APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.05.2006

BEFORE
THE HON'BLE RAVINDRA SINGH, J.

Criminal Misc. Bail Application No. 3356 of 2006

Rajendra alias Rajjo ...Applicant (In Jail)
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Sri K.K. Dwivedi
Sri S.P.S. Raghav

Counsel for the Opposite Party:
Sri M.L. Jain
A.G.A.

Code of Criminal Procedure-439-Bail Application-offence under section 302 read with SC/ST Act-Section 3 (ii) (V)-deceased a poor S.C. boy age 16 years-murder by way of strangulation-dead body hanged to give colour of suicide-the occurrence witnessed by the sister of deceased Km. Laxmi and Sonu their statement recorded by I.O. supported the prosecution story-bluntly murdered only because the deceased refused to cut the varseen-prosecution story fully corroborated by medical evidence-held-not to be released on bail.

Held: Para 5

It is opposed by the learned A.G.A. and the learned counsel for the complainant by submitting that the applicant is main accused. He has committed the murder of the deceased. The manner in which the deceased was murdered shows a high handedness of the applicant because all the sisters of the deceased were confined in a room. Thereafter, the murder was committed by way of strangulation and dead body of the deceased was hanged to give a impression that the deceased himself committed the suicide. The alleged occurrence was witnesses by the sisters of the deceased. The statements of the Km. Laxmi and Sonu have been recorded by the I.O. They have fully supported the prosecution story. The applicant has confessed before the police and at his pointing out the rope used in the commission of the alleged offence was recovered. The deceased was poor person belonged to a scheduled cast. He was aged about 16 years. He has not taken any loan from the applicant. He was bruetly murdered only because he has refused to cut the varseem of the applicant. The prosecution story is fully corroborated by medical evidence. The deceased has received anti mortem injuries and the cause of death was strangulation. In such circumstances the applicant may not be released on bail.

(Delivered by Hon'ble Ravindra Singh, J.)

1. This application is filed by the applicant Rajendra alias Rajjo with a prayer that he may be released on bail in case crime no. 8 of 2006, under Section 302 I.P.C. and Sections 3(ii)(v) of the S.C./S.T.(P.A. Act, P.S. Dauki, District Agra.

2. The prosecution story, in brief, is that in the present case the F.I.R. has been lodged by Mahesh Chandra at P.S. Dauki, district Agra on 7.1.2006 at 9.10 p.m. in respect of the incident which had occurred on 7.1.2006 at about 7.045 p.m. The distance of the police station was about 1 km from the place of occurrence. The F.I.R. was lodged only against the applicant. It is alleged that the deceased Anil was asked by the applicant to cut the varseem of his field, but the deceased refused, therefore, he was beaten by the applicant by kicks and fists prior the alleged occurrence. Thereafter, on

7.1.2006 at about 7.45 p.m. the applicant entered into the house of the first informant. The sisters of the first informant were confined in a room and closed from outside and they were extended threat for not making hue and cry. Thereafter, the applicant strangulated the neck of the deceased by rope who was sleeping in front of the room where his sisters were confined. After committing his murder he was hanged in a hook. The alleged occurrence was witnessed by the sisters of the first informant namely Laxmi and Sonu from the window and side of the door. At the said time the first informant and his brother Munna also came there, but the applicant by pushing them ran away from the place of occurrence. The dead body of the deceased in hanging condition was found inside the room by the first informant and other. The dead body was taken down and the room of the sisters was open. They also came out from the room and narrated the whole story. The first informant went to the police station along with the dead body of the deceased and lodged the F.I.R.

3. Heard Sri S.P.S. Raghav and Sri K.K. Dwivedi learned counsel for the applicant , learned A.G.A. for the state of U.P. and Sri M.L. Jain learned counsel for the complainant

4. It is contended by the learned counsel for the applicant that there was no motive for the applicant to commit the alleged offence. The first informant is not eye witness. Even the sisters of the first informant namely Laxmi and Sonu had not seen the alleged occurrence because as per the prosecution version they were also kept in a closed room. The applicant has been falsely implicated only on the basis of the doubt and suspicion. The applicant is old man aged bout 60 years. He has never been challaned in any criminal case. The deceased had committed suicide. The recovery of the plastic rope has been shown from the field of the applicant whereas the same rope was used in hanging the deceased in a room. During investigation the statements of Laxmi and Sonu were not recorded by the I.O. The deceased had taken a sum of Rs.10,000/- as loan from the applicant and there was an agreement with the deceased that he will work as a labour at the house of the applicant and labour charges would be deposited to final payment. The applicant demanded the money but the same was not given and the applicant was beaten by the deceased. Due to this reason the applicant has been falsely implicated.

5. It is opposed by the learned A.G.A. and the learned counsel for the complainant by submitting that the applicant is main accused. He has committed the murder of the deceased. The manner in which the deceased was murdered shows a high handedness of the applicant because all the sisters of the deceased were confined in a room. Thereafter, the murder was committed by way of strangulation and dead body of the deceased was hanged to give a impression that the deceased himself committed the suicide. The alleged occurrence was witnesses by the sisters of the deceased. The statements of the Km. Laxmi and Sonu have been recorded by the I.O. They have fully supported the prosecution story. The applicant has confessed before the police and at his pointing out the rope used in the commission of the alleged offence was recovered. The deceased was poor person belonged to a scheduled cast. He was aged about 16 years. He has not

taken any loan from the applicant. He was bruetly murdered only because he has refused to cut the varseem of the applicant. The prosecution story is fully corroborated by medical evidence. The deceased has received anti mortem injuries and the cause of death was strangulation. In such circumstances the applicant may not be released on bail.

6. Considering the facts and circumstances of the case and the submissions made by the learned counsel for the applicant and learned A.G.A. and without expressing any opinion on the merits of the case the applicant is not entitled for bail, therefore, the prayer for bail is refused.

7. According this bail application is rejected.

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.05.2006

BEFORE
THE HON'BLE K.N. SINHA, J.

Criminal Misc. Writ Petition No.4689 of 2006

Ram Kumar Gautam ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri A.M. Tripathi

Counsel for the Respondents:
Sri V.K. Singh
A.G.A.

Code of Criminal Procedure-S-156 (3)-Magistrate being satisfied about cognizable offence made out-being fracture in right hand-directed the Magistrate to Register and for investigation-interference by the revisional court on the ground of previous enmity between the parties-held-illegal and not tenable in the eye of law-session judge mis interpreted the law laid down by this court in Gulab Chand Upadhyay case reported in 2002 (44) ACC-670-court should examine the genuineness of each complaint on its own wisdom.

Held: Para 4 and 5

The approach on the fact is quite erroneous. If there is previous enmity between the parties that does not mean that any offence, committed thereafter, should go un-noticed. There is fracture in the hand of one injured and it makes out a cognizable offence. Whenever said application under Section 156 (3) Cr.P.C. discloses a cognizable offence, the Magistrate is bound to direct for registration of the case. The law laid down in Gulab Chandra case (supra) has been wrongly interpreted. It gives a guide line to the Magistrate. Suppose, in a murder case, where all the accused are known and murder takes place in broad day light and on inaction of police, if the complainant approaches the Magistrate under Section 156 (3) Cr.P.C., whether his prayer can be thrown away, taking resort to Gulab Chandra case (supra) that offence was committed in broad day light and accused are known, hence case could not be registered.

This is absolutely misinterpretation of the judgment of this Court by the revisional court and the law laid down did not permit the court to intepret in such a way. Any guide line given by this Court has to be followed in the circumstances of the case. There may be false type of complaint. There may be some complaint of civil nature or otherwise or some complaint in which the cognizable offence is patently made out. The courts should examine the genuineness of each complaint and in his wisdom, should pass a proper order. The

order of the Additional Sessions Judge, Court No.3 Meerut, as passed in the revision, is absolutely illegal and not tenable in the eyes of law.

Case law discussed:
2002 (44) ACC-670

(Delivered by Hon'ble K.N. Sinha, J.)

1. Heard Sri A.M. Tripathi, learned counsel for the petitioner, Sri Vivek Kumar Singh, learned counsel for opposite party no. 4 to 7 and learned A.G.A.

2. From the record, it transpires that petitioner Ram Kumar Gautam moved an application before the Judicial Magistrate, Mawana, District Meerut, under Section 156 (3) Cr.P.C., which was allowed and it was directed by the Magistrate that S.O. Mawana, District Meerut, shall register a case and investigate. Against the said order, a revision was filed by the opposite party no. 4 to 7 and after hearing the parties the said revision was allowed, setting aside the order of the Magistrate. It was observed that if petitioner so likes, he may file a complaint.

3. The allegation in the application is that opposite parties Pankaj, Manoj, Harish and Om Prakash came along with danda, gun and iron rod, entered into the shop of the petitioner and badly assaulted petitioner and his brother. In support of this, the injury report was also filed showing a contusion and from X-ray, a fracture was also found. In this way, the offence goes minimum to the extent of Section 325 Indian Penal Code, besides other sections of the India Penal Code.

4. The revisional court heard the parties counsel but the said fact was ignored on the ground that there has been previous litigation between the parties. The revisional court had traced the history of the litigations between the parties and came to the conclusion that Ram Kumar Gautam was not injured and injury was received at the thumb of Mahesh Gautam. He has also resorted to a judgment of this Court in **Gulab Chandra Upadhyaya Vs. State of U.P. (2002 (44) ACC-670**. The approach on the fact is quite erroneous. If there is previous enmity between the parties that does not mean that any offence, committed thereafter, should go un-noticed. There is fracture in the hand of one injured and it makes out a cognizable offence. Whenever said application under Section 156 (3) Cr.P.C. discloses a cognizable offence, the Magistrate is bound to direct for registration of the case. The law laid down in Gulab Chandra case (supra) has been wrongly interpreted. It gives a guide line to the Magistrate. Suppose, in a murder case, where all the accused are known and murder takes place in broad day light and on inaction of police, if the complainant approaches the Magistrate under Section 156 (3) Cr.P.C., whether his prayer can be thrown away, taking resort to Gulab Chandra case (supra) that offence was committed in broad day light and accused are known, hence case could not be registered.

5. This is absolutely misinterpretation of the judgment of this Court by the revisional court and the law laid down did not permit the court to intepret in such a way. Any guide line given by this Court has to be followed in the circumstances of the case. There may be false type of complaint. There may be some complaint of civil nature or otherwise or some complaint in which the cognizable offence is patently made out.

The courts should examine the genuineness of each complaint and in his wisdom, should pass a proper order. The order of the Additional Sessions Judge, Court No.3 Meerut, as passed in the revision, is absolutely illegal and not tenable in the eyes of law.

6. Consequently the writ petition is hereby allowed. The judgment and order dated 5.4.2006 (Annexure No.6 to the writ petition) passed by the Additional District & Sessions Judge, Court No. 3, Meerut in Criminal Revision No. 270/2005 is quashed. Whereas the order dated 6.6.2005 passed by the Judicial Magistrate Mawana district Meerut stands restored. Petition allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.04.2006

BEFORE
THE HON'BLE KRISHNA MURARI, J.

Civil Misc. Writ Petition No. 18339 of 2006

Parshuram ...Petitioner
Versus
Deputy Director of Consolidation and others ...Respondents

Counsel for the Petitioner:
Sri Abhishek Kumar

Counsel for the Respondents:
Sri Rahul Sahai
Sri M.K. Nigam
S.C.

U.P. Consolidation of Holdings Act 1956- Section 48-Revision-territorial jurisdiction-property in dispute situated in District Ballia-revision challenging the order passed by S.O.C. Mau-the revision-held-maintainable at Mau and not at Ballia.

Held: Para 8, 13 & 14

I have considered the arguments advanced by the learned counsel for the parties and perused the record. In the case of Darbari Lal (supra) the property in dispute was situate in district Jalaun. The appeal filed against the order of Consolidation Officer was transferred from Jalaun to the Court of Settlement Officer Consolidation Kanpur. Against the appellate order passed by Settlement Officer Consolidation Kanpur, a revision was preferred before the Deputy Director of Consolidation Jaldun at Orai. Objection against the maintainability of the revision before the Deputy Director of Consolidation Jalaun at Orai was rejected and the matter came to this court. This court after considering the provision of the Act and Rules specially Section 48 and Rule III held that revisional court of Jalun at Orai will have no jurisdiction to hear the revision against the order of the appellate authority of Kanpur. The facts of the case of Darbari Lal are identical to the fact of the present case and the law laid down in the said case applies with full force.

In view of the aforesaid discussions, the two case laws relied upon by the learned counsel for the respondents being clearly distinguishable are of no help to him. On the contrary the law laid down in the case of Darbari Lal with which I am in respectful agreement applies with full force.

As a result, the writ petition stands allowed, the impugned order of Deputy Director of Consolidation dated 10.3.2006 is hereby quashed. The revision filed by the answering respondents before Deputy Director of Consolidation Ballia is not maintainable and stands dismissed. It would however be open to the respondents to file revision afresh before the competent court.

Case law discussed:

1989 R.D.-304 relied on.
1994 R.D.-62 distinguished.
1970 R.D.-270 distinguished.

(Delivered by Hon'ble Krishna Murari, J.)

1. Heard Sri Abhishek Kumar learned counsel for the petitioner and Sri Rahul Sahai appearing for the respondent no.3.

2. With the consent of learned counsel for the parties, the writ petition is being disposed of at the admission stage.

3. The dispute relates to khata no. 245 situate in village Sikandarpur District Ballia.

4. An objection under Section 9-A (2) of the U.P. Consolidation of holdings Act (for short the Act) was filed by the respondents which was allowed by the Consolidation Officer vide order dated 21.3.2003. Aggrieved, the petitioner preferred an appeal before the Settlement Officer Consolidation, Ballia. Subsequently, on an application made by the petitioner the appeal was transferred to the court of Settlement Officer Consolidation, District Mau and came to be decided by order dated 1.2.2006. The respondents preferred a revision before Deputy Director of Consolidation Ballia against the order passed by Settlement Officer Consolidation District Mau. The petitioner raised an objection regarding the maintainability of the revision before the Deputy Director of Consolidation Ballia on the ground that he had no jurisdiction and the revision would lie only before Deputy Director of Consolidation Mau.

5. The Deputy Director of Consolidation, Ballia vide order dated 10.3.2006 overruled the objection and held that revision was maintainable before him.

6. It has been urged by the learned counsel for the petitioner that Deputy Director of Consolidation Ballia has no jurisdiction to hear the revision against the judgment of the Settlement Officer Consolidation Mau. Reliance in support of contention has been placed on a decision of learned Single Judge in the case of **Darbari lal Vs. District Deputy Director of Consolidation Jalaun 1989 RD 304**.

7. In reply it has been urged by the learned counsel for the respondents that since only appeal was transferred from Ballia to Mau to be heard by Settlement Officer Consolidation Mau, the property in dispute was situate in district Ballia, as such the Deputy Director of Consolidation Ballia will have jurisdiction to hear the revision. He has placed reliance on the judgment of learned single Judge in the case of **Ram Das Rai Vs. Deputy Director of Consolidation 1994 RD 62** and a Division Bench Judgment in the case of **Shitla Prasad Vs. Deputy Director of Consolidation U.P. Lucknow in camp at Faizabad and others 1970 RD 270**.

8. I have considered the arguments advanced by the learned counsel for the parties and perused the record. In the case of Darbari Lal (supra) the property in dispute was situate in district Jalaun. The appeal filed against the order of Consolidation Officer was transferred from Jalaun to the Court of Settlement Officer Consolidation Kanpur. Against

the appellate order passed by Settlement Officer Consolidation Kanpur, a revision was preferred before the Deputy Director of Consolidation Jaldun at Orai. Objection against the maintainability of the revision before the Deputy Director of Consolidation Jalaun at Orai was rejected and the matter came to this court. This court after considering the provision of the Act and Rules specially Section 48 and Rule III held that revisional court of Jalun at Orai will have no jurisdiction to hear the revision against the order of the appellate authority of Kanpur. The facts of the case of Darbari Lal are identical to the fact of the present case and the law laid down in the said case applies with full force.

9. In so far as the case of Ram Das Rai relied upon by the learned counsel for the respondents is concerned the same is clearly distinguishable. In the case of Ram Das Rai the Consolidation Commissioner transferred some appeals pending in the court of Settlement Officer Consolidation Deoria to Sri Ram Chandra Yadav, Settlement officer Consolidation, Gorakhpur with a direction that he would hold camp at Deoria and decide the appeals. Against the appellate order revision was filed before the Deputy Director of Consolidation Deoria. The question arose whether the revision would be maintainable before the Deputy Director of Consolidation Deoria or before Deputy Director of Consolidation Gorakhpur. Learned single Judge held that the revisions filed before Deputy Director of Consolidation Deoria were maintainable. It was held that the order passed by the Consolidation Commissioner directing Sri Ram Chandra Yadav, Settlement Officer Consolidation Gorakhpur to decide the appeal by holding a camp at Deoria was a direction within meaning of Sub -Section 2 of Section 42 of the Act and he would be deemed to be Settlement Officer consolidation Deoria and for this reason, revision filed before the Deputy Director Consolidation Deoria were held to be maintainable. The facts in so far as present case is concerned, are entirely different. In the present case, the appeals were transferred to be heard by the Settlement Officer Consolidation Mau. The facts being clearly distinguishable, the case of Ram Das Rai is of no help to the respondents. Even otherwise, the ratio of this decision supports the contention advanced by learned counsel for the petitioner.

10. Division bench judgment in the case of Shitla Prasad Vs. Deputy Director of Consolidation relied upon by the learned counsel for the respondents also has no application in the facts and circumstances of the present case. In the case of Shitala Prasad (supra) revisional order was challenged on the ground that since the revision was not transferred by the District Deputy Director of Consolidation Faizabad to the Deputy Director of Consolidation Lucknow in camp at Faizabad, it could not be heard and disposed of by him and his judgment is void for that reason. It was in the context of the aforesaid facts, the Division Bench held that a revision -application can be made to the Deputy Director of Consolidation and that all the Deputy Director of Consolidation in Uttar Pradesh have jurisdiction to hear the revision-application under Section 48 of the Act. Learned counsel for the respondents has urged that in view of the observation made by division bench any Deputy Director of Consolidation will

have jurisdiction to hear a revision-application and thus the revision filed before Deputy Director of Consolidation Ballia against the order of Settlement Officer Consolidation Mau would be maintainable.

11. I am afraid the interpretation being given by the learned counsel for the respondents to the observation made by the division bench are totally misconceived. The question before division bench was as to whether the Deputy Director of Consolidation could decide a revision without file being transferred to him by the District Deputy Director of Consolidation. While, rejecting the arguments that Officer hearing a revision - application gets jurisdiction to hear it by the authority of the order of transfer of the case to his file by the District Deputy Director of Consolidation, it was observed by the division bench as follows;

"*This provision read along with various notifications issued by the State Government from time to time and the order of the Director clearly show that a revision-application can be made to a Deputy Director of Consolidation and that all the Deputy Director of Consolidation in Uttar Pradesh have jurisdiction to hear a revision - application is not conferred by an order passed under rule 65 (1-A) but by the provision of the Act mentioned above and the notifications of the State Government*".

12. The aforesaid observation made by the Division Bench has to be read with reference to the facts of the case and in context of the question which was being considered. If the aforesaid observation are to be read in the manner as suggested by the learned counsel for the respondents in that case any Deputy Director of Consolidation in the entire State of U.P. could seize upon any case and decide it himself irrespective of the fact whether the dispute lies within territorial jurisdiction of the district where he is posted or not. This would not only be against the provisions of the Act but would also result into total chaos.

13. In view of the aforesaid discussions, the two case laws relied upon by the learned counsel for the respondents being clearly distinguishable are of no help to him. On the contrary the law laid down in the case of Darbari Lal with which I am in respectful agreement applies with full force.

14. As a result, the writ petition stands allowed, the impugned order of Deputy Director of Consolidation dated 10.3.2006 is hereby quashed. The revision filed by the answering respondents before Deputy Director of Consolidation Ballia is not maintainable and stands dismissed. It would however be open to the respondents to file revision afresh before the competent court. Petition allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.07.2006

BEFORE
THE HON'BLE D.P. SINGH, J.

Civil Misc. Writ Petition No. 23802 of 2005

Smt. Atro Devi and another ...Petitioners
Versus
Punjab National Bank and others
...Respondents

Counsel for the Petitioners:
Sri Vinod Sinha
Sri S.P. Singh

Counsel for the Respondents:
Sri Tarun Verma

Constitution of India, Art. 226-Compassionate appointment-denial on the ground-the financial condition of the claimant is soundful-after the death of bread earner-getting Rs.4198/- towards monthly pension-apart from Rs.5,81,272/- inclusive of terminal dues Insurance-held-unless and until-taking into consideration the death cum retiral benefits- the scheme framed by the bank can not be illegal-can not be interfered under writ jurisdiction- ratio laid down in Smt. Kanti Srivastava's case-No longer a good law.

Held: Para 7

From a perusal of the scheme, it does not appear that it is arbitrary, however, until and unless the petitioners are able to demonstrate that taking into consideration the death-cum-retrial benefits would be illegal, his petition cannot succeed. To buttress his contention that such benefits cannot be taken into consideration to adjudge the financial condition of the family, he draws support from the Single Judge decision in the case of Smt. Kanti Srivastava (Supra).

Case law discussed:
2004 (6) J.T. 418
W.P. 38847/02 decided on 20.5.03

(Delivered by Hon'ble D.P. Singh, J.)

1. Heard Sri Vinod Sinha, learned counsel for the petitioners and Sri Tarun Verma for the respondents.

2. This petition is directed against orders dated 18.6.2004 and 5.3.2005 whereby the claim for compassionate appointment has been rejected by the respondents.

3. The husband of petitioner no. 1 and father of petitioner no. 2 Sri Dharam Pal Singh died in harness on 3.3.2003 while working as cashier-cum-clerk in Punjab National Bank. The claim for appointment of petitioner no. 2 on compassionate ground was rejected vide order dated 18.6.2004 mentioning that the family was in receipt of the terminal dues and was receiving family pension etc. However, application was again moved bringing to the notice of the respondent that the deceased left behind a large family including unmarried daughters and the terminal benefit and the monthly pension was not sufficient to meet the financial requirement, in pursuance of which the petitioner was informed that the matter be treated as closed, thus, the petition.

4. Learned counsel for the petitioner has urged that the terminal benefits and pension given at the time of death cannot be taken into consideration for the purpose of adjudging the financial position of the distressed family. In support of his contention he has relied upon a Single Judge decision of this Court rendered in the case of **Smt. Kanti Srivastava v. State Bank of India and others** decided on 14.2.2003, (Writ Petition No. 35344 of 2001). He has also urged that looking to the size of the family specially the unmarried daughters, the amount said to be paid to the petitioners was not sufficient to make two ends meet and, therefore, he is entitled to appointment.

5. The concept of compassionate appointment is an antithesis to the normal

recruitment rules and is saved at the altar of Articles 14 and 16 by reasons of humanitarian consideration. The sole object of compassionate appointment is to give succour to the distressed bereaved family of the sole bread earner so that they are able to tide over the sudden financial crisis. It does not require reference to decisions of the Apex Court to say that neither it is a right nor can it be treated an alternative source of recruitment. By giving compassionate appointment, the sole object is to strengthen the financial position of the family which is deprived of the regular salary earned by the deceased sole bread earner. If otherwise, the family, inspite of the demise of the bread winner, is financially comfortably placed, the heirs or the dependent cannot seek compassionate employment as it would amount to violation of the sacrosanct object of the compassionate appointment. Keeping that in view, the claim of the petitioner is to be examined.

6. Compassionate appointment in the respondent Bank is governed by a scheme known as 'Scheme for Employment of the Dependent of the Employees who died while working in the Bank'. One of the most important ingredient for grant of compassionate appointment as mentioned in the scheme is the financial condition of the family. It is provided in the scheme that the financial condition of the family would be examined after considering the family pension, gratuity received, provident fund, compensation by the Bank or Welfare fund, Insurance proceeds etc. It is apparent from the record that the petitioners received a total sum of Rs.5,81,272/- inclusive of terminal dues, Insurance amount etc. and they are also getting Rs.4,198/- per month as pension and they have their own dwelling concrete house. Though, it is contended that a sum of Rs.2,85,000/- was spent on the medical treatment of the deceased employee, the bank had reimbursed a sum of Rs.1,10,000/- only as vouchers and bills for the said amount were found admissible. No doubt the petitioner has a large family, but the amount received in lump sum and the monthly pension cannot be said to be meager.

7. From a perusal of the scheme, it does not appear that it is arbitrary, however, until and unless the petitioners are able to demonstrate that taking into consideration the death-cum-retiral benefits would be illegal, his petition cannot succeed. To buttress his contention that such benefits cannot be taken into consideration to adjudge the financial condition of the family, he draws support from the Single Judge decision in the case of **Smt. Kanti Srivastava** (Supra).

8. It would be worthwhile to note that the aforesaid scheme has been approved by the Apex Court in **Punjab National Bank v. Ashwani Kumar Taneja** (2004 (6) J.T. 418). The ratio laid down in **Smt. Kanti Srivastava's** case (Supra) was followed by the same learned Single Judge in a later decision of **Durgesh Kumar Tiwari v. Chief, General Manager, State Bank of India** decided on 20.5.2003, (Writ Petition No.38847 of 2002) and the Bank challenged the said decision of **Durgesh Kumar Tiwari** (supra) before the Apex Court in Civil Appeal No.996 of 2006 (**Chief General Manager, SBI and others v. Durgesh Kumar Tiwari)** where the said judgment has been held to be unsustainable in law and has been set

aside. Thus, the said ratio is no longer a good law.

9. For the reasons stated above, this is not a fit case for interference under Article 226 of the Constitution of India. Rejected. Petition dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.05.2006

BEFORE
THE HON'BLE UMESHWAR PANDEY, J.

Civil Misc. Writ Petition No. 28252 of 2006

Shiv Nath & another ...Plaintiff/Petitioner
Versus
Bangai ...Defendant/Respondent

Counsel for the Petitioners:
Sri H.C. Pathak

Counsel for the Respondent:

Code of Civil Procedure-Order 17-rule I-Adjournment of case-beyond 3 occasion-Trail Court refused adjournment and proceeded with hearing-held-not proper-number as provided in the proviso-be intereperated as directory and not mandatory-before granting adjournment the court must be satisfied with such extraordinary circumstances-otherwise the suffering party be compensated by award of cost-necessary direction issued in this regard.

Held: Para 4

The petitioners-plaintiffs' adjournment application had been rejected by the trial court on 30.3.2005 as P.W. 1 Ram Raj, who was in the process of being cross examined, was not present. It was noted that the witness on account of illness could not reach the court and obviously if one witness who was in the process of cross examination is not present on account of his illness such prayer for adjournment should have been allowed, subject to award of costs. On the very next day i.e. 31.3.2005 this witness was presented before the trial court but his cross examination was not permitted and the second impugned order was passed on the petitioners' application given under Section 151 C.P.C. In view of the availability of an exceptional circumstance, which was beyond control of the other plaintiff to produce P.W. 1 (the other plaintiff) in the witness box on 30.3.2005, the prayer seeking adjournment made by the petitioners should have been granted. Of course, if the court finds in the face of it, the reasons of illness given to be false it does have a right to reject such prayer but here what appears to have actually clicked to the court for refusing the adjournment is nothing but the provision contained in the proviso to Rule 1 of Order 17 C.P.C. and that does not appear to be a just and proper approach and interpretation of the court to that provision.

Case law discussed:
2005 (6) SCC-344

(Delivered by Hon'ble Umeshwar Pandey, J.)

Heard learned counsel for the petitioners.

1. The plaintiffs-petitioners' application for adjournment was rejected by the trial court vide Annexure No. 5 on the ground that earlier on three occasions plaintiff's such prayer of adjournment had been granted and in the light of proviso added to Order 17 Rule 1 C.P.C. no adjournment beyond three dates could be granted by the court. The petitioners subsequently moved the trial court with another application under Section 151 C.P.C. (Annexure No. 6) for permitting Ram Raj, one of the plaintiffs present in the court, to be cross examined by the

defendant's counsel. But that application too has been dismissed by the trial court vide Annexure No. 7. Thereafter, only the petitioner approached the revisional court which also did not find favour of the court and has been dismissed vide Annexure No. 9.

2. The petitioners on 30.3.2005, which was the 4th date fixed for final hearing (evidence) in the suit, had moved an application for adjournment. As the plaintiffs had already taken three earlier adjournments it actually weighed with the trial court in rejecting the prayer and passing the impugned order. That date being the 4th occasion, the plaintiff to the suit as was seeking adjournment of hearing in the suit it was not allowed in view of the proviso to Order 17 Rule 1 C.P.C. as amended vide C.P.C. (amendment) Act, 1999 (operative w.e.f. 01.07.2002). The ground taken by the petitioner for adjournment was that the plaintiff P.W. 1 had fallen ill and could not reach the court to be present for his cross examination as such. His examination in chief had already been recorded earlier. The ground of illness, which had been taken for such adjournment, was though quite substantial but the gravity of the same has been out-weighed by the trial court simply keeping in view the referred proviso to Rule 1 of Order 17 C.P.C. Subsequent thereto the very next day (31.3.2005) when the plaintiff Ram Raj (P.W. 1) appeared before the court and moved an application under Section 151 C.P.C. offering himself for the cross examination, that prayer has also been dismissed by the trial court. Whether or not there were exceptional reasons or the circumstances beyond the control of the plaintiff on the date when their prayer for adjournment was refused, is a matter of appreciation by the court while granting or refusing such prayer of a party. In this context in order to appreciate the propriety of the order passed by the courts below, a reference to the provisions of Order 17 C.P.C. as a whole, is necessary and it is quoted as below:-

1. Court may grant time and adjourn hearing.- *[(1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:*

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit.]

(2) ***Cost of adjournment.-****In every such case the Court shall fix aday for the further hearing of the suit, and [shall make such orders as to costs occasioned by the adjournment or such higher costs as the Court deems fit]:*

[Provided that,--

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,

(b) no adjournment shall be granted at the request at the request of a party, except where the circumstances are beyond the control of that party,

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground

for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.]

3. A perusal of the aforesaid provisions no doubt makes it clear that the statute provides guidelines not to grant adjournment sought by one party in the matter of hearing of a suit on more than three occasions. But at the same time it also does not put complete fetters on the court's discretion for such grant of adjournment, in case, the party suffering on account of such grant of adjournment can be compensated by award of costs and there are exceptional reasons or circumstances beyond the control of that party seeking adjournment to proceed with the hearing. Therefore, to say that this proviso added to Rule 1 by C.P.C. Amendment Act, 1999, takes away the discretion of the court to grant adjournment on fourth occasion would be a wrong interpretation of the Rule. Thus, the number, as provided in the aforesaid proviso, has only limited adjournment and can be quite safely interpreted to be just directory and not mandatory. It is true that grant of any adjournment let alone the first, second or third adjournment, is not a right of a party. The court granting adjournment must be satisfied by the party making such prayer that special and extraordinary circumstances are available for grant of adjournment and the court is not supposed to make a routine order in this regard. The proviso to Order 17 Rule 1 C.P.C. has to be necessarily read down so as not to take away the discretion of the court in the extreme hard cases, for instance, a party may be suddenly hospitalized on account of some serious ailment or there may be serious accident or some act of God leading to some devastation. In such circumstances it cannot be said that though the circumstances may be beyond control of a party, further adjournment cannot be granted because of restrictions of three adjournments, as provided in the proviso to Order 17 Rule 1 C.P.C. The court can grant adjournment even in cases, which may not directly come within the category of circumstances beyond the control of a party, by resorting to the provision of higher costs which can also include punitive costs, in the discretion of the court for granting adjournment beyond three occasions, while considering such prayer of a party. However, the court must have regard to the injustice that may result on refusal thereof, with reference to the particular facts of a case. In this context the case law of ***Salem Advocate Bar Assn. Vs. Union of India, (2005) 6 SCC 344*** is quite relevant. The law laid down in para 30 and 31 of the judgment by the Hon'ble Apex Court squarely applies to the facts of the present case.

4. The petitioners-plaintiffs' adjournment application had been rejected by the trial court on 30.3.2005 as P.W. 1 Ram Raj, who was in the process of being cross examined, was not present. It was noted that the witness on account of illness could not reach the court and

obviously if one witness who was in the process of cross examination is not present on account of his illness such prayer for adjournment should have been allowed, subject to award of costs. On the very next day i.e. 31.3.2005 this witness was presented before the trial court but his cross examination was not permitted and the second impugned order was passed on the petitioners' application given under Section 151 C.P.C. In view of the availability of an exceptional circumstance, which was beyond control of the other plaintiff to produce P.W. 1 (the other plaintiff) in the witness box on 30.3.2005, the prayer seeking adjournment made by the petitioners should have been granted. Of course, if the court finds in the face of it, the reasons of illness given to be false it does have a right to reject such prayer but here what appears to have actually clicked to the court for refusing the adjournment is nothing but the provision contained in the proviso to Rule 1 of Order 17 C.P.C. and that does not appear to be a just and proper approach and interpretation of the court to that provision.

5. In view of the aforesaid, this writ petition is hereby disposed of with a direction to the trial court to permit cross examination of P.W. 1 Ram Raj on the very next date when the suit is listed for hearing and thereafter to further proceed to dispose of the case in accordance with law. Petition disposed of.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.05.2006

BEFORE
THE HON'BLE S.N. SRIVASTAVA, J.

Civil Misc. Writ Petition No. 5324 of 1997

Shree Satya Narain Tulsi Manas Mandir, Durga Kund, Varanasi ...Petitioner
Versus
Workmen Compensation Commissioner/ Authority under the Minimum Wages Act, 1948/ Additional Labour Commissioner, Varanasi and others ...Respondents

Counsel for the Petitioner:
Sri N.B. Saxena
Sri M.B. Saxena

Counsel for the Respondents:
Sri V.K. Shukla
Sri B.N. Singh
Sri S.C. Rai
Sri K.C. Sinha
Sri A.C. Agrawal
Sri Ashok Nigam
Sri Adish Agrawal
Sri Sanjay Goswami
Sri S.K. Maurya
Sri Dr. R.G. Padia
Sri P. Padia
C.S.C.

Minimum Wages Act, 1948, U.P. Minimum Wages Act (U.P. Amendment) Act 1960, U.P. Minimum Wages Rules 1952-readwith Constitution of India Act-14, 21, 38 (2) and 43-Right to get minimum wages-persons working in a religions on charitable institution-engaged at the pleasure of Management-cannot be denied their rights of living a life of human dignity-State Government directed to frame scheme-regulation providing protection to such working of such religions and charitable institutions.

Held: Para 36

Article 21 of the Const of India is applicable equally to all such persons, The right to get livelihood, wages to maintain themselves and their families as discussed above, and to get fair wages cannot be denied merely on the ground that the establishment or Institution is a religious or charitable institution or that persons who are engaged are Sevadars or employees at the pleasure of management. Employees or Sevadars are the persons who have dedicated themselves to the service of Deity and Almighty and in such way, merely on that ground for cannot be denied their right of living wages to maintain themselves or their families and to live a life with human dignity,

Case law discussed:

AIR 1993 SC-2178, AIR 1986 SC-847, AIR 1980 SC-1789, AIR 1985 SC-389, AIR 1951 SC-2260, AIR 1983 SC-130, AIR 1981 SC-745, 1992 (4) SCC-465, AIR 1984 SC-802, AIR 1986 SC-180, AIR 1992 SC-504, 1987 ALJ-728, AIR 1954 SC-282, AIR 1961 SC-1402, 1992 LABIC-1621, AIR 1963 SC-2089

(Delivered by Hon'ble S.N. Srivastava, J.)

1. The proceedings under the Minimum Wages Act, 1948 were initiated against the petitioner on the basis of the notice dated 8.8.1995 and 21,11.1995 (Annexures- 1 and 2 to the writ petition). The notice dated 8.8.1995 were also mentioned in the said notice. On the basis of this notice M. W. Case No. 237/95 (Sri R. P. Srivastava, Labour Enforcement Officer, Varanasi Vs. Shree Satya Naraln Tulsi Manas Mandir) was registered before the respondent no.1 under the Minimum Wages act and the respondent no. 1 issued notice to the petitioner fixing 28.11.1995 and directing the petitioner to appear along with all documents and witnesses in support of his case. Notice (Annexure 1) to the writ petition makes It clear that all 29 workers In Shree Satya Narain TulSI Manas Mandir Durga Kund Varanasi are getting fixed amount of Rs.450/- to 650/- per month except persons mentioned at Serial Nos. 17 and 18, who are being paid a fixed amount of Rs.1050/- per month.

2. After receiving the notice the petitioner filed objection/written statement (Annexure-4 to the petition) raising the question of jurisdiction and the applicability of the provisions for the Minimum Wages Act.

3. In the written statement filed by the petitioner, it is stated that Shree Satya Naraln Tulsi Manas Mandir is a temple of Sanatam Dharm Sect and is a holy place where devotees come for darshan and pujan for their Adhyatmik Santushthi by Murti Puja. No Prasad is sold in the temple and It IS purely a religious shrine of Hindus and not a commercial establishment. It was further stated that the temple is neither an Industry within the meaning of U. P. Industrial Disputes Act nor a shop or commercial establishment within the meaning of U.P. Shop and Commercial Establishment Act and It is a religious and spiritual place which has no room for any sort of business, trade or manufacturing. Various other fats were also brought through this objection/written statement.-

4. Subsequently the petitioner moved an application stating that since the petitioner temple is not a commercial establishment and the notification issued to fix minimum wages for commercial establishment is not applicable to it nor it being a scheduled employment the provisions of Minimum Wages Act are not applicable at all to the petitioner Temple and as such the question whether provisions of Minimum Wages Act are

applicable to the petitioner Temple be decided as a preliminary issue.

5. The respondent no. 1 by the impugned order dated 4.2.1992 turned down the objection of the petitioner while observing that all the issues need be decided together while delivering final verdict.

6. Heard Sri Mool Behari Saxena, learned counsel for the petitioner and Sri Bhupendra Nath Singh, learned counsel appearing for Opposite party no.3, Dr. Ashok Nigam, learned Addl. Solicitor General of India and Sri K.C. Sinha, learned Asstt. Solicitor General of India, appearing for Union of India, Sri Adish Agarwal, Addl. Advocate General assisted by Sri Sanjai Goswami and Sri S.K. Maurya, learned Standing counsel, and Dr. R.G. Padia, Senior Advocate assisted by Sri Prakash Padia who assisted the Court in this matter.

7. The question for consideration as framed by this Court by means of order dated August 29,2002 may be excerpted below.

"Whether the employees of Religious/Charitable Institution/ Establishment are the employees protected under the Minimum Wages Act or any other statutory enactment in the matter of wages and if not, whether a citizen of India employed in any religious or charitable Institution/Establishment is entitled to protection in the matter of wages under Article 21 of the Constitution of India?

8. The present proceeding under the minimum Wages Act were triggered after issue of notice (Annexure 1 to the petition). This notice presupposed the petitioner Sri Satya Narain Tulsi Manas Mandir as a factory/firm under the Minimum Wages Act and the case came to be registered on the basis of the said notice.

9. Learned counsel for the petitioner began his argument by submitting that Shree Satya Narain Tulsi Manas Mandir is a temple of Sanatan Dharam Sect and it is a religious place where devotees throng for darshan and pujan and that it is neither a firm/factory nor a shop or commercial establishment. It is further submitted that no commercial activities are carried on within the temple precincts and the persons who have been shown In the list attached to the notice dated 8.8.1995 as the employees of the Establishment are in fact 'Sevadars' who have been kept to facilitate worship and Pujan of the idols by the devotees who pay a visit to the temple and as such the provisions of Minimum Wages Act are not applicable to the petitioner. It was further submitted that the question of jurisdiction was raised by the petitioner before the respondent no.1 and the order passed by him to the effect that the question of jurisdiction could be raised after the evidence is closed, cannot be sustainable. He further submitted that admittedly, the petitioner is a temple and persons have been engaged as Sevadar to maintain the temple and to facilitate darshan and pujan of the idols established in the temple by the devotees and, therefore, the entire proceedings against the petitioner under the Minimum Wages Act are without Jurisdiction. He further submitted/argued that the respondent no. l has acted illegally and with material irregularity in the matter by refusing to decide the question of Jurisdiction as to whether the proceedings

against the petitioner under the Minimum Wages Act are maintainable as a preliminary issue.

10. Sri B.N. Singh, learned counsel for the respondent no. 3 argued that the question whether the petitioner is a factory/Firm or a shop or commercial establishment could only be determined by leading evidence and the order passed by the respondent no.1 directing this question to be decided only after evidence is closed, is absolutely in accordance with aw. The learned counsel did not dispute that the petitioner is a temple belonging to Vaishnav sect and idols are kept therein for worship by the devotees but since a counter has been set up and tickets are sold to the devotees it shall be considered to be a shop or commercial establishment and the persons engaged by the petitioner are the employees of commercial establishment. He further urged that the writ petition should be dismissed as the order passed by the respondent no. l directing to adduce evidence was perfectly valid. According to him, no decision is required on the application filed by the petitioner at this stage.

11. After hearing learned counsel for the parties, it is necessary to consider the relevant provisions of the Minimum Wages Act, 1948, U.P. Minimum Wages (U.P. Amendment) Act, 1920, U.P. Minimum Wages Rules, 1952 and U.P. Dookan Aur Vainjya Adhishthan Niyamavali, 1963.

Section 2(e) of the Minimum Wages Act, 1948 which defines "employer" is being reproduced herein below:-

"2(e) "employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of Section 26-

(i) .....

12. Scheduled employments are mentioned in Schedule II of the notification dated 31.3.1978 issued under Section 22-F of the Minimum Wages Act and published in U.P. Gazette Extraordinary dated 31.3.1978. Employment in shops and Employment in any Commercial Establishment are mentioned at serials no. 36 and 47 respectively in Schedule II Par 1.The notification dated 18.1.1992 provides for minimum rate of wages in respect of the employees employed in (i) commercial establishment in U.P. and (ii) Shops in U.P.

13. Section 2 (4) of the, Uttar Pradesh Dookan Aur Vanljya Adhisthan Adhiniyam, 1962 defines Commercial establishment' which means any premises, not being the premises of a factory, or a shop, wherein any trade, or incidental or ancillary thereto, is carried on for profit and includes a premises wherein, Journalistic or printing work, or business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on, or which is used as theatre, cinema, or for any other public amusement or entertainment or where the clerical and other, establishment of a factory, to whom the provisions of the Factories Act 1948, do no apply, work. Similarly Section 2 (16) defines \ shop' means any premises where any wholesale or retail trade or business is carried n, or where services are rendered to customers, and includes,

all offices, godowns or warehouses, whether in the same premises or not, which are used in connection with such trade or business.

14. The definition of commercial establishment makes it clear that it must be connected with trade, business manufacture or any work connected with the same. Similarly it is clear from the definition of shop that any premises where any wholesale or retail trade or business is carried on or where services are rendered to customers in a shop.

15. The expression" Wages" which is defined in section 2 (h) of the Minimum Wages Act means all remuneration, capable of being expressed in terms of money, which would be payable to a person employed in respect of his employment or of work done in such employment and the word "employee" as defined in section 2(i) means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adopted or otherwise processed for sale for the purposes of the trade or business of that other person.

16. Now in the above background it is to be seen whether from the pleadings of the parties, Shree Satya Narayan Tulsi Manas Mandir is a commercial establishment or a shop. According to the pleadings of the petitioner in the petitioner's establishment about 29 persons are working and they are getting wages as mentioned in the list-appended alongwith the notice-dated 8.8.1995. From the pleadings of the parties it is established that the petitioner is involved in the activities relating to Sanatan Dharma sect of Hindu religion.

17. From the perusal of the counter-affidavit filed on behalf of the respondents, it appears that the workmen were engaged by the petitioner to look after the premises of the Manas Mandir, sale of books, issuing the tickets and collection of fare, checking of tickets and their collection etc. It further appears that the main source of income of the petitioner is from the sale of books, sale of tickets of exhibition and rent realized from the shops and Bank.

18. The petitioner urged that the sale of tickets for entering in the temple premises where moving idols of various deities are kept as well as sale of religious books are part of religious activities for maintenance of Radha Krishna Leela Jhanki which is run by the Thakur Das Surekha Charitable Fund. It IS not run for profit but for propagation of religious and cultural heritage of Hindu religion. Rupee one charged from the devotees is not for public amusement or entertainment but for the maintenance of the Jhanki and payment of electricity charges as without this the Jhanki can not continue further. The books published by the Thakur Das Surekha Charitable Fund are available and distributed free of cost and for outsiders the expenses of sending the books by registered post are charged otherwise the books are published and made available to the public on the basis of no profit and no loss. The money received from the entry charges and rent of the shops etc. is utilized to meet out the

heavy expenses of the maintenance of the temple without any move of profit. The petitioner has stated in paragraph 13 of the rejoinder affidavit that the workers engaged in the petitioner's establishment are there with the sense of their religious duty and not for earning of their livelihood and they are given all the facilities. The petitioner has denied the allegation of denial of leave, earned or sick or casual, to the workers. It has been stated that the total yearly earning of the temple is approximately Rs.50,000/- for which proper account is maintained.

19. Shri B. N. Singh has contended that the petitioner is a 'commercial establishment' and in this context the definition of 'commercial establishment' as contained in Uttar Pradesh Dookan Aur Vanijya Adhishthan Adhiniyam will have to be looked Into. The said at envisages that commercial establishment is a premises wherein any trade, business, manufacture or any work in connection with, or incidental or ancillary thereto is carried on for profit. From the aforesaid definition, it is clear that Manas Mandir is not a premises wherein any trade, business or manufacturing work is carried on for profit and it is a place for religious activities wherein idols of different deities are kept for Puja and darshan by the devotees, religious books are distributed free of cost and Re.1/- is charged as entry free from the devotees for proper maintenance and management of the temple and not for any profit. No material is available on record to establish that there was any profit-oriented motive In establishing the Manas Mandir or in establishing the moving idols of the deities. Thus, it does not transpire that the petitioner is a commercial establishment as defined under the U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962 and as such, the notice issued to the petitioner by the Opp. party no.1 is without Jurisdiction and the entire proceeding initiated on that basis is also without any basis and is liable to be quashed.

20. It was also canvassed by the learned counsel for the Opp. parties that even though the workers are engaged in charitable or religious activities, they are also the citizens of India and they have every right to live with dignity. Article 21 of the Constitution of India also guarantees their livelihood and they are also entitled to get such wages to keep their pot boiling. Merely because they are engaged in religious activities in religious establishment, they cannot be denied their basic right of earning livelihood and in consequence, cannot be allowed to be exploited and they too are entitled to basic human right and to get minimum wages from the earnings of religious and charitable institutions like temples, mosque and churches. In the above conspectus, it falls to the Government to initiate steps in order to secure them decent living and minimum wages.

21. After hearing both the counsel for the parties, issue for determination cropped up if employees of religious or charitable Institutions/Establishment are employees not protected under the Minimum Wages Act or any other statutory provisions in the matter of wages and if not whether a citizen of India employed in any religious or charitable Institutions/Establishment is entitled to protection in the matter of wages under Article 21 of the Constitution of India. As a necessary consequence, notices were issued to State of U. P. as also the Union of India. Sri

S.C. Rai, the learned Addl. Chief Standing Counsel accepted notice on behalf of State of U.P. and learned Senior Standing counsel accepted notice on behalf of Union of India. Learned Addl. Chief Standing Counsel representing the State of U.P. and learned Senior Standing counsel for Union of India sought time for instructions in the matter and they were accorded four weeks' time to file their respective counsel affidavits. Both the counsel sought further time on 22.10.2002 and therefore 26.11.2002 was fixed for further hearing. On 26111 Nov 2002 both the counsel were granted one month's and no more time to file, counter affidavit or to take appropriate steps in this regard. On 11.8.2003/ learned Addl. Chief Standing Counsel made a statement before the Court that he has received instructions not to file any counter affidavit or resist the issues involved in the writ petition. He also read out copy of the letter issued by the Labour Secretary dated 10.1.2003, which was placed on record. Sri K.C. Sinha, learned Assistant Solicitor General of India filed a short counter affidavit on the question.

The text of short counter affidavit as contained in para 3 thereof is that the minimum wage is a concurrent subject of III List, Seventh Schedule of Constitution of India and under the statutory provisions of the Minimum Wages Act, 1948, both the Central and the State Government are the appropriate Government to fix, revise and enforce minimum wages of the workers engaged in the scheduled employments under their respective jurisdictions and therefore, in implementing provisions of the Act, the role of the Central Government is of advisory in nature as both Central Government and the State Government implement the Act independent of each other. In para 6 of the short counter affidavit, the specific averment is that the Central Government is the appropriate Government under Minimum Wages Act only in relation to any scheduled employment carried on or by under the authority of the Central government or a Railway administration, or in relation to Mines, Oil Fields or Major Ports or any Corporation established by a Central Act. For remaining employments, the State Government is the appropriate Government. In para 7 of the short counter affidavit, the averment is that religious institutions do not stand included in the schedule of employments in the Central Sphere and ultimately, it has been prayed that necessary direction, if any, be given to the State of U.P. to add any new employment in the Schedule of employments within the sphere of State Government. It was in the above backdrop that the case was again heard. Having gone through all this tedium, I heard Sri Adish Agarwal, learned Addl. Advocate General, learned Counsel for the Opp. Parties and also Dr. R.G. Padia, learned Senior Advocate, who entered appearance to assist the Court in the matter on the request of the Court and also Dr. Ashok Nigam, learned Addl. Solicitor General of India who assisted the Court.

22. In view of the fats stated and borne out from the pleadings of the parties, it is to be seen whether the petitioner is an employer within the definition of the Minimum Wages Act, 1948 and the persons working in Shree Satya Narayan Tulsi Manas Mandir are in the scheduled employment. From a punctilious reading of the notifications issued by the Government from time to

time under the Minimum Wages Act; 1948, U.P. Minimum Wages (Amendment) Act, and U.P. Minimum Wages Rules, 1952 it is found that there is no notification providing for categorization of the workers engaged by Shree Satya Narayan Tulsi Manas Mandir or any religious or charitable Trust or Math, Mandir etc.

23. As stated supra, a question of pivotal importance begs consideration in the above conspectus and it is whether the workers who are engaged In various Charitable/ Religious Establishments viz. in Temples, Maths, Monasteries etc within the fold of Hindu Religion have also a constitutional right to be given minimum wages notwithstanding the fact that Minimum Wages Act and the Rules framed thereunder are not intended for application for the reason that these institutions cannot be said to be a shop/commercial establishment or industry? In connection with this question, I feel called to deal with this aspect on the admitted fact that the workers mentioned in Annexure 1 to the notice are working in the charitable and religious establishment of the petitioner but are not getting wages sufficient to keep the life meaningful, complete and worth living i.e. something more than survival of animal existence. I am told across the bar that in majority of religious and charitable institutions, notwithstanding the fact that huge income is flowing to their coffer from the devotees, the condition of the workers employed in such institutions is very dismissal and they are keeping a precarious existence as the Minimum Wages Act is not applicable by reason of the fact that such institutions do not fall within the ambit of definition of a Shop or commercial establishment or industry. Most of these workers like Opposite party no. 3 get very exiguous amount, which is too meager and incapable of protecting their own lives and the lives of 'their family members.

24. It is engrafted in Article 21 of the Constitution that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. It is also essential to refer to Articles 37 38 39 and 43 embodied in Part IV of the Constitution of India. Article 38 of the Constitution is being excerpted below for ready reference.

"Article 38. State to secure a social order for the promotion of welfare of the people-

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which Justice, social, economic and political shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

“39. Certain principles of policy to be followed by the State:-

(a) That the citizens, men and women equally, have the right to an adequate means of livelihood;
(b) x x x x x x x
(c) That the operation of the economic system does not result in the

concentration of wealth and means of production to the common detriment;

(d) x x x x x

(e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; "

"43. living wage, etc, for workers.- The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas."

Article 38 (2) of the Constitution specifically mandates that the State shall, in particular, strive to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Similarly, Article 43 mandates that the State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, Industrial or otherwise, work a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. For the workers employed in shops and commercial establishments the State has already provided minimum wages Act and various other welfare legislations but for the workers who are engaged and working in charitable and religious institutions and are bleeding themselves for the upkeep of the institutions and for gratifying the spiritual urges of the public at large and in number of cases such hapless workers keep themselves on tenterhook round the clock or in the minimum 12 to 8 hours a day, the State seems to be still oblivious of their suffering and has not made any legislation for their welfare as yet.

25. Articles 14 of the Constitution of India make it clear that the workers in the employment of such institutions cannot be discriminated against simply on the grounds that they are employed in religious and charitable institutions which were founded not with the motive of earning profits but for religious and charitable purposes. Considering the provisions of Article 21, 38 (2) and 43 of the Constitution of India, the view is irresistible that such workers are also entitled to get-minimum wages as right to life under Article 21 of the Constitution of India. Article 43 of the Constitution of India also makes it clear and does not make any discrimination while stating "to all workers, agricultural, industrial or otherwise" and all such workers are entitled to get a living wage. The word 'living wage' contained in Article 43 means the wages by which a worker can maintain his life to live with dignity with all other facilities as contained and implicit in Article 21 as held by the Supreme Court in various decisions. While Interpreting 'living wage' to secure to all workers a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, anybody could

come to the conclusion that living wage means at least minimum wage. It has been held in various pronouncements by the Supreme Court that fundamental rights and directive principles of State Policy are complementary and supplementary to each other. Paragraphs 138 and 141 of the judgment in the case of **Unnikrishnan K.P. v. State of Andhra Pradesh**[1] are being quoted below:

"138. This Court has also been consistently adopting the approach that Fundamental Rights and Directive Principles are supplementary and complementary to each other and that the provisions in Part III should be interpreted having regard to the preamble and the Directive Principles of the State policy. The initial hesitation to recognize the profound significance of Part IV has been given up long ago. We may explain. While moving for consideration the interim report on Fundamental Rights, Sardar Vallabhai Patel described both the rights mentioned in parts III and IV as Fundamental Rights- one justiciable and other non-justiciable. In his supplementary report, he sated:

"There were two parts of the report; one contains Fundamental Rights which were justiciable and the other part of the report refers to Fundamental Rights which were not justiciable but were Directives."

26. This statement indicates the significance attached to Directive Principles by the founding fathers. Yet another decision on the point is **Minerva Mills v. Union of India**[2]. It is true that in the **State of Madras v. Champakam Darairajan**[3] fundamental rights were held pre-eminent vis-a-vis Directive principles but since then there has been a perceptible shift in this Court's approach to the inter-play of Fundamental Rights and Directive Principles.

"141. It is thus well established by the decisions of this Court that the provisions of Part III and IV are supplementary and complementary to each other and that Fundamental Rights are but a means to achieve the goal indicated in Part IV. It is also held that Fundamental Rights must be construed in the light of the Directive Principles. It is from the above standpoint that question no. 1 has to be approached."

27. The case of **Francis Corlie v. Union Territory of Delhi**[4] was the first case in which right to life was interpreted. It says that right to life includes the right to live with human dignity. Hon. Supreme Court has now settled in number of cases that right of livelihood is a right to live and let all other live with human dignity and all that goes along-with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms freely moving about and mixing and commingling with fellow human beings. It further states that right to life includes the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bar minimum expression of the human-self. Every act, which offends against or impairs human dignity would constitute deprivation of this right to live and it

[1] AIR 1993 SC 2178
[2] AIR 1980 SC 1789
[3] AIR 1951 SC 2260
[4] AIR 1981 SC 745

would have to be in accordance with reasonable, fair and just procedure established bylaw which stands the test of other fundamental rights. It was held in this case \. by the Supreme court that these are necessary components of Articles 14 and 21 of the Constitution of India.

28. Right of livelihood has further been defined in **A.I.R. 1984 S.C., 802; A.I.R. 1986 S.C. 180 and 1992 (IV) S.C.C. 465**. In the case of **Olga Tellis v. Municipal Corporation** right to life has been further defined in paragraphs 32 and 33 of the judgment. Relevant extracts from paragraphs 32 and 33 are being quoted below: -

"32..... If the right to livelihood is not treated as a part of the constitution right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. ....."

33. Article 39(a) of the Constitution, which is a directive principle of State policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to adequate means of livelihood. Article 41, which is another directive principle, provides, inter-alia, that that State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work in cases of unemployment and all the undeserved want. Article 37 provides that the directive principles, though not enforceable by any court, are nevertheless fundamental in the governance of the country. The principles contained in Arts. 39(a) and 41 must be regarded as equal fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as off ending the right to life conferred by Article 21."

The above case also laid down the law that any person who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.

29. There are various other pronouncement of the Supreme Court in which this principle was followed subsequently in all such cases. In **D.S. Nakara V5. Union of India (A.I.R. 1983 S.C., 130),** the Supreme Court held that if an under privileged also are clamouring for their rights and are seeking the intervention of the Court with touching faith and confidence in the Court, the Judges of the Court have a duty to redeem their constitutional oath and do justice no less to the pavement dweller than to the guests of the Five Star hotel.

30. The Supreme Court in **Lingappa Pochanna V5. State of Maharashtra (A.I.R. 1985 S.C., 389)** has laid down the law relating to distributive justice to achieve a fair division of wealth among the members of society based upon the principle' from each according to his

capacity, to each according to his needs'. Distributive justice comprehends more than achieved lessening of inequalities by different taxation, giving debt relief or distribution of property owned by one many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargaining should he restored their property. All such laws may take the form of forced re-distribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements. In **State of Himachal Pradesh v. Umed Ram (A.I.R. 1986 S.C. 847)** the Supreme Court has further elaborated that right under Article 21 embraces not only physical existence of life but the quality of life and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. Right to live with dignity is a fundamental right as held by Apex Court in **Maneka Gandhi v. Union of India**[5]. Article 38 (2) was regarded as another constitutional imperative. In **Mohini Jain v. State of Karnataka** the Supreme Court has further repeated that "right to life" is the compendious expression for all those rights, which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct, which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. From the above it is clear that right to earn wages to maintain human dignity with all such connected matters in a dignified manner is part of right to life. It is further held that depriving a person of his right to livelihood amounts to depriving him of his right to life.

31. India is a signatory to the Universal Declaration of 1948. Article 25 of the Universal Declaration, 1948, which also provides such right to citizen of India.

32. It has come on record through the means of affidavit that the petitioner earns huge money during certain period of the year and that money is used and appropriated by the management and the office bearers or the petitioner to their use. Each and every person working in a religious and charitable institution, whether he is an ordinary worker or an office bearer, is the custodian to protect the property of the establishment. Even the Chairman, Secretary, Trustees of such institutions are workers in similar way and have been engaged to protect the property of the institution and to follow the aims and objects for which the institution has been established. The Mahants, Secretaries and heads of such religious and charitable institutions are like other workers who have also been engaged to achieve the same goal. The wealth collected or received by the religious and charitable institutions is to be distributed in a rationale manner to protect the life and livelihood of the workers and their family members.

33. In these circumstance, I direct the State to make certain scheme for such

[5] AIR 1978 SC-597

religious and charitable institutions and frame regulation in the scheme to provide protection to such workers. The State has every duty to enforce the constitutional rights of the workers of such institutions as applicable to other Establishments i.e. commercial establishment. The work "otherwise" mentioned In Article 43 of the Constitution, contained in Directive Principles, read with Article 21 of the Constitution fully covers the case of such workers.

34. The above discussion gives birth to consideration of the precise question as to what are the rights of employees or Sevadars, or Imams etc. who are charged with the duties/responsibilities to upkeep the establishment or to perform Pooja of Deity in a temple, managed either by the Trustees, Committee, Manager or Savaits as the case may be, and whether in the matter of offerings to the Deity or the income flowing from such trust, temple, they can lay claim to surplus income or offerings to a use other than betterment and maintenance /upkeep of the Trust etc. and employees/workers are entitled to get wages.

35. Having scanned the matter in all its entirety, and after hearing the learned counsel for the parties, my conclusions lean in favour of the view that the offerings or income from such Temple/charitable Trust, etc. is an offering/income meant for deity and Almighty and in this connection, such trustee, Savaits etc. have not personal claim to appropriate such offering and income according to their own choice. In my view they are also in the service of Deity or Almighty at par with the other employees or Sevadars engaged in the service of Almighty and the Deity and by this reckoning, merely because, they are Savait or Mahants etc. or at the helm of the affairs in the Management of such establishments, they have no overriding claim or personal rights to the offerings/gifts/Daan received by the temple or charitable or religious establishment or its use except for the upkeep and maintenance of such Trust/Temple/Establishment/Institutions vis-a-vis other employees and Sevadars. No doubt, a Poojari performs Pooja to Almighty and for service so rendered by him entitles him to receive remuneration whether it is from the offerings or income derived from such Charitable Trust, establishment etc. but the service so rendered by him does not invest him with a Fight to claim more and more from the property which does not belong to him in individual capacity but is dedicated or gifted or offered to Almighty or Idol and the same cannot be appropriated as a personal property. of anyone of the servants of Almighty, or Poojari or Savaits of a temple. He may have personal interest of beneficial character for the cause of temple, religious or charitable establishment but he cannot claim his personal rights to receive offerings made to idol or Almighty. By no reckoning, such offerings could be utilised or appropriated for his use except that the same can be utilised for accomplishing and furthering the alms and objects of the Charitable Trust, temples ete. The persons who are engaged by the management or persons Involved in the management are working on behalf of the Devotees in a similar way as Sevadars and other persons Involved and they are also entitled at par' with Savalt/members of the Trust who are involved for whole time in the service of

temple and they have also got same rights of livelihood like Sevadars and other employees.

36. Article 21 of the Const of India is applicable equally to all such persons, The right to get livelihood, wages to maintain themselves and their families as discussed above, and to get fair wages cannot be denied merely on the ground that the establishment or Institution is a religious or charitable institution or that persons who are engaged are Sevadars or employees at the pleasure of management. Employees or Sevadars are the persons who have dedicated themselves to the service of Deity and Almighty and in such way, merely on that ground for cannot be denied their right of living wages to maintain themselves or their families and to live a life with human dignity,

37. In the above conspectus, it is now established that though service conditions of the employees of religious and charitable establishments are not governed by any statutory rules, looking to the fact that these people are committed to their works in religious and charitable establishment and service to the entire sociality selflessly and have been devoting their time to the service of the mankind, a humanistic approach is called for towards their plight and predicament. It is settled that under Article 21 of the Constitution of India, the rights to live takes within its sweep the right to livelihood and by this reckoning they are also entitled to such emoluments so as to keep the pot boiling for himself and his family members. The above view point receives reinforcement from various decisions including the decision of the **Workmen represented by Secretary v. the Management of Reptakos Brett & Co. and another, AIR 1992 SC 504**, In which five norms of fixation of minimum wages have been delineated I.e. food requirement, clothing requirement, other misc. expenses including fuel, lighting etc. besides the above, the right to get education and maintain health of the children has also been recognized to be taken into account for constituting living wages. As observed in **AIR 1992 SC 504 (supra),** a living wage/minimum wages have been promised to the workers under the Constitution. Further, a socialist frame work to enable the working people in India a decent standard of life, has been promised by the 42nd Amendment by adding word 'socialism in the Preamble. The workers are hopefully looking forward to achieve the said ideal. The promises are piling up but the day of fulfillment is nowhere in sight. In the light of the above observations, it cannot be disputed that every citizen whether employee of a religious or charitable establishment or otherwise is entitled to get living wages. It is now well settled by several pronouncements of Apex Court as well as this Court that religious activities, which are Integral part of religion, cannot be interfered with but the matters, which are not integral part of religious activities, can be regulated by legislation or by any scheme.

38. A decision rendered by a Division Bench of Allahabad High Court in **Vikram Narain Singh v. State of U.P. 1987 AU 728**. Yet another decision in which similar matter came up for consideration before the Apex Court is the decision rendered **in Raja Vir Kishore Deo v. State of Orissa** in which Constitution Bench of Apex court held Orissa Act No. 11 of 1995 valid. In the Judgment, the rights of management of

temple, which were vested in Raja of Puri and his ancestors, were taken away. In the said decision, the Supreme Court held that the Act so enacted has not taken away the right of Raja of Puri as Sewaks and it also does not affect religious rights of Raja. This Judgment also pronounces that all persons in the management are Savaits like its employees and any one engaged in the service and performance and up-keep of the temple/trust etc. person has no right to use the offerings of devotees personally except in the Interest of all the persons and the interest of temple or religious institutions. Another Constitutional Bench decision is Commissioner Hindu Religious Endowments (Madras) v. Sri Lakshmindra Thirtha Swamiar, 1954., SC 282, In which the Constitution a Bench in para 22 of the decision, observed that freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the constitution Itself has laid down under Article 26 (b). Therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. It was further observed by the Apex Court that the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent legislature, for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. Another Constitution Bench decision of the Apex court in **Darhgah Committee, Ajmer and another v. Syed Hussain Ali and others reported in AIR 1961 Supreme Court 1402**, also lends countenance to the view that the matters of religion include even practices which are regarded by the community as part of its religion. In order that the practices in question should be treated as a part of religion they must however be regarded by the said religion as its essential and integral part, otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices.

39. This Court is also of the view that the State cannot interfere with the integral part of the religious functions but such matters like payment of Minimum Wages or other welfare scheme for the Sevaks/workers in the employment of Temple or other religious and Charitable Establishments can well be regulated.

40. My view is fortified by certain cases, which I consider germane to l r--the controversy involved in this petition, may be noticed. One such question relating to an employee working in a temple whether he was entitled to get gratuity was on the tapis in **Administrator, Shree Jagannath Temple v. Jagannath Padhi**[6]. A division bench consisting of Hon. B.L. Hansaria then C.J. and Sri A. Pasayat, gave vent to the following observation:

"It does not have foundation on any legal liability, but upon a bounty

[6] 1992 LAB IC 1621

streaming from appreciation and graciousness. Long service carries with it expectation of an appreciation from the employer and a gracious financial assistance to tide over post retrial difficulties. Judged In that background, we feel that it would be unconscionable to keep temple out of the purview of the Act, more particularly when opposite party no. l, a low paid employee has served the temple for a very long span of time."

41. In the light of above observation that every citizen whether employees of any Religious and Charitable establishment/Institution which includes, Math, Monastery ete. are entitled to get living/minimum wages, it is held that Opposite party no.3 and all employees working in the Establishment of the petitioner are entitled to get minimum wages from the date the dispute was raised. The petitioners are liable to pay the same forthwith alongwith arrears. Besides, the State is also liable to make suitable legislation for securing to all workers, a living wage conditions of work ensuring a decent standard of life in the tenor and spirit of Article 43 of the Constitution of India.

42. Similar matter came up for consideration before the Apex court in **All India Imam Organization v. Union of India**[7]. In that matter also, there was absence of legislation for payment of salary/wages to Imam. The Apex court in paragraph 5 of the said decision laid down as under:

"Absence of any provision in the Act or the rules providing for appointment of Imam or laying down condition of their service is probably because they are not considered as employees. At the same, it cannot be disputed that due to change in social and economic set up they too need sustenance. Nature of their job is such that they may be required to be present in the mosque nearly for the whole day. There may be some who may perform the duty as part of their religious observance. Still others may be ordained by the community to do so. But there are large number of such persons who have no other occupation or profession or service for their livelihood except doing duty as Imam. What should be their fate) Should they be paid any remuneration and if so how much and by whom) '" According to the Board they are appointed by the mutawallies and therefore, any payment by the board was out of question. Prima facie it is not correct as the letter of appointments issued in some states are from the Board. But assuming that they are appointed by the Mutawallies the Board cannot escape from its responsibility as the Mutawailies too under Section 36 of the Act are under the supervision and control of the Board. In series of decisions rendered by this Court it has been held that right to life enshrined in Article 21 means right to live with human dignity. It is too late in the day, therefore, to claim or urge that since Imams perform religious duties they are not entitled to any emoluments. Whatever may have been the ancient concept but it has undergone change and even in Muslim countries mosques are subsidized and the Imams are paid their remuneration. "

43. The only difference between the case referred to above and this case appears to be that in case of Imams, there was a statutory body like Wakf Board

[7] 1993 SC 2089

covered by Central as well as State Wakf Act but there was also no provision regulating the services of Imams. Here, in the present case, there is no statutory body, which may be directed to prepare a scheme for payment of minimum/living wages to the employees-workers of such Establishment.

44. In view of above discussions, in order to make fundamental right of such workers enforceable, it is directed that the Union of India and the State of U.P. shall prepare a scheme for constitution of Board on the lines of the U.P. Muslim Wakf Act, 1960 with suitable amendments commensurate to the requirements of Hindu religion representing all sects falling within the fold of Hinduism. The Board so constituted shall be self-governing autonomous body, being had to tenets, customs and other provisions sects. This Board shall register all such religious and charitable establishments/Endowments according to the norms represented by Maths, Monasteries, Temples and Religious and Charitable Trust or Societies as the case may be, through their heads or the representatives of all sects. The central as well as the State Government may also frame welfare scheme for providing minimum wages to such workers as well as other welfare measures relating to such workers/employees. As stated supra, such scheme will be prepared on the lines of the U.P. Muslim Wakf Act, 1960 or any other legislation in this regard with suitable amendments/changes as according to Hindu religion may be deemed proper after inviting objections from all sections in the fold of Hindu religion. The Scheme so framed may be placed before this Court after three months.

45. List this matter after three months i.e. on 4.9.2006. Let a copy of this order be supplied each to learned Advocate General U.P. and to Addl. Solicitor General Union of India within two weeks for taking effective steps in the light of directions aforestated.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.07.2006

BEFORE
THE HON'BLE TARUN AGARWALA, J.

Civil Misc. Writ Petition No. 35562 of 2006

Sundershan Kumar ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Dhiraj Srivastava
Sri B.K. Srivastava
Sri V.K. Srivastava

Counsel for the Respondents:
Sri Anil Bhushan
Sri Digvijay Singh
Miss Rashmi Tripathi
S.C.

Intermediate Education Act 1921 Chapter II, Regulation 2-appointment of officiating Principal-senior most teacher once declines and the power exercised for appointment-can not be exercised again-such senior person can be considered-whenever vacancy occurs in future.

Held: Para 7

From a perusal of Regulation 2 Chapter II framed under the Intermediate Education Act, 1921, a senior most

teacher is entitled to function as Officiating Principal. Once the power under Regulation 2 Chapter II is exercised and an adhoc Principal is be exercised, whenever a vacancy occurs again in future. Consequently, once a teacher declines to accept the post, the said person can apply again whenever the vacancy occurs. Consequently, the respondent having expressed his inability at an earlier point of time to officiate as the Principal can be considered again on the post of Principal whenever the vacancy occurred again, when a vacancy arose subsequently.

Case law discussed:

1995 (25) ALR-139
2001 (2) UPLBEC-1713
2001 (2) UPLBEC-1268
Special Appeal No. 41 of 1993 decided on 7.4.94
AIR 1980 SC-1255
1997 (1) ESC-414
1999 (4) AWC-3452
2004 (1) UPLBEC-600

(Delivered by Hon'ble Tarun Agarwala, J.)

1. Heard Sri V.K. Srivastava, the learned counsel for the petitioner, Sri Anil Bhushan, the learned counsel appearing for respondent no. 6 and the learned Standing Counsel appearing for respondent Nos. 1,2 and 3.

2. Since, no factual controversy is involved in the present case, the writ petition is being decided finally without calling for a counter affidavit.

3. It transpires that a permanent Principal retired on 30.6.2003. Sri Ram Murti Garg, the respondent no. 6 was the senior most teacher and the Committee of Management offered him to officiate on the post of Principal. The respondent no. 6 expressed his inability to officiate as the Principal. Consequently, the Committee of Management appointed the next senior most teacher namely, Sri Murari Lal as the officiating Principal. Sri Murari Lal continued to perform his duties as the officiating Principal till 30.6.2006 and, upon his retirement, he handed over the charge to the respondent no. 6, as per the directions of the Authorised Controller, who had taken over the institution in the meanwhile, Prior to this, the Principal asked to Authorised Controller as to whom he should hand over the charge. Admittedly, the petitioner is junior to respondent no. 6. He, however, made a representation praying that he should be given the charge of the officiating principal upon the retirement of Sri Murari Lal. The Authorised Controller heard the petitioner as well as the respondent no. 6 and thereafter, passed the order dated 29.6.2006 directing the outgoing Principal to hand over the charge of the post of Officiating Principal to the respondent no. 3. The petitioner being aggrieved by the said order, has filed the present writ petition.

4. The submission of the learned counsel for the petitioner is, that once the respondent no. 6 refused to accept the post of the Officiating principal, he lost his right and could not be appointed as a Principal. In support of his submission the learned counsel for the petitioner has relied upon various decisions in **Satya Vir Singh Vs. District Inspector of Schools, Bulandshahr, 1995 (25) ALR 139, (2001) 2 UPLBEC-1713, Urmila Srivastava (Smt.) Vs. District Inspector of Schools, Jaunpur and others, (2001) 2 UPLBEC 1268, Hari Ram Yadav Vs. State of U.P. and others and the decision dated 7.4.1994 in Special Appeal No.141 of 1993 as also a decision of the Supreme Court in AIR 1980 SC-1255, Dr. N.C. Singhal Vs.**

Union of India and others on the proposition that once the Senior Most teacher declined to officiate as the Principal, he cannot claim his right again to officiate as the Principal.

5. On the other hand, the learned counsel for the respondents submitted that there is no bar for the senior most teacher to be considered again for the appointment on the post of Principal after a vacancy again occurs. A teacher, who declines initially, could be considered again as and when the vacancy arises subsequently, and the Management takes a decision to fill up the vacancy. In support of his submission the learned counsel for the petitioner has relied upon the decision in the case of **(1997) 1 ESC 414, Awadhesh Pandey Vs. Dy. Director of Education-IVth Region, Azamgarh and others, 1999 (4) AWC 3452, Committee of Management, Kisan Vidya Mandir College, Saharanpur Vs. State of U.P. and others, (2004) 1 UPLBEC 600.**

6. In my view, the judgment cited by the learned counsel for the petitioner and the submission made by him has been dealt in length the decision in the **Committee of Management Vs. State of U.P., (2004) 1 UPLBEC 600**. Nothing new has been added by the learned counsel for the petitioner. Consequently, this Court is not dwelling upon the judgments cited by the learned counsel for the petitioner. It is sufficient for the Court to state that the court is in entire agreement with the said judgment.

7. From a perusal of Regulation 2 Chapter II framed under the Intermediate Education Act, 1921, a senior most teacher is entitled to function as Officiating Principal. Once the power under Regulation 2 Chapter II is exercised and an adhoc Principal is be exercised, whenever a vacancy occurs again in future. Consequently, once a teacher declines to accept the post, the said person can apply again whenever the vacancy occurs. Consequently, the respondent having expressed his inability at an earlier point of time to officiate as the Principal can be considered again on the post of Principal whenever the vacancy occurred again, when a vacancy arose subsequently.

8. In view of the aforesaid, the judgment cited by the learned counsel for the petitioner are distinguishable and is not applicable to the present facts and circumstances of the case.

9. In view of the aforesaid, the writ petition fails and is dismissed. In the circumstances of the case, there shall be no order as to cost. -Petition dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.7.2006

BEFORE
THE HON'BLE S.N. SRIVASTAVA, J.

Writ Petition No. 37357 of 2006

Shiv Prasad ...Petitioner
Versus
Deputy Director of Consolidation Ghazipur and others ...Respondents

Counsel for the Petitioner:
Sri Kamleshwar Singh

Counsel for the Respondents:
Sri Kamlesh Kumar Yadav
S.C.

Consolidation of Holding Rules-Rule 25-A-read with Code of Civil Procedure-Ord. 23 Rule-3-Compromise-settlement of Rights-although provisions of C.P.C. not applicable but to cut short the litigation the rights confer upon the statue-such tenure holder can settle their claim on the basis of compromise-otherwise except procedure given under Rule 25-A.

Held: Para 17 and 18

A right which does not accrue to a person under the provisions of the U.P. Zamindari Abolition & Land Reforms Act or any other provision of law could not be recognized by any agreement or compromise in the consolidation proceedings. Thus, it is held that if a person had no right under the statute any such right could not be recognized or admitted by a compromise or a new right could not be created through compromise or conciliation.

It is clear from the law laid down by the Apex Court in AIR 1961 S.C. 1790, Rana Sheo Ambar Singh v. The Allahabad Bank Ltd., Allahabad that Bhumidhari rights in all the estates vested in the State is a new statutory right under the U.P. Zamindari Abolition & Land Reforms Act. Relevant portion of the judgment is being reproduced below:-

"(7)...We are of opinion that the proprietary rights in sir and khudkashat land and in grove land have vested in the State and what is conferred on the intermediary by S. 18 is a new right altogether which he never had and which could not therefore have been mortgaged in 1914."

Case law discussed:

1976 RD (2) 69 SC
AIR 1961 SC-1790

(Delivered by Hon'ble S.N. Srivastava, J.)

1. By means of this writ petition, the petitioner has assailed the order dated 19th May, 2006, passed by the Deputy Director of Consolidation, Ghazipur setting aside order dated 26.6.1999 of Consolidation Officer passed on the basis of compromise dated 8.6.1999 as well as order dated 18.6.2003, passed by the Assistant Settlement Officer, Consolidation in Appeal whereby the matter was remanded to Consolidation Officer attended with direction to decide the matter on merits in accordance with law after affording opportunity of adducing evidence as also of hearing to the parties.

2. The facts beyond the pale of controversy are that the land in dispute was acquired by one Babu Lal, a common ancestor of all three branches of Hira Lal, Kamta and Moti. It would thus appear that all the three Branches inherited the property. It would further appear that some compromise-dated 8.6.1999 came to be entered into between the parties and on the basis of said compromise, the Consolidation Officer passed an order dated 26.6.1999 according approval to the compromise centering round the land situated in Villages Ramval, Khuthan, Suhwal and Brumua. It further appears that by the said compromise instead of portioning out shares to the parties in accordance with law, the parties were given land on the basis of some family settlement allegedly entered into between the parties. An appeal preferred by Hari Shanker heir of Hira Lal on the ground that no such compromise was entered into and that someone impersonating himself as Hari Shanker was set up by the petitioner to obtain compromise attended with the relief that and the order passed by the Consolidation Officer on the basis of compromise by which rights of Opp. Parties were affected in all the Villages be set aside. The Appellate authority by an

order dated 18.6.2003 rejected appeal on the ground that the order was rightly passed on the basis compromise entered into between the parties. A revision was also filed by Hari Shanker on the ground that the revisionist was entitled to get one third share in all the properties of Hira Lal including properties situated in Bengal and Madhya Pradesh and further the alleged compromise relied upon by petitioner was the outcome of fraud. In the ultimate analysis, revision was allowed by the Deputy Director of Consolidation, which order is impugned in the present petition. While allowing the Revision and remanding the matter to Consolidation Officer for deciding the same afresh, the Deputy Director of Consolidation recorded categorical findings to the effect that there was no date mentioned in the order-sheet of 8.6.1999 on which alleged compromise was claimed to have been entered into between the parties and verified; that the first date in the order sheet was 11.5.1999 and thereafter 19.6.1999 was the date fixed; that on 26.6.1999 order was passed by the Consolidation Officer on the basis of alleged compromise that the matter has been protracting since long; that the alleged compromise appears to be a forged compromise, which was entered into between the parties on the date on which case was not fixed and further that there was also nothing on record to show that how it was verified. Finally, it was held that the alleged compromise was not a lawful compromise entered into between the parties and in consequence the said compromise was set aside the said and the matter was remanded to determine the shares of the parties on merits in accordance with law after giving opportunity to adduce evidence and of hearing to the parties.

Heard learned counsel for petitioner and learned counsel for caveator-Opp. Parties as well as learned Standing Counsel.

3. Learned counsel for petitioner urged that as the parties had arrived at a compromise filed before Consolidation Officer, it was not open for any of the party to retreat from the compromise even if it be assumed that the compromise was not entered into between the parties. He further urged that the finding recorded by the Deputy Director of Consolidation that the compromise was not signed by the parties, and further that it was forged and unlawful is wholly perverse and renders itself liable to be set aside and the order passed by the Deputy Director of Consolidation is liable to be quashed. It was also urged that the share of the parties could only be determined on the basis of a family settlement entered into between the parties and the orders were rightly passed by the Consolidation Officer as well as Assistant Settlement Officer, Consolidation in accordance with law according approval to the family settlement by way of compromise entered into between the parties before Consolidation Officer. It was finally urged that the order of Deputy Director of Consolidation remanding the matter is vitiated in law.

4. Per contra, learned counsel for the Caveator-Opp. Parties as well as learned Standing Counsel urged that compromise which is not lawful could not be relied upon by the Consolidation Officer. They urged that lawful compromise implies that it shall not be one militating to the provisions of law. It was further urged that right of a party or his share is defined in the statute and the compromise which

is contrary to statute falls short of acceptability. It was further urged that in the present case Hari Shanker did not enter into compromise and the alleged compromise was entered into by setting up some one who impersonated himself as Hari Shanker and affixed false signature posing it to be that of Hari Shanker on the date on which case was not fixed. The learned counsel also alleged that the entire web of deceit was woven behind the back of Opp. Parties. Lastly, it was urged that the Deputy Director of Consolidation rightly set aside the compromise and rightly remanded the matter to decide the matter afresh in accordance with law.

5. In rejoinder to the above submissions, the learned counsel for the petitioner asserted that the compromise was entered into between the parties on the basis of a settlement in the family and the shares of the parties were given due consideration including the rights/share of a party who had already executed sale deeds in favour of different persons were also taken note of while determining respective shares of the parties in the land in dispute and further that the finding that Opp. Parties did not enter into any compromise is perverse. It was also asserted that Hari Shanker himself was a party to the compromise and the orders of Consolidation Officer as well as Assistant Settlement Officer, Consolidation were set aside illegally by the Deputy Director of Consolidation.

6. I have bestowed my anxious considerations to the respective arguments of learned counsel for the parties and have also perused the materials on record as well as relevant provisions of law on the point.

7. On the basis of pleadings and arguments of the parties, the first question that arises for consideration is whether under the U.P. Consolidation of Holdings Act a compromise could be entered into between the parties as contemplated under the C.P.C. at any stage in proceedings arising out of Section 9-A(2)/Section 11/Section 12/Section21/Section 48 of the U.P. Consolidation of Holdings Act, secondly, whether title of the parties in the land which is creation of a statue could be determined on the basis of a compromise for exclusive title or for determination of share in a joint holding and, thirdly, whether a person could be declared as Bhumidhar, Sirdar or Asami on the basis of a compromise in the proceeding under the U.P. Consolidation of Holdings Act or any other proceeding under the U.P. Zamindari Abolition & Land Reforms Act without any title in law.

8. Before delving into this question, I feel called to advert to certain provisions of U.P. Consolidation of Holdings Act. Section 3(4-C) of the U.P. Consolidation of Holdings Act defines land, same is being reproduced as under:-

"3(4-C) "Holding' means a parcel or parcels of land held under one tenure by a tenure-holder singly or jointly with other tenure-holders."

Section 3(11) defines tenure-holder which runs as under:-

"3(11) "Tenure-holder' means a (bhumidhar with transferable rights or bhumidhar with non-transferable rights), and includes-
(a) an asami,

(b) a Government lessee or Government grantee, or
(c) a co-operative farming society satisfying such conditions as may be prescribed."

9. Definition in Section 3((12) also makes it clear that "Words and expressions not defined in this Act but (used or) defined in the U.P. Land Revenue Act, 1901, but (used or) in the U.P. Zamindari Abolition and Land Reforms Act, 1950 shall have the meaning assigned to them in the Act in which they are so (used or) defined."

10. Under the U.P. Consolidation of Holdings Act, the procedure prescribed is that after spot verification, as required under the Act and the Rules, Consolidation Officer shall prepare a statement of principles under Section 8-A as well as statement under Section 8 of the U.P. Consolidation of Holdings Act on verification of map and land record, thereafter, Record shall be published and the statement showing the mistakes (undisputed cases of succession) and disputes discovered during the test and verification of the record of right during the course of the field to field partal shall be published in the Village. Any Objection to that shall be filed on publication of record under Section 9 of the U.P. Consolidation of Holdings Act before Assistant Consolidation Officer disputing the correctness and nature of the entries in the record or in the extract furnished there-from or in the statement of principles, or the need for partition. At the stage of Assistant Consolidation Officer, the only provision under which a compromise, by way of conciliation, could be entered into is Rule 25-A of the U.P. Consolidation of Holdings Rules which is being reproduced below:-

"25-A. Sections 9-A, 9-B and 9-C.- (1) The Assistant Consolidation Officer shall, as far as possible, deal with all the objections filed by a tenure-holder with regard to matters referred to in clause (i) of sub-section (1) of Section 9-A and sub-section (1) of Section 9-B in village itself. In decided dispute on the basis of conciliation in terms of sub-section (1) of Section 9-A, he shall record the terms of conciliation in the presence of at least two members of the Consolidation Committee of the village. These terms shall then be read over to the parties concerned and their signatures or thumb impressions obtained. The members of the Consolidation Committee present shall also sign the terms of conciliation. The Assistant Consolidation Officer shall then pass orders deciding the dispute in terms of conciliation specifying the precise entries to be made in the records. Details of the operative part of the orders passed by the Assistant Consolidation Officer shall be noted in the Misilband register. No ex parte order or orders in default shall be passed by the Assistant Consolidation Officer.

(2) In all cases in which the Assistant Consolidation Officer sends a report, under the provisions of sub-section (2) of Section 9-A, or sub-section (1) of Section 9-B to the Consolidation Officer for disposal, he may fix a date and place for the disposal of the cases by the Consolidation Officer and communicate the same to the parties present before him and issue notices in C.H. Form 6-A to the parties not so present. The report of the Assistant consolidation Officer in such cases clearly brings out the points in

dispute between the parties and the efforts made by him to reconcile them."

11. The quintessence of the above rule i.e. Rule 25-A of the U.P. Consolidation of Holdings Rules at the risk of repetition is that at the stage of Assistant Consolidation Officer conciliation may take place in terms of sub-section (i) of Section (1) of Section 9-A and sub-section (1) of Section 9-B and Assistant Consolidation Officer shall record terms of conciliation in the presence of two members of Consolidation Committee. The terms shall then be read over to the parties concerned and their signature and thumb impression shall be obtained. The members of Consolidation Committee shall also sign the terms of conciliation and then Assistant Consolidation Officer shall pass orders deciding dispute in terms of conciliation. The details of the operative part of the order passed by the Assistant Consolidation Officer, it is further envisaged in the Rule, shall be noted in the Misilband Register. No ex parte order or order in default shall be passed by the Assistant Consolidation Officer. All disputed cases received from the Assistant Consolidation Officer shall be entered in the Misilband Register in the office of the Consolidation Officer and the Consolidation Officer shall hear the parties, frame issues on the points in issue and take evidence and then decide the dispute. In the case of partition in case any objection is filed, the Consolidation Officer shall proceed with the partition, only after recording reasons in writing if he considers it in the interest of better consolidation.

12. There is no provision under the U.P. Consolidation of Holdings Act or Rules framed thereunder by which provisions of Order XXIII Rule 3 of C.P.C. have been made applicable to consolidation proceedings. The intention of the Legislature while enacting U.P. Consolidation of Holdings Act was development of agriculture land as is eloquent from the preamble of the Act.

13. As stated supra, the only provision under the U.P. Consolidation of Holdings Act and the Rules framed thereunder for conciliation is Rule 25-A. Rule 25-A of the U.P. Consolidation of Holdings Rules, as discussed above, provides that a person could get his rights settled through conciliation in case his rights are recognized by a statute. A person cannot get any right settled or declared in conciliation proceedings under Rule 25-A of the U.P. Consolidations of Holdings Rules if his rights are not recognized by statute. The intention of Legislature while framing Rule 25-A of the U.P. Consolidation of Holdings Rules clearly is that the parties may not be drawn into avoidable and unnecessary litigation relating to their legitimate rights created under U.P. Zamindari Abolition & Land Reforms Act and for correction of the entries in the revenue records. Intention of Legislature while enacting Rule 25-A of the U.P. Consolidation of Holdings Rules is clear and a person cannot get any right under Rule 25-A of the U.P. Consolidation of Holdings Rules which was never created and recognized by the statute under the U.P. Zamindari Abolition & Land Reforms Act on abolition of Zamindari or under any other subsequent amendment of U.P. Zamindari Abolition & Land Reforms Act. A tenure holder could get his legitimate right of cotenancy in case land was acquired by common ancestors or jointly by way of

reconciliation. Similarly, if an entry in the joint name of a number of tenure holders is incorrectly recorded, parties may get the entry corrected by conciliation under Rule 25-A of the U.P. Consolidation of Holdings Rules settling the matter/rights by mutual partition or by recognizing family settlement already taken place and already acted upon by the parties to get the entry corrected accordingly. But a tenure holder cannot get any exclusive right in a proceeding under Section 25-A of the U.P. Consolidation of Holdings Rules unless such Rules are recognized by statute.

14. In **1976 (2) R.D. p. 69, Kale and others v. Deputy Director of Consolidation and others**, it has been held by the Apex Court that family arrangements acted upon by parties could be recognized by the consolidation authorities as family arrangement operates as estoppels against parties having taken benefit thereunder.

15. There is no provision under the U.P. Consolidation of Holdings Act for compromise at any of the stage of consolidation proceedings either under Sections 9-A, 9-B, 11, 20, 21 or Section 48 of the U.P. Consolidation of Holdings Act. Though under the U.P. Zamindari Abolition & Land Reforms Act, the provisions of C.P.C. are made applicable by virtue of Section 341 of the U.P. Zamindari Abolition & Land Reforms Act and in appropriate cases in the suits arising out of U.P. Zamindari Abolition & Land Reforms Act, a compromise could be entered into.

16. Under the U.P. Consolidation of Holdings Act, provisions of C.P.C. are not made applicable like Section 341 of the U.P. Zamindari Abolition & Land Reforms Act and as such there is no provision of compromise under the U.P. Consolidation of Holdings Act, but in order to secure interest of justice and cut short litigation, rights recognized by statute may be settled by mutual agreement before any Consolidation authority other than Assistant Consolidation Officer. Procedure prescribed under the C.P.C. are not applicable to consolidation proceedings, but if an agreement was entered into which was not contrary to the rights conferred by the U.P. Zamindari Abolition & Land Reforms Act such agreement in which all the parties including State joined may be legitimately relied upon by the Consolidation authorities. Thus, a tenureholder who did not have any right under the statute could not get any right by way of compromise or settlement.

Order XXIII Rule 3 of the C.P.C. is being reproduced below:-

"3. Compromise of suit. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise (in writing and signed by the parties), or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith (so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit).

(Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been

arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reason to be recorded, thinks fit to grant such adjournment.)

(Explanation.-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.)"

17. Since right of a tenure-holder in land is a creation of statute under the U.P. Zamindari Abolition & Land Reforms Act and these rights are declared or adjudicated by the Consolidation authorities for the area where the notification under Section 4 of the U.P. Consolidation of Holdings Act is made, only such statutory rights already in existence in favour of a person could be recognized through a lawful agreement or compromise in consolidation proceedings. A right which does not accrue to a person under the provisions of the U.P. Zamindari Abolition & Land Reforms Act or any other provision of law could not be recognized by any agreement or compromise in the consolidation proceedings. Thus, it is held that if a person had no right under the statute any such right could not be recognized or admitted by a compromise or a new right could not be created through compromise or conciliation.

18. It is clear from the law laid down by the Apex Court in **AIR 1961 S.C. 1790, Rana Sheo Ambar Singh v. The Allahabad Bank Ltd., Allahabad** that Bhumidhari rights in all the estates vested in the State is a new statutory right under the U.P. Zamindari Abolition & Land Reforms Act. Relevant portion of the judgment is being reproduced below:-

"(7).....We are of opinion that the proprietary rights in sir and khudkashat land and in grove land have vested in the State and what is conferred on the intermediary by S. 18 is a new right altogether which he never had and which could not therefore have been mortgaged in 1914."

19. In view of the discussions made above, as in the present case there is no such family arrangement acted upon between the parties of which parties have taken benefit as claimed by the petitioners, the Deputy Director of Consolidation rightly set aside the compromise and orders passed by the Consolidation Officer and the Assistant Settlement Officer, Consolidation. Finding recorded by the Deputy Director of Consolidation does not suffer from any error of law apparent on the face of record in holding that the compromise relied upon by petitioner was not lawful. Impugned order was rightly passed in accordance with law. The questions framed above are decided accordingly.

20. In the light of the discussions made above, writ petition has no force and is dismissed.

No order as to cost.

Petition dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.05.2006

BEFORE
THE HON'BLE ANJANI KUMAR, J.

Civil Misc. Writ Petition No.42503 of 2004

Israr Ahmad ...Petitioner
Versus
Devanand and others ...Respondents

Counsel for the Petitioner:
Sri Ravi Kiran Jain
Sri Ashish Kumar Singh
Sri Mohd. Sarwar Khan

Counsel for the Respondents:
Sri Shashi Nandan
Sri R.B. Srivastava
Sri Amar Nath Mishra

U.P. Urban Building (Regulation of letting and Rent Control Act-1972- Section 21 (a)(b)-Release application on the ground of bonafide need-to settled two unemployed sons as well as for demolition and reconstruction-concurrent findings recorded by the courts below regarding bonafide need-comparative hardship and dilapidated condition of the building-can not be interfered by the writ court by exercising power as an appellate court.

Held: Para 4

The appellate authority considered the entire material on the record including the evidence and affirmed the findings arrived at by the prescribed authority with regard to bona fide requirement of the landlord, comparative hardship and dilapidated condition of the building which requires demolition and reconstruction. Learned counsel for the petitioner has not been able to point out any infirmity in the order passed by the prescribed authority and affirmed by the appellate authority which may warrant interference by this Court in exercise of powers under Article 226 of the Constitution of India except that he submitted that the findings recorded by the prescribed authority and affirmed by the appellate authority are such that no reasonable person can arrive at.

Case law discussed:
2004 (3) SCC-682 relied on.

(Delivered by Hon'ble Anjani Kumar, J.)

1. This writ petition, by the tenant under Article 226 of the Constitution of India, challenge the order dated 19th August 2004 passed by the appellate authority under the provisions of U.P. Act No.13 of 1972 (in short the Act) whereby the appeal filed by the petitioner-tenant against the order of the prescribed authority under the Act dated 17.2.2004 is dismissed and the application filed by the respondent-landlords under Section 21 (1) (a) and (b) of the Act has been allowed by the prescribed authority and the prescribed authority directed release of the accommodation in dispute in favour of the landlord.

2. Brief facts are that respondent-landlords' father, Arjun Prasad, filed an application before the prescribed authority under Section 21 (1) (a) and (b) of the Act on the ground that the building in question is more than 150 years old and the building is in dilapidated condition which may fall down any time. Apart from the above Arjun Prasad also stated that he has two sons, Devanand and Vidyanand, who are 38 and 29 years of age respectively, who could not study beyond Intermediate and are still unemployed. The landlord, therefore, wanted to settle them in two separate businesses. It is, therefore, prayed that premises may be released in favour of the

landlord for aforesaid bona fide need. The landlord filed the aforesaid application further on the ground that the building is in a dilapidated condition which requires demolition and reconstruction. The landlord further submitted that in order to settle the two sons, Devananad and Vidyanand, the landlord's need is bona fide. On the question of comparative hardship the landlord stated that the tenant will not suffer any hardship because he has another big house in the same town Shahganj where he can easily shift his business. The aforesaid allegations were denied by the tenant who filed a written statement. It would not be out of place to mention that during the pendency of the said application Arjun Prasad, the landlord, died and his sons, Devanand and Vidyanand were substituted and they filed affidavit. The tenant denied the allegations made by the landlord and stated that the building is not 150 years old as alleged by the landlord and that it is not in dilapidated condition which requires demolition and reconstruction. The building is in good condition and in the adjoining shop itself Arjun Prasad was carrying on business which is now looked after by his two sons and his widow. Therefore, it is submitted by the tenant that the need of the landlord is flimsy, what to say of bona fide. The tenant has also raised the plea that two brothers Israr Ahmad and Irshad Ahmad were carrying on business in the shop in dispute from the time of their father, Shamsuddin, under the name and style of Firm Shamsuddin Irshad Ahmad and the landlord has deliberately not impleaded Irshad Ahmad who is also carrying on business in the shop in dispute and has inherited the tenancy. The tenant has also raised a plea that apart from two sons of deceased Arjun Prasad the widow of Arjun Prasad and his daughters also inherited the property but have not been impleaded. Therefore, for this reason alone the application is liable to be dismissed. Since Irshad Ahmad has not been impleaded as respondent the application is liable to be dismissed on this ground also. On the question of bona fide need the tenant has stated that the landlord possesses much more accommodation that what is required and in case they want to set up business they have ample accommodation at their disposal. Therefore, the need of the landlord cannot be said to be either bona fide or pressing. It is also stated by the tenant that in case the landlord require the accommodation in dispute they would have not let out a shop 10 years ago. The tenant also denied the case of the landlord for demolition and reconstruction. The tenant's contention is that the landlord has not complied with the provisions of the Act and the Rules of submitting necessary documents which requires support of an application under Section 21 (1) (b) of the Act. The landlord has not also complied with the provisions of Rule 17 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972. The shop in dispute, as the tenant says, was occupied on rent by the father of the preset tenants who started a cloth business from the shop in dispute which is continuously being carried on and, therefore, the shop has earned a goodwill and in case the tenants are shifted from the shop they will lose the goodwill. The tenants do not have any other shop where they can shift their business and carry on their business. The shop cannot be said to be in a dilapidated condition which requires demolition and reconstruction.

3. Before the Prescribed authority, after exchange of pleadings and evidence on the record the prescribed authority dealt with the objection raised by the tenant and found that the question that all the heirs of Arjun Prasad halve not been impleaded does not in any way effect the maintainability of application under Section 21 (1) (a) of the Act as two sons are already there. On the question of brother of petitioner being not impleaded the prescribed authority found from the evidence that the brother of the petitioner-tenant is in service outside India which is clear from the evidence on the record. On the question of building being in dilapidated condition after assessing evidence of both the sites the prescribed authority found that the building is in dilapidated condition which requires demolition and reconstruction. On the question of bona fide requirement the prescribed authority recorded a finding that the landlord requires the accommodation in dispute bona fide as the accommodations which are suggested by the tenant were either not commercial accommodations or were occupied by the tenants. Thus the prescribed authority found that the need of the landlord is bona fide. On the question of comparative hardship the prescribed authority found that the tenant has a big house on the road side to which the tenant can shift t his business. The objection of the tenant is that the building suggested by the landlord is in residential locality whereby the business of the tenant cannot be shifted. The prescribed authority recorded a finding that the residential accommodation of the tenant is situate on 50 feet wide road side. It was, therefore, found by the prescribed authority that it will not affect the tenant in any way if he shifts to the aforesaid accommodation. On the question of loss of goodwill the prescribed authority found that mere shifting of business will not cause loss of goodwill. On the question of building being dilapidated condition the prescribed authority found that on the evidence on the record the building is in dilapidated condition which requires demolition and reconstruction. Thus the prescribed authority allowed the application filed by the landlord and directed release of accommodation in favour of the landlord.

4. Aggrieved by the order passed by the prescribed authority the tenant preferred an appeal before the appellate authority as contemplated under Section 22 of the Act. Before the appellate authority the same arguments were advanced as w ere advanced before the prescribed authority. The appellate authority considered the entire material on the record including the evidence and affirmed the findings arrived at by the prescribed authority with regard to bona fide requirement of the landlord, comparative hardship and dilapidated condition of the building which requires demolition and reconstruction. Learned counsel for the petitioner has not been able to point out any infirmity in the order passed by the prescribed authority and affirmed by the appellate authority which may warrant interference by this Court in exercise of powers under Article 226 of the Constitution of India except that he submitted that the findings recorded by the prescribed authority and affirmed by the appellate authority are such that no reasonable person can arrive at. This argument of the learned counsel for the petitioner cannot be accepted in view of law laid down by the Apex Court in the case of ***Ranjeet Singh v. Ravi Prakash, (2004) 3 SCC 682***, wherein the Apex

Court has held that this Court under Article 226 of the Constitution of India cannot re-evaluate or reappraise the evidence on the record that what has been arrived at by the prescribed authority and affirmed by the appellate authority unless the findings arrived at by the prescribed authority and affirmed by the appellate authority is demonstrated either perverse or suffering from manifest error of law. Nothing of the sort has been demonstrated by the learned counsel for the petitioner that either the findings arrived at by the prescribed authority and affirmed by the appellate authority are perverse or suffer from any manifest error of law.

5. Before this Court learned counsel for the petitioner submits that by filing amendment application seeking amendment, which was allowed to the effect that in the original application filed by the landlord it has not been pleaded that the son Devanand whose need has been found favour by the prescribed authority and affirmed by the appellate authority, this statement is incorrect. A perusal of the application filed by the landlord under Section 21 (1) (a) and (b) of the Act before the prescribed authority categorically states in para 3 that the landlord had two sons, Devanand and Vidyanand, aged 38 years and 29 years respectively. They have studied only up to Intermediate and that the landlord requires the disputed accommodation for their bona fide requirement.

6. No other arguments were advanced.

In view of what has been stated above the writ petition has no merits and is dismissed.

7. Lastly it is submitted by the learned counsel for the petitioner that since the petitioner is carrying on business since long time, he needs some reasonable time to vacate the accommodation in question. Considering the facts and circumstances of the case and in the interest of justice I direct that the order of eviction of the petitioner shall not be executed for a period of six months from today, provided :

1. the petitioner furnishes undertaking before the prescribed authority within a period of three weeks from today that he will hand over peaceful vacant possession of the accommodation in question to the landlord on or before 15th November 2006;
2. the petitioner pays the entire arrear of rent/damages calculated at the rate of rent within three weeks from today, if not already paid, by either depositing the same before the prescribed authority or paying the same to the landlord-respondent and keeps on depositing the future rent/damages by first week of the succeeding month in the manner prescribed above. The amount if deposited before the prescribed authority by the petitioner-tenant, the landlord shall be permitted to withdraw the same.

   Provided also that the building being in dilapidated condition may not fall down.

In the event of default of any of the conditions mentioned above, it will be open to the landlord to get the order of eviction executed against the petitioner.

Petition Dismissed.

REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.05.2006

BEFORE
THE HON'BLE R.K. RASTOGI, J.

Criminal Revision No. 966 of 1987

Dhruv ...Applicant (In Custody)
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Sri J.P. Gupta
Sri B.N. Singh
Sri Umesh Vats

Counsel for the Opposite Party:
A.G.A.

Prevension of Food Adulteration Act, Section 7/16-Adulteration in wheat flour sample taken on 22.8.83 by Food Inspector-according to report of public analyst-adulteration found proved-2.2.87 conviction with 6 month simple imprisonment with fine of Rs.1000/-Appeal dismissed 8.6.87-statement recorded u/s 313 revisionist was 30 years-after long gap of 23 years-conviction reduced to already undergone with enhancement of fine up to Rs.2000/- accordingly revision partly allowed.

Held: Para 7

Learned A.G.A. opposed the prayer of the accused revisionist. He contended that the sentence of minimum six months imprisonment has been provided under section 16 of the P. F. Act and so the imprisonment can not be reduced. It is, however, to be seen that it has been provided in this very section that the court in special circumstances can award lesser punishment after recording reasons. It is also to be seen that in the present case the accused was convicted for sale of adulterated flour which took place in the year 1983. Now the accused revisionist is aged about 50 years and as such, I am of the view that taking into consideration this long gap of 23 years between the date of the incident and the date of judgment by this Court as well as the present age of the accused, it would not be appropriate to send him to Jail again for undergoing the remaining period of imprisonment. As such I am of the view that instead of ordering him to undergo remaining part of sentence of imprisonment awarded to him the period of imprisonment should be reduced to the period already undergone by him and the amount of fine should be enhanced to Rs.2000/-.

(Delivered by Hon'ble R.K. Rastogi, J.)

1. This is a revision against the judgment and order dated 8.6.1987 passed by Sri Raghunath Prasad, then II Addl. Sessions Judge, Deoria in Criminal Appeal No. 7 of 1987, Dhruv Vs. State of U.P.

2. The facts relevant for disposal of this revision are that on 22.8. 1983 the complainant, Food Inspector visited the grocery shop of the accused revisionist and took sample of wheat flour from his shop. It was sent to the public analyst for examination, and according to the report of the Public Analyst, it was adulterated. Then a notice under section 13 (2) of P.F. Act was given to him and after obtaining sanction of the C.M.O. a complaint was filed against him.

3. Learned Magistrate summoned the accused and framed charges against him under section 7/16 of the P F. Act. The complainant, Food Inspector examined himself as P.W. 1 and narrated the entire case on oath. He also examined Sri Gomti Prasad (P.W.2) an eye witness

of the incident of taking sample of flour and Sri Ashok Kumar (PW 3) clerk in the office of the C.M.O to prove dispatch of the notice under section 13(2) of the Act alongwith the report of Public Analyst.

4. The accused revisionist in his statement under section 313 Cr.P.C. stated that the flour whose sample was taken was not meant for human use but he was selling it for consumption of animals. Learned magistrate, after hearing of the case, was of the view that the case was sufficiently proved against the revisionist beyond all reasonable doubts. He, therefore, convicted the accused revisionist under section 7/16 of P. F. Act and sentenced him to undergo six months' S.I. and awarded a fine of Rs.1000/-.

5. Aggrieved with that judgment and order dated 2.2.1987 the accused filed Criminal Appeal No. 7 of 1987. The above appeal was decided by Sri Raghunath Prasad II Addl. Sessions Judge, Deoria vide his judgment dated 8.6.1987 He after hearing of the appeal was in agreement with the findings of the learned magistrate. He, therefore, dismissed the appeal and confirmed the conviction order as well as the sentence. Aggrieved with that judgment and order the accused has filed this revision.

I have heard the learned counsel for the revisionist and the learned A.G.A. for the State.

6. Learned counsel for the revisionist did not challenge the findings of the court below on merits. He made only one submission before me that the incident is dated 22.8.1983. The accused was convicted by the trial court on 2.2.1987. The appeal filed by the accused was dismissed on 8..6.1987.Then the accused filed this revision before this court and this revision could not come up for hearing before this court for a very long time and for the first time it was listed for hearing on 16.10.2003. It was also pointed out that the file of the appellate court was also weeded out. However, the file of the trial court is intact and has been sent to this court. It was submitted by the learned counsel for the revisionist that the accused in his statement under section 313 Cr.P.C. recorded on 27.10.86 has described his age as 30 years. He further submitted that in this way at present the revisionist is about 50 years old, and after such a long gap of 23 years from the date of the incident, it would not be appropriate to send the accused to Jail again to serve out the sentence of imprisonment awarded to him. He submitted that, in this view of the matter, a lenient view should be taken in regard to punishment. He further pointed out that the appeal of the accused revisionist was dismissed on 8.6.87 and then he was taken into custody and he was granted bail by this court in this revision on 22.6.87, and thereafter he was released after filing bail bond etc before the trial court. He submitted that in this way the accused has undergone imprisonment for a period of more than two weeks and this period should to be treated to be sufficient.

7. Learned A.G.A. opposed the prayer of the accused revisionist. He contended that the sentence of minimum six months imprisonment has been provided under section 16 of the P. F. Act and so the imprisonment can not be reduced. It is, however, to be seen that it has been provided in this very section that the court in special circumstances can

award lesser punishment after recording reasons. It is also to be seen that in the present case the accused was convicted for sale of adulterated flour which took place in the year 1983. Now the accused revisionist is aged about 50 years and as such, I am of the view that taking into consideration this long gap of 23 years between the date of the incident and the date of judgment by this Court as well as the present age of the accused, it would not be appropriate to send him to Jail again for undergoing the remaining period of imprisonment. As such I am of the view that instead of ordering him to undergo remaining part of sentence of imprisonment awarded to him the period of imprisonment should be reduced to the period already undergone by him and the amount of fine should be enhanced to Rs.2000/-.

8. I, therefore, partly allow this revision. The conviction of accused revisionist under section 7/16 of P.F. Act is maintained but the sentence awarded to him is modified and taking into inconsideration that the accused revisionist has already undergone imprisonment for a period of more than two weeks in this case, I order that the sentence regarding award of imprisonment shall stand modified to the period of imprisonment already undergone by him provided he pays enhanced fine of Rs.2000/-. He is allowed two months' time to pay this amount of fine and if any part of fine has already been paid by him that shall be liable to be adjusted towards this amount. If the fine is not deposited by him he would have to undergo the sentence as ordered by the trial court and confirmed by the appellate court. Revision Partly Allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.05.2006

BEFORE
THE HON'BLE S.N. SRIVASTAVA, J.

Civil Misc. Writ Petition No. 54992 of 2005

Umesh Chand and others ...Petitioners
Versus
Sub Divisional Officer, Tahsil Nichlaul District Maharajganj & others ...Respondents

Counsel for the Petitioners:
Sri A.K. Tiwari

Counsel for the Respondents:
C.S.C.

Constitution of India, Art. 226-Practice of Procedure-proper dress-the Revenue Officers while performing judicial functions-must wear proper dress. General mandamus issued for strict compliance to all the revenue Courts of the state.

Held: Para 5

I have searched various circulars/D.Os containing various directions issued in compliance of the orders of the Court for direction if any, to the Presiding officers to wear proper dress while sitting in Court performing judicial functions. Since these presiding officers are performing judicial functions, it is incumbent upon them to wear proper dress besides observing in compliance the various other norms prescribed there-for. A direction to this effect may be issued to all the Presiding officers manning the revenue courts in the State.

(Delivered by Hon'ble S.N. Srivastava, J.)

1. In the matter of directions contained in order dated 11.8.2005 the text of which was that revenue courts

would hold courts for 4 days in a week, and also to adhere to the court hours i.e. between 10 a.m. to 5 p.m., the case was taken up on 1.5.2006 on which date, order was passed calling upon the Chairman Board of Revenue to formulate guidelines capable of enforcing obedience to the directions of the Court. The operative portion of the said order is excerpted below.

"In view of the above, the Chairman Board of Revenue may formulate guidelines capable of enforcing obedience to the directions of the Court and also propose action in case the direction of the Court remain un-acted upon."

2. On 15 May 2006, learned Chief Standing Counsel appeared to convey that Chairman Board of Revenue was not able to attend the court but at the same time, he has apprised that the Chairman has formulated requisite guidelines to enforce compliance of the order of the Court in the strictest sense. The learned Chief Standing Counsel produced copies of various orders passed by the Chairman, Board of Revenue unto this date. To begin with, he drew attention of the Court to D.O. letter dated 11.5.2006 addressed to all the Divisional Commissioners and the District Magistrates in the State of U.P. in which are encapsulated the peremptory directions to ensure that the Presiding officers manning the various revenue courts sit in court for performing judicial functions for 4 days in a week between 10 a.m. to 5 p.m. This Court by means of order dated 15.5.2006 called upon the standing counsel to bring on record all the orders passed by Chairman Board of Revenue by filing affidavit of an officer of the Board of Revenue. Accordingly, an affidavit sworn by Jai Prakash Tripathi, Addl. Land Reforms commissioner, Board of Revenue U.P. Lucknow has been filed. From a perusal of affidavit and annexures thereto, it would transpire that the D.O. letter dated 11.5.2006 addressed to all the Divisional Commissioner and District Magistrates in the State of U.P., besides reiterating directions issued earlier also embodies expression of concern besides terming it objectionable that directions of the Court are not being strictly observed in compliance.

3. It may be recalled here that this Court had issued a writ of mandamus by means of order dated 11.8.2005 commanding the Board of Revenue to issue appropriate instructions by way of circular that during the days which may be ear-marked for performance of judicial functions the authorities may not be assigned any administrative functions except in an unforeseen emergency coming into existence. Pursuant to the above directions, circular dated 6th Oct 2005 was issued addressed to all the District Magistrates prescribing therein quota of judicial work to be given in a month by different revenue authorities including District Magistrate, Addl. District Magistrate (Administration), Addl. District Magistrate (Finance and Revenue), Sub divisional Officer, Tahsildar and Naib Tahsildar attended with direction to abide by the schedule fixed in terms of the directions of the Court. By means of another circular issued on 28.11.2005, the Board of Revenue prescribed quota for disposal of cases by the Commissioner, the Addl. Commissioner (administration) and the Addl. Commissioner (Judicial) besides reiterating directions contained in the earlier circular. Yet another D.O. letter was issued on 14.12.2005 prescribing

days on which judicial work was to be performed by revenue authorities attended with further direction to keep adherence to the days and time fixed by earlier circulars and also to quota prescribed for disposal for them in a month.

4. It would thus appear that the Board of Revenue has issued comprehensive directions from time to time in observance of the orders of this Court. However, considering that the directions about holding courts for 4 days and adhering to the court hours between 10 a.m. to 5 p.m. are not being strictly followed as would be manifested from the D.Os. and circulars issued by the Board of Revenue, I feel called to call upon the Board of Revenue to collect details of the disposal month-wise in the shape of monthly statements for the period from Sept 2005 upto June 2006 decided by subordinate revenue courts on merits, to be precise, from Divisional commissioner for the works performed by Addl. Commissioner (Administration) and Addl. Commissioner (Revenue) and from District Magistrate for the works[performed by the District Magistrates themselves including Addl. District Magistrate, S.D.Os, Tahsildar and Naib Tahsildar. The details so received may be short-listed by Board of Revenue for onward transmission and perusal of the Court.

5. I have searched various circulars/D.Os containing various directions issued in compliance of the orders of the Court for direction if any, to the Presiding officers to wear proper dress while sitting in Court performing judicial functions. Since these presiding officers are performing judicial functions, it is incumbent upon them to wear proper dress besides observing in compliance the various other norms prescribed there-for. A direction to this effect may be issued to all the Presiding officers manning the revenue courts in the State.

6. Since further details have been sought from the Board of Revenue as enumerated above, with a view to monitoring compliance with the directions of the Court, list this matter on Sept 11,2006.

7. Office is directed to supply certified copy of this order to Sri Sanjeev Goswami, learned Standing counsel High Court Allahabad within a week from today.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.07.2006

BEFORE
THE HON'BLE V.M. SAHAI, J.
THE HON'BLE VIKRAM NATH, J.

Civil Misc. Writ Petition No.22497 of 2004

Dr. Rajesh Kumar Tewari ...Petitioner
Versus
State of U.P. and others ...Respondents
With
Civil Misc. Writ Petition No.23534 of 2004

Counsel for the Petitioner:
Sri Vishnu Behari Tewari

Counsel for the Respondents:
Sri Pradeep Kumar
Sri C.B. Yadav
Sri H.N. Singh
Sri S.N. Singh
S.C.

U.P. Public Service Commission (Reservation of Physically Handicapped)

Dependents of Freedom of Fighters of Ex-Service men) Act-1973-Rule-3 Reservation-out of 82 posts of Hindis lecturer-2% Quota for dependents of fighters of freedom comes-1.62% e.g. 2 post are declared reserved for P.H. Quota.

Held: Para 13

In the present case, it is admitted fact that 82 vacancies were advertised and the quota fixed for the dependents of freedom fighters is 2%. Thus, 2% of 82 being more than 1.5 would result into 2 posts in that quota. The law with regard to rounding off is very clear and well settled. Where the value is one-half or more, it has to be rounded off to the next whole number and where it is less than one-half, it has to be ignored. In the present case, 2% of 81 comes to 1.62. It being more than one-half, the value to be taken is 2. This view is supported by the decision of the Hon'ble Apex Court in the case of State of U.P. and another Vs. Pawan Kumar Tiwari and others reported in AIR 2005 SC 658.

Case law discussed:
AIR 1993 SC-477
AIR 2005 SC-658

(Delivered by Hon'ble Vikram Nath, J.)

1. Both these writ petitions have been filed with a prayer to command the respondents to permit the petitioners to appear in the interview for the post of Lecturer in Hindi under the category of dependents of freedom fighters against the Advertisement No.32 issued by the U.P. Higher Education Service Commission. Both these petitions relate to Advertisement No. 32 only. Pleadings in both these petitions are also similar. Both these petitions, being similar in nature, and the relief claimed also being similar, they are being heard together. The pleadings of Writ Petition No. 22497 of 2004 are being referred to in this judgment.

2. Upon a request being sent by the Director, Higher Education, U.P., the Uttar Pradesh Higher Education Service Commission issued Advertisement Nos. 30, 31 and 32 jointly inviting applications for the post of Lecturer in different degree colleges and post graduate colleges for appointment of Lecturers in different institutions all over the State. A copy of the advertisement has been filed as Annexure 1. According to the advertisement, total of 82 vacancies for the post of Lecturer in Hindi were advertised and the break up given was 41 posts for General category, 22 posts reserved for Other Backward Caste category, 17 posts reserved for the Scheduled Caste category and 2 posts reserved for the Scheduled Tribes category. The advertisement further mentioned that the reservation applicable for physically handicapped, dependents of freedom fighters and ex-service men was also applicable in the selection. According to both the petitioners, they had applied under the category of dependents of freedom fighters, but the respondents had illegally not applied the reservation in accordance with law for the dependents of freedom fighters and therefore, they were being illegally deprived from being considered under the said category.

3. Counter affidavit has been filed by the respondents in which the fact that the petitioner have applied and are eligible for consideration under the dependents of freedom fighters category, is not disputed. The controversy which has arisen upon the filing of the counter affidavit is that the respondents have not correctly applied the provisions of U.P.

Act No. 4 of 1993. What has been stated in the counter affidavit filed by Shri Nakachhed Ram posted as Assistant Director in the Directorate of Higher Education, is that although 2% reservation quota is admissible for the dependents of freedom fighters, but out of 41 vacancies for General Category, one post was reserved for the dependents of freedom fighters. It has further been stated in the counter affidavit that horizontal reservation for physically handicapped, dependents of freedom fighter and Ex-service men quota are allowed within the prescribed quota of General, OBC, SC and ST category. Paragraph 5 of the counter affidavit containing these averments is quoted hereunder:

"That the contents of paragraph no. 6 of the writ petition are not admitted for the reason already given in para 1 (d) of this counter affidavit. However, it is pertinent is submit that vertical reservation can not exceed 50% of total vacancies. Hence, horizontal reservations for physically Handicapped, Dependent of the Freedom Fighter and Ex-Serviceman quota are allowed within the prescribed quota of General, OBC, SC and ST category. It is further submitted that only 2% reservation quota is admissible for the dependents of freedom fighter (Annexure 1 to this counter affidavit). In the present case, out of 41 vacancies for General category one post was reserved for the dependent of Freedom Fighters. Hence, the averments to the contrary made in para under reply are incorrect and therefore denied."

4. These averments, it is alleged, age based upon the interpretation of a Government Order dated 22nd October, 2001 filed as Annexure CA1 to the counter affidavit of Dr. Nakachhed Ram. Clause 6 of the said Government Order is relevant for the present controversy. The same is quoted hereunder:

"(6) उत्तर प्रदेश लोक सेवा (शारीरिक रूप से विकलांग, स्वतन्त्रता संग्राम सेनानी के आश्रित और भूतपूर्व सैनिकों के लिए आरक्षण) अधिनियम, 1993 में उत्तर प्रदेश अधिनियम संख्या 6 सन् 1997, उत्तर प्रदेश अध्यादेश संख्या 11 सन् 1999 तथा उत्तर प्रदेश अधिनियम संख्या 29 सन् 1999 द्वारा किये गये संशोधनों के अनुसार लोक सेवाओं और पदों में, सीधी भर्ती के प्रक्रम पर, निम्नलिखित वर्ग के व्यक्तियों को उनके सम्मुख अंकित प्रतिशत में आरक्षण प्रदान किया जाना अपेक्षित है:-

(1)	स्वतंत्रता संग्राम सेनानी के आश्रित के लिये	रिक्तियों का 2 प्रतिशत
(2)	भूतपूर्व सैनिकों के लिये	रिक्तियों का 5 प्रतिशत (समूह क एवं ख की रिक्तियों के सिवाय)
(3)	(क) दृष्टिहीनता/कम दृष्टि से ग्रसित व्यक्तियों के लिये	राज्य सरकार द्वारा अधिसूचित पदों में रिक्तियों का 1 प्रतिशत
	(ख) श्रवणह्रास से ग्रसित व्यक्तियों के लिये	तदैव
	(ग) चलन क्रिया सम्बन्धी निःशक्तता या प्रमस्तिष्कीय अंगघात से ग्रसित व्यक्तियों के लिये	तदैव

उपर्युक्त आरक्षण हारिजान्टल होगा अर्थात यदि उपर्युक्त वर्गों में से किसी वर्ग का चयनित अभ्यर्थी अनुसूचित जाति का हो तो उसे अनुसूचित जाति के कोटा में, यथाआवश्यक समायोजन करते हुये रखा जायेगा। यदि वह अभ्यर्थी अनुसूचित जनजाति का हो तो उसे अनुसूचित जनजाति के कोटा में, यथाआवश्यक समायोजन करते हुये रखा जायेगा। यदि वह अभ्यर्थी अन्य पिछड़ा वर्ग का हो तो उसे अन्य पिछड़ा वर्ग के कोटा में, यथाआवश्यक समायोजन करके रखा जायेगा। यदि वह खुली प्रतियोगिता वाली कटेगरी अर्थात सामान्य वर्ग का हो तो उसे उस वर्ग में यथाआवश्यक समायोजन करके रखा जायेगा।

यदि कोई रिक्ति उपयुक्त अभ्यर्थी की अनुउपलब्धता के कारण बिना भरी रह जाती है तो उसे आगामी भर्ती के लिये अग्रनीत किया जायेगा।"

5. It has further been alleged in the counter affidavit filed on behalf of the

State as well as the Commission that the index of the petitioners was less than the minimum index in the general category up to which level the candidates in the general category were called for interview, as such the petitioners were not called for interview. However, pursuant to interim order passed by this Court, it is stated in the supplementary counter affidavit of the Commission that the petitioners have been interviewed, however, their results have not been declared as per the interim order of this Court.

6. From the stand taken by the respondents, basically three questions arise in these petitions. Firstly while applying the U.P. Act No. 4 of 1993 whether the vacancies are to be calculated separately for each caste category or on the entire number of posts advertised? The second question is whether the candidates, seeking reservation under the U.P. Act No. 4 of 1993, have to compete with the candidates of their respective caste category? Lastly to what relief are the petitioners entitled?

7. We have heard Shri Ram Gopal Tripathi and Shri V.B. Tiwari for the petitioners, learned Standing Counsel for the State respondents and Shri H.N. Singh for the Commission in both the writ petitions.

8. The Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-service Men) Act, 1993 (in short referred to as U.P. Act No. 4 of 1993) was promulgated and came into force with effect from 30th December, 1993. According to Section 3 of the U.P. Act No. 4 of 1993, it was provided that there shall be reserved 5% of vacancies at the stage of direct recruitment in favour of the physically handicapped, dependents of freedom fighters and ex-service men. Sub section 2 of Section 3 of U.P. Act No. 4 of 1993 provided that the respective quota of the categories shall be such as the State Government may from time to time determine by a notified order. Further, sub section 3 of Section 3 of U.P. Act No. 4 of 1993 provided the manner in which the reservation was to be applied. For sake of convenience, Section 3 of U.P. Act No. 4 of 1993 is quoted hereunder:

"**3. Reservation of vacancies in favour of physically handicapped etc.-** (1) In public services and posts in connection with the affairs of the State there shall be reserved five percent of vacancies at the stage of direct recruitment in favour of-

(i) Physically handicapped
(ii) dependents of freedom fighters, and
(iii) ex-servicemen

(2) The respective quota of the categories specified in sub-section (1) shall be such as the State Government may from time to time determine by a notified order.

(3) The persons selected against the vacancies reserved under sub-section (1) shall be placed in the appropriate categories to which they belong. For example, if a selected person belongs to Scheduled Castes category he will be placed in that quota by making necessary adjustments; if he belongs to Scheduled Tribes category, he will be placed in that quota by making necessary adjustments; if he belongs to Backward Classes category, he will be placed in that quota by making necessary adjustments.

Similarly if he belongs to open competition category, he will be placed in that category by making necessary adjustments.

(4) For the purpose of sub-section (1) an year of recruitment shall be taken as the unit and not the entire strength of the cadre or service, as the case may be:

Provided that at no point of time the reservation shall, in the entire strength of cadre, or service, as the case may be, exceed the quota determined for respective categories.

(5) The vacancies reserved under sub-section (1) shall not be carried over to the next year of recruitment."

9. From a perusal of sub-Section (3) of the U.P. Act No. 4 of 1993, it is clear that persons selected under the aforementioned three categories would be placed in their respective categories of General, OBC, SC and ST depending upon their status in each of the categories and accordingly, the vacancy in each of the four categories would be reduced by the number of the selected candidates under the U.P. Act No. 4 of 1993. Even the Government Order dated 22.10.2001 also in clear and specific terms lays down the same view. To be more explicit, supposing out of the total number of vacancies advertised, there were two posts to be filled up from the dependents of freedom fighters category and if both the candidates selected under the said category belong to General Category, then they would occupy two positions in the total posts earmarked for the General Category and the remaining post of the General Category would be filled up accordingly. However, in a situation where the two candidates selected under the dependents of freedom fighters category belong to different castes, that is, one General and one OBC, then one post from each of the two categories would be reduced by one and the remaining posts in each of the two categories would be filled up accordingly.

10. The scheme as envisaged under Section 3 of the U.P. Act No. 4 of 1993 clearly provides for the extent of reservation, the categories for which reservation is being made and the manner in which it is to be applied. Sub section (1) provides that there shall be a maximum of five percent reservation on vacancies for each of the three categories mentioned in that section. Further according to sub section (2), the respective quota for each category may be such as the State Government may determine. Sub section (3) deals with the method in which the selected candidate in each of the three categories are to be placed in the respective caste categories. From a close and careful reading of the entire Section 3 of U.P. Act No. 4 of 1993, it is clear that vacancies for each of the three categories covered by the said Act are to be calculated on the total number of vacancies advertised. The language used in sub section (1) is very clear in this regard which reads as follows:-

"(1) In public services and posts in connection with the affairs of the State there shall be reserved five percent of vacancies at the stage of direct recruitment."

11. Further sub section (3) provides that after selection, the candidates are to be placed in their respective caste category thereby consuming post of that caste category leaving the balance to be filled up from amongst the candidates

selected in that caste category. In case the stand of the respondents is to be accepted, the scheme of Section 3 of U.P. Act No. 4 of 1993 would fail. The Legislature, if it intended, what the respondents claim that for reservation to the three categories under U.P. Act No. 4 of 1993, the vacancies are to be calculated on the number of posts in each of the caste category, then the Legislature would have framed Section 3 differently. That being the position, it is difficult to uphold the contention of the respondents.

12. The Apex Court in case of **Indira Sawhney Vs. Union of India** reported in **AIR 1993 SC 477** has explained the concept of 'vertical reservations' and horizontal reservations'. It would be but appropriate to quote para 95 of the Apex Court judgment in Indira Sawhney's case (supra):-

"We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16 (4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, we referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes (under Article 16 (4) may be called vertical reservations whereas reservations in favour of physically handicapped (under Clause (1) of Article 16) can be referred to as horizontal reservations. Horizontal reservations cut across vertical reservations-what is called inter-locking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. Category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains-and should remain-the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.

It is however, made clear that the rule of 50% shall be applicable only to reservations proper; they shall not be-indeed cannot be-applicable to exemptions, concessions or relaxations, if any provided to 'Backward Class of Citizens' under Article 16 (4).

13. In the present case, it is admitted fact that 82 vacancies were advertised and the quota fixed for the dependents of freedom fighters is 2%. Thus, 2% of 82 being more than 1.5 would result into 2 posts in that quota. The law with regard to rounding off is very clear and well settled. Where the value is one-half or more, it has to be rounded off to the next whole number and where it is less than one-half, it has to be ignored. In the present case, 2% of 81 comes to 1.62. It being more than one-half, the value to be taken is 2. This view is supported by the decision of the Hon'ble Apex Court in the case of **State of U.P. and another Vs. Pawan Kumar Tiwari and others** reported in **AIR 2005 SC 658.**

14. The respondents have, therefore, to prepare a separate panel of the selected candidates in the dependents of freedom fighters quota for 2 posts and thereafter place them in the respective caste category. In the present case, as is clear from the averments contained in paragraph 6 of the counter affidavit, the quota for the dependents of freedom fighters has been calculated in the different caste categories. The respondents have calculated only one seat in the general category and no quota in the other 3 caste categories because 2% of 41 comes to 0.82, which amounts to 1 post and in all the other 3 caste categories, the vacancies being less than 25, 2% of each of the vacancies being less than 0.5, no vacancy of dependents of freedom fighters quota has been carved out in the other 3 caste categories.

15. Such application of the quota for dependents of freedom fighters is contrary to the provisions of the U.P. Act No. 4 of 1993 and also the Government Order dated 22.10.2001 and therefore, cannot be sustained.

16. It is, thus, held that vacancies for applying reservation pursuant to the U.P. Act No. 4 of 1993 have to be calculated from the total number of posts advertised and not from the number of posts reserved for OBC, SC/ST and the unreserved posts for open competition. The correct number of vacancies would come to 2 and not 1 as alleged in the counter affidavit.

17. Now coming to the question of obtaining minimum index in the respective caste category we find that respondents have themselves corrected their mistake. It has been stated in paragraph 6 of the supplementary counter affidavit filed on behalf of the Commission that the Commission has reviewed its decision, and in view of the resolution passed in the meeting dated 12.5.2005, it has resolved to scrutinize the forms of the dependents of freedom fighter category and to call all the eligible candidates for interview falling in the said category. Again, in paragraph 10 of the same affidavit, it has been stated that apart from the two petitioners, two more candidates who fall in the same category are also required to be called for interview on the basis of their index assessment scrutiny marks. For the said purpose, necessary directions have been issued to the office of the Commission for calling the other two candidates for interview who have not been interviewed so far. It is, thus, clear that the stand taken in the counter affidavit with regard to minimum index, having not been secured by the applicants of the freedom fighter category in comparison with the general category, has been done away with, and the earlier resolution dated 6th August, 2003 stands amended and replaced by the resolution passed in the meeting of the Commission held on 12th May, 2005. Thus, the said objection raised in the counter affidavit no longer exists in view of the decision taken by the Commission in its meeting dated 12.5.2005. Therefore, the Commission is required to declare the result of the petitioners as well as the other candidates in the category of the dependents of freedom fighters so that the selected candidates may be given appointment and adjusted against their respective caste categories.

18. According to the reading of Section 3 of the U.P. Act No.4 of 1993 and also clause 6 of the Government Order dated 22.10.2001, it is clear that

upon selection in the category of dependents of freedom fighters, the selected candidates are to be adjusted in their respective category of reservation based upon their caste, and consequently, they are to occupy a position in the vacancies advertised in their respective categories. From the aforesaid, it follows that there has to be a separate panel of the selected candidates in the category of dependents of freedom fighters and after making such selection, irrespective of the fact whether they have qualified in the category of their castes or not, they are to be placed in their respective categories of their castes and thereafter, the remaining positions of that caste category are to be filled up.

19. With regard to the question of relief being granted to the petitioners, learned counsel for the respondents have urged that the petitioners have not laid any foundation with regard to application of quota nor have they sought any relief in this regard and, therefore, this Court may not go into this question at all. We are afraid that such an argument can be sustained. We are hearing these petitions under Article 226 of the Constitution. Once it has come to the knowledge of the Court that the respondents have failed to follow the statutory provisions or have acted in violation of statutory provisions, this Court in its extra ordinary jurisdiction can always issue a writ commanding the respondents to apply the provisions correctly. Article 226 of the Constitution confers ample power on High Court to correct an error which is manifest and apparent on the face of the record and also where there is apparent miscarriage of justice. In the present case, both the grounds are established. The contention of the respondents is, therefore, rejected.

20. The action of the respondents in calculating the quota of the dependents of freedom fighters being contrary to the Act, is liable to be set aside and the respondents are directed to correctly apply the quota for the dependents of freedom fighters afresh in the light of observations made above and thereafter, prepare a panel of the selected candidates in the quota of the dependents of freedom fighters and, accordingly, place them in their respective caste categories. Depending upon their placement in the caste categories, the remaining vacancies in the caste categories may be filled up.

21. Writ petition is, accordingly, allowed with costs and it is directed that the respondents shall declare 2 posts out of 82 posts of Lecturer in Hindi to be reserved for dependents of freedom fighters against Advertisement No. 32 and after following the revised procedure as laid down in the decision of the Commission taken in its meeting dated 12.5.2005 and the observations made in this judgment declare the result and further the selected candidates may be given appointment against the said 2 posts in accordance with their respective merit. This exercise may be completed within a period of three months from the date of production of certified copy of this order before the respondents. Petition Allowed.

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.05.2006

BEFORE
THE HON'BLE IMTIYAZ MURTAZA, J.
THE HON'BLE RAVINDRA SINGH, J.

Criminal Contempt No. 13 of 1999

State of U.P. ...Petitioner
Versus
Vishram Singh Raghubanshi, Advocate District Court, Etawah ...Respondent

Counsel for the Petitioner:
Sri Arvind Tripathi
Sri Bhagwat Prasad
A.G.A.

Counsel for the Respondent:
Sri Vishnu Gupta
Sri R.O.V.S. Chauhan
Sri Rakesh Pandey
Sri Pankaj Lal

(A) Contempt of Courts Act-Section 2 (c) Criminal Contempt Definition-any act by a person which would tend to interfere with the administration of justice-which lawer the authority of court , amounts contempt of court.

Held: Para 13

In the case of Delhi Judicial Service Association V. State of Gujrat, reported in (1991) 4 Supreme Court Cases 406 the Apex Court had held "The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The Court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation, against obstruction and outrage." (Frankfurter, J. in *Offutt V. U.S.*) The object and purpose of punishing contempt for interference with the administration of justice is not to safeguard or protect the dignity of the Judge or the Magistrate, but the purpose is to preserve the authority of the courts to ensure an ordered life in society."
Case law discussed:
1991 (4) SCC-406

(B) Contempt of Courts Act-Section 12-Contempnor a practicing advocate-found master brain for surrendering one Om Prakash as an actual accused-abusing the presiding judge during course of proceeding-On simple suggestion to ask question politely instead of loud and threatening voice-Law does not permit a lawyer the liberty of causing disrespect to the court-the conduct of hurling filthiest abuses-held-lowered the authority of court-amounts to interference with due course of judicial proceeding-charges framed in September 2004-in affidavit dated 18.10.2005 denied the allegations-apology on belated stage-can not be a weapon to purge the guilt punishment of 3 month simple imprisonment with fine of Rs.2000/- awarded.

Held: Para 19

In the present case, we are of the firm opinion that the apology tendered by the contemnor is not at all bona fide or genuine. The charges were framed against him as back as on 27th September, 2004. In his first affidavit dated 18th October, 2005 he denied the allegations. In the second affidavit dated 24th November, 2005 he has made a show of tendering apology. This apology is coming forth after he scented that his

adventure has turned to be misadventure. It is well settled principle that apology is not a weapon to purge the guilt of a contemnor. The apology must be sought at the earliest opportunity. The apology tendered by the contemnor is at a very belated stage to escape the punishment for the grossest criminal contempt committed by him. The apology so offered by him cannot be allowed to be employed as a device to escape the rigour of law. Therefore, we do not accept the apology of the contemnor. Instead, we allow the reference and find the contemnor Vishram Singh Raghubansi, Advocate to be guilty of criminal contempt on both the charges. We convict him accordingly under Section 12 of the Contempt of Courts Act and sentence him to suffer simple imprisonment for three months and to pay a fine of Rs.2000/-. In default of payment of fine, he shall suffer further simple imprisonment of one month.

Case law discussed:

AIR 1988 SC-1395
1993 9i) SCC-529

(Delivered by Hon'ble Imtiyaz Murtaza, J.)

1. This reference has come up before this Court for taking proceedings under the Contempt of Courts Act on the basis of a report dated 27.10.1998 of Shri Suresh Chandra Jain, II Addl. Chief Judicial Magistrate, Etawah. The District Judge, Etawah forwarded the said report to this Court on 28.10.1998. The letter of Shri Suresh Chandra Jain, II Addl. Chief Judicial Magistrate, Etawah reads as follows:

प्रेषक,

सुरेश चन्द्र जैन,
द्वितीय अपर मुख्य न्यायिक मजिस्ट्रेट,
इटावा।

सेवा में,

निबन्धक,
माननीय उच्च न्यायालय,
इलाहाबाद।

द्वाराः जनपद न्यायाधीश, इटावा।

विषयः- धारा १५ कन्टैम्पट आफ कोर्ट एक्ट, १९७१ अन्तर्गत श्री विश्राम सिंह रघुवन्शी, एडवोकेट कलकट्री कचहरी, इटावा के खिलाफ मेरी न्यायालय की अवमानना के सम्बन्ध में कार्यवाही किये जाने हेतु रेफ्रेन्स।

महोदय,

उपरोक्त विषय पर माननीय न्यायालय को सविनय निम्न निवेदन किया जाता हैः-

१. यह कि माननीय उच्च न्यायालय द्वारा जून १९९८ में ट्रांसफर द्वारा मुझे द्वितीय अपर न्यायिक मजिस्ट्रेट, इटावा के रूप में तैनात किया गया, तथा दिनांक ८.६.९८ से मैं न्यायालय द्वितीय अपर मुख्य न्यायिक दण्डाधिकारी, इटावा के पीठासीन अधिकारी के पद पर कार्यरत हूँ।

२. दिनांक २२.८.९८ को एक फौजदारी वाद संख्या ९९१ सन् ९४ राज्य बनाम रामनरेश धारा ३२३/३२५/३५२/५०४ भा.दं. संहिता में मुलजिमान की तरफ से उक्त अधिवक्ता श्री विश्राम सिंह रघुवंशी, एडवोकेट न्यायालय में उपस्थित होकर जिरह कर रहे थे, जिरह के दौरान उक्त अधिवक्ता ने गवाह को धमकाते हुए अत्यन्त जोर से सवाल पूछना शुरू किया। उन्हें समझाया गया कि वह अधिवक्ता के व्यवसाय के रूप में शान्तिपूर्वक गवाह से प्रश्न पूछें, तो वह न्यायालय में डायस पर चढ़कर बयान के कागज को मुझसे छीनने का प्रयास करने लगे तथा मुझे गालियां देने लगे कि, 'मादरचोद बहनचोद' , हाई कोर्ट को कन्टैम्पट रैफर कर।' तथा इसी तरह की समभ्य गालियां देते हुए न्यायालय कक्ष से बाहर निकल गये। 'इनका यह आचरण बयान के अन्त में नोट किया गया तथा आदेशपत्र में भी उक्त तथ्य को अंकित किया गया। बयान का नोट किया भाग व आदेशपत्र की सत्य प्रतिलिपि संलग्न संख्या-१ व २ के रूप में संलग्न की जाती है। उक्त अधिवक्ता को तीन रोज में स्पष्टीकरण प्रस्तुत करने का अवसर दिया गया कि उनके खिलाफ कार्यवाही क्यों न की जाये, लेकिन उन्होंने कोई स्पष्टीकरण प्रस्तुत नहीं किया। उक्त घटना अत्यन्त गम्भीर है। ऐसी घटना होते हुए न्यायिक प्रशासन नहीं चल सकता है, न ही न्यायालय कार्य कर सकती है।

३. (अ) यह कि मेरी न्यायालय में लम्बित एक अन्य अत्यन्त पुराना फौजदारी वाद संख्या २०४ सन् ६१ राज्य बनाम अशर्फी लाल आदि धारा ४५२/३४२/५०४/५०६ भा.द. संहिता थाना बिधूना से सम्बन्धित आरोपपत्र न्यायालय में दिनांक १०.७.१६६१ को पंजीकृत किया गया था। तब उक्त केस शुरू हुआ था। रिकार्ड के अवलोकन से यह स्पष्ट होता है कि इस केस से सम्बन्धित घटना दिनांक २६.३.६१ की है, तथा प्रथम सूचना रिपोर्ट वादी भाईदयाल ने सात मुलजिमान अशर्फीलाल, बाबूलाल, रामकृष्ण रामनाथ, कलुआ, जमादार तथा रामपाल के खिलाफ थाना बिधूना में पंजीकृत कराई थी। आरोपपत्र आने से पूर्व विवेचना के दौरान सभी मुलजिमान की जमानत श्री विश्राम सिंह, एडवोकेट ने कराई थी, तथा इनने विभिन्न मुलजिमान की तरफ से मार्च तथा अप्रैल १६६१ में अपने मीमो आफ ऐपीयरेन्स तथा जमानत प्रार्थनापत्र दाखिल किये थे। दिनांक १२.१०.६३ को पांच मुलजिमान अशर्फीलाल, रामकृष्ण, जमादार, रामपाल एवं रामबाबू उर्फ बाबूलाल के खिलाफ न्यायालय द्वारा आरोप लगाया गया। दिनांक ३.५.६४ तथा दिनांक २०.६.६४ को पी. डबलू-१ भोलासिंह की आंशिक साद्वय अंकित की गई, उसके बाद मुलजिमान के गैर हाजिर हो जाने के कारण केस की कार्यवाही आगे नहीं बढ सकी। रिकार्ड से यह भी स्पष्ट होता है कि दिनांक १२.३.६७ को उक्त अधिवक्ता ने उक्त मुलजिमान के वारन्ट निरस्त करने का प्रार्थनापत्र दिया, जिसपर उक्त मुलजिमान को न्यायिक अभिरक्षा मं लिया गया, तथा आदेश दिनांक १२.३.६७ द्वारा न्यायालय ने सभी मुलजिमान पर रू०५०-५० अर्थदण्ड करके वारन्ट निरस्त किया, तथा उनके नवीन मुचलके न्यायालय में दाखिल कराये गये। रू०५०/- अर्थदण्ड पर छोड़ने का उक्त आदेश मुलजिम रामकृष्ण की तरफ से श्री विश्राम सिंह रघुवंशी, एडवोकेट की तरफ से दिये गये प्रार्थनापत्र दिनांक १२.३.६७ पर पारित किया गया। श्री विश्राम सिंह रघुवंशी, एडवोकेट उपरोक्त मुलजिमान की तरफ से शुरू से ही अधिवक्ता के रूप में कार्यरत रहे हैं, उपरोक्त तथ्यों से यह स्पष्ट होता है कि श्री विश्राम सिंह रघुवंशी, एडवोकेट अपने मुवक्किल मुलजिमान को भलीभांति जानते व पहचानते थे, क्योंकि उनके ही साथ उनके मुवक्किल न्यायालय में अनेक बार उपस्थित हुए, विभिन्न तारीखों पर श्री विश्राम सिंह रघुवंशी, एडवोकेट ने व्यक्तिगत हाजरी मुलजिमान की अपने मार्फत माफ भी कराते रहे हैं तथा उनकी तरफ से सारी कार्यवाही उक्त अधिवक्ता ने न्यायालय में की।

(ब) दिनांक २५.७.६८ को तीन मुलजिमान रामकृष्ण, रामबाबू तथा रामपाल ने न्यायालय में आत्मसर्मपण किया, तथा गैर जमानतीय वारन्ट निरस्त कराने के लिये प्रार्थनापत्र ५७ख दिया, इनकी तरफ से यह प्रार्थनापत्र इनके उपरोक्त अधिवक्ता ने न्यायालय में दिया था, तथा उन्हीं ने सारी कार्यवाही की थी। उपरोक्त तीनों मुलजिमान में दो मुलजिमान रामकृष्ण व रामबाबू सगे भाई हैं, तथा अशर्फीलाल के पुत्र हैं। दिनांक ३०.७.६८ को इनको जमानत पर रिहा करने का आदेश भी पारित किया गया लेकिन इनके वास्तविक रूप से रिहा होने के पूर्व न्यायालय की जानकारी में आया कि सही मुलजिम रामकृष्ण पुत्र अशर्फीलाल सरेण्डर कराकर जेल भिजवा दिया गया। यह तथ्य जेल गये व्यक्ति ओमप्रकाश की माता श्रीमती कोकिला देवी द्वारा प्रार्थनापत्र दिनांक १.८.६८ देने पर सामने आया, जिसकी जांच की गई तथा जेल से तलब किये जाने पर रामकृष्ण के नाम से जेल में गये व्यक्ति ने न्यायालय में उपस्थित होकर बताया है कि उसका नाम ओमप्रकाश पुत्र श्रीकृष्ण जाटव है, तथा वादी मुकदमा भाईदयाल को भी तलब किया गया, जिसने भी उक्त तथ्य को तसदीक किया।

(स) मैंने उक्त सम्बन्ध में जांच भी की तथा श्री विश्राम सिंह रघुवंशी, एडवोकेट श्री अशर्फीलाल अभियुक्त तथा उपरोक्त श्री ओम प्रकाश के बयान भी अंकित किये। ओमप्रकाश ने अपने बयान में कहा है कि उसने अदालत में किसी वकील को अपना नाम रामकिशन नहीं बताया था। अशर्फीलाल ने न्यायालय में कागज पर इसका निशान अंगूठा करा लिया था। श्री अशर्फीलाल ने अपने बयान में कहा है कि ओमप्रकाश अलग बस में आया था, इसने स्वयं रामकिशन बनकर न्यायालय में सर्मपण किया तथा इससे जहां दस्तखत करने को कहा गया, इसने दस्तखत कर दिये। इनके बयान दिनांक २६.६.६८ से भी स्पष्ट होता है कि बगैर अधिवक्ता द्वारा सलाह दिये गये तथा अधिवक्ता की पलानिंग के बिना ओमप्रकाश का रामकिशन के नाम से न्यायालय में सर्मपण करना सम्भव नहीं है तथा श्री विश्राम सिंह रघुवंशी, एडवोकेट की दिमागी योजना के तहत ही उपरोक्त फर्जी कार्यवाही न्यायालय में कराई गई। श्री विश्राम सिंह रघुवंशी, एडवोकेट ने अपने बयान दिनांक २६.६.६८ को उपरोक्त तथ्यों से इन्कार किया है, तथा कहा है कि अशर्फीलाल उपरोक्त व्यक्ति को उनके पास लाया था तथा यह अधिवक्ता रामकिशन को पहले से नहीं जानते थे। उपरोक्त अधिवक्ता का कथन सही व विश्वसनीय नहीं है। इस सम्बन्ध में मैंने आदेश दिनांक २८.६.१६६८ पारित किया जिसके अन्तर्गत उपरोक्त अधिवक्ता के उक्त आचरण के सम्बन्ध में उत्तर प्रदेश बार काउन्सिल को सूचित करना उचित पाया गया।

(द) उक्त तथ्यों से यह स्पष्ट होता है कि श्री विश्राम सिंह रघुवंशी, एडवोकेट ने दिनांक २५.७.१६६८ को रामकृष्ण पुत्र अशर्फीलाल के नाम से फर्जी व्यक्ति ओमप्रकाश पुत्र रामकृष्ण जाटव को सरेण्डर कराकर जेल भिजवाया, क्योंकि उन्हें यह भलीभांति मालूम था कि ओमप्रकाश के नाम से सरण्डेर किया जा रहा मुलजिम रामकृष्ण नहीं है, क्योंकि यह अधिवक्ता रामकृष्ण मुलजिम की तरफ से शुरू से ही नियुक्त रहे हैं, तथा पैरवी करते रहे हैं तथा अपने मुवक्किल रामकृष्ण को भलीभांति जानते थे। न्यायालय में रामकृष्ण की जगह फर्जी व्यक्ति ओमप्रकाश को सरण्डर कराने की योजना (प्लानिंग) तथा कार्य उक्त अधिवक्ता के दिमाग का षडयन्त्र है, तथा उनका यह कार्य अत्यन्त आपत्तिजनक तथा विधि व्यवसाय के सभी

आचरण व सिद्धान्तों के प्रतिकूल है, जिसके सम्बन्ध में इनके विरूद्ध कार्यवाही की जानी चाहिये।

(य) श्री विश्राम सिंह रघुवंशी, एडवोकेट द्वारा उपरोक्त मुलजिमान की तरफ से सन् १९९१ से दाखिल किये गये उपरोक्त सुसंगत विभिन्न मीमो आफ ऐपीयरेन्स (पर्चापता), सरेण्डर व जमानत के प्रार्थनापत्र दिनांक ३०.३.९१, ३.४.९१ आरोपपत्र दिनांक १२.१०.९३ प्रार्थनापत्र दिनांक १२.३.९३ प्रार्थनापत्र दिनांक २५.७.९८, प्रार्थनापत्र दिनांक १.८.९८, दिनांक २६.९.९८ को श्री अशर्फीलाल मुलजिम, ओमप्रकाश तथा श्री विश्राम सिंह रघुवंशी, एडवोकेट के अंकित किये गये बयानों की सही नकलें, तथा उपरोक्त आदेश दिनांक २८.९. ९८ की भी सही नकल संलग्नक-३ लगायत संलग्नक-२० के रूप में संलग्न की जाती है।

(र) न्यायालय में फर्जी कार्यवाही करना क्रिमनल कन्टैम्पट की सीमा के अर्न्तगत आता है। धननजय बनाम स्टेट आफ हरियाना, १९९५, वोल्यूम-१, सुप्रीम कोर्ट केसेस, ४२१, चन्द्रशशी बनाम अनिल कुमार १९९५ जे.आई.सी. पेज २२५ (सुप्रीम कोर्ट) तथा १९९६ ए.सी.सी. पेज २२५ (सुप्रीम कोर्ट) आदि अनेक नजीरों में माननीय उच्चतम न्यायालय ने यह निर्धारित किया है कि न्यायालय में फर्जी कार्यवाही करना क्रिमनल कन्टैम्पट बनता है। इस प्रकार मेंरी न्यायालय में श्री विश्राम सिंह रघुवंशी, एडवोकेट द्वारा फर्जी व्यक्ति को मुलजिम के रूप में सरेण्डर कराकर जेल भिजवाना क्रिमनल कन्टैम्पट ही समझा जाना है, जिसके लिये उनके खिलाफ कार्यवाही अपेक्षित है।

४. माननीय उच्चतम न्यायालय ने सुप्रीम कोर्ट बार ऐसोसियेशन बनाम यूनियन आफ इण्डिया, इ.आई.आर. १९९८ सुप्रीम कोर्ट-१८९५ की नवीनतम नजीर में यह निर्धारित किया है कि कन्टैम्पट आफ कोर्ट की प्रक्रिया तथा अधिवक्ता के प्रोफैशनल मिसकन्डक्ट के सम्बन्ध में बार काउन्सिल के समक्ष प्रक्रिया अलग-अलग है। ऐसी परिस्थिति में कन्टैम्पट आफ कोर्ट की कार्यवाही अलग चलनी है, तथा बार काउन्सिल के समक्ष इनके प्रोफैशनल मिसकन्डक्ट के लिये अलग कार्यवाही चलनी है। इनके उपरोक्त कार्य अत्यन्त आपत्तिजनक तथा विधि व्यवसाय के प्रतिकूल हैं।

अतः धारा १५ कन्टैम्पट आफ कोर्ट एक्ट १९७१ के अर्न्तगत श्री विश्राम सिंह रघुवंशी, एडवोकेट के खिलाफ कार्यवाही की जाने की कृपा की जाये।

धन्यवाद।

भवदीय,

(सुरेश चन्द्र जैन)

दिनांक २७.१०१९९८ द्वितीय अपर मुख्य न्यायिक मजिस्ट्रेट, इटावा।

2. On the basis of the aforesaid report, report, Joint Registrar (C & L) submitted a note which reads as under:

"***REGISTRAR***

Shri Suresh Chandra Jain, II Addl. Chief Judicial Magistrate, Etawah has made this reference for initiating contempt proceedings u/s 15 of Contempt of Court Act 1971 against Sri Vishram Singh Raghuvanshi, Advocate of Collectorate, Etawah.

Reference has been made on two grounds.

First it is said that on 22.8.98 Sri Vishram Singh Raghuvanshi, Advocate on behalf of accused person was arguing in Criminal Case No.991/94 State Versus Ram Naresh u/s 323/325/352/504 I.P.C. before the said court. During the course of cross examination Sri Raghuvanshi asked the questions in a loud voice by threatening the witness. He was asked to cross examine witness politely, but instead of following the advice of the court Sri Raghuvanshi reached on the dias of the court and attempted to snatch papers of statement from the Presiding Officer and uttered abusive language as mentioned at portion marked 'A' in the office note dated 19.11.98 These words were recorded in the order sheet as well as in the statement. Show cause notice was issued to him under the provision of contempt of Court. But he did not submit any explanation despite the opportunity was granted to him.

The reference has been moved on the second ground with regard to Criminal case no. 204/91 State Vsrsus Asharfi Lal and others u/s 452/342/504/506 I.P.C., P.S. Bidhuna. Sri Raghuvanshi was the advocate on behalf of the accused person in that case also and was having well acquaintances with them (accused

persons) as he appeared in the court of different dated on behalf of accused person. On 25.7.98 one Om Prakash S/o Sri Krishna Jatav in the fake name of Sri Ram Krishna S/o Asharfi Lal was got surrendered in the aforesaid case and sent to jail as Sri Ram Krishna was wanted in that case. On information of misdeed, an enquiry was made and it came to the knowledge of the court that the surrendered accused person was Sri Om Prakash instead of Sri Ram Krishna. Sri Vishram Singh Raghuvanshi was the advocate of accused Ram Krishna in the said case. The Presiding Officer has mentioned that Sri Raghuvanshi was the master brain for constructing fake process. On enquiry Sri Raghuvanshi has refuted about aforesaid fact while other circumstances indicated his involvement in the matter. Presiding Officer passed an order on 28.9.98 to take action against Sri Raghuvanshi by referring the matter to the Uttar Pradesh Bar Council.

3. Sri Suresh Chandra Jain, II Addl. Chief Judicial Magistrate has reported that committing fraud in the court came under the purview of criminal contempt on the light of decision given by Hon'ble Supreme Court in various cases which are mentioned at portion marked "B" in the office note dated 19.11.98. He had further mentioned the decision of Hon'ble Supreme Court namely Supreme Court Bar Association Versus Union of India, A.I.R. 1998 Supreme Court 1895 in which Hon'ble Supreme Court has held that the proceedings under contempt of court and proceeding before Bar Council against professional misconduct of advocates are separate. Hence Sri Jain has aalso referred this matter for taking action against the advocate under provisions of Contempt of Court Act. In this context section 2 (c) of the Contempt of Court Act which defines criminal contempt is relevant to mention here.

"2(c) "Criminal Contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which&
i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court; or
ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding; or
iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."

The act and conduct of Sri Vishram Singh Raghuvanshi which he committed on 22.8.98 and 25.7.98 have not only scandalized the court but also caused interference in the administration of justice and act committed on 22.8.98 further lowered down the authority of the court as he uttered abusive language against the court. Prima facie a case of criminal contempt is made out against Sri Vishram Singh Raghuvanshi, Advocate.

May kindly lay the file before the Hon'ble Acting Chief Justice for his lordship's kind perusal and orders.

Sd/-illegible
(D.N. Agarwal)
Joint Registrar (C & L)

4. A perusal of the above shows that the allegations are that on 22.8.1998 the contemnor Sri Vishram Singh Raghuvanshi, Advocate, was arguing in Criminal case No. 991 (State Vs. Ram Naresh) and during the course of cross-

examination he asked the question in a loud voice by threatening the witness. He was asked to cross-examine the witness politely but instead of following the advice of the court Sri Raghuvanshi, the contemnor reached at the dais of the court and attempted to snatch the papers of statements from the Presiding Officer and uttered abusive language that ***"Madarchod, Bahanchod, High Court Ko contempt refer Kara Tatha Isi Tarah Ki Asabhya Galiyan Dete Hue Nayayalaya Kachh Se Bahar Nikal Gaye."*** These words were recorded in the order sheet as well as in the statement. A show cause notice under the Contempt of Courts Act was issued to him but he did not submit any explanation despite having been given 3 days time in this regard.

5. The second allegation against the contemnor is that he was appearing on behalf of accused persons in Crl. Case No.204/91 (State Vs. Asharfi Lal and others) under Sections 452/342/504/506 I.P.C. P.S. Bidhuna. He was well acquainted with the accused persons as he appeared in the court on different dates on behalf of the accused. On 25.7.98 one Om Prakash son of Sri Krishna Jatav in the fake name of Sri Ram Krishna son of Asharfi Lal was got surrendered in the aforesaid case and sent to jail as Shri Krishna was wanted in that case. An enquiry was made and it came to the knowlede of the court that surrendered person was Om Prakash and not Shri Krishna. On enquiry Sri Raghuvanshi, contemnor, has refuted about aforesaid facts while the circumstances indicated his involvement in the matter. The Presiding Officer passed an order dated 28.9.98 to take action against Sri Raghuvanshi, contemnor. This court had framed following charges against the contemnor on 27.9.2004:

"(1) On 22.8.98 you appeared on behalf of the accused in Criminal Case No.991 of 1994 ***State Vs. Ram Naresh*** *under Sections 323/325/352/504 I.P.C. before the Court of Sri Suresh Chandra Jain, II Addl. C.J.M., Etawah. During the course of cross-examination you asked questions in a loud voice threatening the witness. When you were asked to cross-examine the witness politely you reached to the dais of the court and attempted to snatch the papers of statement from the Presiding Officer and uttered abusive language e.g.* ***Madarchod, Bahanchod, High Court Ko contempt refer Kar.*** *These words were recorded in the order-sheet as well as in the judgment.*

(2) That on 25.7.98 you got surrendered one Om Prakash s/o Sri Krishna Jatav in the fake name of Sri Ram Krishna s/o Asharfi Lal and the said Om Prakash was sent to jail instead of Sri Ram Krishna who was really to be surrendered. In this connection an inquiry was held and the Presiding Officer has mentioned that you were the master-brain for constructing the fake process. The Presiding Officer has passed an order on 28.9.98 to take action against you and has referred the matter to the U.P. Bar Council."

6. Thereafter the case was adjourned on several dates either on the request of the counsel for the contemnor or on account of his illness or the case could not be taken up due to paucity of time. An affidavit dated 18.10.05 was filed in reply

to the charges framed and in paragraph 11 it was stated that "in view of the facts and circumstances stated above, the charge no. 1 is categorically denied as based on incorrect facts. The deponent did not use any abusive language as stated in the charge. The deponent would require copies of the order-sheet as well as records for a detail reply to he said charges especially in order to enable the deponent to get Ram Naresh accused in criminal case no. 991 of 1994 summoned for establishing as to whether narration in the order-sheet/judgment regarding the deponent having used abusive language and having snatched the papers is correct or false. It was further mentioned in paragraph 12 that "charge no. 1 is based on incorrect report which has been given in retaliation to the complaint made by the deponent against Shri Suresh Chandra Jain, ACJM, IInd which fact is further fortified by the averments made in the preceding paragraph." In paragraph 13 of the affidavit charge was categorically denied and it was also stated that the "the enquiry referred to in charge no. 2 was unilateral and ex-parte enquiry, copy of which has not been given to the deponent till date and thus the deponent is not in a position to make statement regarding the said enquiry report".

7. Another affidavit dated 24.11.05 was filed by the contemnor. In paragraph 3 of this affidavit it was stated that the "*deponent expresses his unqualified remorse for the incident giving rise to the present conempt application. The deponent tenders his unconditional apology to this Hon'ble Court and to Shri Suresh Chandra Jain, the then A.C.J.M.-2, Etawah for the entire incident without any qualification or precondition. The deponent gives a solemn undertaking that no such incident would occur in future. The deponent has immense respect for this Hon'ble Court and all other courts of law in the land."* In paragraph 4 it was stated that "*deponent also expresses bona fide, genuine and heartfelt regret for the occurrence which the deponent considers a blot on his professionalist."*

8. We have heard Shri Bhagwati Prasad, Advocate, and the learned A.G.A. for the State.

9. We see no reason to disbelieve the facts stated by Shri Suresh Chandra Jain, II Addl. C.J.M., Etawah against the contemnor and we are of the opinion that the facts reported are correct. These facts clearly prove that the contemnor V. S. Rabhubansh is guilty of gross criminal contempt.

10. In ***Ishwar Chand Jain Vs. High Court of Punjab and Haryana (AIR)*** 1988 SC 1395 the Supreme Court observed that."

11. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under a constitutional obligation to guide and protect judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial order which may have been upheld by the High Court on the judicial orders which may have been upheld by the High Court on the judicial side no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for rule of law. If judicial officers are under

constant threat of complaint and enquiry on trifling matters and if High Court encourages anonymous complaints to hold the filed the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants.

12. Thus, it has been clearly laid down by the Supreme Court that the power of the High Court of superintendence and control over the subordinate judiciary under Article 235 of the Constitution includes within its ambit the duty to protect members of the subordinate judiciary.

13. In the case of Delhi Judicial Service Association V. State of Gujrat, reported in (1991) 4 Supreme Court Cases 406 the Apex Court had held "The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The Court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation, against obstruction and outrage." (Frankfurter, J. in *Offutt V. U.S.*) The object and purpose of punishing contempt for interference with the administration of justice is not to safeguard or protect the dignity of the Judge or the Magistrate, but the purpose is to preserve the authority of the courts to ensure an ordered life in society."

14. If the judiciary has to perform its function in a fair and free manner the dignity and authority of the court has to be respected by all concerned. Failing that, the very constitutional scheme and public faith in the judiciary runs the risk of being lost. Since the contemnor is also an Advocate the matter has to be considered with little more seriousness. An Advocate is not merely an agent or servant of his client, he is the officer of the court. He owes a duty towards the court. There can be nothing more serious than an act of an Advocate if it tends to obstruct or prevent the administration of law or destroys the confidence of the people in such administration. In the case of N.B. Sanghvi Vs. High Court of Punjab and Haryana reported in (1991) 3 SCC 600 the Apex Court observed "The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the judge into submission, it is all the more painful. When there is a deliberate attempt to scandalize which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned judge but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly

employed with a view to taming a judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned judge but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realize that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society. Judicial independence was not achieved overnight. Since we have inherited this concept from the British, it would not be out of place to mention the struggle strong-willed judges like Sir Edward Coke, Chief Justice of the Common Pleas, and many others had to put up with the Crown as well as the Parliament at considerable personal risk. And when a member of the profession like the appellant who should know better so lightly trifles with the much endeared concept of judicial independence to secure small gains it only betrays a lack of respect for the martyrs of judicial independence and for the institution itself. Their sacrifice would go waste if we are not jealous to protect the fair name of the judiciary from unwarranted attacks on its independence."

15. As we said, there is no reason whatsoever to disbelieve the facts stated by the Presiding Officer of the court concerned against the contemnor. The same are found to be correct. Both the charges related to criminal contempt framed against him are fully established. We should say a few words more in respect of each of the charges.

16. So far as the first charge related to what he did on 22.8.1998 during the proceedings of Criminal Case No.991 of 1994 (State Vs. Ram Naresh) in the court of the presiding officer is concerned, he (contemnor) committed the grossest criminal contempt unimaginable of an Advocate. A Judge has a duty to discharge and he passes order in the manner as he thinks fit to the best of his capability under the facts and circumstances of the case before him. No litigant, far less an advocate, has any right to take the law in his own hands. The contemnor before us abused the Judge in filthy most words unworthy of mouthing by an ordinary person, what to say of a lawyer belonging to intelligentsia class. There was hardly any justification for his ascending the dais during the course of the proceedings in the manner he did and then abusing him in these words: "***Maaderchod, Bahanchod, High Court Ko Contempt Refer Kar."*** The presiding officer had simply asked him to cross-examine the witness in the witness box politely instead of asking questions in a loud and threatening voice. The presiding officer was duty-bound to ensure that the witness was not coerced resulting the truth becoming a casualty under the threat of the contemnor. Law does not permit a lawyer the liberty of causing disrespect to the court or in any manner lowering its dignity. The courts cannot be intimidated to seek favourable orders. He intimidated the presiding officer of the court hurling filthiest abuses and lowered the authority of his court amounting to interference with the due course of judicial proceedings, which were being conducted by him (presiding officer). By his act, he

also obstructed the administration of justice. The first charge stands fully established against him.

17. The act of the contemnor to which the second charge relates, also amounts to grave criminal contempt. He got surrendered one Om Prakash son of Sri Krishna Jatav in the fake name of Ram Krishna son of Asharfi Lal on 25.7.1998 in the court of the presiding officer concerned. The said fake person Om Prakash was sent to jail instead of Ram Krishan, who in fact, was to surrender. In this connection, even an inquiry was held and it came to surface that the contemnor was the master brain for this fake process. The contemnor was conducting the case of the accused persons right from the beginning in criminal case in question. Criminal Case No. 204 of 1991 (State Versus Asharfi Lal and others) meaning thereby that he was well acquainted with them as he appeared in his court on their behalf on different dates. It was he had initially got the accused persons bailed out. Subsequently because of non appearance of the accused Ram Krishna in the court, non-bailable warrant was issued against him. It was in this background that the contemnor got surrendered a fake person. By his this act, the contemnor blackened the nobility of the profession of advocacy and interfered and obstructed the administration of justice by polluting the court's proceedings. Thus, the second charge is also clinchingly proved against him.

18. While concluding, we should say that the charges of criminal contempt like the present one established against a practicing lawyer cannot be taken lightly. No system of justice can tolerate such ignoble act and conduct of a practicing lawyer. The pertinent question would be as to what punishment we should award to the contemnor Vishram Singh Raghubansi, Advocate. In the case of Preetam Pal Vs. High Court M.P., 1993 (1) SCC 529, the Supreme Court ruled as under:

"***To punish an advocate for contempt of court, no doubt must be regarded as an extreme measure, but to preserve the proceedings of the courts from being deflected or interfered with, and to keep the streams of justice pure, serene and undefiled, it becomes the duty of the court, though painful to punish the contemnor in order to preserve its dignity. No one can claim immunity from the operation of the law of contempt if his act or conduct in relation to court or court proceedings interferes with or is calculated to obstruct the due course of justice."***

19. In the present case, we are of the firm opinion that the apology tendered by the contemnor is not at all bona fide or genuine. The charges were framed against him as back as on 27th September, 2004. In his first affidavit dated 18th October, 2005 he denied the allegations. In the second affidavit dated 24th November, 2005 he has made a show of tendering apology. This apology is coming forth after he scented that his adventure has turned to be misadventure. It is well settled principle that apology is not a weapon to purge the guilt of a contemnor. The apology must be sought at the earliest opportunity. The apology tendered by the contemnor is at a very belated stage to escape the punishment for the grossest criminal contempt committed by him. The apology so offered by him cannot be allowed to be employed as a device to

escape the rigour of law. Therefore, we do not accept the apology of the contemnor. Instead, we allow the reference and find the contemnor Vishram Singh Raghubansi, Advocate to be guilty of criminal contempt on both the charges. We convict him accordingly under Section 12 of the Contempt of Courts Act and sentence him to suffer simple imprisonment for three months and to pay a fine of Rs.2000/-. In default of payment of fine, he shall suffer further simple imprisonment of one month. However, the punishment so imposed shall be kept in abeyance for a period of sixty days to enable him to approach the Supreme Court, if so advised.

20. The contemnor Vishram Singh Raghubansi, Advocate, Collectorate, Etawah shall be taken into custody to serve out the sentence immediately after the expiry of sixty days if no stay order is passed by the Supreme Court in the meantime.

Let the matter come up before this court on 2nd ugust, 2006 for ensuring compliance.

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.05.2006

BEFORE
THE HON'BLE AMITAVA LALA, J.
THE HON'BLE SHIV SHANKER, J.

Criminal Misc. Writ Petition No. 1021 of 2003

Ram Deo and others ...Petitioners
Versus
State of U.P. and another...Respondents/ Opposite Parties

Counsel for the Petitioners:
Sri Devendra Swaroop

Counsel for the Opposite Parties:
A.G.A.

Constitution of India-Art. 161 and 226-writ of mandamus-petitioners seeking direction-claiming benefit of G.O. dated 11.1.2000 to 25.1.2000 by which all the accused person, who are in Jail having 60 years age of for male and 50 years for female-be pardoned by general direction-the G.O. relied by petitioners-already struck down by Division Bench of High Court- with specific direction for consideration of individual's case-No such mandamus can be issued-However if any representation made before the Government shall be considered by giving full fledged opportunity within one month from the date of receipt of such application.

Held: Para 3

Article 161 of the Constitution of India speaks that the Government has power to grant pardon etc. and suspend to commute sentences in certain cases. We are also of the view such power is to be exercised on the basis of individual cases and following process laid down in the Code of Criminal Procedure. It is also significant to note that the appropriate Government may or may not accept the pardon. Therefore, at this juncture, the High Court cannot calculate the period of imprisonment and hold by itself that on the individual cases of the petitioners, they will be sent for further imprisonment or they will pardoned. It is for essential function of the Government nor for the writ court. Striking down by the general order passed by the Government does not mean considering the individual cases, has been usurped. Therefore, remedy is open for the petitioners to approach before to appropriate Government for consideration of their individual case.

Case law discussed:

2002 (44) ACC-81 (SC)
2004 (49) ACC-2641

(Delivered by Hon'ble Amitava Lala, J.)

"*a issue a writ, order or direction in the nature of mandamus directing the respondents not to arrest the petitioners and refrain from taking any action revoking their orders of release under the Government Order dated 11.1.2000 to 25.1.2000.*

b. issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the present case.

c. award the cost of the petition to the petitioners."

2. The aforesaid writ petition was filed on 17.2.2003 when the aforesaid two Government Orders were already struck down by Division Bench of this Court in the matter of ***Mirza Mohammad Husayn vs. State of U.P. 2002 (44) ACC 81 (SC).*** Therefore, the Government Orders, which were struck down by Division Bench of this Court were no more available at the time of making this writ petition. Hence, the only relevant part of consideration is whether the petitioners will be arrested or not. Factually, they were convicted and their order of conviction were upheld by the appellate court. The Government Orders, which were struck down by the High Court, were general in nature, applicable in respect of all the persons, who are in jail having 60 years age for the male prisoners and 50 years age for the female prisoners. The Division Bench held that for the purpose of pardoning individual cases are to be considered by the Government in view of Article 161 of the Constitution of India. Another Division Bench followed the ratio as reported in ***2004 (49) ACC 2641, Bachchey Lal vs. State of U.P., Lucknow and others.***

1. The petitioners made the following prayers:-

3. Article 161 of the Constitution of India speaks that the Government has power to grant pardon etc. and suspend to commute sentences in certain cases. We are also of the view such power is to be exercised on the basis of individual cases and following process laid down in the Code of Criminal Procedure. It is also significant to note that the appropriate Government may or may not accept the pardon. Therefore, at this juncture, the High Court cannot calculate the period of imprisonment and hold by itself that on the individual cases of the petitioners, they will be sent for further imprisonment or they will pardoned. It is for essential function of the Government nor for the writ court. Striking down by the general order passed by the Government does not mean considering the individual cases, has been usurped. Therefore, remedy is open for the petitioners to approach before to appropriate Government for consideration of their individual case.

4. Thus, having heard the learned counsels appearing for the contesting parties and in disposing of the writ petition, we direct the petitioners to approach the Government individually annexing copy of the order within a period of one month from this date. Upon receiving such individual applications, appropriate Government will consider the same within a period of one month from the date of such applications by giving fullest opportunity of hearing and taking decision in accordance with law. For the

purposes of effective adjudication, a copy of the writ petition along with its annexure can also be treated as part and parcel of the application.

5. The writ petition stands disposed of.

However, no order is passed as to costs. Petition Disposed of.

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.04.2006

BEFORE
THE HON'BLE VINOD PRASAD, J.

Criminal Misc. Application No.3485 of 2006

Bhupendra Singh ...Applicant
Versus
State of U.P. & another...Opposite Parties

Counsel for the Applicant:
Sri Sanjeev Kumar Pandey

Counsel for the Opposite Parties:
A.G.A.

Code of Criminal Procedure-S-482-Quashing of Charge Sheet-offence under section 149,148,149,302,307 I.P.C.-on the ground other co-accused acquitted-on the principle stars decises upon 2005 (53) ACC-305-applicant not appeared before the trial court as yet if the protection given such person having no respect to the order passed by court of law-No relief can be granted-except to approach before the same Trial court-who will pass reasoned order.

Held: Para 3 & 4

It is not the law that the principal of *stare decises* should be applied also to the accused who had been avoiding the process of law. It will be misused of the power of the court if such an order is passed in respect of those persons who have got no respect for the orders of the court.

In this view of the matter, I do not find any merit in this application. This application is rejected. The applicant is free to appear in the court and raise his grievances in view of the law laid down by this Court and who will decide it by passing a reasoned order thereon.

Case law discussed:
2005 (53) ACC-305

(Delivered by Hon'ble Vinod Prasad, J.)

1. Heard learned counsel for the applicant and the learned A.G.A.

2. The applicant has challenged the proceeding of a charge sheet under Sections 147,148,149,302,307 I.P.C., case crime no.124 of 2005, police station Kotwali City, district Etah, pending in the court of C.J.M., Etah.

3. The learned counsel for the applicant is contended that the other co-accused persons have already been acquitted. He submitted that since the co-accused persons have been acquitted, therefore, he should not be tried and he based his submission on the principal of *stare decises* and also relied upon the judgment of this Court reporting in *2005 (53) A.C.C. 305 Kalimuddin Khan Vs. State of U.P. and others.* The applicant has not appeared in the trial court as yet. He has not made any application before the trial court for the purposes of discharge or acquittal in accordance with the law laid down by this Court mentioned above. It will be a travesty of justice to close the case and acquit the accused who has not appear before the court at all. It is not the law that the

principal of *stare decises* should be applied also to the accused who had been avoiding the process of law. It will be misused of the power of the court if such an order is passed in respect of those persons who have got no respect for the orders of the court.

4. In this view of the matter, I do not find any merit in this application. This application is rejected. The applicant is free to appear in the court and raise his grievances in view of the law laid down by this Court and who will decide it by passing a reasoned order thereon.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.07.2006

BEFORE
THE HON'BLE DR.B.S. CHAUHAN, J.
THE HON'BLE SUSHIL HARKAULI, J.
THE HON'BLE AMAR SARAN, J.

Criminal Misc. Writ Petition No.4861 of 2000

Ajit Singh @ Muraha ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri S.K. Shukla
Sri S.P. Shukla
Sri R.K. Pandey
Sri Prem Prakash
Sri Ramendra Asthana

Counsel for the Respondents:
Sri V.S. Mishra

Constitution of India, Art. 226-Stay of arrest-during pendency of investigation writ court can exercise power to grant stay in rarest of rare case-Full Bench held-observation made in Satya Pal Singh Vs. State of U.P.-good law-ratio of Jogender Singh's case-not applicable in cases for quashing the criminal proceeding.

Held: Para 32, 34, 85 Para 117 as per Hon'ble Amar Saran, J.

Thus, the arrest is permissible only in a case where the circumstances of the said case so require and there is a justification for making the arrest otherwise not.

It is evident from the statutory provisions itself that arrest is to be made only and only if it is found to be necessary and there is a justification for making the arrest for the purpose of further investigation. What to talk of arrest even case may not be investigated if there is no sufficient ground for the same. Therefore, it cannot be held that arrest is to be made in every case without discrimination rather the mandate issued by the Hon'ble Apex Court in Joginder Kumar's case is to be followed but as stated above, the said case deals with the power of the police to make arrest while the Full Bench in Satyapal's case deals with the power of the Court to interfere with investigation.

In view of the above, the conclusions drawn by us, hereinabove, we answer the first part of question No. 1 holding that Satyapal's case lays down the correct law and we approve, affirm and reiterate the same. However, the second part of the 1st question does not require to be answered, as the ratio of Joginder Kumar's case has no application in a case for quashing criminal proceedings.

Constitution of India, Art. 226-Power of writ Court-Quashing of Criminal proceeding-on the ground of malafide-sufficient evidence there–can not be interferred even if malafide established.

Held: Para 42, 75 & 105

Thus, it is evident that in case there is sufficient evidence against the accused, which may establish the charge against him, if the bias/mala fide is established, the proceedings cannot be quashed.

Thus, it is evident from the aforesaid judgments of the Hon'ble Apex Court that the Court has a power to grant interim relief so long the case is pending before it. In a case where the writ Court refuses to entertain a petition and relegates the party to some other appropriate forum or the party itself withdraws the writ petition to approach another forum, as the case does not remain pending before the Court, the writ Court has no competence to issue any direction protecting the right of the petitioner interregnum, for the reason that writ does not lie for granting only an interim relief and interim relief can be granted provided the case is pending before the Court and rights of the parties are likely to be adjudicated upon on merit. Under the garb of seeking quashing of criminal proceedings, the relief of anticipatory bail, which is not available in the State of U.P., cannot be obtained, for the reason that a litigant cannot be permitted to achieve something indirectly, which cannot be sought directly.

No power is conferred on the High Court to quash the FIR and investigation or to stay the arrest of the petitioner because some of these directions or observations have not been complied with. Only because the High Court is of the opinion that the particular case is not of such a grave nature necessitating arrest, or that the accused is not likely to abscond or that his arrest is not needed for the purpose of investigation, the High Court is not empowered to substitute its discretion in place of the discretion of the Investigating officer, who alone is entitled to arrive at a conclusion as to whether there is any need to effect arrest during investigation.

Case law discussed:

AIR 1992 SC-604, AIR 1995 SC-196, 2003 SCC (2) 649, 2003 (11) SCC-251, AIR 2005 SC-1057, AIR 1968 SC-117, AIR 1980 SC-326, AIR 1993 SC-1082, 2005 (7) SCC-56, AIR 1982 SC-949, AIR 1988 SC-709, AIR 1993 SC-892, AIR 2000 SC-754, AIR 1988 SC-128, 1996 (7) SCC-705, AIR 1983 SC-1219, 1999 (8) SCC-686, 2006 SCW-2543, 1995 (4) SCC-41, AIR 2000 SC-1405, AIR 1989 SC-714, 1997 (1) SCC-416, AIR 1987 SC-877, 1999 (8) SCC-508, 2005 (13) SCC-540, 2003 (11) SCC-251, AIR 1991 SC-1260, AIR 1996 SCC (7) 212, 2001 (2) SCC-17, 2001 (8) SCC-645, 2005 (12) SCC-338, 2001 SCC (7) 659, AIR 2000 SC-1869, AIR 1990 Crl. 648, AIR 2002 SC-441, AIR 2004 SC-4320, AIR 1971 SC-530, AIR 1985 SC-218, AIR 1980 SC-1707, 1992 (4) SCC-363, AIR 2002 SC-834, 2004 (2) SCC-362, AIR 2003 SC-2661, AIR 1988 SC-661,

(Delivered by Dr. B.S. Chauhan, J.)

ISSUES BEFORE THE FULL BENCH:-

1. A Division Bench of this Court vide order dated 22.08.2000, referred two questions to a larger Bench for determination/answer, namely;

1. Whether arrest during investigation can be stayed by this Court only in rarest of rare cases as observed in Satyapal Vs. State of U.P. & Ors., 2000 Cr.L.J. 569, or according to the criteria laid down by the Supreme Court in Joginder Kumar Vs. State of U.P. & Ors.,(1994) 4 SCC 260?

2. Whether the Full Bench in Satyapal's case was right in holding that Joginder Kumar's case was delivered on its own peculiar facts and circumstances and hence does not lay down any legal principles relating to the power of arrest and the power of stay to arrest by this Court?

BACKGROUND OF THE CASE AND CONTENTIONS ON BEHALF OF THE PARTIES:-

2. The petitioner Ajit Singh filed this writ petition for quashing the First Information Report dated 19.05.2000 1989, Police Station Kuthan, District Jaunpur. When the matter came up for hearing, it was submitted by the learned counsel for the petitioner before the Division Bench that the F.I.R. had been filed at a belated stage on 19.05.2000 in respect of the incident alleged to have occurred on 24.03.2000 and the petitioner apprehended the arrest by the investigating agency at the behest of respondent no.3 Hansraj, the complainant. Stay of arrest was prayed contending that the arrest was likely to be made in contravention of the law laid down by the Hon'ble Apex Court in Joginder Kumar's case wherein it has been held that the arrest should not be made in every case in routine and it may be made only where there is a justification for making the arrest and necessary in the facts and circumstances of that case. The contention was opposed by the learned Government Advocate placing reliance upon the Full Bench judgment of this Court in Satyapal's case wherein it has been held that arrest should be stayed only in rarest of rare cases and not as a matter of routine, observing that the Hon'ble Apex Court decided the case of Joginder Kumar's case on the facts of that case and it does not lay down the law for universal application. The Division Bench was of the opinion that the Full Bench had made observations in contravention of the law laid down by the Hon'ble Apex Court which was not permissible in view of the provisions of Article 141 of the Constitution of India and, therefore, (Annex.1) registered as Case Crime No. 144 of 2000, under Sections 323, 504, 506 Indian Penal Code and Section 3(1) (x) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

referred the aforesaid two questions to the larger Bench.

3. We have heard Shri Ramender Asthana, Shri S.P. Shukla and Shri Prem Prakash, learned counsel for the petitioner and Shri V.S. Mishra, learned Government Advocate for the State.

4. Learned counsel for the petitioner have submitted that the judgment of the Full Bench in Satyapal's case does not lay down the correct law that this Court should stay arrest only in rarest of rare cases as it is in contravention of the law laid down by the Hon'ble Apex Court in Joginder Kumar's case and as the law laid down by the Hon'ble Apex Court is binding on all Courts in view of the provisions of Article 141 of the Constitution of India, it was not permissible for the Full Bench to say that the guidelines issued in Joginder Kumar's case need to be confined to the peculiar facts and circumstances of that case, which were distinguishable from the facts of the case before the Full Bench. As the arrest may destroy the reputation of a person and it brings humiliation, it is violative of Articles 14 and 21 of the Constitution of India and this Court, being the custodian of law, has a solemn duty to protect the rights of the persons.

5. On the contrary, Shri V.S. Mishra, learned Government Advocate has submitted that the Full Bench of this Court in Satyapal's case has not made any

observations in contravention of the guidelines issued in Joginder Kumar's case as the issues involved in both the cases were entirely different. In Joginder Kumar, the Hon'ble Apex Court dealt with the power of the police to arrest and the guidelines have been issued as under what circumstances the arrest should be made. On the other hand, the Full Bench of this Court in Satyapal's case considered the scope of interference with investigation by this Court, therefore, it cannot be held that this Court had made any observation in contravention of the law laid down in Joginder Kumar's case.

SCOPE OF POLICE POWERS OF INVESTIGATION AND COURT'S POWERS:

6. There can be no quarrel with the settled legal proposition that arrest is a part of investigation and it is not permissible to agitate that the Court can stay the arrest unless the Court is of the view that in the peculiar facts of a particular case, it is necessary to interfere with the investigation. That the powers of investigation fall within the exclusive domain of the police, and at this stage courts cannot intervene unless the police acts wholly without jurisdiction by seeking to investigate an non-cognizable offence without the permission of a Magistrate, or where there may be some other statutory restriction on investigation. It is only after submission of the charge sheet, if the FIR and investigation do not disclose commission of a cognizable offence, or according to other well settled principles delineated by the apex Court and this Court in various decisions, can the High Court grant some appropriate relief.

7. In State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors., AIR 1992 SC 604, the Hon'ble Supreme Court observed as under:-

"The sum and substance of the above deliberation results in a conclusion **that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned.** Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a **Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted**. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution." (Emphasis added)

8. The extent and scope of powers of the courts and police respectively have also been spelt out by the Hon'ble

Supreme Court in H.N. Rishbud & Anr. Vs. State of Delhi, AIR 1955 SC 196, observing that investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under Section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer". For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case. He has also the authority to examine such person orally. Under Section 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be necessary for the purpose of the investigation. The search has to be conducted by such officer in person. The investigating officer has also the power to arrest the person or persons suspected of the commission of the offence under Section 54 of the Code. A police officer making an investigation is enjoined to enter his proceedings in a diary from day-to-day. Where such investigation cannot be completed within the period of 24 hours and the accused is in custody he is enjoined also to send a copy of the entries in the diary to the Magistrate concerned. If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefore under Section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under Section 173 of the Code in the prescribed form furnishing various details.

9. Further, the powers of the police to effect an arrest under section 41 Cr.P.C has been clarified in M.C. Abraham & Anr. Vs. State of Maharashtra & Ors., (2003) 2 SCC 649 :

"In the first place, arrest of an accused is a part of the investigation and is within the discretion of the investigating officer. **Section 41** of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. **It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists** of his having been so concerned. Obviously, **he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In**

appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a **police officer is not always bound to arrest an accused** even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection".

(Emphasis added).

10. In M. Narayandas Vs. State of Karnataka & Ors.,(2003) 11 SCC 251, the Apex Court held that at the stage when a report of a cognizable offence under section 154(1) of the Code is lodged, the concerned police officer is not to refuse to register the case or to embark on an enquiry about the genuineness and reliability of the allegations. The investigation at this stage is the exclusive prerogative of the police officer, and the Courts do not have any power to intervene with the investigation so long as the police officer acts according to his statutory powers. It is only on failure to investigate a cognizable offence that the competent Magistrate can issue a direction to the competent police officer to investigate the offence or to inquire into the offence himself or through a subordinate magistrate. The Court held as under:-

"The core of the above sections, namely, 156, 157 and 159 of the Code is that **if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate**; that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that **the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control** and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is **only in a case wherein a police officer decides not to investigate an offence, the Magistrate concerned can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed** to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code." (Emphasis supplied)

11. In Adri Dharan Das Vs. State of West Bengal, AIR 2005 SC 1057, the necessity of arrest for various aspects of investigation have been clarified by the Hon'ble Supreme Court observing as follows:-

"Ordinarily, **arrest is a part of the process of investigation intended to secure several purposes**. The accused may have to be **questioned in detail regarding various facets of motive, preparation, commission and aftermath**

of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which **the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality**. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. **The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence**. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code." (Emphasis added).

12. The scope of interference at the stage of investigation is no more res integra as it has been considered by the Hon'ble Supreme Court time and again. In Emperor Vs. Khwaja Nazir Ahmad, AIR 1945 PC 18, the Privy Council considered the issue while dealing with the statutory rights of the police under Sections 154 and 156 of the Code of Criminal Procedure (hereinafter called the "Cr.P.C.') for investigation of a cognizable offence and made the following observations:-

".....So it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry.....it would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. **The functions of the judiciary and the police are complimentary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, … the Court's functions begin when a charge is preferred before it and not until then**...." (Emphasis added).

13. Similarly, in Abhinandan Jha & Ors. Vs. Dinesh Mishra, AIR 1968 SC 117, the Hon'ble Apex Court considered the same provision of Cr.P.C. and held that the field of investigation of any cognizable offence is exclusively within the domain of the investigating agency over which **the Courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation.**

14. In State of Bihar & Anr. Vs. J.A.C. Saldanna & Ors., AIR 1980 SC 326, the Hon'ble Apex Court while dealing with the powers of investigation of a police officer under Cr.P.C. observed as under:-

"There is a clear-cut and well demarcated sphere of activity in the field

of crime detection and crime punishment. **Investigation of an offence is the field exclusively for the Executive through the police department, superintendence over which vests in the State Government. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence**. Once that is completed and the Investigating Officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code, its duty comes to an end." (Emphasis added).

15. Thus, in view of the above, it is evident that generally investigation falls within the exclusive domain of the Executive and scope of judicial review is very limited in exceptional cases.

'AUDI ALTERAM PARTEM' RULE OR RIGHT OF ACCUSED TO NOTICE AT INVESTIGATION STAGE:

16. It has been observed in Union of India & Anr. Vs. W.N. Chadha, AIR 1993 SC 1082 that at the stage of investigation and initial arrest the rule of audi alteram partem has no application and the accused has no right of notice or hearing before his arrest, if any, in a cognizable case. Nor the accused has any right as to choose the manner and method of investigation save under certain exceptions provided in the Code itself. The Court held as under:-

"True, there are certain rights conferred on an accused to be enjoyed at certain stages under the Code of Criminal Procedure -- such as Section 50 whereunder the person arrested is to be informed of the grounds of his arrest and to his right of bail and under Section 57 dealing with person arrested not to be detained for more than 24 hours and under Section 167 dealing with the procedure if the investigation cannot be completed in 24 hours -- which are all in conformity with the "Right to Life' and "Personal Liberty' enshrined in Article 21 of the Constitution and the valuable safeguards ingrained in Article 22 of the Constitution for the protection of an arrestee or detenu in certain cases. But so long as the investigating agency proceeds with his action or investigation in strict compliance with the statutory provisions relating to arrest or investigation of a criminal case and according to the procedure established by law, no one can make any legitimate grievance to stifle or to impinge upon the proceedings of arrest or detention during investigation as the case may be, in accordance with the provisions of the Code of Criminal Procedure."

17. In State of Maharashtra Vs. Mohd. Rashid & Anr.,(2005) 7 SCC 56, the question as to the right of an accused to four working days written notice whenever his arrest was needed in the following three years came up for consideration. The Hon'ble Supreme Court held that the accused had no such right of notice. "Such a blanket protection of not arresting the first respondent in any crime, except after written notice to him, could not be passed."

18. Thus, in view of the above, it is evident that an accused cannot claim a right to notice/hearing before arrest is made.

SCOPE OF INTERFERENCE UNDER ARTICLE 226 OF THE CONSTITUTION:

The power of quashing the criminal proceedings has to be exercised **very sparingly and with circumspection and that too in the rarest of rare cases** and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the F.I.R. or complaint and the extraordinary and inherent powers of Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor it can "soft-pedal the course of justice' at a crucial stage of investigation/ proceedings. (Vide State of West Bengal & Ors. Vs. Swapan Kumar Guha & Ors., AIR 1982 SC 949; Madhavrao Jiwaji Rao Scindia & Anr. Vs. Sambhajirao Chandrojirao Angre & Ors., AIR 1988 SC 709; The Janata Dal Vs. H.S. Chowdhary & ors., AIR 1993 SC 892; Mrs. Rupan Deol Bajaj & Anr. Vs. Kanwar Pal Singh Gill & Anr., AIR 1996 SC 309; G. Sagar Suri & Anr. Vs. State of U.P. & Ors., AIR 2000 SC 754; and Ajay Mitra Vs. State of M.P., AIR 2003 SC 1069).

19. In M/s. Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors., AIR 1998 SC 128, a similar issue was considered and the Hon'ble Apex Court held that the criminal law cannot be set into motion as a matter of course. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors that might be committed by the Subordinate Courts as it is the duty of the High Court to prevent the abuse of process of law by the inferior Courts and to see that esteem of administration of justice remains clean and pure. However, there are no limits of power of the Court but more the power more due care and caution is to be exercised invoking these powers. The Apex Court held that nomenclature under which the petition is filed is totally irrelevant and does not prevent the Courts from exercising its jurisdiction which otherwise it possesses unless there is a special procedure prescribed which procedure is mandatory.

20. In State of U.P. Vs. O.P. Sharma, (1996) 7 SCC 705, the Hon'ble Supreme Court has indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 of the Code or under article 226 or 227 of the Constitution of India, as the case may be, and allow the law to take its own course. Similar view had been taken in Pratibha Rani Vs. Suraj kumar & Anr., AIR 1985 SC 628.

21. In L.V. Jadhav Vs. Shankarrao Abasaheb Pawar & Ors., AIR 1983 SC 1219, the Apex Court held that Court's power is limited only to examine that the process of law should not be misused to harass a citizen and for that purpose, the high Court has no authority or jurisdiction to go into the matter or examine the correctness of allegations unless the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion and that there is sufficient ground for proceeding against the accused but the Court, at that stage, cannot go into the truth or falsity of the allegations.

22. In Trisuns Chemical Industry Vs. Rajesh Agarwal & Ors., (1999) 8 SCC 686, the Supreme Court placed reliance upon its earlier judgment in Rajesh Bajaj Vs. State N.C.T. of Delhi & Ors., AIR 1999 SC 1216 and observed that the inherent power of the High Court should be limited to very extreme exceptions. The said judgment was approved and followed by the Apex Court in Ram Biraji Devi Vs. Umesh Kumar Singh & Ors., 2006 AIR SCW 2543, wherein the Apex Court reiterated that the power can be used only in extreme exceptions where it is necessary to do so in t he interest of justice.

23. In State of Haryana & ors. Vs. Ch. Bhajan Lal (supra), the Hon'ble Supreme Court laid down the guide-lines for exercising the inherent power as under:-

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the first Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out as case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by as police officer without an order of a Magistrate ass contemplated under S. 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with malafide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

24. In Ganesh Narayan Hegde Vs. S. Bangarappa & Ors., (1995) 4 SCC 41, an earlier decision in Mrs. Dhanalakshmi Vs. R. Prasanna Kumar & Ors., AIR 1990 SC 494, has been cited with approval for the

proposition that there should be no undue interference by the High Court as no meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at this stage. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of court or that the interests of justice otherwise call for quashing of the charges.

25. In Zandu Pharmaceutical Works Ltd. Vs. Mohd. Sharaful Haque & Ors., AIR 2005 SC 9, the Hon'ble Apex Court held that criminal proceedings can be quashed but such power is to be exercised sparingly, carefully with caution and only when such exercise is justified by the tests specifically laid down in the statutory provisions itself. It is to be exercised ex debito justitiae to do real and substantial justice for administration of which alone Courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. A case where the FI.R. or the complaint does not disclose any offence or is frivolous, vexatious or oppressive, the proceedings can be quashed. It is, however, not necessary that at this stage there should be meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. The allegations have to be read as a whole.

26. In State of W.B. Vs. Narayan K. Patodia, AIR 2000 SC 1405, The Apex Court observed that lodging an FIR is only the first step of investigation by the police. Premature quashing of the FIR at the initial stage instead of serving the cause of justice, harmed it. The inherent powers of the High Court are reserved to be used "to give effect to any orders under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice".

27. Undoubtedly, the enjoyment of a good reputation is a personal right and, thus, dignity of a person is to be protected as guaranteed under Article 21 of the Constitution of India. Filing F.I.R. and visit by the police for arrest of a person on the basis of false and frivolous F.I.R./complaint, may, result in incalculable harm to his reputation and self-respect. Such a right has been recognised by the Hon'ble Apex Court in Joginder Kumar's case and Smt. Kiran Bedi & Anr. Vs. Committee of Enquiry & Anr., AIR 1989 SC 714 to be a personal right. However, the law of arrest is one of the balancing individual rights, liberties and privileges, on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of doing which comes first - the criminals or society, the law violator or the law abider.

28. In D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416, the Hon'ble Apex Court held that when the crime goes unpunished, the criminals are encouraged and the society suffers. The victim of crime or his kith and kin become frustrated and contempt for law develops. The Court further observed as under:-

".....if we lay too much of emphasis on protection of their fundamental rights and human rights, such criminals may go

scot-free without exposing any element or iota of criminality, the crime would go unpunished and in the ultimate analysis, the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This is all the more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime."

While deciding the said case, the Hon'ble Supreme Court laid down certain guidelines for the police, as how to act and proceed when arrest is necessary. The Court expected the legislature to bring legislation to give effect to the said guidelines.

29. In order to give effect to the law laid down by the Hon'ble Supreme Court in this case, the provisions of the Code have been amended by Code of Criminal Procedure (Amendment) Act, 2005 by which Section 50-A has been inserted. It requires the Police to give information about the arrest of the person as well as the place where he is being held to anyone who may be nominated by him for sending such information. It further obliges the Magistrate concerned to satisfy himself about the fulfillment of the requirements of the said provision when arrested person is produced before him in order to ensure compliance of the said law. The aforesaid provisions are mandatory and any violation, thereof, can be a ground available to an apprehended person to question the correctness of the arrest by the aforesaid procedure. This is because the aforesaid Section is clearly designed to protect the fundamental right of a person guaranteed under Article 21 of the Constitution, subject to reasonable restriction as placed by the law enacted by the Legislature. In our opinion, the interpretation of the said provision therefore makes it imperative for the investigating agency not to apprehend a person and further for the Magistrate to satisfy himself that the investigating agency had proceeded with in accordance with law, which in our opinion would ensure the safety and liberty of a person from being abused and from preventing any unwarranted arrest.

30. In Ahmed Noormohmed Bhatti Vs. State of Gujarat, AIR 2005 SC 2115, the Hon'ble Supreme Court held that for violation of the guidelines contained in D.K. Basu and Joginder Kumar the appropriate remedy is departmental action or contempt. The Court observed as follows:-

"These requirements are in addition to the constitutional and statutory safeguards and do not detract from various directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee. This Court has also cautioned that **failure to comply with the requirements aforesaid, shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court**." (Emphasis added).

31. The Hon'ble Apex Court in Smt. Nandini Satpathy Vs. P.L. Dani & Anr., AIR 1978 SC 1025, has observed that emphasis should shift depending on circumstances, in balancing these interests. The Hon'ble Apex Court in Joginder Kumar's case after considering the rights of the people guaranteed under Articles 21 and 22(1) of the Constitution of India, observed as under:-

"The incidents of personal liberty are guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental rights to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

32. Thus, the arrest is permissible only in a case where the circumstances of the said case so require and there is a justification for making the arrest otherwise not.

33. The Court has a duty to balance the freedom of a person and the right of the Executive to investigate the offence. Therefore, the Court has to examine as to whether the investigation is being made in accordance with law and if it comes to the conclusion that investigation is nothing but a means to harass the accused, the Court can always interfere with investigation.

Section 157 (1) of the Code of Criminal Procedure reads as under:-

"Procedure for investigation. - (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, **if necessary**, to take measures for the discovery **and arrest** of the offender:

Provided that–

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a

police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he **shall not investigate the case**." (Emphasis added).

34. It is evident from the statutory provisions itself that arrest is to be made only and only if it is found to be necessary and there is a justification for making the arrest for the purpose of further investigation. What to talk of arrest even case may not be investigated if there is no sufficient ground for the same. Therefore, it cannot be held that arrest is to be made in every case without discrimination rather the mandate issued by the Hon'ble Apex Court in Joginder Kumar's case is to be followed but as stated above, the said case deals with the power of the police to make arrest while the Full Bench in Satyapal's case deals with the power of the Court to interfere with investigation.

35. Investigation is the primary function of the Police. The arrest of the suspect in the next step in the investigation which can be carried out in certain cases without warrant of arrest. Arrest can also be made in view of the provision of Section 42 of the Code, if the accused does not disclose his identify, i.e. name, parentage and residence etc or information in this regard given by him is believed to be false. Tendency to implicate falsely in criminal cases and absence of statutory provision for seeking anticipatory bail in the State of Uttar Pradesh have flooded this Court with cases for quashing FIR/Complaint and in the meanwhile staying arrest. The Court is competent to interfere with investigation/arrest only in exceptional cases as explained above.

LIMITATIONS ON EXAMINING QUESTIONS OF MALA FIDE IN WRIT PETITION:-

36. The issue of mala fide decided by the Hon'ble Apex Court in State of Haryana Vs. Ch. Bhajan Lal (supra) held as under:-

"At this stage, **when there are only allegations and recriminations on no evidence, this Court could not anticipate the result of the investigation and rendered a finding on the question of mala fides on the materials at present available**. Therefore, we are unable to see any force in the contentions that the complaint should be thrown over board on the some unsubstantiated plea of mala fides." (Emphasis added).

37. In Sheo Nandan Paswan Vs. state of Bihar & Ors., AIR 1987 SC 877, the Hon'ble Apex Court while dealing with the issue of mala fides in criminal law observed as under:-

"It is well established proposition of law **that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta** of the first informant or the complainant." (Emphasis added).

38. Similarly, in State of Bihar & Anr. Vs. J.A.C. Saldanha & Anr. (supra), the Apex Court has held as under:-

"It must, however, be pointed out that **if an information is lodged at the police station and an offence is registered, the mala fide of the informant would be of secondary importance** if the investigation produced unimpeachable evidence disclosing he offence." (Emphasis added).

39. In Sarjudas & Anr. Vs. State of Gujarat, 1999 (8) SCC 508 the Hon'ble Supreme Court held that there must be cogent evidence of mala fides or malicious intention of the informant or the complainant for taking note of the allegations of mala fide. The bald statement in this respect is not sufficient.

40. In State of Orissa Vs. Saroj Kumar Sahoo,(2005) 13 SCC 540, it has been held that probabilities of the prosecution version can not be analyzed at this stage. Likewise the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus:

"It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. **The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings."** (Emphasis added).

41. In M. Narayandas Vs. State of Karnataka & Ors., (2003) 11 SCC 251, the Apex Court rejected the contention that proceedings were liable to be quashed as the same stood initiated on account of personal vendetta observing that complaint has to be tested and weighed after the evidence is collected.

Similar view has been explained by the Apex Court in State of Bihar & Anr. Vs. Shri P.P. Sharma & Anr., AIR 1991 SC 1260; and Zandu Pharmaceutical Works Ltd. (supra).

42. Thus, it is evident that in case there is sufficient evidence against the accused, which may establish the charge against him, if the bias/mala fide is established, the proceedings cannot be quashed.

QUASHING OF FIR BECAUSE DISPUTE IS OF CIVIL NATURE:

43. In Trilok Singh & Ors. Vs. Satya Deo Tripathi, AIR 1979 SC 850, the Hon'ble Supreme Court examined the similar case wherein the truck had been taken in possession by the Financer in terms of hire purchase agreement, as there was a default in making the payment of installments. A criminal case had been lodged against the Financer under Sections 395, 468, 465, 471, 12-B/34, I.P.C. This Court refused to exercise its power under Section 482, Cr.P.C. and did not quash the criminal proceedings on the ground that the Financer had committed

an offence. However, reversing the said judgment, the Apex Court held that proceedings initiated were clearly an abuse of process of the Court. The dispute involved was purely of civil nature, even if the allegations made by the complainant were substantially correct. Under the hire purchase agreement, the Financer had made the payment of huge money and he was in fact the owner of the vehicle. The terms and conditions incorporated in the agreement gave rise in case of dispute only to civil rights and in such a case, the Civil Court must decide as what was the meaning of those terms and conditions.

44. In K.A. Mathai alias Babu & Anr. Vs. Kora Bibbikutty & Anr., 1996 (7) SCC 212, the Hon'ble Apex Court had taken a similar view holding that in case of default to make payment of installments, Financer had a right to resume possession even if the hire purchase agreement does not contain a clause of resumption of possession, for the reason that such a condition is to be read in the agreement. In such an eventuality, it cannot be held that the Financer had committed an offence of theft and that too, with the requisite mens rea and requisite dishonest intention. The assertions of rights and obligations accruing to the parties under the hire purchase agreement wipes out any dishonest pretence in that regard from which it cannot be inferred that Financer had resumed the possession of the vehicle with a guilty intention.

45. In Jagdish Chandra Nijhawan Vs. S.K. Saraf, (1999) 1 SCC 119, the Hon'ble Supreme Court dealt with a case wherein the company had provided an accommodation to its employee and after termination of his services, he did not vacate the said accommodation and a criminal case was lodged against him under Sections 406, 408, 409, I.P.C. also taking the assistance of Section 630 of the Companies Act, 1956. The Hon'ble Apex Court held that as the accused had been granted a rent free accommodation as a part of the conditions of employment, the agreement provided for civil rights and thus, complaint was not maintainable.

46. In Charanjit Singh Chadha & Ors. Vs. Sudhir Mehra, (2001) 7 SCC 417, again the Hon'ble Apex Court held that recovery of possession of the vehicle by Financer-owner as per terms of the hire purchase agreement, does not amount to a criminal offence. Such an agreement is an executory contract of sale conferring no right in rem on the hirer until the transfer of the property to him has been fulfilled and in case the default is committed by the hirer and possession of the vehicle is resumed by the Financer, **it does not constitute any offence** for the reason that such a case/dispute is required to be resolved on the basis of terms incorporated in the agreement. The Apex Court elaborately dealt with the nature of the hire purchase agreement observing that in a case of mere contract of hiring, it is a contract of bailment which does not create a title in the bailee.

47. In Lalmuni Devi (Smt.) Vs. State of Bihar & Ors., (2001) 2 SCC 17, the Hon'ble Supreme Court held that peculiar facts of a case may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable, it does not mean that the criminal complaint cannot be maintained, therefore, held that no law of universal application can be laid down in such matters. The facts and circumstances of each case have to be examined,

appreciating the terms and conditions incorporated in the agreement.

48. In M. Krishnan Vs. Vijay Singh & Anr., (2001) 8 SCC 645, after considering several authorities on the point it was pointed out that mere filing of a civil suit with respect to the documents gives no ground for quashing criminal proceedings, as the allegations in the complaint need to be independently established. The Court held as under:-

"Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The **proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents**. In a criminal court the **allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil Court**. Had the complainant failed to prove the allegations made by him the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the **unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents** intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in a criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of.....**Where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction** between the parties." (Emphasis added).

Similarly, in Rajesh Bajaj (supra), the Hon'ble Supreme Court observed as under:-

"It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discovering whether there was commission of offence or not."

49. Similar view has been reiterated in Ram Biraji Devi (supra) observing that where a person cannot be fastened with any criminal liability and no guilty intention can be attributed to him nor there is a possibility of deceiving on his

part and the matter relates to only civil liabilities, the Court should interfere and quash the proceedings.

50. Thus, in view of the above, it becomes clear that in a given case, there may be civil as well as criminal liability and the Court has to examine the facts and circumstances of each case. Nature of the agreement reached between the parties and terms and conditions incorporated therein would be determining factor. However, such a course is permissible where the matter is of such a nature that it can be decided only by a Civil Court and no element of criminal law is involved.

DEFENCE AND INVESTIGATIONAL MATERIAL NOT TO BE CONSIDERED AT THIS STAGE:

51. In Savita Vs. State of Rajasthan (2005) 12 SCC 338, it has been held that at the stage when investigation had not even started and charge- sheet had not been submitted the High Court could not take into consideration extraneous material given by the party concerned for reaching the conclusion that no offence was disclosed. This in fact was too premature a stage for the High Court to give such a finding when even the investigation had not started and the investigating agency had no occasion to find out whether there was material to file a charge-sheet or not.

52. Similarly in State of T.N. Vs. Thirukkural Perumal, (1995) 2 SCC 449, it has been held that it is impermissible to quash criminal proceedings based on evidence collected by the investigating agency during investigation. The Court held as under:-

"The normal process of the criminal trial cannot be cut short in a rather casual manner. **The court, is not justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made in the FIR or the complaint** on the basis of the evidence collected during investigation only while dealing with a petition.....seeking the quashing of the FIR and the criminal proceedings.

53. In S.M. Datta Vs. State of Gujarat & Anr., (2001) 7 SCC 659, the practice of the High Court in scuttling criminal proceedings at the initial stage was criticised, except in the rarest cases where the same amounted to abuse of the process of law. Only broad allegations were to be seen and genuineness of the FIR could not be looked into at this stage. The Court observed as under:-

"**Criminal proceedings, in the normal course of events ought not to be scuttled at the initial stage**, unless the same amounts to an abuse of the process of law. In the normal course of events thus, **quashing of a complaint should rather be an exception and a rarity** than an ordinary rule. **The genuineness of the averments in the FIR cannot possibly be gone into** and the document shall have to be read as a whole so as to decipher the intent of the maker thereof. **It is not a document which requires decision with exactitude,** neither is it a document which requires mathematical accuracy and nicety, but the same should be able to communicate or indicative of disclosure of an offence broadly and in the event the said test stands satisfied, the question relating to the quashing of a complaint would not arise. It is in this context, however, one feature ought to be noticed

at this juncture that there cannot possibly be any guiding factor as to which investigation ought to be scuttled at the initial stages and investigations which ought not to be so scuttled. **The first information report** needs to be considered and if the answer is found on a perusal thereof **which leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere."** (Emphasis added).

54. In M/s. Medchl Chemicals & Pharma (P) Ltd. Vs. M/s. Biological E. Ltd. & Ors., AIR 2000 SC 1869, the Apex Court observed that the complaint or charge sheet can only be quashed in the rarest of rare exceptional case, but where the allegations on the face of the complaint do not constitute an offence, criminal proceedings may be unhesitantly quashed. The Court held as follows:-

"Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and **the case for quashing at the initial stage must have to be treated as rarest of rare** so as not to scuttle the prosecution. With the lodgment of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. **The jurisdiction as such is rather limited** and restricted and its undue **expansion is neither practicable nor warranted**. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount." (Emphasis added).

55. Thus, the Court is not permitted to consider/examine the reliability/genuineness of the allegations made in the F.I.R. or complaint, at the stage of considering a case for quashing criminal proceedings.

QUASHING OF F.I.R.-BECAUSE OF CROSS-CASES:

56. In the case of Jagdish Yadav Vs. Ram Nandan Yadav & Ors., 1990 SCC (Crl.) 648, it was observed that simply due to lodging of a cross-case the investigation ought not to have been interfered with by the High Court. As in view of the fact that the two cases related to the same incident it was open to the Magistrate after the two reports came to be placed before him to consider what action according to law is called for.

57. Likewise the scope of interference with investigation when there were cross cases has been considered in Kari Choudhary Vs. Sita Devi, AIR 2002 SC 441, the Court observed that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally

take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency.

58. In Upkar Singh Vs. Ved Prakash, AIR 2004 SC 4320, the Court considered the issue and placing reliance upon its earlier judgment in T.T. Antony Vs. State of Kerala & Ors., (2001) 6 SCC 181, held that the registration of a complaint in the nature of a counter-case from the purview of the Code is not excluded. Any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code. This prohibition does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident. The Court held as under:-

"Be that as it may, if the law laid down by this Court in T.T. Antony case is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given herein below i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code."

(Emphasis added).

59. In view of the above, pendency of cross-cases in respect of the same incident cannot be a sole and exclusive ground for interference with criminal proceedings.

SCOPE OF ARTICLE 141 AND LAW OF PRECEDENTS:

60. There can be no dispute that the law laid down by the Hon'ble Apex Court is binding on all Courts of the country in view of the provisions of Article 141 of the Constitution of India but the decision of the Hon'ble Apex Court is to be read with reference to and in the contest of the peculiar statutory provisions interpreted by the Court and taking into consideration the facts of the case where the law had been laid down.

61. It is settled proposition of law that an issue, which has not been considered by the Court while delivering a judgment, cannot be said to be binding as a decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Court must carefully try to ascertain the true principle laid down by the decision of the Court. The Court should not place reliance upon a discussion without discussing as to how the factual situation fits in with a fact situation of the decision on which reliance is placed, as it has to be ascertained by analyzing all the material facts and the issues involved in the case and argued on both sides. The judgment has to be read with reference to and in context with a particular statutory provisions interpreted

by the Court as the Court has to examine as what principle of law has been decided and the decision cannot be relied upon in support of a proposition that it did not decide (Vide H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur & Ors. Vs. Union of India, AIR 1971 SC 530; M/s. Amar Nath Om Parkash & Ors. Vs. State of Punjab & Ors., AIR 1985 SC 218; Rajpur Ruda Meha & Ors. Vs. State of Gujarat, AIR 1980 SC 1707; C.I.T. Vs. Sun Engineering Works (P) Ltd., (1992) 4 SCC 363; Sarva Shramik Sangh, Bombay Vs. Indian Hume Pipe Co. Ltd. & Anr., (1993) 2 SCC 386; Haryana Financial Corporation & Anr. Vs. M/s. Jagdamba Oil Mills & Anr., AIR 2002 SC 834; Mehboob Dawood Shaikh Vs. State of Maharastra, (2004) 2 SCC 362; ICICI Bank & Anr. Vs. Municipal Corporation of Greater Bombay & Ors., AIR 2005 SC 3315; M/s. MaKhija Construction and Enggr. Pvt. Ltd. Vs. Indore Development Authority & Ors., AIR 2005 SC 2499; and Shin-Etsu Chemical Co. Ltd. Vs. Aksh Optifibre Ltd. & Anr., (2005) 7 SCC 234).

62. In Jawahar Lal Sazawal & Ors. Vs. State of Jammu & Kashmir & Ors., AIR 2002 SC 1187, Hon'ble Supreme Court held that a judgment may not be followed in a given case if it has some distinguishing features.

In Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., AIR 2003 SC 511, the Hon'ble Supreme Court held that a decision is an authority for which it is decided and not what can logically be deduced therefrom. A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. While deciding the said case the Court placed reliance upon its earlier judgment in Delhi Administration Vs. Manohar Lal, AIR 2002 SC 3088.

63. In Union of India Vs. Chajju Ram, AIR 2003 SC 2339, a Constitution Bench of the Hon'ble Supreme Court held as under:-

"It is now well settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is equally well settled that a little difference in facts may lead to a different conclusion."

64. In Ashwani Kumar Singh Vs. U.P. Public Service Commission & Ors., AIR 2003 SC 2661, the Apex court held that a judgment of the Court is not to be read as a statute as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case. Substantial flexibility; one additional or different fact may make a world of difference between the conclusions in two cases. Disposal of cases by blindly placing reliance upon a decision is not proper.

Not only that, in Nand Kishore Vs. State of Punjab, (1995) 6 SCC 614, the Hon'ble Apex Court has held as under:-

"Their Lordships' decisions declare the existing law but do not enact any fresh law, is not in keeping with the plenary function of the Supreme Court under Article 141 of the Constitution, for the Court is not merely the interpreter of the law as existing but much beyond that. The Court as a wing of the State is by itself a source of law. The law is what the Court says it is."

65. The Hon'ble Apex Court has repeatedly held that it is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law and while performing its duty, it is competent to lay down norms, procedure and guidelines for observance (Vide Vineet Narain Vs. Union of India & Ors., AIR 1998 SC 889; and Union of India Vs. Sushil Kumar Modi, (1998) 8 SCC 661).

66. In view of the above, it is evident that while following the judgment of the higher Court, the Court has to examine as to whether the issue involved in the case in hand had been decided in the case sought to be followed. The facts, if found distinguishable, can also tilt the position as in that situation the ratio of the judgment may not be applicable.

FINAL DISPOSAL OF CASES AT INITIAL STAGE:

67. In many cases, it has been found that petitions are disposed of on the very first day without issuing notice to the complaint and giving the opportunity to the State to controvert the averments made in the petition staying the arrest of the accused till the charge sheet is filed. Such a course is not permissible as the Court has to deal with every case on merit.

68. The Hon'ble Apex Court in Manjit Kaur Vs. State of Punjab & Ors., (2005) 12 SCC 310, **cautioned the Court not to quash the proceedings by a cryptic and unreasoned order**. It was further observed that the petition is to be disposed of by a reasoned order taking into account the facts and legal issues involved therein.

As to whether it is permissible for this Court to dispose of the petition on the very first date staying the arrest till charge sheet is filed.

69. The issue involved herein was examined by a Constitution Bench of the Hon'ble Apex Court in State of Orissa Vs. Madan Gopal Rungta, AIR 1952 SC 12, wherein the Orissa High Court while dismissing the writ petition without entering into the merit of the case, relegated the petitioner therein to the Civil Court as the petition raised disputed questions of fact, had granted the interim relief for a limited period to facilitate the petitioner to approach the Civil Court and obtain interim relief. The Hon'ble Apex Court set aside the said order of the High Court observing that the writ was not maintainable only for the purpose of granting interim relief and in case the High Court did not entertain the case on merit and relegated the party to some other forum, it did not have a power to grant interim relief for the interregnum period. The Court held as under:-

"The question which we have to determine is whether directions in the nature of interim relief only could be granted under Art. 226, when the Court expressly stated that it refrained from determining the rights of the parties on which a writ of mandamus or directions of a like nature could be issued. In our opinion, **Art. 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do.** The directions have been given here only to circumvent the provisions of S. 80 Civil P.C., and in our opinion that it is not within the scope of Art. 226. An interim

relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But **when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Art. 226 of the Constitution**. In our opinion, the language of Art. 226 does not permit such an action. On that short ground, the judgment of the Orissa High Court under appeal cannot be upheld." (Emphasis added).

70. The said judgment stood approved by a Seven Judges' Bench of the Hon'ble Apex Court in Special Reference No. 1 of 1964 under Article 143 of the Constitution of India, AIR 1965 SC 745, further placing reliance on Maxwel wherein it had been observed that when an Act confers a jurisdiction, it impliedly also grants the power of doing of such acts or applying such means as are essentially necessary to its execution.

71. The ratio of the said judgment in Madan Gopal (supra) has consistently been approved and followed by the Hon'ble Apex Court as is evident from the Constitution Benches decisions in Amarsarjit Singh Vs. State of Punjab, AIR 1962 SC 1305; and State of Orissa Vs. Ram Chandra Dev, AIR 1964 SC 685.

72. In State of Bihar Vs. Rambalak Singh "Balak" & Ors., AIR 1966 SC 1441, the Hon'ble Apex Court has made a similar observation observing that granting interim relief is permissible when the case is pending before the Court and if jurisdiction is conferred by the Statute upon a Court, the conferment of jurisdiction implies the conferment of power of doing all such acts or applying such means.

In The Premier Automobiles Ltd. Vs. Kamlakar Shantaram Wadke & Ors., AIR 1975 SC 2238, a similar view has been reiterated.

73. A Constitution Bench of the Hon'ble Apex Court in Maharaj Umeg Singh & Ors. Vs. State of Bombay & Ors., AIR 1955 SC 540, entertained a writ petition under Article 32 of the Constitution of India and the question involved therein had been as to whether the Moti Moree held by the petitioner and his ancestors under a Grant was part of Jagir within the meaning of The Bombay Merged Territories and Areas (Jagir Abolition) Act, 1954. The vires of the provisions of the Act had been challenged. The Hon'ble Apex Court subsequently came to the conclusion that the petitioner therein had to establish satisfactorily that the Moti Moree was not a Jagir within the definition given under the Act 1954 and the question required to

be completely thrashed out and adjudicated upon by the Civil Court. The Court relegated the parties to the Civil Court and adjourned the case till that issue was decided by the Civil Court. However, the Court further granted the following interim relief:-

"We, therefore, order that the petitioner do file the necessary Suit within three months on this date and the petition do stand adjourned till after the hearing and final disposal of that Suit. The stay granted by this Court in this petition will continue in the meanwhile. We may record here that the learned Advocate General on behalf of State of Bombay has also given his undertaking not to take any steps against the petitioner in the meanwhile."

74. In the said case, though the parties therein were relegated to the Civil Court for adjudication of their rights by adducing evidence on facts but granted the interim relief till the disposal of the Suit for the reason that the matter remained pending before the Court to be decided after disposal of the Suit. More so, it contained an undertaking given by the Advocate General of the State of Bombay not to take any step adversely affecting the petitioner.

75. Thus, it is evident from the aforesaid judgments of the Hon'ble Apex Court that the Court has a power to grant interim relief so long the case is pending before it. In a case where the writ Court refuses to entertain a petition and relegates the party to some other appropriate forum or the party itself withdraws the writ petition to approach another forum, as the case does not remain pending before the Court, the writ Court has no competence to issue any direction protecting the right of the petitioner interregnum, for the reason that writ does not lie for granting only an interim relief and interim relief can be granted provided the case is pending before the Court and rights of the parties are likely to be adjudicated upon on merit. Under the garb of seeking quashing of criminal proceedings, the relief of anticipatory bail, which is not available in the State of U.P., cannot be obtained, for the reason that a litigant cannot be permitted to achieve something indirectly, which cannot be sought directly.

REASONED ORDER NEEDED FOR INTERIM RELIEF:

76. In view of the above, it is neither desirable nor permissible in law to dispose of a writ petition granting the interim relief without adjudicating upon the issues involved therein. Thus, the petition is to be decided on merit. However, it may be necessary in the facts and circumstances of the case that interim relief has to be granted for the reason that in the facts and circumstances of a case, withholding of interim relief may tantamount to dismissal of the main relief itself as by the time the case comes for hearing to be decided finally, nothing may be allowed to be granted in favour of the petitioner.

77. In Deoraj Vs. State of Maharashtra & Ors., AIR 2004 SC 1975, the Hon'ble Apex Court while dealing with a case of election under the provisions of Maharashtra Cooperative Societies Act, 1960, held that interim relief should be granted **if so required but in a foolproof case**. The Court held as under:-

"In such a case the availability of a very strong prima facie case - of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be **rare and exceptional cases**. The Court would grant an interim relief only if satisfied withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously, such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship."

78. Similar view has been reiterated in Bombay Dyeing & Manufacturing Co. Ltd. Vs. Bombay Environmental Action Group & Ors., (2005) 5 SCC 61, placing reliance upon the earlier judgments of the Hon'ble Apex Court in Dr. B. Singh Vs. Union of India & Ors., AIR 2004 SC 1923; and Dattaraj Nathuji Thaware Vs. State of Maharashtra & Ors., AIR 2005 SC 540, wherein it has been held that the Court must consider on one hand the enormity of losses and hardship which may be suffered by others, if interim order is granted and whether petition itself would become infructuous if the interim relief is refused on the other hand. Thus, the Court has to strike a balance between the two extreme positions.

FACTS AND ISSUES IN JOGINDER KUMAR'S CASE:

79. It may be noted that Joginder Kumar's involved the arrest of a practising lawyer who had been called to the police station in connection with a case under inquiry on 7-1-94. On not receiving any satisfactory account of his whereabouts, the family members of the detained lawyer preferred a petition in the nature of habeas corpus before the apex Court on 11-1-94 and in compliance with the notice, the lawyer was produced on 14-1-94 before the Court. The police version was that during 7-1-1994 and 14-1-1994 the lawyer was not in detention at all but was only assisting the police to detect some cases. The detenu asserted otherwise. The Court was not satisfied with the police version. It was noticed that though as on that day the relief in habeas corpus petition could not be granted but the questions whether there had been any need to detain the lawyer for 5 days and if at all he was not in detention then why was the Court not informed, were important questions which required an answer. Besides, if there was detention for 5 days, for what reason was he detained. The Court, therefore, directed the District Judge, Ghaziabad to make a detailed enquiry and submit his report within 4 weeks. In that case the Court voiced its concern regarding complaints of violations of human rights during and after arrest.

80. In Joginder Kumar's case, the apex court has considered the issue of balancing individual rights and liberties of detained accused, on the one hand, and the society's need for law enforcement on the other.

Joginder Kumar's case does not confer any powers on the High Court to quash an FIR in the extraordinary powers of the High under Article 226 of the Constitution or of staying the arrest simply because the case is of a minor nature or because the investigation has not been able to produce significant material for showing the complicity of an accused in an offence at that stage. Finally in operative part of the judgment in Joginder Kumar's case, the Apex Court has only issued certain directions.

81. However, for non-compliance of the aforesaid directions, the official concerned can be held liable for departmental action, and may also be liable to be punished for contempt of court. The observations and guidelines in D.K. Basu and Joginder Kumar are therefore directed at the police. The said judgment did not deal with the power of the High Court to quash the FIR and investigation or to stay the arrest of the accused at all.

82. The Full Bench in Satyapal's case had examined the issue as to what extent and in what circumstances, this Court has competence to interfere with investigation of an offence. While in Joginder Kumar's case, the Supreme Court explained the powers of the police to arrest a person suspected to be involved in a crime. Thus, in both the cases, issue had been entirely different and there was nothing common in both the said cases. Observations made by the Full Bench in Satyapal's case that Joginder Kumar's case was decided on the facts of that case, simply meant that the law laid down therein did not affect the powers of this Court in interfering with investigation by any means.

83. While dealing with a similar situation, i.e. the observations made by a Seven Judges' Bench in India Cement Ltd. Vs. State of Tamil Nadu, AIR 1990 SC 85, the five Judges' Bench in State of West Bengal Vs. Kesoram Industries Ltd., (2004) 10 SCC 201, observed as under:-

"A doubtful expression occurring in a judgment, apparently by mistake or inadvertence, ought to be read by assuming that the Court had intended to say only that which is correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the context, also having regard to what has been said a little before and a little after . ..... A statement caused by an apparent typographical or inadvertent error in a judgment of the Court should not be misunderstood as declaration of such law by the Court."

84. In view of the above, it is not permissible to read the said observations in a manner not warranted nor any person can be permitted to make an issue of it. The Full Court only intended to say that the ratio of Joginder Kumar's case was not applicable in a case where quashing of criminal proceedings is sought.

ANSWERS TO THE QUESTIONS REFERRED:

85. In view of the above, the conclusions drawn by us, hereinabove, we answer the first part of question No. 1 holding that Satyapal's case lays down the correct law and we approve, affirm and reiterate the same. However, the second

part of the 1st question does not require to be answered, as the ratio of Joginder Kumar's case has no application in a case for quashing criminal proceedings.

86. Our answer to the second question under reference is that the observations contained in the Full Bench decision in Satyapal's case did not intend to whittle down or reduce the powers of this Court for staying the arrest of an accused person and for which our judgment contains reason explaining the intendment of the Full Bench judgment therein, i.e. the ratio of Joginder Kumar's case had no application in Satyapal's case.

87. After answering the aforesaid questions, the matter requires to be sent back to the Division Bench for its disposal. However, at the time of conclusion of the submissions, it was suggested by the learned counsel for the parties that in the instant case the investigation has been completed and charge sheet has been filed against the petitioner. The Competent Court has already taken cognizance and in such circumstances, the petition has become infructuous and be accordingly dismissed as having become infructuous.

88. The petition stands accordingly dismissed as having become infructuous.

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(Opinion per Hon'ble Amar Saran, J.)

89. I have had the advantage of reading the opinion of my esteemed senior Brother Hon'ble Chauhan, J.

I am in full agreement with his Lordship's answer to the first question referred by the Division Bench of this Court comprising Hon'ble M. Katju J and Hon'ble Onkareshwar Bhatt J vide their order dated 22.8.2000. The question referred was as under:

1. Whether arrest during investigation can be stayed by this Court only in rarest of rare cases as observed in Satyapal Vs. State of U.P. and others, 2000 Cr.L.J. 569, or according to the criteria laid down by the Supreme Court in Joginder Kumar Vs. State of U.P. and others (1994)4 SCC 260 ?

90. The answer given by Brother Chauhan J was as follows:

"In view of the above, the conclusions drawn by us, hereinabove, we answer the first part of question No. 1 holding that Satyapal's case lays down the correct law and we approve, affirm and reiterate the same. However, the second part of the Ist question does not require to be answered, as the ratio of Joginder Kumar's case has no application in a case for quashing criminal proceedings."

91. However, I need to say a few words especially in relation to the answer given by Brother Chauhan J to the second question posed by the referring division bench.

The second question referred by the Division Bench was as under:

2. Whether the Full Bench in Satyapal's case was right in holding that Joginder Kumar's case was delivered on its own peculiar facts and circumstances and hence does not lay down any legal principles relating to the power of arrest and the power of stay to arrest by this Court?

The answer given by Brother Chauhan, J. to the second question was:

"Our answer to the second question under reference is that the observations contained in the Full Bench decision in Satyapal's case did not intend to whittle down or reduce the powers of this Court for staying the arrest of an accused person and for which our judgment contains reason explaining the intendment of the Full Bench judgement therein, i.e. the ratio of Joginder Kumar's case had no application in Satyapal's case."

92. As brother Justice Chauhan has already stated in his answer to both the questions referred by the Division Bench that the ratio of Joginder Kumar's case has no application in a case praying for staying arrests, in my view the valid answer to the second question about whether the Full Bench was right in holding that Joginder Kumar's case was delivered on its own peculiar facts and did not lay down any legal principles relating to the power of the arrest and the power of staying of arrest by this Court, lay in affirming the Full Bench in Satyapal's case even on this point.

93. If the observations in Joginder Kumar's case are excluded as is mentioned in the answer of Brother Chauhan J to this question and also in the second part of the answer given to the first referred question, then there can be no denial of the fact that ipso facto to some extent the powers of this Court to stay arrest are whittled down. Furthermore in my view the position that the scope of this Court under Article 226 for interfering with investigations and staying arrests is not whittled down even without applying Joginder Kumar's case, runs counter to the position taken in Satyapal's case and will amount to over-ruling or mitigating the ratio and impact of Satyapal's case, in an indirect way, which is a course not permissible for a subsequent Full Bench of equal strength.

94. I also do not think that the reference by the Division Bench headed by Hon'ble M. Katju J was meaningless or futile, which is what the answer to the second question that even without applying Joginder Kumar's case the power of the Court to stay arrest was "not whittled down" would seem to imply.

95. In my view the Division Bench had sought to seek the application of Joginder Kumar's case in the matters relating to stay of arrest because they were conscious of the limitations imposed because of Satyapal's case which in turn was based on various pronouncements of the Apex Court which defined the parameters and scope for permitting interference with the FIR and investigation and for staying arrest. The referring Division Bench sought enlargement of those powers by insisting that some observations in Joginder Kumar's case should also be taken into consideration for staying arrest of accused against whom FIRs disclosing cognizable offences have been registered. The power of arrest could only have a wider meaning and amplitude provided the ratio of Joginder Kumar's case as understood by the Division Bench was applied. The relevant passage in Joginder Kumar's case (paragraph 24) which was quoted with approval by the D.B. in this regard was:

"No arrest can be made because it is lawful for the police officer to do so. The

existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental rights to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

96. *Satyapal's* case on the other hand examined which of the two views, in *Mahesh Yadav Vs. State of U.P.,* Writ Petition No. 4658 of 1998, where the petition had been disposed of on the very first day with a direction that the petitioner was not to be arrested in the concerned crime number until submission of the charge-sheet subject to his cooperating with the investigation, or the view taken in Writ Petition No. 2588 of 1998: *Shamsul Islam @ Afroz Vs. State of U.P. and others*, refusing to interfere with the investigation and to stay the arrest where the FIR disclosed commission of a cognizable offence, was correct. *Satyapal's* case preferred the view taken in Shamsul Islam (supra) to the view in Mahesh Yadav's case. Satyapal also laid down that without issuing notice to the informant calling for a reply, no order finally disposing of the petition and staying the arrest until submission of charge sheet could be passed at the stage of initial hearing. Satyapal's case has cited with approval the law laid down in the *State of Haryana Vs. Ch. Bhajan Lal and others:* 1991 (28) ACC 11 (SC), *M/s. Pepsi Food Limited Vs. Spl. Judicial Magistrate and others* : 1998 (36) ACC 20 (SC*), Roopan Deol Bajaj Vs. K.P.S. Gill:* 1995 (32 ACC 786 (SC), *Smt. Rashmi Kumar Vs. Mahesh Kumar Bhada*: 1997 (Suppl) ACC 30 (SC) and *Central Bureau of Investigation vs. Duncan Agro Industries Ltd.:* 1995 (Suppl) ACC 204 (SC), and has held that the ratio in *Joginder Kumar's* case has no application and it needs to be confined to its own facts. In paragraph 31 Satyapal's case has observed:

"31. The scope of interference by this Court either in exercise of extraordinary power under Article 226 of the Constitution or its inherent power under Section 482 Cr.P.C. with the investigation of a cognizable offence has been examined in a number of decisions of the Hon'ble Supreme Court, as well as of the different High Courts. It has been consistently held that where the

allegations in the FIR taken at the face value and accepted in entirety, do not constitute any cognizable offence: the FIR and the investigation thereon may be quashed."

97. The anxiety of the referring Division Bench in desiring that the observations in Joginder Kumar's case may also be taken into account for effecting stays of arrest during investigation is however understandable. On a traditional interpretation of the legal position as laid down in Satyapal's case and in the authorities of the apex Court referred therein, the scope of interference and stay of arrest at the stage of investigation needed to be confined to the "rarest of rare" cases. Under the settled interpretation of the powers of this Court under Article 226, there was no power of staying arrests when the FIR disclosed a cognizable offence, even in those cases where the accused was being prosecuted for a minor criminal offence, where the accused was already named in the FIR and his arrest was not needed for custodial interrogation or for facilitating the investigation, where there was no likelihood of the accused absconding or repeating the crime, where the dispute was really of a civil nature, where there were cross cases, where apparently the accused had been falsely implicated due to political rivalry, or there was omnibus involvement of all major or minor, married or unmarried female and male members of a family in a case under section 498-A IPC, or the Dowry Prohibition Act.

98. It was on this understanding that the referring Division Bench had pointed out that on a reading of section 157(1) of Cr.P.C., arrest is not necessary in all cases and it is to be effected only "*if necessary*."

99. However as Brother Chauhan has rightly concluded that the observations in *Joginder Kumar* can not be utilized for considering the scope of powers for quashing criminal proceedings or for staying arrest therein, and observations in *Joginder Kumar* are essentially directed at the police.

Joginder Kumar was on a *habeas corpus* petition which had been filed for the release from illegal detention of a practicing advocate. As the Court was not satisfied with the plea of the Police respondents who produced Joginder Kumar in Court that they had picked him up in a bona fide manner for interrogation about a criminal case and he had not been illegally detained, the Apex Court had directed enquiry into the matter by the district judge and it was in that connection that observations had been made about situations when arrests may not be necessary or justified, although powers for arrest existed with the police.

100. In its operative part, the Court in Joginder Kumar's case had also only issued the following directions:

"1. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the Diary as to who was informed

of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons in the various Police Manuals."

101. In *D.K. Basu v. State of West Bengal, AIR 1997 SC 610* the Court also mentions some similar directions and guidelines which included the need for the arresting officer to wear identification tags, to make a memo of arrest at the time of arrest, to note in the case diary the name of his next friend disclosed by the arrestee who was to be informed of the arrest, to permit the arrestee's lawyer to be present for part of the time during custodial interrogation, to get medical examination of the arrestee done every 48 hours during interrogation.

102. These cases were therefore not at all concerned with the powers of the High Court for staying arrest during investigation in a cognizable case. For non-compliance of the directions in D.K. Basu as in *Joginder Kumar*, the official concerned has only been held liable for departmental action or for being punished for contempt of court. In this regard paragraph 37 of D.K. Basu's case observes:

"Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter."

103. In ***Ahmed Noormohmed Bhatti v. State of Gujarat,(2005) 3 SCC 647*** also it has been mentioned in paragraph 8 that for violation of the guidelines contained in D.K. Basu and Joginder Kumar the appropriate remedy is departmental action or contempt. Paragraph 9 of the aforesaid law report reads as follows:

"9. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee. This Court has also cautioned ***that failure to comply with the requirements aforesaid, shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court."*** *(Emphasis added)*

104. It is clear from a perusal of Chapters V and XII of the Code of Criminal Procedure and the observations and guidelines in D.K. Basu and Joginder Kumar, that these provisions, directions and observations are directed at the investigating officer, and powers of supervision have been entrusted to the Magistrate concerned to ensure compliance of the same.

105. No power is conferred on the High Court to quash the FIR and investigation or to stay the arrest of the petitioner because some of these directions or observations have not been

complied with. Only because the High Court is of the opinion that the particular case is not of such a grave nature necessitating arrest, or that the accused is not likely to abscond or that his arrest is not needed for the purpose of investigation, the High Court is not empowered to substitute its discretion in place of the discretion of the Investigating officer, who alone is entitled to arrive at a conclusion as to whether there is any need to effect arrest during investigation. A direction for staying the arrest or quashing an FIR can only be passed in that rarest of rare case where the FIR on its plain reading discloses no cognizable offence. The observations in *Joginder Kumar* are not meant for enlarging the jurisdiction of the Court for quashing an FIR in exercise of its extraordinary powers under Article 226 of the Constitution of India. Quashing of an FIR or consequential stay of arrest is only possible when the FIR does not disclose a cognizable offence, or when a case for interference with the investigation falls within the parameters set by the decisions of the apex Court *State of Haryana v. Bhajanlal et al* and relied upon in Satyapal which deal with the powers of the High Court to quash an FIR or to stay the arrest during investigation.

106. At best as observed by the apex Court in *Joginder Kumar (supra)* that "*it shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with."* There is also no decision of the Apex Court where a contrary view has been taken or where it has been held that Joginder Kumar's case can be utilized for extending the powers of staying arrest or interfering with the investigation beyond the parameters of the decisions of the Apex Court described above.

108. It may be noted that Brother Chauhan J relying on authorities starting from the Privy Council case in *Emperor v. Khawaja Nazir Ahmad,* AIR 1945 PC 18, and going on to *H. N. Rishbud*, AIR 1955 SC 196, *Abhinandan Jha & Ors. v. Dinesh Mishra*, AIR 1968 SC 117, *M.C. Abraham & Anr v. State of Maharashtra & Ors*. (2003) 2 SCC 649, *Adri Dharan Das V. State of West Bengal*, AIR 2005 SC 1057 has also held that the powers and functions of the police and the Courts is clearly demarcated, and that the Court will not ordinarily intervene with the investigation of a crime or with the arrest of the accused in a cognizable case, which is the province of the police.

What then is the remedy?

109. The only remedy in my opinion when an accused is sought to be arrested in the case of a minor cognizable offence, where the arrest may not appear strictly necessary at the stage of investigation is the power of anticipatory bail conferred under section 438 Cr.P.C. This is the only provision wherein the Sessions Court and thereafter the High Court could consider the gravity or minor nature of the cognizable offence, merits of the matter, the probabilities and genuineness or otherwise of the allegations, for considering whether it would be proper to restrain the Investigating officer from arresting an accused by granting him anticipatory bail in an appropriate case. The relevant provision, section 438 Cr.P.C has conferred wide powers in this connection to the Sessions Court or the High Court to grant bail to an accused in the event of his being arrested in a non-

bailable case "*if it thinks fit*." subject to such conditions as are mentioned in sub-clause (2) of the provision. Section 438 of the Code is being reproduced below:

"438. Direction for grant of bail to person apprehending arrest.- (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, ***if it thinks fit****, direct that in the event of such arrest, he shall be released on bail.*

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including –

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court.

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1). (Emphasis added)

110. That this provision was enacted for giving relief to an accused in such situations, where allegations are not very grave or where the accused appear to have been implicated because of political rivalry or where the arrest may not be necessary at the stage of investigation would be apparent from a perusal of Clause 39.9 of the 41s Report, and clause 31 of the 48th Law Commission Report which contain the objects and reasons for introducing the said provision. Clause 39.9 of the 41st and clause 31 of the 48th Law Commission Report are being reproduced herein below:

"39.9. Though there is a conflict of judicial opinion about the power of a Court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. ***The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days.*** *In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase.* ***Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail., there seems no justification to require him first***

to submit to custody, remain in prison for some days and then apply for bail.

We recommend the acceptance of this suggestion. We are further of the view that this special power should be conferred only in the High Court and the Court of Sessions, and that the order should take effect at the time of arrest or thereafter."

"31. The Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission (41st Report). We agree that this would be a useful addition, though ***we must add that it is in very exceptional cases that such a power should be exercised.***

We are further of the view that in order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, ***the final order should be made only after notice to the public prosecutor****. The* ***initial order should only be an interim one. Further the relevant section should make it clear that the direction can be issued only for reasons to be recorded****, and if the Court is satisfied that such a direction is necessary in the interests of justice.*

It will also be convenient to provide that the ***notice of the interim order as well as of the final orders will be given to the Superintendent of Police forthwith."*** *(Emphasis added)*

111. However, the State of U.P. in its wisdom by section 9 of Act No. 16 of 1976, which became effective from 1.5.1976, has chosen to omit section 438 Cr.P.C in the State of U.P. Two Division Benches of this Court, in *Vijai Kumar Verma Vs. State of U.P. and others*, [2002(2) JIC 429 (All)] decided on 29.7.2002 comprising of Justice M.Katju and Justice K.N. Sinha and another D.B., Crl. Misc. Writ Petition No. 5774 of 2006, *Smt. Sudama and others v. State of U.P. and others* in which orders were passed on 9.5.2006, (wherein I was a member) have strongly urged the State Government to consider restoring section 438 Cr.P.C. in the State of U.P.

112. It is pointed out in the said cases that for minor matters where the accused may have been implicated owing to political rivalry or where there is no danger of the accused absconding nor is the arrest of the accused necessary for the purpose of custodial interrogation, identification or getting any recovery effected the provision of anticipatory bail is the proper remedy. It was further observed in the aforesaid Division Benches that there is no justifiable reason for excluding this provision from the State of U.P., when it exists in every other state, in its present or slightly modified form (as in Orissa, West Bengal and Maharashtra). There is also no evidence to suggest that absence of this provision in U.P. has helped improve the law and order situation in U.P., in any manner. Precautions can be taken for ensuring that the provision if re-introduced in U.P. is not misused, by confining the power only for a limited period, or till submission of charge-sheet and making surrender before the Court concerned, a pre-condition for an application for regular bail under section 439 Cr.P.C. If the legislatures so desire, the provision of anticipatory bail could be denied in grave cases of murder, dacoity, rape, abduction or Prevention of Corruption Act, NDPS Act etc. Well defined parameters for exercise of powers under section 438 Cr.P.C. have been laid down in various decisions of the Apex court which are described in the D.B.

order in *Smt. Sudama and others v. State of U.P. and others* (supra).

113. Restoring the provision of anticipatory bail in U.P. would reduce unnecessary work load and free at least 6 Allahabad High Court judges (and additionally 3 or 4 judges at the Lucknow bench of the High Court) who are presently engaged in hearing thousands of petitions which are filed every year under Article 226 and under 482 Cr.P.C in these essentially temporary matters for staying arrests at the stage of investigation, who may then be available for final disposal of the approximately 60,000 pending criminal appeals and other important matters whose non-disposal have caused a veritable crisis in the criminal justice system. Anticipatory bail orders are usually passed after giving notice to the State and the Investigating Officer, and not ex parte, as are orders passed under Article 226 of the Constitution, because counsel argue that that if instructions are awaited the petition may become infructuous as the accused may be arrested meanwhile. Arrests have even been stayed in grave cases of murder, rape, dacoity abduction, under the Prevention of Corruption Act, or cases of financial and other scams or where accused are absconding, not co-operating or they are needed for custodial interrogation, effecting recoveries under section 27 of the Evidence Ace or for obtaining their hand writings, or thumb marks or they have to be put up for identification. The interim orders staying arrests having been obtained ex parte because of misinformation or incomplete information furnished by counsel, in the absence of instructions from investigating officers. An order of anticipatory bail on the other hand passed by the Sessions Judge could be passed after obtaining instructions from the locally based investigating officer and would be subject to greater control and judicial review by the High Court. Hence there is little reason to suspect that there would be any misuse if Sessions Courts and the High Court are entrusted with powers of anticipatory bail. Moreover an order of anticipatory bail where the accused needs to fill up bonds and produce sureties for his appearance is a better guarantee to ensure the appearance of the accused in Court during trial or for the purpose of investigation when needed, compared to an unconditional order staying arrest under Article 226 passed by the High Court.

114. However in view of the omission of section 438 Cr.P.C from the State of U.P., I am of the opinion that it is not permissible to introduce anticipatory bail by the back door by taking recourse to Article 226 of the Constitution of India for staying arrest unless it is one of the rarest of rare exceptional cases where the FIR discloses no cognizable offence or the case is covered in the parameters mentioned in Bhajan Lal and other cases dealing with powers of High Court to quash an FIR and investigation. It is true that on this interpretation, relief may have to be denied to petitioners in petty cases where accused may have been implicated in a mala fide manner due to political rivalries or in cases of 498 A IPC where entire families have been indiscriminately roped in or where there arrests may not be strictly needed during investigation. This may also result in disquiet and protest from the general public.

115. However the blame for this problem must squarely be laid at the door

of the legislature which has taken away a salutary power, and has left the public without remedy in a suitable case. If the said power of anticipatory bail is omitted in all matters, without exception in the State of U.P., it is for the legislatures to face the political fall out and consequences of this omission. The High Court cannot do indirectly what it cannot do directly and lay down bad law by arrogating to itself powers to pass orders under Article 226 staying arrests which are in effect a subterfuge for orders of anticipatory bail for the purpose of bailing out legislatures for their actions or inactions, or treat a cognizable case as a non-cognizable case for the purpose of interfering with the power of arrest during investigation.

116. In this view of the matter I concur with the answer given by Brother Chauhan J to the first question that Satyapal's case has laid down the correct law on when arrests may be stayed during investigation and that the observations in *Joginder Kumar's* case has no relevance on the matter. However so far as the second question posed by the referring Division bench is concerned, my answer is that the Full Bench in *Satyapal's* case was right in holding that *Joginder Kumar's* case was delivered on its own peculiar facts and does not lay down any legal principles relating to the power of arrest and the power of staying of arrest by this Court, and I affirm the view taken by the Full Bench in *Satyapal's* case also on this point.

117. I agree with Brother Chauhan J that the petition needs to be dismissed both on merits, resulting in the rejection of the reference, and because the petition has become infructuous due to submission of the charge sheet.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.05.2006

BEFORE
THE HON'BLE DR. B.S. CHAUHAN, J.
THE HON'BLE DILIP GUPTA, J.

Civil Misc. Writ Petition No. 19501 of 2006

Om Prakash ...Petitioner
Versus
Dakshinanchal Vidyut Vitran Nigam Ltd. and others ...Respondents

Counsel for the Petitioner:
Sri Mayank Agrawal
Seema Agrawal

Counsel for the Respondents:
Sri W.H. Khan
S.C.

Constitution of India, Art. 226-Practice of Procedure-grant of interim protection-are likely to be adjudicated upon on merit.
Case law discussed:
AIR 1952 SC-12, AIR 1965 SC-745, AIR 1964 SC-685, AIR 1966 SC-1441, AIR 1971 SC-530, AIR 1980 SC-1707, 1992 (4) SCC-363, 1993 (2) SCC-386, AIR 2002 SC-834, 2004 (2) SCC-362, AIR 2005 SC-2499, 2005 (7) SCC-23

(Delivered by Hon'ble Dr.B.S. Chauhan, J.)

1. This writ petition has been filed for quashing the demand notice dated 22.03.2006 for recovery of Rs.2,54,686/- as outstanding dues towards electricity consumption.

2. The facts and circumstances giving rise to this case are that on 115.02.2006, in a surprise check by respondent Department, the petitioner was found committing theft of electricity. He was proceeded with under the provisions of the Electricity Act, 2003 (hereinafter called the 'Act'). However the offence was compounded under sub-section (3) of Section 152 of the Act, asking the petitioner to deposit a sum of Rs.50,000/-. Petitioner deposited the said amount but he received the impugned recovery notice dated 22.03.2006 for a sum of Rs.2,54,686/-. Hence the present petition.

3. Sri Mayank Agrawal, learned counsel for the petitioner has submitted that once the matter has been compounded and the petitioner has deposited the entire amount, no recovery is permissible. Therefore, the notice impugned is liable to be quashed.

4. On the other hand, Ms. Suman Sirohi, learned Standing Counsel appearing for respondents no.3 and 4 and Shri W.H. Khan, learned counsel

while petition dismissed as withdrawn to relegate the matter before competent forun-writ court no competence to grant interim order as the case no pending before writ court.

Held: Para 13

Thus, it is evident from the aforesaid judgments of the Hon'ble Apex Court that the Court has a power to grant interim relief so long the case is pending before it. In a case where the writ Court refuses to entertain a petition and relegates the party to some other appropriate forum or the party itself withdraws the writ petition to approach another forum, as the case does not remain pending before the Court, the writ Court has no competence to issue any direction protecting the right of the petitioner interregnum, for the reason that writ does not lie for granting only an interim relief and interim relief can be granted provided the case is pending before the Court and rights of the parties

appearing for the respondent Corporation have submitted that the compounding fee was recovered as a penalty for committing the theft and the deposit of the said amount does not exonerate the petitioner from civil liability, i.e. from making payment of the outstanding dues of electricity consumed by him. The petition is liable to be dismissed. More so, if the petitioner has any grievance regarding the quantum of the amount, the only remedy available to him is to approach the Authority under the provisions of the U.P. Electricity Supply Code, 2005 but the writ petition is not maintainable.

5. In view of the submissions made by the learned counsel for the respondents, Shri Mayank Agrawal, learned counsel for the petitioner prays for withdrawal of the writ petition. His prayer is accepted and the writ petition is dismissed as withdrawn.

6. At this stage, Shri Mayank Agrawal, learned counsel for the petitioner has submitted that the recovery is likely to be made in pursuance of the impugned notice dated 22.03.2006 but it may take sometime to approach the Authority under the Code 2005 for obtaining appropriate order, and so this Court should grant stay of recovery of the amount for a stipulated period and during that period, the petitioner shall get an appropriate order from the Authority under the Code 2005.

7. The issue involved herein is as to whether this Court has a power to grant the relief sought at this stage to the petitioner when the petition has been dismissed as withdrawn and the matter has neither been adjudicated upon on merit nor examined at all.

8. The issue involved herein was examined by a Constitution Bench of the Hon'ble Apex Court in The State of Orissa Vs. Madan Gopal Rungta, AIR 1952 SC 12, wherein the Orissa High Court while dismissing the writ petition without entering into the merit of the case, relegated the petitioner therein to the Civil Court as the petition raised disputed questions of fact, had granted the interim relief for a limited period to facilitate the petitioner to approach the Civil Court and obtain the interim relief. The Hon'ble Apex Court set aside the said order of the High Court observing that the writ was not maintainable only for the purpose of granting interim relief and in case the High Court did not entertain the case on merit and relegated the party to some other forum, it did not have a power to grant interim relief for the interregnum period. The Court held as under:-

"The question which we have to determine is whether directions in the nature of interim relief only could be granted under Art. 226, when the Court expressly stated that it refrained from determining the rights of the parties on which a writ of mandamus or directions of a like nature could be issued. In our opinion, Art. 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of S. 80 Civil P.C., and in our opinion that it is not within the scope of Art. 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion

that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Art. 226 of the Constitution. In our opinion, the language of Art. 226 does not permit such an action. On that short ground, the judgment of the Orissa High Court under appeal cannot be upheld."

9. The said judgment stood approved by a Seven Judges' Bench of the Hon'ble Apex Court in Special Reference No. 1 of 1964 under Article 143 of the Constitution of India, AIR 1965 SC 745, further placing reliance on Maxwel wherein it had been observed that when an Act confers a jurisdiction, it impliedly also grants the power of doing of such acts or applying such means as are essentially necessary to its execution.

10. The ratio of the said judgment in Madan Gopal (supra) has consistently been approved and followed by the Hon'ble Apex Court as is evident from the Constitution Benches decisions in Amarsarjit Singh Vs. State of Punjab, AIR 1962 SC 1305; and State of Orissa Vs Ram Chandra Dev, AIR 1964 SC 685.

11. In State of Bihar Vs. Rambalak Singh "Balak" & Ors., AIR 1966 SC 1441, the Hon'ble Apex Court has made a similar observation observing that granting interim relief is permissible when the case is pending before the Court and if jurisdiction is conferred by the Statute upon a Court, the conferment of jurisdiction implies the conferment of power of doing all such acts or applying such means.

12. In The Premier Automobiles Ltd. Vs. Kamlakar Shantaram Wadke & Ors., AIR 1975 SC 2238, a similar view has been reiterated.

13. Thus, it is evident from the aforesaid judgments of the Hon'ble Apex Court that the Court has a power to grant interim relief so long the case is pending before it. In a case where the writ Court refuses to entertain a petition and relegates the party to some other appropriate forum or the party itself withdraws the writ petition to approach another forum, as the case does not remain pending before the Court, the writ Court has no competence to issue any direction protecting the right of the petitioner interregnum, for the reason that writ does not lie for granting only an interim relief and interim relief can be granted provided the case is pending before the Court and rights of the parties are likely to be adjudicated upon on merit.

14. A Constitution Bench of the Hon'ble Apex Court in Maharaj Umeg Singh & Ors. Vs. State of Bombay & Ors., AIR 1955 SC 540, entertained a writ petition under Article 32 of the Constitution of India and the question

involved therein had been as to whether the Moti Moree held by the petitioner and his ancestors under a Grant was part of Jagir within the meaning of The Bombay Merged Territories and Areas (Jagir Abolition) Act, 1954. The vires of the provisions of the Act had been challenged. The Hon'ble Apex Court subsequently came to the conclusion that the petitioner therein had to establish satisfactorily that the Moti Moree was not a Jagir within the definition given under the Act 1954 and the question required to be completely trashed out and adjudicated upon by the Civil Court. The Court relegated the parties to the Civil Court and adjourned the case till that issue was decided by the Civil Court. However, the Court further granted the following interim relief:-

"We, therefore, order that the petitioner do file the necessary Suit within three months on this date and the petition do stand adjourned till after the hearing and final disposal of that Suit. The stay granted by this Court in this petition will continue in the meanwhile. We may record here that the learned Advocate General on behalf of State of Bombay has also given his undertaking not to take any steps against the petitioner in the meanwhile."

15. In the said case, though the parties therein where relegated to the Civil Court for adjudication of their rights by adducing evidence on facts but granted the interim relief till the disposal of the Suit for the reason that the matter remained pending before the Court to be decided after disposal of the Suit. More so, it contained an undertaking given by the Advocate General of the State of Bombay not to take any step adversely affecting the petitioner.

16. Even if it is assumed for the sake of argument that in Maharaj Umeg Singh (Supra) the Hon'ble Apex Court has expressed the contrary opinion, the said judgment does not have any binding effect for the reason that the issue involved herein was not involved therein. On the other hand, in Madan Gopal Rungta (supra), exactly a similar issue was involved and had been replied.

17. More so, the order passed in Maharaja Umeg Singh (supra) can be held to be an order passed under Article 142 of the Constitution of India in the facts and circumstances of the case to do complete justice between the parties.

18. It is settled proposition of law that an issue, which has not bee considered by the Court while delivering a judgment, cannot be said to be binding as a decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Court must carefully try to ascertain the true principle laid down by the decision of the Court. The Court should not place reliance upon a discussion without discussing as to how the factual situation fits in with a fact situation of the decision on which reliance is placed, as it has to be ascertained by analyzing all the material facts and the issues involved in the case and argued on both sides. The judgment has to be read with reference to and in context with a particular statutory provisions interpreted by the Court as the Court has to examine as what principle of law has been decided and the decision cannot be relied upon in support of a proposition that it did not

decide (Vide H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur & Ors. Vs. Union of India, AIR 1971 SC 530; M/s Amar Nath Om Prakash & Ors. Vs. State of Punjab & Ors., AIR 1985 SC 218; Rajpur Rude Meha Vs. State of Gujarat, AIR 1980 SC 1707; C.I.T. Vs. Sun Engineering Works (P) Ltd., (1992) 4 SCC 363; Sarva Shramik Sangh, Bombay Vs. Indian Hume Pipe Co. Ltd. & Anr., (1993) 2 SCC 386; Haryana Financial Corporation & Anr. Vs. M/s Jagdamba Oil Mills & Anr., AIR 2002 SC 834; Mehboob Dawood Shaikh Vs. State of Maharastra, (2004) 2 SCC 362; M/s Makhija Construction and Enggr. Pvt. Ltd. Vs. Indore Development Authority & Ors., AIR 2005 SC 2499; and Shin-Etsu Chemical Co. Ltd. Vs. Aksh Optifibre Ltd. (2005) 7 SCC 23.

19. In Jawahal Lal Sazawal & Ors. Vs. State of Jammu & Kashmir & Ors., AIR 2002 SC 1187, Hon'ble Supreme what can logically be deduced therefrom. It is equally well settled that a little difference in facts may lead to a different conclusion."

22. In Ashwani Kumar Singh Vs. U.P. Public Service Commission & Ors., AIR 2003 SC 2661, the Apex court held that a judgment of the Court is not to be read as a statute as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case. Substantial flexibility; one additional or different fact may make a world of difference between the conclusions in two cases. Disposal of cases by blindly placing reliance upon a decision is not proper.

23. There is another possibility that after obtaining an interim relief from the Court held that a judgment may not be followed in a given case if it has some distinguishing features.

20. In Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., AIR 2003 SC 511, the Hon'ble Supreme Court held that a decision is an authority for which it is decided and not what can logically be deducted therefrom. A little difference in facts or additional facts may make a lot of difference in the presidential value of a decision. While deciding the said case the Court placed reliance upon its earlier judgment in Delhi Administration Vs. Manohar Lal, AIR 2002 SC 3088.

21. In Union of India Vs. Chajju Ram, AIR 2003 SC 2339, a Constitution Bench of the Hon'ble Supreme Court held as under:-

"It is now well settled that a decision is an authority for what it decides and not Court, the party may not approach any other forum and cause prejudice to the rights of the other parties.

24. Thus, in view of the above, the relief sought by the petitioner at this stage after withdrawing the writ petition cannot be granted and prayer so made stands rejected.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.05.2006

BEFORE
THE HON'BLE S.N. SRIVASTAVA, J.

Civil Misc. Writ Petition No.25739 of 2006

Suraj Bhan and others ...Petitioners
Versus

Director Consolidation, U.P., Lucknow and others ...Respondents

Counsel for the Petitioners:
Sri A.P. Paul
Sri B.B. Paul

Counsel for the Respondents:
C.S.C.

U.P. Consolidation of Holding Act-Section 4 (2)(a), 6 read with Consolidation of Holdings Rules Rule-17 (c)-Notification under section 4 (2)(a) published Consolidation Proceeding started-Chak allotment finalized only possession remained to be delivered under Section 23-on the basic of consolidation report-without application of mind the D.D.C. recommended for publication of Notification rescinding consolidation proceeding-held-not proper-direction issued to pass a fresh order regarding the fulfillment of condition contained under rule 17 (c) before exercising power under section 6 of the Act.

Held: Para 13

In the above conspectus, the writ petition succeeds and is allowed and inconsequence, the impugned order dated 2.9.2005 (Annexure 10 to the writ petition) is quashed. The matter may be remitted to the Director Consolidation for decision afresh in the light of the facts available on record or to ascertain the fact otherwise in accordance with law whether condition (C) of Rule 17 of the Rules framed under the U.P. Consolidation of Holdings Act is satisfied before exercising power under section 6 of the U.P.C.H. Act.

Case law discussed:
1976 RD-35

(Delivered by Hon'ble S.N. Srivastava, J.)

1. Challenge in this petition is focused on the order dated 2.9.2005 whereby Director, Consolidation, U.P. rescinded the Notifications dated 1.8.1986 and 8.9.1991 having been issued under section 4 (2) (a) of the U.P. Consolidation of Holdings Act for commencement of consolidation of the area relating to two villages namely, village Jakhangaon Tahsil Mathura and village Fodar Tahsil Mathura.

2. The petition was called on 11.5.2006 and the same day, by an order of the Court dated 11.5.2006, learned Standing counsel was directed to seek instructions from respondents forthwith and the case was listed for 16.5.2006. No counter affidavit was filed on 16.5.2006 on behalf of Director Consolidation and instead, the learned Standing counsel furnished all the requisite information by producing entire material as received from the office of Director Consolidation and the same was ordered to be placed on record.

3. A brief resume of necessary facts filtering out unnecessary details, as collected from the papers furnished by the learned Standing counsel before the court, is that village Jakhangaon situated within the circle of Tahsil Mathura was notified under section 4 (1) (a) on 26.10.1991 while village Fodar falling within the circle of Tahsil Mathura was notified for commencement of consolidation proceeding on 23.8.1986. Thereafter records were published under section 8 of the Act on 31st Oct, 1994 followed by final records prepared and published on 12th Oct 1995. It would further transpire from the record that chak allotment proceedings were embarked upon followed by publication of record on 26.2.1996 and thereafter, provisional scheme of chak allotment proceedings

came to be confirmed on 1.9.1996. In so far as village Fodar is concerned, notification under section 4 (1)(a) of the Act was issued on 23.8.1986 and final records were published on 24.10.1989 and thereafter chak allotment proceedings were confirmed and published on 20.5.1995. From a further scrutiny of the record, it would appear that a resolution was passed in the matter by Land Management Committee containing signatures of certain villagers whereby further consolidation proceedings were sought to be rescinded. It would further appear from the record that consolidator and consolidation Lekhpal submitted a report and on the basis of that report, the District Magistrate/District Deputy Director Consolidation transmitted a report to the Director Consolidation the text of which is that on account of objection to continuance of consolidation proceeding by the village people, the authorities were not getting cooperation for carrying out further consolidation operation in the village and as a result, the further consolidation proceedings were stymied. Likewise, in the matter of village Jakhangaon, similar view was articulated and ultimately all the papers were transmitted to the Director Consolidation alont-with proposal for cancellation of consolidation proceeding in relation to the two villages. In the ultimate analysis, order dated 2.9.2005 was passed by Director Consolidation whereby notifications issued under section 4 (2)(a) of the Act relating to the two villages aforesaid were rescinded.

4. I have heard learned counsel for the parties and have also been taken through the record.

5. Learned counsel for the petitioner assailed the impugned order on the ground that after the notifications under section 4 (1)(a) of the U.P. Consolidation of Holding Act published on 26.10.1991 publication of record was undertaken under section 9 of the Act and thereafter final records were published under section 10 of the Act in the year 1995 followed by chak allotment proceeding which were published and subsequently the matter attained finality under section 23 of the Act in the year 1996 and only action that remained to be taken up, was to hand over possession to respective tenure holders. He argued that order of cancellation of notification militates against the provisions of Section 6 read with Rule 17 of the U.P. Consolidation of Holding Rules. He further canvassed that the Director Consolidation passed the impugned order sans any reasons. Per contra, learned Standing propped up the impugned order passed in exercise of power under section 6 of the Act stating that on the basis of various reports and records submitted at his end, he rightly passed the impugned order.

6. In the light of the above facts, it would be useful to refer to Section 6 of the U.P. Consolidation of Holdings Act and Rule 17 of the U.P. Consolidation of Holdings Rules.

"6. Cancellation of notification under Section 4.-(1) It shall be lawful for the State Government at any time to cancel the (notification) made under Section 4 in respect of the whole or any part of the area specified therein.

(2) Where a (notification) has been cancelled in respect of any unit under sub-section (1), such area shall, subject to the final orders relating to the correction of

land records, if any, passed on or before the date of such cancellation, cease to be under consolidation operations with effect from the date of the cancellation."

Rule 17 of the U.P. Consolidation of Holdings Rules

Section 6-The (notification) made under Section 4 of the Act, may among other reasons, be cancelled in respect of whole or any part of the area on one or more of the following grounds, viz, that-

(a) the area is under a development scheme of such a nature as when completed would render the consolidation operations inequitable to a section of the peasantry;
(b) the holdings of the village are already consolidated for one reasons or the other and the tenure-holders are generally satisfied with the present position;
(c) the village is so torn up by party factions as to render proper consolidation proceedings in the village very difficult; and
(d) that a co-operative society has been formed for carrying out cultivation in the area after pooling all the land of the area for this purpose."

7. It is explicit from a perusal of Section 6 of the Act that the State Government may cancel notification under section 4 of the Act in respect of whole or any part of the area specified therein. From a perusal of Rule 17 of the Rules, framed under the U.P. Consolidation of Holdings Act it would by crystallize that cancellation proceeding can be initiated on four grounds as enumerated in the rule.

8. From a perusal of record, ground (a) (b) and (d) are not attracted. In so far as ground (c) is concerned, it spells out that that notification under section 4 of the Act can be cancelled if the village is so torn up by party factions as to render proper consolidation proceedings in the village very difficult. Coming to the facts pertaining to village Foder, it may be recalled (as stated supra) that the Land Management Committee had passed some resolution bearing signatures of few disgruntled village people objecting to continuing further consolidation operation in the village and ostensibly on the basis of the said resolution, Consolidator and consolidation Lekhpal scripted some report and again on the basis of the said report, the matter was referred to Director, Consolidation who in his discretion, passed the impugned order. It would transpire from the reports submitted to the end of Director Consolidation that authority concerned was apprised that the village people were not cooperating in the consolidation operation on account of their objection to further continuance of consolidation proceeding in the village and also regard being had to their sentiments protest and objection, a recommendation was made to the Director Consolidation to rescind the notification under section 4 in exercise of power under section 6 (1) of the U.P. Consolidation of Holdings Act. From the original papers filed before the Court by the Learned Standing counsel, it would be indicated that there was no mass protest as alleged to warrant belief that the village was so torn up as to render the further consolidation operation difficult as envisaged in ground (c) of Rule 17 of the Rules and it was resolution bearing signatures of few people of the village which was in fact acted upon for making recommendations to the Director Consolidation for cancellation of

notification issued under section 4 of the Act. In my considered view, the condition for cancellation of Notification under section 4 was not satisfied as the village does not appear to be so torn up by party factions warranting action under section 6 (a) of the Act. It would further appear that the entire consolidation proceeding had, in fact, reached near completion excepting exchange of possession in between the respective tenure holders, for as noticed above the chak allotment proceeding having been confirmed under section 23 of the Act in respect of both the villages the consolidation proceeding had almost reached completion without any let or hindrance from any quarter. In this view of the matter, I am scarcely convinced that there was any valid justification for cancellation of notification when stage of confirmation of chak allotment proceeding had already been reached and only possession remained to be exchanged. In the case of Agricultural and Industrial Syndicate V. State of U.P. 1976 RD 35, the Regional Deputy Director set out the reasons for making the suggestions (1) the consolidation would benefit hardly 25% tenure holders in view of statistics furnished in respect of village Aithal Buzurg (i) No. of tenure holders 237, (ii) Tenure holders whose land is already at only one place...139, (iii) Tenure holders land is situated in two compact blocks...31, (iv) Tenure holders whose land is divided into 3 or more compact blocks...67. In respect ----- village Bukkanpur the statistics supplied was (I) No. of tenure holders...255, (ii) Tenure holders whose land is already at only one place ...153, (iii) Tenure holders whose land is situated in two compact blocks...41 and (iv) Tenure holders whose land is divided into 3 or more compact blocks....61. It was further reasoned that in actual practice, a number of tenure holders have necessarily to be allotted three chaks. It will thus be clear from the above figures that hardly 25% tenure holders will be benefited from the consolidation as the holdings are already quite compact in both these villages. The second ground set out for seeking cancellation of notification under section 4 was that both the villages are badly torn up by party faction because about 400 persons are involved on different sides in dispute regarding land which have still not been decided. They claim rights against each other and also against the Gram Samaj. The matter is so hotly contested that the parties are likely to go up even upto the High Court. If decision of the consolidation court are upset in writ petition, dispute regarding rights will be reopened probably some years after we have closed the consolidation proceedings. This will create innumerable problems in these villages. It would thus appear that reasons set out for seeking exercise of power under Section 6 of the U.P.C.H. Act were well founded and are not comparable with the reasons set out here in this petition. From a close scrutiny of the various reports submitted to the end of the Director Consolidation acting on which the Director Consolidation rescinded the notification, it would seem that in the facts and circumstances, there was no valid justification borne out from the papers under scrutiny before the Director Consolidation for rescinding the notification in terms of ground contained in Rule 17 (c) of the Rules considering firstly, that the consolidation operation had nearly reached completion after the chak allotment proceeding had been confirmed and what remained was to exchange possession and secondly, the

condition requiring exercise of power under Rule 17 (c) of the U.P. Consolidation of Holdings Rules was not satisfied vis-a-vis the facts on record so as to warrant the satisfaction on the line o satisfaction contained in Rule 17 (c) of the Rules that the village was so torn up as to render further consolidation proceeding difficult and also regard being had to the fact that as a matter of fact, the genesis of recommendations made was the resolution of Land Management Committee containing very few signatures and no such statistics were supplied in the instant case as in the case referred to above so as to lend justification to the exercise of power by the Director Consolidation under section 6 of the U.P. Consolidation of Holdings Act.

9. In the matter of conditional legislation, decision of Apex Court in **Sundarjas Kanyalal Bhatija & Ors. V. Collector, Thane Maharasthra and others decided on 13.7.1989** may by noticed. It was a case in which the Government of Maharashtra issued a draft notification under Section 3 (3) of the Bombay provincial Municipal Corporation Act, 1949 and thereby proposed the formation of Kalyan Corporation by merging of municipal areas of Kalyan, Ambarnath Domoivali and Ulhasnagar. The proposal was resented to by the residents of the said areas and many objections and representations by persons, companies and authorities including the municipal bodies of Ambarnath and Ulhasnagar were made. Subsequently, the draft notification was challenged in the Bombay High Court. The High Court took the view that the decision to exclude Ulhasnagar was taken by the State abruptly and in an irrational manner and that the decision was against the object of the Act. The Apex Court in the aforesaid decision held in the facts and circumstances that "***No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with."*** As stated supra, it would appear that the conditions contained in Rule 17 (c) of the U.P. Consolidation of Holdings Act were not fully satisfied regard being had to the details contained in various papers produced before the Court and therefore, in the circumstances, the notification issued in exercise of power under section 6 of the U.P.C.H. Act is liable to be quashed.

10. The next aspect to be noticed here pertains to argument of the learned counsel for the petitioner that the Director Consolidation while passing the impugned order, assigned no reasons, which shows that he merely endorsed the report, submitted to his end and did not apply his mind. One of the grounds of attack in the petition was that the Director Consolidation did not pass a reasoned order. In connection with this submission, ratio of the decision in **Agricultural & Industrial Syndicate Ltd. v. State of U.P. 1976 RD 35** may be noticed. In this petition, the petitioner sought striking down section 6 of the U.P. Consolidation of Holdings Act, 1953 as being unconstitutional and also a writ of certiourari quashing the order of the Director Consolidation, Dwelling on the power of Director Consolidation, a Division Bench of this Court in the above noted decision observed that **"when the Director of Consolidation issues a notification under section 4 or 6 of the Act, he performs neither a quasi**

judicial function nor exercises any administrative power but performs a legislative function. It was further observed that to judge the validity of the notification the court must apply the same tests as it would apply to a piece of legislation. Just at it cannot be contended that any legislative authority should give reasons in support of its legislation or give a hearing to those affected before proceeding to legislate the Director of Consolidation also cannot be required to give either a reasoned order or to accord a hearing to the tenure holders concerned before issuing a notification under section 6 of the Act."

The Court further observed as under:

"If the High Court allows the writ petition and quashes the notification issued under Section 6, the result would be in substance a direction to the State Govenment to continue the consolidation with the matter of conditional legislation and was seized of similar question as involved in the present case. The quintessence of what was held by the Apex Court is that the Rules of natural justice are not applicable to legislative activity plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative posers unless hearing was expressly prescribed. It was further held that the High Court was in error in directing the Government to hear the parties who are not entitled to be heard in law.

12. From a close scrutiny of the ratio flowing from the above decisions, it would crystallize that no reasoned or speaking order need be passed by the Director Consolidation. The power of the proceedings in the area in question inspite of the fact it has not considered it fit to do so in exercise of powers vested in it by the legislature. As the notifications under Section 4 and 6 are issued by the State Government in exercise of conditional legislative powers, it cannot be conceivably contended that the High Court can issue a mandamus to the legislature to legislate on any subject or to apply any law to any area. The High Court cannot pass an order making it obligatory on the State Government to enforce the scheme of consolidation in an area where in its opinion such scheme should not be enforced. It would amount to compel the State Government to exercise its powers of conditional legislation."

11. In Sunderjas Kanyalal Bhatija and others v. Collector, Thane Maharasthra and others delivered on 13.7.1989, the Apex court was dealing

Director Consolidation to rescind notification has to operate within the periphery of conditions contained in Rule 17 of the Rules on his subjective satisfaction. In view of the above, the contention of the learned counsel that no reasons have been assigned, cannot sustained.

13. In the above conspectus, the writ petition succeeds and is allowed and inconsequence, the impugned order dated 2.9.2005 (Annexure 10 to the writ petition) is quashed. The matter may be remitted to the Director Consolidation for decision afresh in the light of the facts available on record or to ascertain the fact otherwise in accordance with law whether condition (C) of Rule 17 of the Rules framed under the U.P. Consolidation of

Holdings Act is satisfied before exercising power under section 6 of the U.P.C.H. Act.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.5.2006

BEFORE
THE HON'BLE DR.B.S. CHAUHAN, J.
THE HON'BLE DILIP GUPTA, J.

Civil Misc. Writ Petition No. 30115 of 2006

Smt. Jagannathiya ...Petitioner
Versus
The State of U.P. & others ...Respondents

Counsel for the Petitioner:
Sri M.A. Haseen

Counsel for the Respondents:
C.S.C.

Code of Civil Procedure-Order 39 Rule 2-A-Violation of Interim Injunction order-rejection of application on ground after passing the order-duty of civil court comes to an end-it is for administration of Police to ensure its compliance-held-such casual and indifferent attitude of the Court below-shocking beyond imagination-Civil Court to issue necessary direction to S.P. concern to take all measures to ensure the compliance.

Held: Para 17 and 22

In such a fact-situation the civil court must ensure by all means that interim order passed by it is complied with and for that purpose, it should issue necessary instructions to the police if the facts so warrant, our conscious is shocked and it is beyond our imagination as how the trial court and appellate court could take such a casual and indifferent attitude.

In the fact-situation we have no option but to direct the civil court to issue necessary orders to the Superintendent of Police, Kaushambi to take all measures to ensure the compliance of

the interim orders passed by it at the earliest, and we direct the said authority to ensure its compliance forthwith. We further direct the Superintendent of Police, Kaushambi to file his personal affidavit within a period of three weeks from today as under what circumstances the interim order passed by the trial court could not be complied with.

Case law discussed:

AIR 1967 SC-1386
1995 (6) SCC-50
AIR 1961 SC-221
AIR 1997 SC-1240
AIR 1998 SC-2765
AIR 1971 Alld.-231
AIR 1981 All. 309
AIR 1996 K.-256,
1989 (NOC) 50 (Gan)
AIR 1967 Guj.-124
AIR 1985 P.&H. 299
AIR 1973 Alla.-449
AIR 1961 SC-221
AIR 1992 Alld.-326
AIR 1985 P.C.-106

(Delivered by Hon'ble Dr. B.S. Chauhan, J.)

1. This writ petition reveals a very sorry state of affair, wherein the learned civil court and the revisional court expressed their inability to enforce the order passed by them, leaving the hapless litigant on the mercy of the so called police administration.

2. The present petitioner filed a Suit No. 477 of 2003 along with an application for injunction, under Order 39, Rules 1 and 2 of the Code of Civil Procedure (hereinafter called C.P.C.). The said application was rejected by the trial court vide order dated 15.7.2003. Being aggrieved, Revision No. 12 of 2003 was preferred and the revisional court granted the injunction vide order dated 18.11.2004, to the effect that the respondents were restrained from interfering with the peaceful possession and occupation of the petitioner in respect of the premises in dispute. The order passed by the revisional court was not complied with. Therefore, petitioner filed an application under Order 39, Rule 2-A C.P.C. before the trial court, which stood rejected vide order dated 2nd July, 2005, observing that once the order is passed by the civil court, it is for the police administration to ensure its compliance. Therefore, the party may approach the police authorities. Unfortunately, revision preferred against the said order also stood dismissed vide order dated 28.7.2005, and Writ No. 319 of 2006 under Article 227 of the Constitution also stood dismissed as withdrawn vide order dated 4.1.2006, with liberty to the petitioner to approach the appropriate forum. Hence this petition.

3. Learned counsel for the petitioner has submitted that in spite of the interim injunction in her favour, the respondents are harassing and interfering with her peaceful possession, with all impunity, and the courts below have expressed their inability observing that it is the duty of the police administration to enforce the orders passed by the courts.

4. Order 39, Rule 2-A deals with the power to enforce the order passed by the court and impose the punishment. It is settled legal proposition that any action taken in contravention of the order of the Court is a nullity as having been done in disobedience of the interim order of the Court. (Vide Mulraj Vs. Murti Raghunathji Maharaj, AIR 1967 SC 1386).

5. Similar view has been reiterated in Surjit Singh & Ors. Vs. Harbans Singh & Ors., (1995) 6 SCC 50; and Govt. of

A.P. Vs. Gudepu Sailoo & Ors., AIR 2000 SC 2297.

6. A Constitution Bench of the Hon'ble Supreme Court, in State of Bihar Vs. Rani Sonabati Kumari, AIR 1961 SC 221, has categorically held that the said provisions deal with the willful defiance of the order passed by the civil court.

7. In Tayabbhai M. Bagasarwalla & Ors. Vs. Hind Rubber Industries Pvt. Ltd., AIR 1997 SC 1240, the Hon'ble Supreme Court dealt with a case of disobedience of an injunction passed under O. 39 Rr. 1 C.P.C., wherein the contention was raised that the proceedings under O., 39 R. 2A cannot be initiated and no punishment can be imposed for disobedience of the order because the civil court, which granted the injunction, had no jurisdiction to entertain the Suit. The Apex Court rejected the contention holding that a party aggrieved of the order has a right to ask the court to vacate the injunction pointing out to it that it had no jurisdiction or approach the higher court for setting aside that order, but so long the order remains in force, the party cannot be permitted to disobey it or avoid punishment for disobedience on any ground, including that the court had no jurisdiction, even if ultimately the court comes to the conclusion that the court had no jurisdiction to entertain the Suit. The party, who willingly disobeys the order and acts in violation of such an injunction, runs the risk for facing the consequence of punishment.

8. In Samee Khan Vs. Bindu Khan, AIR 1998 SC 2765, the Hon'ble Supreme Court held that in exercise of the power under O. 39 R. 2-A C.P.C., the civil court has a power either to order detention for disobedience of the disobeying party or attaching his property and if the circumstances and facts of the case so demand, both steps can also be resorted to. The Apex Court held as under:-

"But the position under R. 2A of Order 39 is different. Even if the injunction order was subsequently set aside the disobedience does not get erased. It may be a different matter that the rigor of such disobedience may be toned down if the order is subsequently set aside. For what purpose the property is to be attached in the case of disobedience of the order of injunction? Sub-rule (2) provides that if the disobedience or breach continues beyond one year from the date of attachment the Court is empowered to sell the property under attachment and compensate the affected party from such sale proceeds. In other words, attachment will continue only till the breach continues or the disobedience persists subject to a limit of one year period. If the disobedience ceases to continue in the meanwhile the attachment also would cease. Thus, even under Order 39 Rule 2-A the attachment is a mode to compel the opposite party to obey the order of injunction. But detaining the disobedient party in civil prison is a mode of punishment for his being guilty of such is obedience."

9. Thus, in view of the above, it becomes crystal clear that the proceedings are analogous to the contempt of court proceedings but they are taken under the provisions of O. 39 R. 2-A C.P.C. for the reason that the special provision inserted in the Code shall prevail over the general law of contempt contained in the Contempt of Courts Act, 1972 (for short, "the Act, 1972"). Even the High Court, in such a case, shall not entertain the petition

under the provisions of Act, 1972. [Vide Ram Rup Pandey Vs. R.K. Bhargava & Ors., AIR 1971 All. 231; Smt. Indu Tewari Vs. Ram Bahadur Chaudhari & Ors., AIR 1981 All. 309; Rudraiah Company Vs. State of Karnataka & Ors., AIR 1982 Kar. 182; Papanna Vs. Nagachari & Ors., AIR 1996 Kant 256; and Smt Savitri Devi Vs. Civil Judge (S.D), Gorakhpur & Ors., (2003) 6 AIC 749 (All)].

10. In Md. Jamal Paramanik & Ors. Vs. Md. Amanullah Munshi, AIR 1989 (NOC) 50 (Gau), the Gauhati High Court held that it is not permissible for a court to impose a fine or compensation as one of the punishments, for the reason that the provisions of O. 39 R. 2A do not provide for it. In Thakorlal Parshottamdas Vs. Chandulal Chunnilal, AIR 1967 Guj 124, Hon'ble Mr. Justice P.N. Bhagwati (as His Lordship then was) held that the punishment for breach of interim injunction could not be set-aside even on the ground that the injunction was ultimately vacated by the appellate court. In Rachhpal Singh Vs. Gurdarshan Singh, AIR 1985 P&H 299, a Division Bench of Punjab & Haryana High Court held that if an interim injunction had been passed and is alleged to have been violated and application for initiating contempt proceeding under O. 39 R. 2A has been filed but during its pendency the Suit itself is withdrawn, the court may not be justified to pass order of punishment at that stage. Thus, it made a distinction from the above referred Gujarat High Court's decision in Thakorlal Parshottamdas (supra) that contempt proceedings should be initiated when the interim injunction is in operation.

11. In Sitaram Vs. Ganesh Das, AIR 1973 All 449 the Court held as under:-

"The purpose of Order 39, Rule 2-A, Civil P.C. is to enforce the order of injunction. It is a provision which permits the Court to execute the injunction order. Its provisions are similar to the provisions of Order 21, Rule 32, Civil P.C. which provide for the execution of a decree for injunction. The mode of execution given in Order 21, Rule 32 is the same as provided in Rule 2-A of Order 39. In either case, for the execution of the order or decree of injunction, attachment of property is to be made and the person who is to be compelled to obey the injunction can be detained in civil prison. The purpose is not to punish the man but to see that the decree or order is obeyed and the wrong done by disobedience of the order is remedied and the status quo ante is brought into effect. This view finds support from the observations of the Supreme Court in the case of State of Bihar v. Sonabati Kumari, AIR 1961 SC 221; while dealing with O. 39, Rule 2(iii), Civil P.C. (without the U.P. Amendment) the Court held that the proceedings are in substance designed to effect enforcement of or to execute the order, and a parallel was drawn between the provisions of O. 21, R. 32 and of O. 39, R. 2 (iii), C.P.C. which is similar to Order 39, R. 2-A. This curative function and purpose of Rule 2-A of Order 39, Civil P.C. is also evident from the provision in Rule 2-A for the lifting of imprisonment, which normally would be when the order has been complied with and the coercion of imprisonment no longer remains necessary."

12. In Kochira Krishnan Vs. Joseph Desouza, AIR 1986 Ker 63, it has been

held that violation of injunction or even undertaking given before the court, is punishable under O. 39 R. 2-A C.P.C.. The punishment can be imposed even if the matter stood disposed of, for the reason that the court is concerned only with the question whether there was a disobedience of the order of injunction or violation of an undertaking given before the court, and not with the ultimate decision in the matter. While deciding the said case, the Court placed reliance upon the judgment of the Privy Council in Eastern Trust Co. Vs. Makenzie Mann & Co. Ltd., AIR 1915 PC 106, wherein it had been observed as under:-

"An injunction, although subsequently discharged because the plaintiff's case failed, must be obeyed while it lasts...."

13. A Constitution Bench of the Hon'ble Supreme Court in The State of Bihar Vs. Rani Sonabati Kumari, AIR 1961 SC 221, observed that the purpose of such proceedings is for the enforcement or effectuation of an order of execution.

14. Thus, it is evident from the above discussion that the proceedings are analogous to the proceedings under the Act, 1972. The only distinction is that as the legislature, in its wisdom, has enacted a special provision, enacting the provisions of O. 39 R. 2-A C.P.C., it would prevail over the provisions of the Contempt of Courts Act.

15. In K.L. Viramani Vs. III A.D.J. & Ors., 1992 All 326, this Court held that once the Court is satisfied that interim order passed by it is disobeyed, there could be no justification for the Court not to initiate proceedings for enforcement of its order.

16. However, the Court cannot merely be a silent spectator while the order passed by the competent Court is being violated with impunity and the party is left on the mercy of the so called administration. There is not only an obligation but a solemn duty of the Court to enforce its order by all means. The Statute itself has conferred all powers upon the Court to enable it to enforce its order. The provision itself empowers the civil court to attach the property of the person guilty of disobedience or to detain him in civil prison for a term not exceeding three months. The provision was inserted as it was felt to be necessary in order to maintain the dignity of the court in the eyes of the people so that the supremacy of law may prevail and to deter the people of mustering the courage to disobey the interim injunction passed by the Court.

17. In such a fact-situation the civil court must ensure by all means that interim order passed by it is complied with and for that purpose, it should issue necessary instructions to the police if the facts so warrant, our conscious is shocked and it is beyond our imagination as how the trial court and appellate court could take such a casual and indifferent attitude.

18. It is settled legal proposition that a party cannot be rendered remedy less. (Vide Rameshwar Lal Vs. Municipal Council, Tonk & Ors., (1996) 6 SCC 100). The petitioner had been running from pillar to post for enforcement of the interim order passed by the revisional court but in vain. Undoubtedly, the writ Court should not interfere in the matter

where suit is pending. (Vide K.S. Rashid & Sons Vs. Income Tax Investigation Commission & Ors., AIR 1954 SC 207; A.V. Venkateswaran, Vs. Ramchand Sobhraj Wadhwani & Anr., AIR 1961 SC 1506; M/s. Tilokchand Motichand & Ors., Vs. H.B. Munshi, AIR 1970 SC 898; Jai Singh Vs. Union of India & Ors., AIR 1977 SC 898; and Bombay Metropolitan Region Development Authority, Bombay Vs. Gokak Patel Volkart Ltd., & Ors., (1995) 1 SCC 642).

19. However, in Awadh Bihari Yadav Vs. State of Bihar & Ors., AIR 1996 SC 122, the Hon'ble Supreme Court held that in extraordinary circumstances, writ Court may exercise its discretionary jurisdiction even if the party has approached the other forum. The Court held as under:-

"There must be extraordinary situation or circumstances, which may warrant a different approach, **where the orders passed by a Court are sought to be violated or thwarted with impunity**. The Court cannot be a silent spectator in such extraordinary situation." (Emphasis added)

20. If such a course is not resorted to, the very existence of the the Courts, i.e., judicial system will come in the jeopardy.

21. Learned Standing Counsel takes notice on behalf of respondent nos. 1 to 7. Issue notice to respondent nos. 8 to 12 returnable in four weeks.

22. In the fact-situation we have no option but to direct the civil court to issue necessary orders to the Superintendent of Police, Kaushambi to take all measures to ensure the compliance of the interim orders passed by it at the earliest, and we direct the said authority to ensure its compliance forthwith. We further direct the Superintendent of Police, Kaushambi to file his personal affidavit within a period of three weeks from today as under what circumstances the interim order passed by the trial court could not be complied with.

23. List the matter on 6th July, 2006.

APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.04.2006

BEFORE
THE HON'BLE AJOY NATH RAY, C.J.
THE HON'BLE ASHOK BHUSHAN, J.

Special Appeal No. 178 of 2006

Jagdish Singh ...Petitioner/Appellant
Versus
The State of U.P. & others ...Respondents

Counsel for the Appellant:
Sri S.K. Verma
Sri R.K. Ojha
Sri Siddharth Verma
Sri Shailendra Kumar Singh

Counsel for the Respondents:
Sri Ran Vijay Singh
S.C.

U.P. Intermediate Education Act, 1921, Regulation 101-Prior Approval-appointment on the post of class 3 and Class 4th post-prior approval contemplates-after the completion of selection and before issuance of appointment letter to selected candidates, D.I.O.S. granted permission for fresh advertisement-selection completed and such candidate already joined-held-working without approval-

confer no right to question such appointment-made after due advertisement-particularly where no challenge has been made.

Held: Para 22 & 25

In view of the aforesaid, we are of the considered opinion that prior approval contemplated under Regulation 101 is prior approval by the District Inspector of Schools after completion of process of selection and before issuance of appointment letter to the selected candidate.

Coming to the appeal of Sanjay Kumar, it is not the case of the appellant that any approval has been granted to the selection of the appellant after completion of selection process. Learned counsel for Sanjay Kumar, appellant, has placed reliance only on permission dated 5th March, 2001 of the District Inspector of Schools for publishing advertisement. We have already held that the permission to publish the advertisement is not same thing as prior approval by the District Inspector of Schools as contemplated under Regulation 101. Moreover, after first advertisement dated 8th March, 2001, the Principal again issued advertisement on 28th April, 2002 on the basis of which selection has already been made and a person has already been appointed who has been represented before us by Sri R.S. Misra, Advocate, Sri R.S. Misra, Advocate has rightly pointed out that the appellant is not entitled for any relief since he has not even challenged the selection of the selected candidate on the basis of the advertisement dated 28th April, 2002. There being no approval to the selection of the appellant, Sanjay Kumar, no error has been committed by the learned single Judge in dismissing the writ petition filed by Sanjay Kumar.

Case law discussed:

1997 (2) UPLBEC-102

W.P. No. 36628 of 02 decided on 19.10.05

(Delivered by Hon'ble Ajoy Nath Ray, C.J.)

1. These two special appeals have been heard together and are being disposed of by this common judgment.

2. We have heard Sri R.K. Ojha, learned counsel for the appellant in special appeal of Jagdish Singh and Sri S.K. Verma, Senior advocate, assisted by Sri Siddharh Verma in special appeal of Sanjay Kumar and Sri Ran Vijay Singh, Learned Standing Counsel appearing on behalf of the respondents.

3. Special Appeal No. 178 of 2006 filed by Jagdish Singh is against the judgment and order dated 27th January,2006 passed by a learned single Judge of this Court dismissing the writ petition of the appellant challenging the order of the District Inspector of Schools, Bhadohi dated 18th September,2003 refusing to approve the appointment of the appellant as Class IV employee of a recognized aided institution, namely, Indra Bahadur Singh International Inter College, Bhadohi.

4. Brief facts necessary for deciding the appeal no.178 of 2006 are; that a Class IV vacancy arose in the institution due to retirement of an incumbent. The case of the appellant is that the committee of management was permitted to start process of selection by the District Inspector of Schools vide his letter dated 11th March,!998 in pursuance of which advertisement was issued on 11th March 1998 in pursuance of which advertisement was issued on 11th March,1998 calling the candidates to appear on 22nd March,1998 at !0.00 A.M. in the institution for interview. The appellant's case is that the appellant applied and

appeared for interview and was selected on 22nd March,1998 on which date the appointment letter was also issued. The papers were forwarded by the Principal to the District Inspector of Schools for approval, on18th September, 2003 after an order of this Court dat5ed 4th May,2003 passed in Writ Petition No. 20336 of 2000.the District Inspector of Schools by the impugned order has taken the view that the advertisement for appointment of the appellant was not published in two newspapers having wide circulation nor the information of the vacancy was given to the Employment Exchange. The order further states that details of the selection committee have not been made available and it is also not clear that how many applicants applied. The permission office as per the statement made by the Camp Clerk Sri V.D. Pandey. The District Inspector of Schools has further taken view that there is a ban on the appointment, hence approval cannot be granted. The order dated 18th March, 1998Regional Committee and subsequently another advertisement was issued on 28th April, 2002 was challenged by the appellant in the writ petition which has been dismissed by the learned single Judge.

5. Special appeal of Sanjay Kumar is against the judgment and order dated 20th February 2006 by which judgment a learned single Judge has dismissed the Writ Petition filed by the appellant. The appellant had filed the writ petition claiming that he is entitled for salary as Class IV employee. The appellant's case was that permission was given by the district Inspector of Schools for filling up Class IV post vide letter dated 5th March, 2001 and in pursuance of which, advertisement was issued on 8thMArch, 2001 and thereafter the appointment letter was issued to the appellant on 26th March, 2001and was working. The papers were forwarded for approval by the District Inspector of Schools, which were forwarded to the Regional Committee by the District Inspector of Schools, which were returned by the Regional Committee and subsequently another advertisement was issued on 28th April, 2002 in which the appellant also participated and some other person was selected and appointed.

6. Sri R.K Ojha as well as Sri S.K. Verma, Senior Advocate appearing for the appellants submitted that under Regulation 101 of Chapter III of U.P. Intermediate Education Act, 1921 permission is required from the District Inspector of Schools for filling up the post and the permission having been granted by the District Inspector of Schools for appointment of the appellant, the selection of the appellant was complete was complete and no error was committed by the appointing authority in giving appointment letter and permitting the appellant to join. It is submitted that the permission granted by the District Inspector of Schools, as claimed in the case of Jagdish Singh dated 11th March, 1998 and dated5th march 2001 in the case of Sanjay Kumar was sufficient which fully empowered the appointing authority to fill up the post.

7. Sri R.K Ojha also submitted that the Rules, namely, The Group 'D' Employees Services (U.P.) Rules, 1985are not applicable with regard to the appointment of Class IV employees in a recognized aided institution under the U.P. Intermediate Education Act, 1921 and the learned Single Judge committed error in relying on the said Rules. Sri

Ojha further submitted that the advertisement was made in one newspaper, which was sufficient. A number of applications received were there and the selection being fair, the District Inspector of Schools committed error I rejecting the candidature of the appellant.

8. Sri Ran Vijay Singh, learned Standing Counsel, appearing for the respondents, refuting the submission of the learned counsel for the appellant, contended that Regulation 101 of Chapter III of the U.P. Intermediate Education Act, 1921 contemplates 'prior approval'. He submits that word 'approval' as used in regulation 101 is not akin to prior approval as contended by the learned counsel for the appellant. He submits that prior approval has to be accorded by the District Inspector of Schools after completion of entire process of selection of an employee whose process started with giving up intimation of vacancy as contemplated in Regulation 104 of Chapter III of U.P. Intermediate education Act. Sri Ran Vijay Singh contended that unless the District Inspector of Schools is aware of the entire procedure of the selection, qualification of the candidates, their respective age and other detail facts, no effective power to approve can be exercised hence the approval has to be of the entire process of selection which is to be given immediately prior to appointing a candidate. He submits word "fill up" as used in Regulation 101 covers entire process beginning from intimation of vacancy culminating into submission of the proceeding to the District Inspector of Schools for consideration and approval and it is at that stage the Inspector is in a better position to check entire process and effectively exercise the duty entrusted on the Inspector. He submits that in aided recognized institutions entire salary is paid by the State and thus it is the obligation of the District Inspector of Schools also to look into all aspects of the matter before permitting to fill up the vacancy. Learned counsel for both the parties have relied upon various judgments of this Court which shall be referred to while considering the submissions.

9. First issue, which has arisen in these appeals, is interpretation of 'prior approval' as used in Regulation 101 of Chapter III. Prior to insertion of Regulations 101 to 107 in U.P. Intermediate Education Act with effect from 30th July, 1992, there was no express provision under the U.P. Intermediate Education Act, 1921 and the Regulations framed thereunder requiring approval of appointment of Class III and Class IV employees, although the provisions were there in the U.P. Intermediate Education Act, 1921 regarding approval of appointment of teachers. A Division Bench of this Court in ***1982 UPLBEC-232 Om Prakash Vs. District Inspector of Schools, Budaun and others***, while considering the appointment of Class IV employee took the view that there is no provision for approval of appointment of Class IV employees. Regulations 101 to 107 were added providing for prior approval before filling up the vacancy of non-teaching post and providing for the appointment of dependent of deceased employee and a procedure thereof. Regulations 101 to 104 of the Regulations, which are relevant for the present case, are extracted below:-

"101. Appointing Authority except with prior approval of Inspector shall not

fill up any vacancy of non-teaching post of any recognised aided institution. Provided that filling of the vacancy on the post of Jamadar may be granted by the Inspector.

"102. Information regarding vacancy as a result of retirement of any employee holding a non-teaching post in any recognised, aided institution shall be given before three months of his date of retirement and information about any vacancy falling due to death, resignation or for any other reasons shall be intimated to the Inspector by the appointing authority within seven days of the date of such occurrence.

103. Notwithstanding anything contained in these regulations, where any teacher or employee of ministerial grade of any recognised, aided institution, who is appointed accordingly with prescribed procedure, dies during service period, then one member of his family, who is not less that eighteen years in age, can be appointed on the post of teacher in train graduate grade or on any ministerial post, if he possesses prescribed requisite academic qualifications, training eligibilities, if any, and he is otherwise fit for appointment.

Provided that anything contained in this regulation would not apply to any recognised aided institution establish and administered by any minority class.

Explanation- For the purpose of this regulation "member of the family" means widow or widower, son, unmarried or widowed daughter of the deceased employee.

Note- This regulation and Regulations 104 to 107 would apply in relation to those employees who have died on or after 1 January, 1981.

104. Management of any recognised, aided institution within seven days of the date of death shall present a report to the Inspector about the members of the family of deceased employee, in which particulars of name of the deceased employee, in which particulars of name of the deceased employee, post held, pay scale, date of appointment, date of death, name of the appointing institution and names of his family members, their academic and training eligibilities, if any, and age shall also be given. Inspector shall make entries of particulars of the deceased in the register maintained by himself.

10. Regulations 103 and 104, as quoted above, provide that the appointing authority shall intimate vacancy falling on account of retirement before three months of the date of retirement. In other cases vacancy was required to be communicated within 7 days from occurrence. Regulation further provides for appointment on compassionate ground to dependent of teaching or non-teaching employee in a recognized aided institution. The management was also enjoined to inform about the death of employee, dependents of the employees and the District Inspector of Schools was to put up the application, received from the member of the deceased employee for appointment, to a committee as contemplated under Regulation 105 to consider the case and thereafter the application was to be sent to the management for issuing appointment letter. Regulations 101 to 107 have to be

read in a manner to give effect/and meaning to the provisions incorporated with effect from 30th July, 1992. The entire provisions requires harmonious construction, so all the regulations become workable and every part of it is given meaning.

11. Regulation 101, which is to be interpreted, uses a word "Inspector shall not fill up any vacancy". The word 'fill up', for the purpose of appointment, embraces in itself a procedure, which initiates from intimation of vacancy till selection of a candidate. The submission, which has been placed by the learned counsel for the appellant, is that Regulation 101 means that before starting to fill up any vacancy, prior approval of the Inspector is required. He contended that thus permission is required from Inspector by the appointing authority to start with process of selection and once the permission is granted by the Inspector, the appointing authority is free to proceed with selection and make appointment. They contended that the permission to start selection is one which is contemplated in Regulation 101.

12. As noted above, there was no provision prior to 30th July, 1992 requiring prior approval with regard to Class III and Class IV posts. It is although true that no procedure for filling up the Class III and Class IV posts is contained in the regulation, except the requirement of the qualification which has been mentioned in Chapter III Regulation 2 (1) of the U.P. Intermediate Education Act. The word 'approval' as rightly contended by the learned standing counsel, is approval of certain action which has already been taken. Had the Legislature intended that no selection process for Class III and Class IV posts shall begin without permission of the District Inspector of Schools, the word 'approval' would not have been used and the word used would have been that without prior approval or permission of the District Inspector of Schools, the appointing authority shall not commence selection process. The word approval has been defined in Webster's Third New International Dictionary as 'the act of approving, approbation, sanction, certification as to acceptability.

13. A learned single Judge of this Court had considered Regulations 101 in *1997 (2) UPLBEC 102, Dingur Vs. District Inspector of Schools, Mirzapur and others*. In paragraph 23 of the judgment it has been observed that prior approval, which has been referred to in Regulation 101, has to be granted after examining the proceeding relating to the appointment and finding out as to whether the appointment was really necessary and as to whether it was made after following the procedure in a fair manner in accordance with the provisions. Paragraph 23 of the judgment is quoted below:

"Further, the prior approval which has been referred to in the Regulation 101 in question has to be granted or refused by the competent authority not in an arbitrary manner but after examining the proceedings relating to the appointment and finding out as to whether the appointment was really necessary taking into consideration the norms fixed by the State Government justifying the continuance of the post and after satisfying as to whether the appointment was made after following the prescribed procedure in a fair manner and is in accordance with the provisions regulating

the procedure which is prescribed for making such an appointment. It is only after the competent authority is satisfied that there is no defect in the procedure followed for making the appointment and such an appointment is infact necessary and further all the requisite conditions including the eligibility criteria etc. stand complied with and further the selection proceedings have been concluded in a fair manner that the District Inspector of Schools has to accord the prior approval which on the requisite conditions being satisfied cannot be withheld keeping in view the public interest involved as the State having undertaken to take the liability for payment of salary etc. of the teaching as well as non-teaching staff employed in a recognized Intermediate College or High School is bound to ensure that its smooth functioning is not hampered on account of refusal to grant approval to an appointment made by the committee of management in the interest of the institution."

14. Another learned single Judge had occasion to consider Regulation 101 in *Writ Petition No. 36628 of 2002, Ram Dhani Vs. State of U.P. and others and Writ Petition No. 36630 of 2002, Kailash Prasad Vs. State of U.P. and others*. Vide its judgment dated 19th October, 2005, the learned single Judge, after considering the Regulation 102, took view that previous approval under Regulation 101 is required to be taken before issuing advertisement for filling up vacancy. Following was observed by the learned single Judge:

"In the present case, from the record, it transpires that no previous approval was sought from the District Inspector of Schools before making an advertisement. In my opinion, previous approval under Regulation 101 is required to be taken before issuing an advertisement for filling up the vacancy. Previous approval is required at this stage and not at the stage when a candidate is selected after the advertisement. In the present case, no permission was sought from the District Inspector of Schools, Gorakhpur, prior to the issuance of the advertisement. The Committee of Management has also filed a counter affidavit and has no where stated that previous permission was taken from the District Inspector of Schools, Gorakhpur or that they had applied for permission before issuing the advertisement. Consequently, the appointment of the petitioner was ex-facie in violation of Regulation 101 of the Regulations. Consequently, no financial approval could be accorded by the District Inspector of Schools, Gorakhpur."

15. Against the above judgment of the learned single Judge dated 19th October, 2005, special appeal was filed, which, was decided by our Division Bench vide judgment dated 22nd February, 2006 in special appeal. Only two submissions, raised before us, were dealt with by us i.e. firstly if the District Inspector of Schools fails to communicate its decision within reasonable time, the appointment shall be deemed to have been made and secondly, Regulation 101 gives uncanalised and unguided power to the District Inspector of Schools to grant or refuse approval, which itself is violative of Article 14 of the Constitution. Both the above contentions were repelled by us in our judgment dated 22nd February, 2006. While considering the concept of approval, we made the following observation in the said judgment.

"The concept of the approval of an appointment is a well known concept

under the U.P. Intermediate Education Act, 1921 with regard to the appointment by the Selection Committee for direct recruitment as well as in the case of promotion. For appointment the procedure is prescribed in the various Regulations. The qualification for appointment is also provided in Chapter-III and other provisions of the Act and the Regulations framed. While considering the question of approval of appointment of a candidate, the District Inspector of Schools has to act in accordance with the other express provisions provided for qualification, eligibility and procedure prescribed for selection. It cannot be said that the power of approval as contemplated under Regulation 101 is not hedged by any guidance or qualification. It is not in the discretion of the District Inspector of Schools to pass an order for approval or disapproval at his sweet will. He has to pass an order taking into consideration the other provisions and Regulations of the Act. Thus the submission of the learned counsel for the appellant that the said power is uncanalised and the provision itself is arbitrary, cannot be accepted."

16. The submission, which is now being raised before us in these appeals, was neither considered by us nor was pressed before us in the special appeal decided on 22nd February, 2006, although we have approved the judgment of the learned single Judge dismissing the writ petition but the question as to whether the prior approval is required to be taken before issuing an advertisement for filling up vacancy was neither canvassed before us nor felt for our consideration.

17. Original Notification by which Regulation 101 to 107 was inserted in Chapter III is in Hindi. It is useful to reproduce the original Regulation 101 which is as follows:

"101. नियुक्ति प्राधिकारी, निरीक्षक के पूर्वानुमोदन के सिवाय किसी मान्यताप्राप्त, सहायताप्राप्त संस्था के शिक्षणेत्तर स्टाफ की किसी रिक्ति को नहीं भरेगा।

प्रतिबन्ध यह है कि जमादार के पद की रिक्ति को निरीक्षक द्वारा भरने की अनुमति दी जा सकती है।"

18. Regulation 101, as quoted above, uses two words, namely, 'पूर्वानुमोदन' and 'अनुमति'. The first part of the Regulation provides that appointing authority except with prior approval of Inspector shall not fill up any vacancy of non-teaching post of any recognised aided institution whereas second part of the Regulation provides that permission for filling of post of sweeper (Jamadar) can be given by Inspector. Second part of the Regulation is in the nature of proviso. The main part of the Regulation contains word 'पूर्वानुमोदन' i.e. prior approval whereas second part of the Regulation uses word 'अनुमति' i.e. permission. Thus, the Statute uses both the word 'prior approval' and 'permission'. The meaning of both the word cannot be the same. In view of this, the submission of the learned counsel for the appellant that Regulation 101 requires only permission to issue advertisement by appointing authority and if such permission is granted by Inspector, the appointing authority can fill up the post. Regulation 101 provides prior approval with regard to vacancy of non-teaching staff and permission is contemplated only for filling the post of sweeper. Regulation thus indicates that when the permission is given to the appointing authority to fill up post of sweeper. There is no further prior approval is required. This provision being in nature of proviso to the main

Regulation shall operate as an inception to the first part of Regulation. Thus, the use of two words in Regulation 101 i.e. 'prior approval' and 'permission' itself negates construction of Regulation as contended by the counsel for the appellant.

19. When the prior approval of the Inspector is contemplated in Regulation 101, that prior approval embraces itself an examination of all aspects of the matter including existence of the vacancy, nature of the vacancy whether vacancy is to be filled up by management or it be filled by appointing the dependent of deceased employee who has claimed for appointment under the scheme of the Regulations 101 to 107.

20. Scheme of Regulations 101 to 107 makes it clear that after receiving an intimation of vacancy, the District Inspector of Schools is empowered to send the application of member of deceased employee, who is entitled for compassionate appointment to the institution, who has to issue appointment letter to such candidate. It is, however, implied in the scheme that in the event there is no candidate entitled for compassionate appointment to fill a particular vacancy, the intimation of which has been received by the District Inspector of Schools, the District Inspector of Schools can direct the appointing authority to fill up vacancy by direct recruitment but even in a case the selection is made by direct recruitment by the Principal/Committee of Management, prior approval is required of the District Inspector of Schools before issuing an appointment letter to the selected candidate. Without prior approval of the Inspector, the Principal or the committee of management cannot issue an appointment letter or permit joining of any candidate. The requirement of prior approval in Regulation 101 is a condidate. The requirement of prior approval in Regulation 101 is a condition precedent before issuing an appointment letter and is mandatory. The observation of the learned single Judge in the case of *Dingur Vs. District Inspector of Schools, Mirzapur (supra)* as quoted above, is also to the effect that approval has to be considered by the District Inspector of Schools after examining the proceeding relating to appointment and after examining as to whether prescribed procedure in a fair manner has been followed or not.

21. The observation of the learned single Judge in *Ram Dhani's case* (supra) that previous approval under Regulation 101 is required to be taken before issuing advertisement for filling up vacancy does not lay down correct law. We, however, make it clear that although prior approval is required from the District Inspector of Schools after completion of process of selection but there is no prohibition in the Principal/Management to seek permission of the District Inspector of Schools for filling up vacancy by direct recruitment. The permission may or may not be granted by the District Inspector of Schools but even if such permission to start the selection process or to issue advertisement is granted that is not akin to prior approval as contemplated under Regulation 101.

22. In view of the aforesaid, we are of the considered opinion that prior approval contemplated under Regulation 101 is prior approval by the District Inspector of Schools after completion of process of selection and before issuance

of appointment letter to the selected candidate.

23. The second submission, with regard to the applicability of the Group 'D' Employees (U.P.) Service Rules, 1985 to selection of Class IV posts in a recognized aided institution, Sri Ojha contended that the said Rules are not applicable. Further Sri Ojha contended that for the first time the said Rules were made applicable to the selection of Class IV posts vide letter dated 1st June, 2001 of the Director of Education issued in pursuance of some letter written by the State Government dated 11th May, 2001 and the selection of the appellant being earlier in point of time, the said Rules were not applicable in the present case. Sri Ojha has further submitted that it is not necessary to decide the issue regarding the applicability of 1985 Rules to the selection of the Class III and Class IV employees. Sri Ran Vijay Singh submits that since, according to the petitioner's case, the said 1985 Rules have been made applicable by the letter of the Director of Education dated 1st June, 2001 and the appellant's selection being of the year 1998, thus 1985 Rules cannot be applied to the appellant. In view of the aforesaid, we have not examined the submissions regarding the applicability of 1985 Rules with regard to selection on Class III and Class IV posts in a recognized aided institution and the said question is left open.

24. Coming to the submission of Sri R.K. Ojha on merits of the order passed by the District Inspector of Schools refusing approval, it is clear that the District Inspector of Schools, not being satisfied that the advertisement was published in two newspapers having wide circulation and there being no details of the candidates, who have applied against the post and there being no information to Employment Exchange, the approval was refused. The advertisement, on which reliance has been placed by the learned counsel for the appellant, has been filed as Annexure '2' to the affidavit filed in support of memo of appeal. The case of the appellant is that the District Inspector of Schools has granted permission on 11th March, 1998 to take steps for appointment by completing all formalities. The said letter is Annexure '1'. The District Inspector of Schools in the order although has not accepted the said letter dated 11th March, 1998 having been issued from the office of the District Inspector of Schools but it is not necessary to express any opinion as to whether the said letter was issued or not by the office of the District Inspector of Schools due to one reason as noticed below. The letter of the District Inspector of Schools granting alleged permission is dated 11th March, 1998. The advertisement, which is said to be issued in newspaper 'Janvarta' is also of the same date i.e. 11th March, 1998. How it was possible to get the advertisement published on 11th March, 1998 when the permission is being granted by the District Inspector of Schools on 11th March, 1998 itself. In the advertisement dated 11th March, 1998, 22nd March, 1998, i.e. just eleven days after the date has been fixed for interview. We are satisfied that the District Inspector of Schools has rightly taken the view that there was no proper advertisement of the vacancy and the view taken by the District Inspector of Schools refusing to approve such appointment cannot be said to be based on no material or perverse. We are unable to interfere with the order of the District Inspector of Schools dated 18th

September, 2003 refusing to approve such appointment.

25. Coming to the appeal of Sanjay Kumar, it is not the case of the appellant that any approval has been granted to the selection of the appellant after completion of selection process. Learned counsel for Sanjay Kumar, appellant, has placed reliance only on permission dated 5th March, 2001 of the District Inspector of Schools for publishing advertisement. We have already held that the permission to publish the advertisement is not same thing as prior approval by the District Inspector of Schools as contemplated under Regulation 101. Moreover, after first advertisement dated 8th March, 2001, the Principal again issued advertisement on 28th April, 2002 on the basis of which selection has already been made and a person has already been appointed who has been represented before us by Sri R.S. Misra, Advocate, Sri R.S. Misra, Advocate has rightly pointed out that the appellant is not entitled for any relief since he has not even challenged the selection of the selected candidate on the basis of the advertisement dated 28th April, 2002. There being no approval to the selection of the appellant, Sanjay Kumar, no error has been committed by the learned single Judge in dismissing the writ petition filed by Sanjay Kumar.

In view of the foregoing discussions, both the appeals are dismissed. The parties shall bear their own costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.07.2006

BEFORE
THE HON'BLE RAJES KUMAR, J.

Civil Misc. Writ Petition No. 36139 of 2003

Uttar Pradesh State Road Transport Corpn. Ltd., through the Regional Manager, Regional Office, Gorakhpur ...Petitioner
Versus
Rajendra Prasad & others ...Respondents

Counsel for the Petitioner:
Sri Ajay Singh

Counsel for the Respondents:
Sri S.K. Srivastava
Sri J.P. Gupta
S.C.

Constitution of India, Art. 226-Dismissal Order-challenge on the ground harsh punishment-disproportionate-petitioner held guilty for carrying 24 passengers without ticket-snatched away the way bill from Asstt. Traffic Inspector-threatening and misbehaving with checking officer-held-considering the conduct of employee-dismissal from service-proper.

Held: Para 15 & 16

In the present case, the respondent was found guilty in carrying on the 24 passengers without ticket. In my opinion, this conduct of the respondent is sufficient to dismiss him from the services in view of law laid down by the Apex Court.

The issue involved in the present case is squarely covered by the decisions of the Apex Court in the case of Karnataka SRTC Vs. B.S. Hullikatti (Supra), Regional Manager, RSRTS Vs. Ghanshyam Sharma, reported in 2002 (10) SCC, 330, U.P. S.R.T.C. Vs. Mahendra Nath Tiwari and

another, reported in 2006 (1) SCC, 118, Regional Manager, U.P.S.R.T.C., Etawah Vs. Hoti Lal and another, reported in 2003 (3) SCC, 605.

Case law discussed:

2002 (10) SCC-330 relied on
2006 (1) SCC-118 relied on
2003 (3) SCC-605
2006 (1) SCC-118
2006 (108) FLR-584
2006 (108) FLR-696
1996 (72) FLR-316

(Delivered by Hon'ble Rajes Kumar, J.)

1. This writ petition is directed against the judgment and award dated 26.04.2002 passed by Presiding Officer Labour Court, Gorakhpur, which was published on 28.05.2003.

2. Brief facts of the case giving rise to the present petition are that the respondent no.1 was the employee of the petitioner and was working on the post of conductor attached with Deoria depot. He has been dismissed from the service on the ground that he was conductor of the bus no.UAA-9643 on Lar Deoria route. On 25.10.1994, Traffic Inspector Shri S.N. Tripathi checked the aforesaid bus near Salempur Bale and found that out of 30 passengers, 24 passengers were travelling without ticket and from the blank book a consolidated ticket of 24 passengers was prepared for Rs.72/-. The entry of the said tickets was made in road paper and the checking details were mentioned and after writing the remark in the road paper when Sri S.N. Singh, Assistant Traffic Inspector was going to put his signature, Rajendra Prasad, respondent no.1 snatched the way-bill and threatened for dire consequences and misbehaved with the checking officer. In the explanation, respondent no.1 stated that there was no person without ticket when the checking was made at Salempur Bale. The passengers boarded the bus at Salempur and the preparation of the ticket was in process and the checking inspector has illegally treated them without ticket. He has refused to have given any threatening and misbehaour. After the enquiry, employee was found guilty and the enquiry officer has given report on 28.03.1995 in which the allegation made against the employee that with the view to destroy the evidence, he had snatched the way-bill to destroy the evidence and had threatened with dire consequence and misbehaved with the checking officer could not be proved. However, rest of the charges were found correct. Sri Ajay Singh, Regional Manager in his order dated 10.04.1995 has stated that the driver of the bus Ram Singhasan Pandey in his letter dated 26.10.1994 has stated that when Rajendra Prasad was asked to sign the way-bill, instead of putting the signature he has snatched the way-bill. He has also stated the same thing in his statement dated 21.03.1993. It has also been stated that on snatching, some of the pages of way-bill were torned and taking into account the seriousness of the charges, dismissed the respondent no.1. Apart from the amount given towards subsistence allowance, rest of the amount is forfeited. Labour Court vide order dated 06.03.2000 has not found internal enquiry proper and fair has provided opportunity to the parties to prove the charges.

3. Seven charges have been framed against the employee: 1) carrying on the passengers without ticket; 2) to cause loss to the corporation; 3) he snatched away the way-bill from Assistant Traffic Inspector; 4) Non-performance of duty; 5) Threatening to the checking officer and

misbehaving; 6) Violation of orders of Conduct Rules; 7) disobeydance of orders and directions.

4. The Presiding Officer in its order has observed that the enquiry officer has held that snatching of the way-bill, and threatened him for dire consequence to the checking officer and misbehaviour with the inspecting officer are not established but the Regional Manager in its order relying upon the statement of the driver held that there was allegation of snatching of way-bill, as a result of which some of the papers have been torned. Thus, it is established that the way-bill was snatched but the threatening for dire consequence and misbehaviour with the officer are not established. It has been observed that some of the papers might have been torned as a result of exchange of protest but it is not proved that the same has been done to destroy the evidence. The Presiding Officer however, observed that the charge relating to the travelling of 24 passengers without ticket is established. However, while determining the quantum of the punishment, it has been observed that the charge has been partially not established and the employer has suffered loss of Rs.72/- only and the employee is employed in the services since 1980 and in the earlier checking he was never found guilty. Thus, the removal from the service has been held unjustified. It has been held that two annual increments for two years should be stopped by way of punishment. It has also been held that the employee may not be entitled for the back wages.

5. Heard Sri Ajay Singh, learned counsel for the petitioner and Sri S.K. Srivastava, learned counsel for the respondent no.1.

6. It may be mentioned here that this Court while entertaining the petition on 23.08.2003 stayed the operation of the impugned award dated 26.04.2002.

7. Learned counsel for the petitioner submitted that the job of the conductor is job of faith and trust. Thus, any action of distrust on his part is not commendable and the employee is liable to be dismissed. He submitted that the charge namely, that the respondent no.1 has allowed the passengers to travel without ticket has been established. This finding of the Presiding Officer has not been challenged by the respondent no.1 and has become final. The question for consideration is whether the charge namely, that the respondent no.1 being a conductor allowed 24 passengers out of 30 passengers in bus to travel without ticket is such charge on which dismissal of the employee is justified. He submitted that in the case of **U.P. S.R.T.C. Vs. Mahendra Nath Tiwari and another, reported in 2006 (1) SCC, 118, Regional Manager, U.P.S.R.T.C., Etawah Vs. Hoti Lal and another, reported in 2003 (3) SCC, 605**, conductor was found allowing the passengers to travel without ticket held guilty and the dismissal of such employee has been held justified.

8. Learned counsel for the respondent no.1 submitted that the punishment should be in proportion to the charges. He submitted that the respondent no.1 was working since 1980 and on the earlier occasions, on inspection he was never found guilty and in the present case though he has been found guilty for the charge of carrying 24 passengers without ticket but keeping in view his past conduct and revenue loss only to the extent of Rs.72/- dismissal of the

respondent no.1 from the service is harsh and disproportionate to the charge and thus, the order of the Presiding Officer is wholly justified in setting aside the dismissal of the respondent no.1 and awarding the punishment to the extent of stopping of two annual increments.

9. In the case **Regional Manager, U.P.S.R.T.C., Etawah Vs. Hoti Lal and another (Supra),** the employee was a bus conductor and when he was on duty Assistant Regional Manager checked the bus and found 16 persons were travelling without ticket. Even after realising fare from the passenger no ticket was issued up to the time of checking. When the inspecting officers started checking, the respondent hurriedly tried to issue tickets. Old tickets were found in his possession with the intent to use them again. The employee was suspended and was finally terminated. The order of the termination was challenged in the High Court. Learned Single Judge of the High Court upheld the termination. However, Division Bench held that since the alleged misconduct has caused loss to the State to the extent of Rs.16/- only, the punishment awarded was not commensurate with the charge and thus, set aside the order of the termination leaving it open to the employer to award any punishment, other than removal or termination or compulsory retirement. The matter went in appeal before the Apex Court. Apex Court held as follows:

"It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."

10. In the case of **U.P. SRTC Vs. Mahendra Nath Tiwari and another, reported in 2006 (1) SCC, 118**, it has been held that the employee was bus conductor. He was removed on the allegation that he was found to be driving the bus and no ticket was issued to a lone passenger found in the bus and he had in his possession used ticket. Presiding Officer directed the reinstatement of the respondent with continuity of service and all the remaining dues but directed the stoppage of his annual increment. Writ petition filed by the U.P.S.R.T. has been dismissed. On the Special Appeal being filed, Apex Court held as follows:

"At the time of issuing notice, this Court issued notice only limited to the question of back wages that was awarded to the respondent. Of course, when we are hearing the appeal on grant of leave or the petition for special leave to appeal after notice, we are entitled to reopen the appeal in its entirety and consider the question of punishment and the legality of the reinstatement ordered by the Labour Court and affirmed by the High

Court. This could be done by giving a notice in that behalf to the respondent and giving him an opportunity of being heard. But for the purpose of this case and at this distance of time, we do not think that it is necessary to do so. Therefore, somewhat reluctantly, we refrain from adopting that course, though, according to us, this is a fit case where neither the Labour Court nor the High Court had any justification in interfering with the order removing the respondent from service. The conduct of the respondent as a conductor of U.P. SRTC was totally irresponsible and clearly constituted misconduct on his part deserving the maximum punishment.

We have no hesitation in coming to the conclusion that the respondent did not deserve the award of back wages to him. In fact, he must consider himself lucky to have been reinstated and that we are not interfering with that reinstatement. When a conductor drives a bus for which he is not authorized, he is endangering the public as well as the property of his employer. This by itself is a serious misconduct justifying dismissal of a conductor. Similarly, the fact that one passenger was found travelling and had not been issued a ticket for that journey, constitutes a grave charge against a conductor who is really in a position of trust as far as the employer Corporation is concerned. He is duty-bound to collect the fare from every passenger on behalf of his employer. Same is the position regarding the unexplained twelve used tickets found in his possession. That prima facie suggest that there is room to doubt the honesty of the respondent. The charges are such that they show a betrayal of the trust placed on the conductor by the employer and that the employee endangered an asset of the Corporation in addition to endangering the lives of the other users of the road.

It is a misconception to consider that the amount involved in an offence of this nature has a material bearing, while considering whether there has been misconduct on the part of an employee. It may be relevant in a criminal prosecution when considering the quantum of punishment to be imposed. When a person like the conductor of a bus, who has the obligation to make proper collection of the charges from the passengers on issuing tickets to them, is found to have passengers in the bus, even if it be only one, to whom he had not issued a ticket, it clearly amounts to a clear violation of the duty imposed on him. It is really a breach of the duty cast on the conductor who is acting on behalf of the employer. Whether it be one passenger or ten passengers it would make no difference in principle in the absence of any explanation in that behalf. It was simply the case of a conductor who had violated the regulations or the terms of his employment and had betrayed his employer, which, in any event, is a grave misconduct justifying a dismissal."

11. In the case of **Karnataka SRTC Vs. B.S. Hullikatti, reported in 2001 (2) SCC 574**, it was held by the Apex Court that it is misplaced sympathy by courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the bus conductors to

collect the bus fare from the passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside.

12. The aforesaid view has been reiterated by three-Judge Bench of the Apex Court the in the case of **Regional Manager, RSRTS Vs. Ghanshyam Sharma, reported in 2002 (10) SCC, 330** wherein in addition to what stated in the case of **Karnataka SRTC Vs. B.S.Hullikatti (Supra)** Apex Court further observed that the proved acts amount to either a case of dishonesty or of gross negligence, and bus conductors who by their actions or inactions cause financial loss to the corporations are not fit to be retained in service.

13. Learned counsel for the respondent no.1 further submitted that the findings of the court below is finding of fact and should not be interfered. In support of his contention, he relied upon decisions in the case of **U.P. State Road Transport Corporation and others Vs. Mahesh Kumar Mishra and others, reported in 2000 (85) FLR, 291, B.C. Chaturvedi Vs. Union of India and others, reported in 1996 (72) FLR, 316, Management of Teok Tea Estate Vs. Presiding Officer, Labour Court, Dibrugarh and another, reported in 2006 (108) FLR, 696 (Gauhati High Court), Hombe Gowda Edn, Trust and another Vs. State of Karnataka and others, reported in 2006 (108) FLR, 584.**

14. In my opinion, decisions cited by learned counsel for the respondent no.1 are not applicable to the present case. None of the case relates to the bus conductors in which the charge of carrying the passengers without ticket is found. While the case referred hereinabove namely, in the case of **U.P.S.R.T.C. Vs. Mahendra Nath Tiwari and another, reported in 2006 (1) SCC, 118, Regional Manager, U.P.S.R.T.C., Etawah Vs. Hoti Lal and another, reported in 2003 (3) SCC, 605** relates to the case of the bus conductors, in which on checking it was found that the bus conductor was carrying the passengers without ticket. Thus, it is not necessary to deal every individual case.

15. In the present case, the respondent was found guilty in carrying on the 24 passengers without ticket. In my opinion, this conduct of the respondent is sufficient to dismiss him from the services in view of law laid down by the Apex Court.

16. The issue involved in the present case is squarely covered by the decisions of the Apex Court in the case of **Karnataka SRTC Vs. B.S.Hullikatti (Supra), Regional Manager, RSRTS Vs. Ghanshyam Sharma, reported in 2002 (10) SCC, 330, U.P. S.R.T.C. Vs. Mahendra Nath Tiwari and another, reported in 2006 (1) SCC, 118, Regional Manager, U.P.S.R.T.C., Etawah Vs. Hoti Lal and another, reported in 2003 (3) SCC, 605**.

17. For the reasons stated above, judgment and award dated 26.04.2002 passed by the respondent no.2, Presiding Officer Labour Court, Gorakhpur is set

aside and the dismissal of the respondent no.1 is restored.

In the result, writ petition is allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.07.2006

BEFORE
THE HON'BLE S. RAFAT ALAN, J.
THE HON'BLE SUDHIR AGARWAL, J.

Civil Misc. Writ Petition No. 38598 of 2006

Harsh Kumar Singh ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri H.N. Shukla
Sri R.R. Shukla
Sri M.K. Mishra

Counsel for the Respondents:
S.C.

Constitution of India, Art. 226-Service Law-Suspension Order-on allegations-while working as Tehsildar-fraudulently allotted 800 Bighas agricultural land to different person-by exercising power under Section 195 and 197 of U.P.Z.A.L.R. Act-Power exercised negligently or recklessly in order to confer undue favour on a person-such judicial or Quasi Judicial authority-can be subjected to disciplinary enquiry-contention regarding approval given by the petitioner based upon the recommendations of other authorities-which has been approved by the D.M.-held-not a stage where the correctness of charge can be looked into-suspension order warrant no interference-However disciplinary proceeding be concluded within 6 months.

Held: Para 7 and 9

Learned counsel for the petitioner further contended that even the allegation of fraudulent act against the petitioner is not correct and there is material on record to show that the land settlement was approved by the petitioner pursuant to the recommendation of the other authorities and the said action was also approved by the Sub Divisional Magistrate. In our view, it is not a stage where correctness of the charges can be looked into, since the correctness of the charge is subject matter of departmental enquiry and any observation made by this Court, on this issue at this stage, would prejudice the interest of the parties in the contemplated departmental enquiry.

In view of the aforesaid discussions, we are of the view that the impugned order of suspension does not warrant any interference at this stage. However, we are also of the view that the departmental proceeding should not be prolonged unnecessarily and the authorities should endeavour to conclude the departmental proceeding expeditiously and within a reasonable time. A government servant cannot be allowed to remain under suspension for an indefinite period as it causes not only loss of morale to such government servant but also causes wastage of public money and time. We, therefore, direct the respondents to conclude the departmental proceeding against the petitioner expeditiously, preferably, within a period of six months from the date of production of a certified copy of this order. It is also made clear that in case the respondents find that the departmental proceeding can not be concluded before the aforesaid time despite co-operation rendered by the petitioner, it is open to the respondents to re-consider the question of continuance of the suspension of the petitioner.

Case law discussed:
AIR 1993 SC-1478
1994 (3) SCC-357
1991 RD (HC)-427

(Delivered by Hon'ble S.Rafat Alam, J.)

1. This writ petition is directed against the order dated 6.6.2006 passed by the Commissioner and Secretary, Board of Revenue, U.P., Lucknow (respondent no.2) placing the petitioner under suspension in a contemplated departmental proceeding.

2. Sri H.N. Shukla, learned counsel for the petitioner contended that the petitioner has been placed under suspension on the allegation of allotment of 800 bighas of agricultural land in Village Rampur Shahpur, District Aligarh fraudulently to 231 persons by granting approval in back date ignoring the fact that the approval granted by the petitioner while working as Tehsildar was in exercise of his statutory powers under Sections 195 and 197 of the U.P.Z.A & L.R. Act. He further submitted that the action of the petitioner being statutory exercise of power and if there was any illegality or irregularity in exercise of said power the statute provided remedy of appeal against such orders and, therefore, the disciplinary enquiry in such matters is not permissible. He further submitted that the aforesaid order of suspension has been passed on a complaint made with malafide intention against the petitioner and therefore, the entire proceedings are vitiated in law.

3. Having heard learned counsel for the petitioner, we do not find any force in the submission. The order of suspension shows that the petitioner has been found prima facie guilty of certain fraudulent exercise of power as Tehsildar. If an authority exercises quasi-judicial or otherwise statutory power, it does not mean that a departmental enquiry in respect to the acts or omission in passing such orders, cannot be conducted against such person. In the departmental enquiry the validity of the order of such authority itself is not questioned but motive, manner and the intention with which the authority has exercised its powers is subject matter of enquiry.

4. Enumerating circumstances, when disciplinary enquiry can be conducted against quasi-judicial or judicial authority in respect to the orders passed by such authority, the Hon'ble Apex Court held where the power is exercised negligently or recklessly or in order to confer undue favour on a person, such conduct of quasi judicial or judicial authority can be subject matter of disciplinary enquiry. The statutory or judicial orders passed; there legality may be subject matter of appeal or revision under the Act but it does not preclude the employer from taking disciplinary action for violation of the Conduct Rules. Some of the instances enumerated by the Hon'ble Apex Court as an illustration and not as an exhaustive list, in the case of **Union of India and others Versus K.K. Dhawan, AIR 1993 SC1478** as contained in para-28 of the judgment may be reproduced as under:

"Thus, we conclude that the disciplinary action can be taken in the following cases:

i) Where the officer had acted in a manner as would reflect on his reputation for integrity good faith or devotion to duty;

ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

iii) if he has acted in a manner which is unbecoming of a government servant;

iv) if he had acted negligently or that he omitted the prescribed conditions which Are essential for the exercise of the statutory powers;

v) if he had acted in order to unduly favour a party;

vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great." (Para-28)

The aforesaid view has been followed in the case of **Union of India and others Versus Upendra Singh, 1994 (3) SCC 357**.

5. Learned counsel for the petitioner, however, placed reliance on a Single Judge judgment of this Court in **Iftikhar Ahmad Siddiqui Versus State of U.P. & and others, 1991 Revenue Decisions (H.C.) page 427** and referring to para-11 of the judgment, he argued that in earlier matter the Hon'ble Apex Court upheld the order of the U.P. Public Service Tribunal, Lucknow holding that the Officer who had passed certain orders under the U.P. Consolidation of Holdings Act was entitled for protection under Section 49 (A) of the Act, since the orders were passed in judicial capacity and, therefore, it is submitted that the statutory orders passed by the petitioner could not be the subject matter of departmental enquiry. In our view, the aforesaid judgment does not help the petitioner at all. Part of the order of the Hon'ble Apex Court quoted in para-11 of the judgment does not make it clear whether the Apex Court held that in respect to orders passed on judicial side, no disciplinary enquiry can be conducted. Even the Hon'ble Single Judge before whom in **Iftikhar Ahmad Siddiqui Versus State of U.P. & and others (Supra)** the question was raised that the charges levelled against the petitioner related to the orders passed by him in judicial capacity being the order of the Consolidation Officer, and were either confirmed in appeal or revision and, therefore, no enquiry is permissible, was left open to be decided by the Hon'ble Single Judge and has not been decided in affirmance in favour of the petitioner, as is apparent from para-12 of the judgment which is reproduced as under:

"Thus from the aforesaid judgment it is not clear the determination, as to whether the orders were passed in good faith or not, could be done by the disciplinary authority or by the appellate or revisional authority as contemplated under the Act. However, since the writ petition is being allowed on the first question the matter is being left open for being decided by the respondent No.2 and it shall be open to the petitioner to raise this contention also, which shall be decided by the respondent No.2 in accordance with law."

6. Subsequently, this question has specifically been raised, argued and decided by the Hon'ble Apex Court in a catena of cases some of which we have already referred hereinabove and, therefore, we are clearly of the view that even if the judicial or quasi judicial order passed by the authority is correct, still disciplinary enquiry can be conducted in respect to the manner or motive, if any, of the said officer in passing such orders. These aspects have already been narrated by the Hon'ble Apex Court, which we have also reproduced and need not be dealt with further.

7. Learned counsel for the petitioner further contended that even the allegation of fraudulent act against the petitioner is not correct and there is material on record to show that the land settlement was approved by the petitioner pursuant to the recommendation of the other authorities and the said action was also approved by the Sub Divisional Magistrate. In our view, it is not a stage where correctness of the charges can be looked into, since the correctness of the charge is subject matter of departmental enquiry and any observation made by this Court, on this issue at this stage, would prejudice the interest of the parties in the contemplated departmental enquiry.

8. The next submission of the learned counsel for the petitioner that the proceedings have been initiated on account of mala fide, has also no force, inasmuch as, a perusal of the array of the party would show that no person by name has been impleaded by the petitioner and the allegation of mala fide has been levelled vaguely. It is settled that the plea of mala fide cannot be entertained and permitted to be argued unless a person against whom the allegation of mala fide has been levelled is impleaded eo-nomine and the mala fide is pleaded with sufficient material on record. Thus, the contention with respect to mala fide is also rejected.

9. In view of the aforesaid discussions, we are of the view that the impugned order of suspension does not warrant any interference at this stage. However, we are also of the view that the departmental proceeding should not be prolonged unnecessarily and the authorities should endeavour to conclude the departmental proceeding expeditiously and within a reasonable time. A government servant cannot be allowed to remain under suspension for an indefinite period as it causes not only loss of morale to such government servant but also causes wastage of public money and time. We, therefore, direct the respondents to conclude the departmental proceeding against the petitioner expeditiously, preferably, within a period of six months from the date of production of a certified copy of this order. It is also made clear that in case the respondents find that the departmental proceeding can not be concluded before the aforesaid time despite co-operation rendered by the petitioner, it is open to the respondents to re-consider the question of continuance of the suspension of the petitioner.

10. With the above observations, the writ petition stands dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.07.2006

BEFORE
THE HON'BLE RAJES KUMAR, J.

Civil Misc. Writ Petition No. 43847 of 2004

Shailendra and others. ...Petitioners
Versus
The Chief Controlling Revenue Authority and others ...Respondents

Counsel for the Petitioners:
Sri Raj Kishore Yadav
Sri Suresh Chandra Verma

Counsel for the Respondents:
Sri Anil Mehrotra
Sri S.S. Rajput
S.C.

Stamp Act, Section 47-A(4)-Imposition of Penalty-purchase of land measuring 1 Bigha 5 Biswas 7 Dhoor-On consideration of Rs.10 lakhs-Stamp duty of Rs.1,04,700/- paid on the valuation of Rs.10,47,000/- on 3.11.2000 A.D.M. finance after making spot inspection on 25.1.03 fixed the valuation as Rs.4,10,600/- and fixed stamp duty payable as Rs.4,10,100/- with penalty of Rs.10,000/- after giving full fledged opportunity to the petitioner-in the relevant year the land in question-recorded in revenue records as 'Abadi land'-surrounding plots developed as residential colonies-held-enhanced valuation fully justified-cannot be said erroneous-in view of Full Bench decision-but the penalty can not be imposed.

Held: Para 4, 5 & 6

Both the authorities namely, Deputy Commissioner and Divisional Commissioner on the basis of revenue record, recorded the finding that in the khasra for the Fasli year 1406 to 1407 land in dispute was shown as abadi land and not as banzar or agriculture land. Thus, the valuation of land in dispute treating it as abadi land can not be said to be illegal or erroneous.

In the case of Girijesh Kumar Srivastava and another Vs. State of U.P. and others (Supra), the Full Bench of this Court held that while exercising powers under sub-section (4) of Section 47-A of the Act, the Collector can determine the market value of the property and the duty payable on the instrument as a result of such determination but he has no power to impose penalty.

Respectfully following the Full Bench decision, the penalty levied in the present case is liable to be set aside.

Case law discussed:

1998 (1) AWC-403 (FB) relied on.

(Delivered by Hon'ble Rajes Kumar, J.)

1. By means of the present writ petition, petitioner has challenged the order dated 17.03.2004 passed in revision no.1121 of 2003 by Chief Controlling Revenue Authority/Commissioner, Agra Division, Agra filed against the order dated 11.06.2003 passed by Deputy Commissioner (Stamps), Agra Division, Agra.

2. The brief facts giving rise to the present writ petition are that the petitioners purchased plot no.317/5/1 area 1 Bigha 5 Biswa and 7 Biswansi situated in village Hyatwasan, Pargana, Tehsil and district Agra for Rs.10 lacs and on the valuation of Rs.10,47,000/- paid the stamp duty at Rs.1,04,700/-. The sale deed was registered on 03.11.2000. The valuation of the land in dispute was made on the basis of the circle rate fixed by the District Magistrate for the agriculture land @ Rs.35 lacs per hect. It appears that the Additional District Magistrate (Finance and Revenue) made a survey on 25.01.2003 and submitted a report stating therein that the land was abadi land, in which plots have been carved out and the construction was being going on for residential purpose. He valued the whole of the land @ Rs.1400/- sq. mtr., the valuation fixed by the District Magistrate for residential land of that area and accordingly, total valuation was fixed as abadi land at Rs.41,00,600/- on which stamp duty has been calculated at Rs.4,10,100/- and the deficiency of Rs.3,05,400/- has been worked out. On the basis of the report given by Additional District Magistrate (Finance and Revenue) case no.55/2003-04 has been registered. In the aforesaid case, petitioners have been given opportunity to

show cause as to why the demand for the deficient stamp duty may not be raised and why the penalty may not be levied. Petitioners filed the reply stating therein that the property in dispute was the agriculture land for which khasra no.317/5/1 was filed. It was stated that the said land was registered in the revenue record as agriculture land and in khatauni for Fasli 1406 to 1410 the names of Shailendra Kumar and Narendra Kumar were entered as bhumidhars and as per the khasra Fasli 1406 land was entered as a banjar land and thus on the date of the sale, it was the agriculture land and not the abadi land. It was further stated that the date of sale is relevant and the position of the land after the sale is not relevant. It was submitted that the survey was made on 25.01.2003 and the facts stated at the time of survey relates to year 2003 and thus is wholly irrelevant for the purpose of determination of the land on the date of sale. Commissioner Stamps stated that on the request of the petitioner he himself made the spot inspection of the plots. He found that the land in dispute is situated behind Kamla Nagar inside the Mughal Road and its approach road is through private plot. In several plots construction was going on. Commissioner Stamps has agreed to the submissions of the petitioners that the subsequent construction on the land is not the relevant but he observed that it was not acceptable that on the date of sale, the land was used as an agriculture land. He observed that in Mauja Ghatsavan, which falls under the Nagar Nigam Agra in khasra Fasli 1406, said land was entered as abadi land and surrounding to the land recorded at one side Awadhesh Puri Colony and on other side Bhopal Kunj Colony are present and thus it can not be believed that on the date of purchase the land was useable as agriculture land. Deputy Commissioner Stamps accordingly, upheld the valuation of the land at Rs.41,00,600/- and the deficiency of the stamp at Rs.3,05,400/-. He has also imposed a sum of Rs.10,000/- towards penalty. Against the order of the Deputy Commissioner, Agra petitioners filed revision before the Commissioner Agra Division, Agra. Commissioner Agra Division, Agra by the impugned order dated 17.03.2004 has rejected the revision.

Heard learned counsel for the parties.

3. Learned counsel for the petitioner submitted that as per khasra land in dispute was entered as agriculture land and in khasra also on the date of sale it was entered as agriculture land and in the Fasli 1406 it was shown as banjar land. He further submitted that the levy of penalty at Rs.10,000/- is wholly without jurisdiction in as much as the Deputy Commissioner has no jurisdiction to levy the penalty as held by the Full Bench decision of this Court in the case of **Girijesh Kumar Srivastava and another Vs. State of U.P. and others, reported in 1998 (1) A.W.C., 403**. Learned Standing Counsel submitted that the submission of learned counsel for the petitioners has no force. He submitted that the petitioners fails to prove that even on the date of sale, land in dispute was entered as agriculture land. He submitted that in the order of the Deputy Commissioner and in the order of the Divisional Commissioner it is stated that in the khasra for the year 1406 to 1407 land in dispute was not found in the nature of agriculture land and it was entered as abadi land. It was further submitted that surrounding to the land in

dispute, there were developed residential colonies in which the residential houses were built and even in the land in dispute subsequently, plotting was done and the residential houses have been constructed and, therefore, the valuation of the land in dispute has rightly been made treating as abadi land and not agriculture land.

4. I do not find any substance in the argument of learned counsel for the petitioner so far as valuation of land in dispute is concerned. It is true that the nature of land on the date of sale has to be seen. Both the authorities namely, Deputy Commissioner and Divisional Commissioner on the basis of revenue record, recorded the finding that in the khasra for the Fasli year 1406 to 1407 land in dispute was shown as abadi land and not as banzar or agriculture land. Thus, the valuation of land in dispute treating it as abadi land can not be said to be illegal or erroneous.

5. In the case of **Girijesh Kumar Srivastava and another Vs. State of U.P. and others (Supra)**, the Full Bench of this Court held that while exercising powers under sub-section (4) of Section 47-A of the Act, the Collector can determine the market value of the property and the duty payable on the instrument as a result of such determination but he has no power to impose penalty.

6. Respectfully following the Full Bench decision, the penalty levied in the present case is liable to be set aside.

7. In the result, writ petition is allowed in part. The order of the Deputy Commissioner and Commissioner so far as it relates to the valuation and determination of the land in dispute and the demand of stamp duty is upheld. However, the penalty levied at Rs.10,000/- is deleted.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.03.2006

BEFORE
THE HON'BLE S.K. SINGH, J.

Civil Misc. Writ Petition No. 56470 of 2005

Sudarshan Yadav ...Petitioner
Versus
The Deputy Director of Consolidation, Ballia and others ...Respondents

Counsel for the Petitioner:
Sri J.P. Singh
Sri V.C. Mishra

Counsel for the Respondents:
Sri D.N. Shukla
Sri L.N. Shukla
Sri Rahul Sahai
S.C.

Consolidation of Holdings Act Section-48-Power of Revisional Court-chak allotment matter-whether suo moto power can be exercised by D.D.C.? Held-'No'.

Held: Para 11 and 16

In view of the aforesaid this Court is of the view that exercise of the suo moto powers by the Deputy Director of Consolidation cannot be said to be just and proper, but at the same time if during the course of argument in the pending revision before the Deputy Director of Consolidation on the facts if he feels that some more chak holders are to be heard for doing complete justice between the parties, he may always move accordingly.

For the reasons recorded above, this writ petition succeeds and is allowed. The impugned orders of the Deputy Director of Consolidation dated 18.7.2005 and 1.6.2005 (annexure no. 2 and 1 respectively) are hereby quashed and now the revisions will be heard and decided by the revisional court keeping in mind the observation as made in this judgment.

Case law discussed:

AIR 1975 Alld.-126
1978 (4) ALR-194
AIR 1996 SC-2881

(Delivered by Hon'ble S.K. Singh, J.)

1. Heard Sri V.C. Mishra, learned Senior Advocate assisted by Sri J.P. Singh, learned Advocate in support of the writ petition and Sri D.N. Shukla, learned Advocate assisted by Sri L.N. Shukla, learned Advocate in opposition thereof.

2. By means of this writ petition, challenge is to the order of the Deputy Director of Consolidation dated 18.7.2005 and 1.6.2005 (annexure no.2 and 1 respectively).

3. There is no dispute about certain facts and, therefore, they may be summarised in brief for the purpose of disposal of this writ petition.

4. In the allotment of chak proceedings, against an order of the Settlement Officer Consolidation dated 16.12.2004 respondent no. 2 to 5 filed a revision before the Deputy Director of Consolidation which was numbered as revision no.697 of 2005. In this revision, the revisionists impleaded 59 private respondents. A copy of the ground of revision has been annexed as annexure no.6 to the writ petition. During the pendencey of the revision respondent no. 2 came to this Court by filing writ petition being writ petition no.32528 of 2005 with the prayer for staying delivery of possession upon which this Court disposed of the writ petition by its order dated 16.5.2005 by making observation that it is for the petitioner to approach the Deputy Director of Consolidation for getting the needful done and it is only thereafter they may come to this Court. It is at this stage it appears that a complaint was filed by respondent no.2 and it is also claimed that several other persons/chak holders/villagers filed complaint before the Deputy Director of Consolidation. On those complaints, the Deputy Director of Consolidation called the report from the subordinate authorities and ultimately report of the Assistant Settlement Officer Consolidation came on 20.11.2004. The Deputy Director of Consolidation after examining the reports submitted by the lower consolidation authorities passed an order on 1.6.2005 by which he said that he is exercising his suo moto powers in the matter. It is thereafter he summoned the record and directed for issuance of notice to large number of chak holders who may be said to have been aggrieved in the light of those reports. Petitioner and large number of tenure holders of the village, on coming to know about the order of the Deputy Director of Consolidation, filed an application on 1.7.2005 to recall the order dated 1.6.2005. That application was rejected by the Deputy Director of Consolidation by order dated 18.7.2005 and thus the petitioner is before this Court challenging both the orders of the Deputy Director of Consolidation dated 18.7.2005 and 1.6.2005.

5. Submission of the learned counsel for the petitioner is that admittedly the

revision filed by the respondent no. 2 to 5 i.e. revision no. 697 of 2005 was pending before the Deputy Director of Consolidation, which related to their grievance in respect of the improper adjustment of their chaks at the stage of the appellate authority and therefore it was open for the Deputy Director of Consolidation to give relief to the revisionist if they are so entitled in law but in no case the exercise of the suo moto powers on the alleged application of certain persons even who did not approach either the Consolidation Officer or the Settlement Officer Consolidation any they have not come before the Deputy Director of Consolidation by filing revision, can be permitted. Submission is that the Deputy Director of Consolidation is possessed with wide powers and in fact he is possessed with the same powers as the Consolidation Officer is possessed and he can make any kind of adjustment for doing the justice and balancing the equity between the parties. The Deputy Director of Consolidation can always make spot inspection to know spot situation for making just adjustment which may be in the ends of justice. Submission is that if Deputy Director of Consolidation during the course of argument in the revision finds that some more chak holders are to be heard for justifiable reasons then he can always direct for impleadment of certain more chak holders so as to do the complete justice and, therefore, in these circumstances so far the case in hand is concerned as the revision filed by respondent no. 2 to 5 besides certain other revisions were pending before the Deputy Director of Consolidation, exercise of suo moto powers for registering the matter cannot be said to be justified and thus passing of the impugned order dated 1.6.2005 for registering the matter and then summoning large number of chak holders simply on the report of the lower consolidation authorities cannot be said to be valid in law. Submission is that exercise by the Deputy Director of Consolidation besides being illegal, unwarranted, can be safely termed to be in excess of his jurisdiction and thus both orders are liable to be quashed.

6. In support of the aforesaid submission that during the pendency of the revision exercise of the suo moto powers and alteration in the chak of several chak holders who have not appealed and came before the Deputy Director of Consolidation cannot be said to be justified, reliance has been placed on three decisions of this Court reported in **AIR 1975 Allahabad 126 (Ramakant Singh Vs. Deputy Direction of Consolidation, U.P. and others), 1978 RD 167 (Ram Sunder Singh and others Vs. Ram Mohan Singh, Deputy Director of Consolidation and others) and 1978 (4) ALR 194 (Mohd. Vakil Vs. Deputy Director of Consolidation and others).**

7. In response to the aforesaid, Sri Shukla, learned Advocate vehemently submits that the Deputy Director of Consolidation admittedly is possessed with wide powers and therefore if by placing reliance on the reports given by the subordinate authorities, with an intention to do the justice to large number of chak holders, if directed that matter to be registered under his suo moto powers, then no exception can be taken to it and in any view of the matter no interference is required in the writ jurisdiction as this Court exercises equity powers. Submission is that in the complaints

various kind of illegalities were pointed out which can be found out from the record as has been annexed with the counter affidavit and therefore, in that light if the Deputy Director of Consolidation even during the pendency of the revision before him has exercised suo moto powers, then nothing wrong can be complained. Submission is that it is not a case where this Court is to interfere in the impugned orders. To support the wide powers of the Deputy Director of Consolidation Sri Shukla referred to the provisions of Section 48 of the U.P.C.H. Act and decision of the Apex Court in the case of **Preetam Singh (dead) by L.Rs. and others Vs. Assistant Director of Consolidation and others reported in AIR 1996 SC 2881.**

8. In view of the aforesaid argument as noted above, this Court has given serious thoughts over the matter and thus the question which arises for consideration for this Court is that whether during the pendency of the revision filed by the respondent no. 2 to 5 stating grievances in respect to the improper adjustment in their chaks, the Deputy Director of Consolidation can be permitted to exercise suo moto powers for correction of the alleged illegalities in the allotment of chak proceedings and like irregularities.

9. There cannot be any quarrel to the proposition, as submitted by Sri Shukla that the Deputy Director of Consolidation is possessed with very wide powers, so far the allotment of chak matters are concerned. The authority can always go to the spot, can always make all kind of changes which the law permits for making adjustment between the parties and at the same time if he finds that if some more parties are to be heard it is always open for him to direct for impleadment of those parties/chak holders and after giving adequate opportunity of hearing to all the concerned he can pass appropriate orders. Thus there being no doubt about the powers of the Deputy Director of Consolidation now this Court is to decide that whether once the Deputy Director of Consolidation is seized with a revision in which all kind of grievance in respect to the adjustment of chak can be rectified whether he can exercise suo moto powers for rectification of irregularities in allotment of chak proceeding.

10. So far the case in hand is concerned, as noticed above, admittedly there were several revisions before the Deputy Director of Consolidation including that of respondent no. 2 to 5. A perusal of the complaint as filed as placed before this Court with counter affidavit makes it clear that some irregularity in the allotment of chaks was complained before the Deputy Director of Consolidation. As observed above, during the course of argument in revision itself the Deputy Director of Consolidation was to summon the record and could direct any other chak holder to be impleaded as party if for interest of justice his presence is needed. Section 19 of the U.P.C.H. Act gives various guidelines for making adjustment between the chak holders. Section 20 of the Act permits a chak holder to file objection against the proposal made by the Assistant Consolidation Officer. The chaks are carved out at initial stage by the Assistant Consolidation Officer and that is always subject matter of change on filing the objections before the Consolidation Officer and then on filing appeal before the appellate authority and revision before the revisional authority

and if further needed on approach to this Court or he may approach to further higher forum. In respect to grievance of every individual/chak holder for redressal remedy is provided under the Act. At the same time if there are various kind of drastic irregularities then that is always at the very initial stage of the start of chak carvation proceedings upon which at that very stage if large number of chak holders comes with a complaint, the Deputy Director of Consolidation can get the matter enquired. But here is the case where after carvation of chak at Assistant Consolidation Officer stage, objections were decided by Consolidation Officer, appeals were decided by appellate authority and revisions were pending and, therefore, this Court is of the view that on complaint by the revisionist who already filed revision before the revisional court the exercise of the suo moto powers may not be said to be justified and proper for the simple reason that both course that is exercise of revisional power on a revision filed under the statutory provision of Section 48 of the Act and at the same time exercise of the suo moto powers for the same purpose cannot be permitted to go on simultaneously. A perusal of the judgment of the Deputy Director of Consolidation indicates that he has noticed that in the report submitted by the lower consolidation authority there were certain chak holders who were not given chak on their original plots and in all there were fifteen chak holders in whose chak there has been variance of more than 25%. This happens some times in these proceedings. In the allotment proceedings so far the principle of allotment of original plots is concerned, it is not necessary that each and every original plot is to be given in chak of that chak holder. Requirement is that chak has to be given on largest part of his original holding and that too as far as possible therefore, plot of one has to go to other in most of the case. If a party feels something wrong he has a remedy to file appeal, revision etc. Take a case that the chak holder do not feel aggrieved with change then nothing is to be done. It is not for the Deputy Director of Consolidation or any of the authority to act suo moto by holding the brief of a party who has not approached. Here same is the situation. Even if in certain chaks there is variation of more than 25% in the valuation/area but no body is complaining by filing appeal or revision. If a remedy is provided to a party in law he has to avail it and if he submits to it then others are not to worry. Thus for the chak holders who have not come forward by taking recourse to recourse so provided in law then the Deputy Director of Consolidation or any court is not to hold their brief.

11. In view of the aforesaid this Court is of the view that exercise of the suo moto powers by the Deputy Director of Consolidation cannot be said to be just and proper, but at the same time if during the course of argument in the pending revision before the Deputy Director of Consolidation on the facts if he feels that some more chak holders are to be heard for doing complete justice between the parties, he may always move accordingly.

12. At this stage on taking note of the judgments of this Court noticed above, this Court is of the view that analysis as made above finds its support. Observation made in the case of Mohd. Vakil (Supra) can be quoted at this place:

".....The sole contention advanced by the learned counsel for the petitioner is that opp. party No. 4 not having filed any

revision he would be presumed to have acquiesced to the orders passed by the Consolidation Officer and the Asstt. Settlement Officer (Consolidation) rejecting his claim. The question, therefore, posed for consideration by the learned counsel for the petitioner is whether it is open to the Deputy Director of Consolidation in exercise of power under Sec. 48 of the U.P. Consolidation of Holdings Act (hereinafter to be referred to as the Act) to exercise suo motu power even though the party has not preferred a revision and proceed to consider his case.

....It is well settled that a person who does not challenge the order would be deemed to have acquiesced to the order and in the circumstances so far as his rights are concerned that Chapter stands closed and cannot be reopened howsoever, wide powers may be provided by a particular provision of the Act."

13. In the similar manner Full Bench of this Court in the case of Rama Kant Singh (Supra) made the following observation:

"After the record has been called for by the Deputy Director of Consolidation under Section 48 he should examine the record to decide whether it was a fit case for exercise of the revisional jurisdiction suo motu. Such opinion shall have to be formed even where the application in revision moved by a party is defective having been made beyond the prescribed period of limitation or all the necessary parties have not been impleaded.

If the Deputy Director of Consolidation finds that the case requires further hearing, he shall give notice to all the necessary parties irrespective of whether they were or were not impleaded in the application and after giving them reasonable opportunity of hearing, pass such orders as he thinks fit. Where the application in revision is not defective and is maintainable, the exercise of revisional jurisdiction shall be at the instance of the parties and not suo motu."

14. So far the judgment on which the reliance has been placed by the learned counsel for the respondent given by the Apex Court in the case of Preetam Singh (Supra) suffice it to say that the decision of the Apex Court is not at all on the point. The decision of the Apex Court is on the point that even if the order of remand passed by the appellate authority has not been challenged, while considering the revision, the merits or otherwise of the remand order can be examined.

15. To conclude, it can be safely held that the Deputy Director of Consolidation in passing the impugned order dated 1.6.2005 for registering the matter in suo moto exercise has committed an error and at the same time in rejecting the application filed by the petitioner and other chak holders by order dated 18.7.2005 has also committed an error and thus both orders needs interference of this Court.

16. For the reasons recorded above, this writ petition succeeds and is allowed. The impugned orders of the Deputy Director of Consolidation dated 18.7.2005 and 1.6.2005 (annexure no. 2 and 1 respectively) are hereby quashed and now the revisions will be heard and decided by the revisional court keeping in mind the observation as made in this judgment.

Parties are to bear their own costs

Petition Allowed.

APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.06.2006

BEFORE
THE HON'BLE TARUN AGARWALA, J.

First Appeal From Order No. [620] of 2006

M/s Ashok Prakashan and another
...Defendant-Appellants
Versus
Sunil Kumar and others ...Plaintiffs-Opposite Parties

Counsel for the Appellants:
Sri M.K. Gupta

Counsel for the Opposite Parties:
Sri B.D. Mandhyan
Sri M. Saxena
Sri R.B. Singhal
Sri Murlidhar
Sri Ajit Kumar
Sri Anoop Trivedi

Code of Civil Procedure-Order 39 rule I-3-Grant of Interim Injunction-without issuing Notices to other side-on the last day of working-without considering the mandatory reequirement before passing the interim order-held-can not sustained-operation of Injunction order stayed-Trail Court directed to decide the interim injunction as fresh-after hearing to both the parties within six weeks.

Held: Para 22, 23 and 25

In view of the aforesaid, I find that the Court below had committed a manifest error in granting an exparte injunction in favour of the plaintiff. In the opinion of the Court, the Court below should not have issued an exparte injunction, and that to, on the last working date of the Court. In my view, the application for injunction ought to have been considered by the Court after notices were issued to the opposite parties. Consequently, at this moment, I do not find that the basic ingredients for the grant of injunction existed. Further the mandatory provisions of Order 39 Rule 3 C.P.C. was not complied by the Court below. Consequently, the injunction cannot continue any further.

In view of the aforesaid, the effect and operation of the injunction order dated 29.5.2006 passed by the Incharge District Judge, Meerut in Original Suit No.1 of 2006 shall remain stayed till further orders of the Court.

Since 6.7.2006 has been fixed for the appearance of the defendants-appellants. I direct the defendants-appellants to appear before the Court below on the said date and file their reply/ objections. The Court below shall consider the injunction application afresh and shall pass such and further orders after hearing the parties within six weeks from the date of the production of a certified copy of this order.

AIR 1970 Alld.-376

(Delivered by Hon'ble Tarun Agarwala, J.)

1. This First Appeal From Order under Order 43 Rule 1(r) of the Civil Procedure Code is against an exparte injunction dated 29.5.2006 passed by the Incharge District Judge, Meerut in Original Suit No.1 of 2006 restraining the defendant-appellants from printing, publishing and selling the books, detailed at the foot of plaint and from using the name G Ram or J Ram.

2. The brief facts, as enumerated in the plaint is, that the plaintiffs' father G Ram and defendant Nos. 1 and 2 are real brothers. The plaintiff's father had written several books which were published by a firm known as Ashok Prakashan, in which defendant Nos. 1 and 2 were the partners.

It is alleged that the appellant's father was also a partner in the said firm. However, there was no deed in writing but the plaintiff's mother Sheela Devi was a partner in the firm and that an agreement to this effect was executed in writing. The plaintiff contended that his father died on 24.2.2004 and that the plaintiff inherited the Copyright of the books written by his father. It was alleged that after the death of his father, the plaintiffs were selling the books under the name of J Ram and that no royalty was being paid by the defendants to the plaintiff on the books sold by the defendants' firm. Consequently, the plaintiffs prayed for a permanent injunction restraining the defendants from printing, publishing or selling the books written by the plaintiffs' father G Ram and also prayed for the defendants be further restrained from using the name G Ram as J Ram.

3. The said suit was instituted on the last working day of the Civil Court, Meerut on 29.5.2006 before the Incharge District Judge and on the same date, an exparte injunction was granted restraining the defendants from printing, publishing and selling the books, detailed at the foot of the plaint and from using the name G Ram or J Ram. The Court below while granting the injunction held:

"The purpose of the suit shall be frustrated, if interim injunction is not granted in favour of the plaintiff because the defendants have been continuously infringing the copyright of the plaintiff."

4. Aggrieved, the defendants-appellants have filed the present First Appeal From Order before this Court and have prayed that the injunction order granted by the Court below should be set aside. Before this Court, the defendants-appellants submitted that the present suit is a second suit arising out of the same cause of action, and therefore, was not maintainable and was also barred by Section 10 of the Code of Civil Procedure. Further, the plaintiff had concealed material facts and had not come to the Court with clean hands. The plaintiff along with others had earlier filed Original Suit No.362 of 2006 before the Civil Judge (Senior Division) at Bulandshahar in April 2006 praying for the rendition of the accounts and for restraining the defendant-appellants from publishing or selling the books written by G. Ram without paying royalty to the plaintiff. It was also submitted that an injunction application was moved on 25.5.2006, in which the Civil Judge issued notices and no injunction was granted by the said Court. It was also submitted that another original suit No.174 of 2006 was filed through the brother-in-law of the plaintiff before the Civil Judge (Junior Division), Meerut on 22.5.2006, in which similar relief was prayed, namely, that the defendants-appellants be restrained from publishing the books written by G Ram. The defendants- appellants submitted that the Civil Judge (Junior Division) Meerut granted an exparte injunction restraining the defendants- appellants from publishing or selling the books written by G Ram. Against this injunction, the defendants-appellants preferred an appeal before the District Judge and by an order dated 31.5.2006, the injunction granted by the Civil Judge was stayed by the District Judge and the parties were directed to maintain status quo.

5. Apart from the aforesaid, it was further alleged by the defendant-

appellants that another suit No.560 of 2006, Dinesh Tyagi vs. Ashok Prakashan was also instituted before the Civil Judge (Junior Division), Bulandshahr, in which similar relief for injunction was prayed for and that the Civil Judge by an order dated 31.5.2006 refused to grant an injunction. Consequently, the defendant-appellants submitted that four suits of a similar nature, in which more or less identical reliefs were prayed and an effort was made by the plaintiff to obtain an injunction order against the appellants. The defendant-appellants submitted before this Hon'ble Court that their firm Ashok Prakashan has the exclusive copyrights of the title of the book, which had been duly registered under the Copyright Act and that the books written by G Ram has also been registered under the Copyright Act in the name of the firm since the year 1999-2000. It was also submitted that the author G. Ram had given a no objection certificate and had assigned his Copyright in favour of the appellants upon receiving a lump sum payment towards remuneration.

6. The defendant-appellants further submitted that an agreement between the appellants and G Ram was also executed wherein G Ram acknowledged the appellant as the owner of the Copyright. The defendant-appellants have annexed the certified copy of the plaint filed by the plaintiffs in various Courts and have also annexed the certificates issued under the Copyright Act indicating the registration of the copyright in favour of the firm as well as the assignment deed executed by the author G Ram. It was also alleged that since the year 2001, the books were being written by J Ram as per the new syllabus which was in the knowledge of G Ram and submitted that in view of the aforesaid documents, the plaintiff had no prima facie case nor the balance of convenience was in his favour . Further, the plaintiff would not have suffered any irreparable injury, if the injunction had not been granted. On the other hand, the defendants-appellants are suffering irreparable injury by the grant of the injunction which cannot be compensated in terms of money.

7. Heard Sri M. K. Gupta, the learned counsel for the defendants-appellants and Sri Murlidhar, the learned Senior Counsel along with Sri Ajit Kumar, and Anoop Trivedi, the learned counsel for the plaintiffs-opposite parties.

8. Sri M.K. Gupta, the learned counsel for the appellants urged that the suit filed by the plaintiffs was not maintainable, being a second suit filed on the same cause of action and was also barred under Section 10 of the Civil Procedure Code. The filing of the earlier suit was concealed by the plaintiff in the present suit and such concealment of a material fact disallowed the plaintiff for the grant of an injunction as the plaintiff had not come to the Court with clean hands. It was also urged that the suit ought to have been instituted in the Court of Civil Judge and could not be instituted before the District Judge. The appellants are the owners of the Copyright and that an assignment deed is also in their favour. There was no urgency in the matter and the Court below committed an illegality in granting an exparte injunction. The learned counsel further submitted that there is an urgency in the matter inasmuch as the academic session starts from 1.7.2006 and the books are normally sold in the market in the month of June 2006

and that is why the appeal is required to be heard during the summer vacation.

9. On the other hand, Sri Murlidhar, the learned Senior Counsel for the respondents submitted that there is no urgency in the matter for the appeal to be taken up for consideration during the summer vacation. The appellant could have filed an application under Order 39 Rule 4 of the Code of Civil Procedure readwith Rule 13 of the General Rules (Civil) before the District Judge and that urgent matters could be entertained by the Civil Court, where the defendant could apply for the vacation of the exparte injunction. It was also submitted that the District Judge had the jurisdiction to entertain the suit, being the Principal Court and that the suit was not barred under Section 10 of the Code of Civil Procedure. Sri Ajit Kumar, Advocate also appearing for plaintiffs-opposite parties, submitted that the appeal is matter of record and that Annexure Nos. 2 to 23 annexed to the stay application filed before this Court are such documents which were not part of the record of the Court below, and submitted that the such documents could not be considered by the Court unless these documents were admitted in evidence under Order 41 Rule 27 of the Civil Procedure Code. In support of his submission, the learned counsel relied upon a full bench decision of this Court in the matter of **Zila Parishad Budaun and others vs. Brahma Rishi Sharma, AIR 1970, All. 376**. It was also submitted that the defendant-appellant is a professional litigant and that more than 200 cases are pending in the Civil Courts. The plaintiff-opposite party also denied that the defendants were the owners of the copyright or that the author had assigned his copyright in favour of the defendants. Since 6.7.2006 has been fixed by the Court below, there was no urgency in the matter and this Court should not interfere in the matter and should delegate the defendants-appellants to appear before the Court below on the date fixed.

10. In rejoinder, Sri Gupta submitted that the provision of Order 41 Rule 27 is in the realm of a procedural law and procedural law is a handmaid of justice and should not be considered in a manner which could lead the Court helpless in doing substantial justice between the parties. Further, in any case, the admission of the plaintiff before this Court can always be considered without calling for additional evidence. Apart from this, the appellants have also filed certified copies of various documents which could be looked into by the Court in view of the Sections 65 and 74 of the Evidence Act and Section 48 of the Copyright Act.

11. In the light of the aforesaid submissions, it is clear that two brothers, namely, the defendants, were in the publishing business and the third brother, namely, G Ram was the author. G Ram was writing the books and the other two brothers were publishing and selling the books. It was more or less a family business which continued for more than two decades. The author died and the plaintiff is unable to enjoy the fruits left by his late father. Consequently, a litigation has now started between the son of the author and his uncles.

12. The bone of contention of the plaintiff is, that upon the death of his father, he inherited the Copyright of the books written by his father. On the other

hand, the defendant-appellants' contention is, that the Copyright was assigned in favour of the firm during the life time of the author and that the copyright was duly registered under the Copyright Act. The question to be considered is, who owns the copyright ? Whether the author assigned the copyright in favour of the firm or whether the plaintiff inherited the copyright? These questions would eventually be decided by the Court below after evidence is led by the parties. It is not necessary for this Court to consider these matters at this stage inasmuch as the injunction application could be decided otherwise.

13. One thing which is glaring is that the books written by G Ram was being published by the firm of the defendants for the last several years, and that royalty was being paid. This is admitted by the plaintiff in his plaint. As per the plaint, the controversy has arisen only after the authors death, when royalty was not been paid by the defendants and that the books were been sold as J Ram. The allegation in the plaint is, that the plaintiff inherited the copyright upon his father's death and that the royalty was not being paid to him.

14. In view of the aforesaid, can a temporary injunction be granted by the Court below ? Before any order is to be passed, the Court must be satisfied, that a strong prima facie case is made out by the plaintiff and that the balance of convenience was in favour of the plaintiff and that refusal to grant an injunction would cause an irreparable loss and injury to the plaintiff. It is settled law that all the three ingredients, as stated aforesaid, should be present before the Court could grant an injunction. The burden of proof that all the three ingredients are existing is upon the plaintiff . Merely because the plaintiff has proved that he has a prima facie case by itself would not entitle him to get an injunction as a matter of right, especially if the balance of convenience does not justify the granting of the injunction.

15. The Supreme Court in a large number of cases has held that a party is not entitled to get an order of injunction as a matter of right. The grant of an injunction is within the discretion of the Court, to be exercised with caution, and that the injunction should be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant was restrained by an order of injunction, an irreparable loss or damage would be caused to the plaintiff during the pendency of the suit.

16. In the present case, the only ground alleged in the plaint is, that the plaintiff is the son of the author and had inherited the copyright upon his father's death. Nothing has been stated about irreparable injury or balance of convenience. In fact upon a perusal of the plaint and the application for grant of injunction, I find that none of these two conditions exists.

17. The defendants are publishing the books and selling them for the last several years . The author died in the year 2004, nothing has been alleged by the plaintiff that the defendants were not selling the books in the year 2004 or 2005. In fact the defendants have alleged that the plaintiff conspired by circulating a forged letter of the Chief Secretary to the Government of U.P. as well as of the Chief Minister, indicating therein that the

books published by the defendants-appellants had been banned by the State Government This fact has not been denied and it leads to a irresistible conclusion that the defendants had published these books in the year 2004 and 2005 and were also selling them. Therefore, in the opinion of the Court, no irreparable injury was being caused to the plaintiff since the defendants were selling these books prior to the death of the author and even after the death of the author in the year 2004.

18. In the opinion of the Court, irreparable injury would be caused to the defendants-appellants if they are restrained from publishing or selling the books in question. On the other hand, the plaintiff will not suffer any loss and, in the event, the plaintiff succeeds in his suit, he could be compensated by way of damages. Even otherwise, the plaintiff has filed for a suit for the rendition of account where the matter with regard to the sale of the books, etc., would be accounted for and appropriate compensation/ damages along with royalty, etc. would be considered in the event the plaintiff's suit is decreed. Therefore, the balance of convenience does not lie in favour of the plaintiff.

19. There is another aspect of the matter, Order 39 Rule 3 of Code of Civil Procedure provides that where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by the delay.

20. The power to grant an injunction is an extra ordinary power vested in the Court which is to be exercised after taking into consideration all the facts and circumstances of the case. The Courts are required to be very cautious while exercising such power. It is mandatory for the court to record the reasons, where it appears that object of granting an injunction would be a defeated by the delay.

21. In the present case, from a perusal of the injunction order, I find that no reasons has been recorded indicating that the object of granting an injunction would be defeated by the delay if notices are issued to the opposite parties. The only reason recorded is that the suit would be frustrated, if an interim injunction is not granted since the defendants have been continuously infringing the copyright. This finding, arrived at, by the trial Court is, not based on any cogent reason. The plaint does not indicate that the defendant had been continuously infringing the copyright. In fact nothing has been stated as to when and at what point of time the defendants-appellants had started infringing the copyright of the author G Ram.

22. In view of the aforesaid, I find that the Court below had committed a manifest error in granting an exparte injunction in favour of the plaintiff. In the opinion of the Court, the Court below should not have issued an exparte injunction, and that to, on the last working date of the Court. In my view, the application for injunction ought to have been considered by the Court after notices were issued to the opposite parties. Consequently, at this moment, I do not find that the basic ingredients for the grant of injunction existed. Further the mandatory provisions of Order 39 Rule 3 C.P.C. was not complied by the Court

below. Consequently, the injunction cannot continue any further.

23. In view of the aforesaid, the effect and operation of the injunction order dated 29.5.2006 passed by the Incharge District Judge, Meerut in Original Suit No.1 of 2006 shall remain stayed till further orders of the Court.

24. In view of the aforesaid, I do not find it feasible to dwell upon the other grounds raised by the appellants and the plaintiff opposite party.

25. Since 6.7.2006 has been fixed for the appearance of the defendants-appellants. I direct the defendants-appellants to appear before the Court below on the said date and file their reply/ objections. The Court below shall consider the injunction application afresh and shall pass such and further orders after hearing the parties within six weeks from the date of the production of a certified copy of this order.

26. It is made clear, that any observation or finding given in this order are only prima facie opinion of the Court and the Court below shall not be influenced by any observation or finding given in this order while considering the injunction application.

27. List this appeal for admission and for orders before the appropriate Court in the third week of August 2006.

Certified copy of this order to be made available to the parties, upon payment of usual charges, within four days.

APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.05.2006

BEFORE
THE HON'BLE AJOY NATH RAY, C.J.
THE HON'BLE ASHOK BHUSHAN, J.

Special Appeal No.1169 of 2004

Raghunath Prasad Yadav ...Petitioner/ Appellant

Versus

District Inspector of Schools, Gorakhpur and others ...Respondents/Opp. Parties

Counsel for the Appellant:
Sri Dr. R.G. Padia
Sri Prakash Padia

Counsel for the Respondents:
Sri R.U. Ansari
Sri R.V. Singh
S.C.

U.P. Secondary Education Service Commission of Selection Board Act, 1982-Selection Board Act, 1982-Section 18-read with U.P. Secondary Education Service Commission (Removal of Difficulties) Order 1981)-Pra-5-Adhoc Appointment-on substantive post of L.T. grade Teacher-vacancy caused due to retirement of one Mr. K.P. Singh on 30.6.91-vacancy notified by manager on 10.6.91-further amended authorising the manager to fill the post on 2.8.01-vacancy notified on notice board on 23.8.91-appointed on 26.8.91-whether the period of sixty days as mentioned in Section 18 is mandatory?-held-"yes"-appointment without advertisement in two news papers-State can not be burdened for salary.

Held: Para 11

In view of the aforesaid the appointment of the appellant having been made without advertisement in two news papers which is the case of the petitioner

himself, the petitioner has expressly, in paragraph 9 of the writ petition, stated that the Manager of the Institution advertised the post on the Notice Board of the Institution, no relief can be granted to the appellant. We don not find any good ground to interfere with the Judgement of the learned Single Judge. In the event the appellant has performed any duties at the instance of the Management it is for the Management to consider the claim of the appellant for payment of salary if any.

Case law discussed:

1995 AWC-71,
1994 (3) UPLBEC-1551
2003 (3) E.S.C. (Alld.)-1357
1988 UPLBEC-640
J.T. 1996 (6)-579

(Delivered by Hon'ble Ajoy Nath Ray, C.J.)

1. Heard Sri R.G. Padia, Senior Advocate appearing for the appellant and Sri Ravn Vijay Singh, the learned standing counsel appearing for the respondents.

2. This is an appeal against the judgment and order dated 24th November, 2003 by which judgment the writ petition filed by the appellant has been disposed of.

3. Brief facts necessary for deciding the appeal are:-

Bapu Inter College Pipriganj, Gorakhpur is a recognised institution receiving grant in aid. On retirement of one Kali Prasad Singh on 30th June, 1991 a substantive vacancy arose on the post of Assistant Teacher L.T. Grade. The petitioner's case is that the vacancy was notified by the Manager by the letter dated 10th June, 1991. On 22nd June, 1991 he amended the requisition. It is claimed that the Committee of Management authorised the manager to fill up the post on 2.8.1991 and on 10th August, 1991 the Notice Board of the Institution and thereafter the petitioner was selected on 23rd August, 1991 and appointed on 26th August, 1991. The petitioner's papers were sent to the Inspector for payment of salary. The salary was not paid by the Inspector. Consequently, writ petition was filed by the petitioner praying for a writ of mandamus directing the respondents to pay the petitioner's arrears of salary. The writ petition has been dismissed by the learned Single Judge. One of the grounds taken by the learned Single Judge for dismissing the writ petition is that the selection of the petitioner on ad hoc basis by way of direct recruitment was made prior to expiry of sixty days of sending the requisition sent to the Commission.

4. Dr. R.G. Padia, learned counsel for the appellant submitted that the period of sixty days as mentioned in Section 18 of the U.P. Secondary Education Service Commission and Selection Board Act, 1982 (U.P. Act No. 5 of 1982) is not mandatory and the appointment of the petitioner before expiry of sixty days can at best be an irregularity not affecting the validity of the appointment. He has placed reliance on a Division Bench judgment of this Court reported in 1995 A.W.C. 71 **Prabhu Dayal and others Versus District Inspector of Schools, Firozabad and others.**

5. Sri Ran Vijay Singh, learned standing counsel appearing for the respondents has submitted that the requirement of period sixty days as mentioned in Section 18 is mandatory. He further submitted that the appointment of the appellant as an ad hoc Assistant Teacher L.T. Grade was void ab-initio

and Allahabad Bank initio having been made contrary to the provisions of Act and rules. According to the own case of the petitioner his appointment was made after advertising the vacancy on the Notice Board. There being no advertisement in two news papers, the petitioner is not entitled for any mandamus by this Court. Reliance has been placed by the learned standing counsel on Full Bench judgment of this Court in 1994 (3) UPLBEC 1551 **Radha Rani Raizada and others** Versus **Committee of Management, Vidyawati Darbari Girls Inter College and others** and the Division Bench judgment of this Court reported in 2003 (3) E.S.C. (Allahabad) 1357 **Anllesh Pratap Singh** Versus **State of U.P. and others**. Dr. Padia refuting the submission of the learned standing counsel submitted that the appointment of the petitioner was made by the Committee of Management within its jurisdiction and the power under Section 18 of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982. He contended that prior to 14.7.1992 there was no requirement of publication of any advertisement in two news papers for ad hoc appointment under Section 18. He has placed reliance on the judgment of the Division Bench of this Court reported in 1988 UPLBEC 640 **Chhatrapal** Versus **District Inspector of Schools, Bareilly and others**.

6. We have considered the submissions of counsel for the parties and perused the record.

7. The first question which has been raised in the case is as to whether the period of sixty days as mentioned in Section 18 is mandatory; and what is the effect of the appointment if made prior to sixty days. According to Section 18 of the U.P. Act No. 5 of 1982 the Committee of Management was empowered at the relevant time to make ad hoc appointment where a vacancy has been notified to be Commission and period of one year has expired or the post had actually remained vacant for more than two months to Management can fill up the vacancy absolutely on ad hoc basis. The Division Bench judgment relied by the learned counsel for the appellant in **Prabhu Dayal's case** (supra) has taken the view that the Management is competent to initiate process even before expiry of two months. The Division Bench held that what is required to be done after two months is the appointment, issuing advertisement inviting applications for such appointment within the period of two months, is not prohibited. Paragraph 3 of the judgment is quoted below:-

"Under Section 18 (1) (b) the appointment can be made if the post of a teacher, remained vacant for more than two months. What is required to be done after two months is the appointment. Issuing advertisement inviting applications for such appointment within the period of two months, is not prohibited. As the process of selection on the basis of which the appointment is to be made, is likely to take time, there is no prohibition in the law against inviting applications for such appointment even before expiry of two months."

8. The present case is not similar to above. Not only process was initiated before expiry of two months but the appointment had been made before expiry of two months. The Division Bench judgment in **Anilesh Pratap Singh's case** (supra) relied by the learned standing

counsel do support the contention of the learned standing counsel. Paragraph 15 of the judgment is quoted below:-

"***15*** *Applying the principles laid down in the aforementioned cases, we are of the considered opinion that the provisions of Section 18 of the 1982 Act is mandatory and unless and until the period of two months expires from the date if notifying the vacancy to the Commission, the Committee of Management does not get any power to fill up the vacancy on ad hoc basis."*

9. We, however, do not rest our judgment only on above issue. One of the questions which has been raised by the learned standing counsel is that the appointment of the appellant is void. The submission raised by Dr. Padia is that for the appointment under Section 18 there was no requirement of advertisement in news paper. He submitted that Section 18 does not mention or refer to notification of the vacancy in two news papers and the vacancy notified only on the Notice Board was sufficient. The question raised has already been settled by the Apex Court vide its Judgement reported in Judgement Today 1996 (6) S.C. 579 **Prabhat Kumar Sharma and others** Versus **State of U.P. and others**. The Apex Court in the said judgement has held that any ad hoc appointment of teachers under Section 18 can be made in accordance with the procedure prescribed in paragraph 5 of the Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties) Order, 1981, which is extract below:-

"*5.* ***Ad hoc appointment by direct recruitment,-*** *(1) Where any vacancy cannot be filled by promotion under paragraph 4, the same may be filled by direct recruitment in accordance with Clauses (2) to (5).*

(2) The management shall, as soon as may be, inform the District Inspector of Schools about the details of the vacancy and such Inspector shall invite applications from the local Employment Exchange and also through public advertisement in at least two news papers having adequate circulation in Uttar Pradesh.

(3) Every application referred to in Clause (2) shall be addressed to the District Inspector of Schools and shall be accompanied_____

(a) by a crossed postal order worth ten rupees payable to such Inspector;

(b) by a self-addressed envelope bearing postal stamp for purposes of registration.

(4) The District Inspector of Schools shall cause the best candidates selected on the basis of quality points specified in Appendix. J The compilation of quality points may be done on remunerative basis by the retired Gazetted Government servants under the personal supervision of such Inspector.

(5) If more than one teacher of the same subject or category is to be recruited for more than one institution, the names of the selected teachers and names of the institution shall be arranged in Hindi; alphabetical order. The candidate whose name appears on the top of the list shall be allotted to the institution the name whereof appears on the top of the list of the institution. This process shall be repeated till both the lists are exhausted.

Explanation:- In relation to an institution imparting instruction to women

the expression "District Inspector of Schools" shall mean the "Regional Inspector of Girls' Schools:.

10. Similar view has already been taken by the Full Bench of this Court in **Radha Raizada and others** Versus **Committee of Management, Vidyawati Darbari Girls Inter College and others** (supra) case. Section 18 does not provide the procedure of selection of ad hoc Assistant Teacher but Section 18 has to be harmonised with the Difficulties Order. Thus wherever the ad hoc appointment is made on substantive vacancy paragraph 5 of the Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties) Order, 1981 shall be applicable and for any ad hoc appointment the Inspector has to invite applications from the local Employment Exchange and also through public advertisement in at least two news papers having adequate circulation in Uttar Pradesh. The Division Bench Judgement in **Chhatrapal's** case (supra) relied by the counsel for the appellant was a case where the Division Bench took the view that for substantive vacancy in C.T. Grade approval of the District Inspector of Schools is not necessary and such teacher is to be treated in C.T. Grade till the selection is made by the Board. What shall be the procedure for ad hoc appointment under Section 18 has been expressly considered nor it has been held in the said Judgment that for ad hoc appointment advertisement only on the Notice Board is sufficient. The said Judgment does not support the contention raised by the learned counsel for the appellant in the present case.

11. In view of the aforesaid the appointment of the appellant having been made without advertisement in two news papers which is the case of the petitioner himself, the petitioner has expressly, in paragraph 9 of the writ petition, stated that the Manager of the Institution advertised the post on the Notice Board of the Institution, no relief can be granted to the appellant. We don not find any good ground to interfere with the Judgement of the learned Single Judge. In the event the appellant has performed any duties at the instance of the Management it is for the Management to consider the claim of the appellant for payment of salary if any.

12. Subject to above observation the appeal is dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.04.2006

BEFORE
THE HON'BLE V.K. SHUKLA, J.

Civil Misc. Writ Petition No. 12901 of 2004

Mool Chand and others ...Petitioners
Versus
State of U.P. and others ...Respondents
Connected with
Civil Misc. Writ Petition No. 60669 of 2005

Mool Chand and others ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioners:
Sri R.P. Tiwari
Sri D.K. Mishra

Counsel for the Respondents:
Sri S.F.A. Naqvi
Sri Sant Ram Sharma

Constitution of India Art. 226-Regulation-Petitioners were appointed

on the post of Sweeper-due to the substantive vacancy caused on dismissed of services of the permanent employees-on illegal strike-appointment made on the basis of resolution dated 22.10.90-duly approved by the District Magistrate continuous working and getting salary till August 05-in September-2005 restrained from working-at the same time advertised fresh vacancy-continuous working for 15 years on substantive post can not be ignored-in view of U.P. Group D post Daily Wagers Regularisation Rules 2001-as well as the law laid down by Apex Court by judgment dated 10.4.06 in SLP No. 3595-3612 of 99-working on 10 years or more on substantive, duly sanctioned post-can not be thrown out-entitled for regularisation-till the regularisation made direction issued for minimum pay scale to be paid.

Held: Para 8 & 9

Now the next question to be considered is as to whether petitioners being daily wagers, are their services liable to be regularized as a matter of right. The Hon'ble Apex Court in its latest pronouncement in Appeal (civil) 3595-3612 of 1999 dated 10.04.2006 in the case of Secretary, State of Karnataka and others vs. Umadevi and others, has mandated that where even irregular appointments have been made and the incumbents have been working for 10 years or more in duly sanctioned post but not under the covers of orders of courts or tribunal then process of regularization be set in motion within six months from the date of the order.

Thus, as per latest pronouncement of Hon'ble Apex Court, even where irregular appointments have been made against duly sanctioned post, their cases are liable to be considered for regularization, they cannot be thrown away. Consequently, following the aforementioned decision, it is hereby directed that claim of petitioners for extending the benefit of regularization be adverted to Nagar Panchayat, Bisanda, District Banda and further petitioners be permitted to discharge their duties as sweeper and the minimum of the pay scale be paid to them, till matter of regularization is not finalized.

Case law discussed:

1969 (2) SCC-187
1984 (1) SCC-125
1996 (1) SCC-44
1995 (Supp.) 3 SCC-249
SLP No.3595-3612 of 99 decided on 10.4.2006 relied on.

(Delivered by Hon'ble V.K. Shukla, J.)

1. Petitioners have filed writ petition No. 12901 of 2004 for issuing writ in the nature of mandamus commanding the respondents to consider the regularization of their services on the post of sweeper in Town Area Bisanda, District Banda (subsequently upgraded as Nagar Panchayat, Bisanda, District Banda). Civil Misc. Writ Petition No.60669 of 2005 has been filed questioning the validity of the action taken by respondents by proceeding to make appointment on the post of sweeper on contractual basis and further ceasing petitioners from performing and discharging their duties as sweeper.

2. Brief background of the case is that in Town Area Bisanda, District Banda, in the year 1990 there was strike and the attempt on the part of Chairman of the Town Area Committee to get the strike withdrawn failed and as the work was suffering, resolution was passed on 22.10.1990 for dispensing with the services of striking employees, and for making stop gap arrangement in their place for maintaining cleanliness in the aforesaid Town Area. Petitioners were appointed as sweeper on daily wage basis

on the strength of resolution dated 22.10.1990 passed by the Town Area Committee. The said resolution was also approved by the District Magistrate, Banda. Petitioners claim that they had been appointed against sanctioned post and they have been continuing to perform and discharge their duties on the post of sweeper since 22.10.1990. Petitioners submit that in terms of the provisions as contained under U.P. Group D Post Daily Wagers Regularization Rules, 2001 and various Government Orders issued in the past for extending benefit of regularization, petitioners were raising their claim for extending benefit of regularization, as they were being perpetuated on daily wage basis. Petitioners claim that their services are liable to be regularized, and for extending the benefit of regularization writ petition No.12901 of 2004 had been filed, wherein counter affidavit was invited. During the pendency of the aforementioned writ petition, petitioners continued to discharge and perform their duties as sweeper and were paid remuneration till August, 2005. Since September, 2005, petitioners have been restrained from performing and discharging duties, and applications have been invited for making appointments on the post of sweeper on contract basis. At this juncture, Civil Misc. Writ Petition No.60669 of 2005 has been filed.

3. Counter affidavit has been filed, and therein it has been contended that enquiry had been conducted qua appointment of petitioners, and the said appointments have been found to be illegal, as such order, which has been passed on subsequent occasions canceling their appointments and ceasing them from discharging and performing duties is justifiable action and no right, whatsoever, of the petitioner has been infringed, and as the appointment itself was illegal, no advantage or benefit of regularization can be extended to the petitioners. Rejoinder affidavit has been filed disputing the averments mentioned in the counter affidavit and the statement of fact mentioned in the writ petition has been reiterated.

4. After pleadings aforementioned have been exchanged, both the writ petitions have been taken up together for final hearing and disposal with the consent of the parties.

5. Sri Rajendra Prasad Tiwari Tiwari, learned counsel appearing for the petitioners, contended with vehemence that petitioners had been validly appointed as daily wagers as per resolution which was duly approved by the competent authority and without there being any lawful foundation and basis, petitioners have been ceased from performing and discharging their duties in order to deprive the petitioners of their legitimate right of regularization, as such writ petitions are liable to be allowed.

6. Sri S.F.A Naqvi, learned counsel representing the Nagar Palika Parishad, the then Town Area Committee, Bisanda, District Banda on the other hand, contended that appointment of petitioners was perse illegal and void, as such petitioners are not entitled to get the benefit of regularization, as such no interference be made.

7. After the respective arguments have been advanced, the undisputed position, which emerges is to the effect that on the strength of resolution dated

22.10.1990, petitioners were appointed as sweeper on daily wage basis and said resolution was approved by the District Magistrate, Banda on 22.11.1990. This is undisputed position that in lieu of performing and discharging duties, petitioners have been paid remuneration. Complaint had been made qua appointment of petitioners and enquiry report had been submitted way back on 21.11.1998, concluding therein that in resolution dated 22.11.1990 no details have been given of the safai employees, who were to be appointed, as such said appointments cannot be said to be proper appointment. The fact of the matter is that resolution had been passed taking in view that striking employees had not returned back and stop gap arrangement was to be made. At the point of time when resolution had been passed, names of employees were not there and policy decision was taken to make such appointments and appointments had been made subsequent to the same. Consequently, infirmity, which has been pointed out that names were not there, was not of much consequence, inasmuch as arrangement was to be made by way of stop gap arrangement on temporary basis. The persons whose reference has been given by name in the report dated 21.11.1998, are certainly not the petitioners. Even after the report of Additional Commissioner dated 21.11.1998 had been submitted, all the petitioners continued to perform and discharge their duties without there being any action on the part of respondents on the said report. Record reveals that said report was transmitted by Director, Local Bodies to State Government on 21.06.2003 and State Government on 21.07.2004 asked for action and thereafter Director has written letter on 07.02.2005 for action, which was inclusive of cancellation of appointment also. Petitioners continued to function, remuneration was paid till August, 2005 and there after petitioners have been restrained from performing and discharging duties and their appointment has been sought to be cancelled. In the present case sequence of dates clearly demonstrate that there has been unreasonable delay in taking any action on the said report, which even otherwise was of no much consequence vis-a-vis petitioners, who had been appointed on daily wage basis on the strength of resolution duly approved by competent authority and had been continuing to perform and discharge their duties for the last fifteen years. It is well settled that whenever any authority is vested then that authority has to be exercised within reasonable period. Hon'ble Apex Court in the cases of State of Gujrat vs. Patil Raghav Netha, reported in **1969 (2) SCC 187;** Mansa Ram vs. S.P. Pathak and others, reported in **1984 (1) SCC 125;** Ram Chand and others vs. Union of India and **1996 (1) SCC 44** and State of Orissa and others vs. Burdandan Sharma reported in **1995 (Supp) 3 SCC 249**, has taken the view that exercise of power is always subject to inherent limitation of power being exercised within a reasonable period and as to what would be the reasonable period is dependent upon different facts and situation peculiar in each case. Here, report against petitioners had been submitted on 21.11.1998, and power of cancelling appointment of petitioners had been exercised after seven years. The snail pace with which proceedings have been undertaken, in the facts of present case, cannot be said to be exercise of power within reasonable period. Ceasing of

employment of petitioners based on report dated 21.11.1998 cannot be said to be justifiable exercise of power and the power in the present case has been arbitrarily exercised without there being any lawful justification for the same. Consequently, the order of cessation/cancellation of employment of petitioners is hereby quashed and set aside.

8. Now the next question to be considered is as to whether petitioners being daily wagers, are their services liable to be regularized as a matter of right. The Hon'ble Apex Court in its latest pronouncement in Appeal (civil) 3595-3612 of 1999 dated 10.04.2006 in the case of **Secretary, State of Karnataka and others vs. Umadevi and others**, has mandated that where even irregular appointments have been made and the incumbents have been working for 10 years or more in duly sanctioned post but not under the covers of orders of courts or tribunal then process of regularization be set in motion within six months from the date of the order. Paragraphs 44 and 45 of the said judgment being relevant are being quoted below:

"44. One aspect needs to be clarified. there may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N.NANJUNDAPAA (supra) and B.N. NAGARAJAN (supra) and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. the question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context Union of India, the State governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned vacant posts but not under the cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. the process must be set in motion within six months from this date. We also clarify that that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

45. It is also clarified that those decisions which run counter to the principles settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

9. Thus, as per latest pronouncement of Hon'ble Apex Court, even where irregular appointments have been made against duly sanctioned post, their cases are liable to be considered for regularization, they cannot be thrown away. Consequently, following the aforementioned decision, it is hereby directed that claim of petitioners for extending the benefit of regularization be adverted to Nagar Panchayat, Bisanda, District Banda and further petitioners be

permitted to discharge their duties as sweeper and the minimum of the pay scale be paid to them, till matter of regularization is not finalized. Consequently, both the writ petitions are allowed.

No order as to costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.07.2006

BEFORE
THE HON'BLE S.K. SINGH, J.

Civil Misc. Writ Petition No. 22603 of 2001

Thakur Prasad Dubey ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri P.N. Tripathi

Counsel for the Respondents:
Sri Alam
Sarita Singh
S.C.

Constitution of India, Art. 226-Compulsory Retirement-on the basis of single adverse entry-held-single adverse entry can not be the basis for punishment of compulsory retirement-even the lesser recovery depends upon several factors of formers-unless the finding about negligence in duty-can not be termed as dead wood for the department-Order impugned quashed with all consequential benefit.

Held: Para 7

Petitioner was retired in the public interest. This expression has been explained in series of judgment. Reference can be made to the judgment given in case of S. Ramachandra Raju V. State of Orissa reported in (1994) Vol. 28, Administrative Tribunal Cases 443 in which Apex Court has held that order of compulsory retirement passed on one adverse entry followed by subsequent report makes the exercise of power arbitrary.

Case law discussed:
2000 (1) UPLBEC-582
2006 (2) ESC-1491
AIR 2002 SC-1345
1994 (2) 28 ATC-443

(Delivered by Hon'ble S.K. Singh)

1. Heard Sri P.N. Tripathi, learned Advocate in support of this petition and Sri Alam, learned Standing Counsel in opposition thereof.

2. Challenge in this petition is the order dated 31.5.2001 passed by the respondent no. 2, Sub Divisional Magistrate, Harraiya, District Basti by which petitioner has been directed to be compulsory retired.

3. Petitioner claims to have been appointed as Seasonal Collection Amin in the year 1974 and on account of his continuous satisfactory service he was regularised in the year 1985 and it is said that on account of their being less recovery from the target by the petitioner an adverse entry was given in the year 1993. It is thereafter in the year 2000, in view of the fact that again petitioner could get recovered amount to a tune of about 17,000/- in place of Rs.30,000/= petitioner was placed under suspension which was stayed by this Court but thereafter petitioner has been directed to be compulsory retired by the impugned order dated 31.5.2001 and thus this petition before this court.

4. Submission of the learned counsel for the petitioner is that even if the charge against the petitioner is accepted to be correct that in the year 1993 there was adverse entry in respect to charge of less recovery and in the year 2000 he was placed under suspension for the same reason that cannot be made a ground for compulsory retirement of the petitioner. Submission is that several other Seasonal Collection Amins who got even lessor amount against the recovery target where although placed under suspension but they were reinstated but the petitioner although having realized even more amount has been dealt with in the manner as has been impugned in this petition. Details in this respect has been given in the writ petition. In support of the aforesaid submission, reliance has been placed on the judgment given in case of Devi Saran Sharma Vs. District Magistrate/Zila Adhikari, Meerut and others reported in (2000) 1 UPLBEC 582 and the judgment of this court given in case of Chandar Prasad Verma Vs. State of U.P. and others reported in 2006 (2) ESC. 1491.

5. In response to the aforesaid Sri Alam learned Standing Counsel submits that even on the basis of a single adverse entry petitioner can be directed to be compulsory retired. In this connection reliance has been placed on the decision given by the Apex Court in case of State of U.P. and others Vs. Vijay Kumar Jain reported in AIR 2002 SC. 1345.

6. There appears to be no dispute about the fact that petitioner was initially appointed as Seasonal Collection Amin in the year 1974 and on completion of satisfactory service in the year 1985 he was given regular appointment as Collection Amin. It is said that on account of less recovery to the targeted amount he was placed under suspension but that order was stayed by this court. In fact recovery was to be effected from the farmers and against the targeted amount of Rs.30,000/= he recovered an amount of Rs.17,393.80. It is said that in the report of the enquiry officer it is mentioned that payment to the farmers about their sugar cane was not started and farmers informed that as soon as payment of their sugar cane is started they will immediately make payment upon which targeted amount of the petitioner would have also complete. In the counter affidavit this appears to be the sole ground for directing the petitioner to be compulsory retired. Although Apex Court in the judgment given in case of State of U.P. Vs. Vijay Kumar Jain (Supra) has said that on the basis of a single adverse entry the order of compulsory retirement can be passed but that happened to be a case of serious adverse entry relating to integrity of a government servant. This court in case of Ravi Saran Sharma (Supra has clearly held that exercise of power to compulsory retire a government servant is to be exercised in public interest as object is to weed out dead wood and it should appear from the record that continuance of that employee in the service became of no use and if it is not established then action is to be held as arbitrary and punitive. The same view has been expressed by this court in case of Chandar Prasad Verma (Supra) in which it has been said that power to compulsory retire a government servant cannot be used to punish a government servant. So far case in hand is concerned if there was less recovery from the targeted amount there may be various factors as has been stated by the petitioner and even that apppears from the enquiry

officer's report. Lastly, it can be ---- that it has been held by this court that lesser amount of recovery cannot be said to be a ground for removing a government servant from service unless something further is established against his integrity and conduct. Petitioner has submitted that several other Collection Amins having recovered even lessor amount than the petitioner has been earlier placed under suspension but have been reinstated and therefore on these facts it cannot be said that impugned order of compulsory retirement of the petitioner is in the public interest and petitioner has been established to be dead wood and of no use in the department.

7. Petitioner was retired in the public interest. This expression has been explained in series of judgment. Reference can be made to the judgment given in case of S. Ramachandra Raju V. State of Orissa reported in (1994) Vol. 28, Administrative Tribunal Cases 443 in which Apex Court has held that order of compulsory retirement passed on one adverse entry followed by subsequent report makes the exercise of power arbitrary.

8. In view of the aforesaid discussions, this writ petition succeeds and is allowed. The order dated 31.5.2001 passed by the respondent no. 2 (Annexure-1 to the writ petition is hereby quashed and petitioner is to get consequential benefits. Petition Allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.05.2006

BEFORE
THE HON'BLE S.N. SRIVASTAVA, J.

Civil Misc. Writ Petition No.26520 of 2006

Bhuleliya and others ...Petitioners
Versus
Additional Collector(Land/Revenue)/ Deputy Director of Consolidation, Ghazipur and another ...Respondents

Counsel for the Petitioners:
Sri A.N. Srivastava

Counsel for the Respondents:
Sri Rajesh Yadav
Sri K.R. Sirohi

U.P. Consolidation of Holdings Act Section 52-A(1)-Chak Road and Chak Nali-after notification under section 52-can be passed only by the collector and not by the A.D.M./D.D.C.-held-without jurisdiction.

Held: Para 8

This Court is of the view that under Section 52-A of the U.P.C.H. Act after notification under Section 52 of the U.P.C.H. Act, the Collector may, if he is of the opinion that there exists no provision or inadequate provision of Chak Roads or Chak Guls in the unit and shall, if a representation in that behalf by not less than ten per cent of the total number of tenure-holders is made to him within six months of the said commencement, proceed to take action under sub-Section (2), anything to the contrary contained in section 52 notwithstanding. The impugned order was not passed by the Collector, but it was passed by the Additional District Magistrate/Deputy Director of Consolidation. The impugned order is without jurisdiction as such orders could only be passed by the

Collector of District if the conditions contained under Section 52-A (1) of the U.P.C.H. Act are fully satisfied.

(Delivered by Hon'ble S.N. Srivastava, J.)

1. Heard learned counsel for petitioner and learned counsel Caveator Opp. Party no. 2 as well as learned Standing Counsel and perused the record also.

2. This writ petition is directed against the order dated 6.5.2006 passed by Deputy Director of Consolidation annexed as Annexure No. 1 to the writ petition.

3. Learned counsel for petitioners raised a number of arguments including that impugned order is without jurisdiction as it cannot be passed by Deputy Director of Consolidation. He further urged that there was no requirement of the Chak Marg after notification under Section 52 of the U.P.C.H. Act.

4. Learned counsel for Opp. Party no.2 urged that Chak Road was given to Opp. Party no.2 in order to connect Kharanja Marg from his chak.

5. In rejoinder learned counsel for petitioners urged that Chak of Opp. Party no. 2 is still situated on existing Chak Road which connects the National Highway.

6. Considered arguments of learned counsel for the parties and the materials on record and relevant provisions of law.

Section 52-A (1) of U.P.C.H. Act is being quoted below:

In case of a unit in relation to which a notification under sub-section (1) of Section 52 has been issued before the commencement of the Uttar Pradesh Consolidation of Holdings (Amendment) Act, 1970, the Collector may, if he is of opinion that there exists no provision or inadequate provision of Chak Roads or Chak Guls in the unit and shall, if a representation in that behalf by not less than ten per cent of the total number of tenure-holders is made to him within six months of the said commencement, proceed to take action under sub section (2), anything to the contrary contained in Section 52 notwithstanding.

7. From perusal of materials on record, it transpires that notification under Section 52 (1) of the U.P.C.H. Act was published on 7.7.2001 and on an application moved by Opp. Party no.2 thereafter, the impugned order was passed providing Chak Road and Chak Nali.

8. This Court is of the view that under Section 52-A of the U.P.C.H. Act after notification under Section 52 of the U.P.C.H. Act, the Collector may, if he is of the opinion that there exists no provision or inadequate provision of Chak Roads or Chak Guls in the unit and shall, if a representation in that behalf by not less than ten per cent of the total number of tenure-holders is made to him within six months of the said commencement, proceed to take action under sub-Section (2), anything to the contrary contained in section 52 notwithstanding. The impugned order was not passed by the Collector, but it was passed by the Additional District Magistrate/Deputy Director of Consolidation. The impugned order is without jurisdiction as such orders could only be passed by the

Collector of District if the conditions contained under Section 52-A (1) of the U.P.C.H. Act are fully satisfied.

9. Accordingly writ petition succeeds and is allowed. Impugned order passed by the Additional District Magistrate/Deputy Director of Consolidation is quashed. The matter is remanded back to the Collector, Ghazipur to be decided afresh in accordance with law after giving opportunity of hearing to the parties. Parties are at liberty to raise all the questions of law and fact before the Collector, Ghazipur.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.07.2006

BEFORE
THE HON'BLE ASHOK BHUSHAN, J.

Civil Misc. Writ Petition No. 33845 of 2004

Smt. Tejendra Chawla ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri K.C. Sinha

Counsel for the Respondents:
Sri P.N. Saxena
Sri Amit Saxena
Sri Uma Shanker Singh
Sri Prakash Singh
S.C.

U.P. Intermediate Education Act-1921-Chapter III Regulation 55 to 62 Chapter II-Appendix 'A'-Determination of seniority-teachers working in primary section-attached to Intermediate College-transferred from one institution to another recognised institution-by Joint Director's order 23 years age-service rendered in earlier institution-also shall be counted-not from the date of joining after transfer.

Held: Para 9

Learned counsel for the contesting respondent has also very fairly drawn my attention to Appendix 'A' of Chapter-II, which provides qualifications for teachers of junior classes (6 to 8) and teachers of primary sections (Classes 1 to 5). The prescription of the qualification in Appendix 'A' clearly indicates that the teachers of the primary sections are not out of the purview of the U.P. Intermediate Education Act, 1921. The Division Bench has already held that provisions of U.P. Intermediate Act, 1921 are applicable to the teachers of primary section. Moreso, in the present case the transfer order was passed by the Regional Inspectress of Girls School specifically referring Regulations 55 to 62, thus, the transfer order itself was under the power conferred under Regulations 55 to 62. In this writ petition there cannot be any challenge to the transfer order which was passed 23 years ago nor any such challenge has been made. Regulation 59A is squarely applicable as it was existing at the relevant time, hence the petitioner's services prior to transfer has to be added for the purposes of seniority.
Case law discussed:
1973 (2) ESC-171 relied on.
1978 ALJ 1042

(Delivered by Hon'ble Ashok Bhushan, J.)

1. Heard counsel for the petitioner, Sri P.N. Saxena, Senior Advocate appearing for the respondents and the learned standing counsel.

2. By this writ petition, the petitioner has prayed for quashing the order dated 7th August, 2004 passed by Joint Director of Education (Annexure-1 to the writ petition).

3. The dispute in the writ petition relates to the seniority of the petitioner and respondent No. 6, the Joint Director of Education by the impugned order dated 7th August, 2004 has declared the respondent No. 6 senior to the petitioner while exercising jurisdiction under Chapter-II, Regulation 3 of the U.P. Intermediate Education Act, 1921.

4. Brief facts necessary for deciding the writ petition are; the petitioner was appointed in the year 1969 in a recognised institution, namely Sahay Singh Balika Vidhyalaya, Narhi, District Lucknow. By an order dated 28th September, 1983 the Regional Inspectress of Girls Schools, 4th Region, Allahabad transferred the petitioner from Sahay Singh Balika Vidyalaya, Narhi, District Lucknow to Arya Kanya Inter College, Govindpur, Kanpur. The said transfer order specifically mentioned Regulations 55 to 62 of Chapter-III of the U.P. Intermediate Education Act, 1921. The petitioner in pursuance of the said transfer order joined at Arya Kanya Inter College, Govindpur, Kanpur with effect from 7th November, 1975. The Committee of Management has shown the petitioner senior to respondent No. 6 in its seniority list. Respondent No. 6 has challenged the said seniority list and submitted an appeal before the Joint Director of Education which has been decided by the impugned order. The Joint Director of Education in the impugned order has taken the view that there were no service rule with regard to teachers of the primary section. He further held that inter-se seniority of the petitioner and respondent No. 6 shall be determined from the date of their appointment after the institution was taken in grant in aid. The Joint Director of Education held that seniority of the petitioner shall be treated only from 1st November, 1983 when she joined after transfer in Arya Kanya Inter College.

5. Learned counsel for the petitioner, challenging the order, contended that the order of Joint Director of Education holding respondent No. 6 senior is incorrect. He submits that petitioner's transfer being under Chapter-III, Regulations 55 to 62, her services prior to transfer have to be added for the purposes of seniority by virtue of Regulation 59 of Chapter-III. He submits that Joint Director of Education committed error in reckoning the seniority of the petitioner only from 1.11.1983.

6. Sri P.N. Saxena, learned Senior Advocate, appearing for the contesting respondent, has submitted that both petitioner and respondent no. 6 being teachers of the primary section running attach to the Intermediate College their services are not governed by the provisions of Regulations 55 to 62 of Chapter-III of U.P. Intermediate Education Act, 1921 and the petitioner is not entitled to reckon her services prior to transfer.

I have considered the submissions raised by both the parties and perused the record.

7. The main issue which has arisen in the writ petition is with regard to applicability of the provisions of Regulations 55 to 62 of Chapter-III of U.P. Intermediate Education Act, 1921 on the teachers working in attach primary section. Both petitioner and respondent No. 6 are teachers of the primary section of the girls Intermediate College. The institution is running from Class-1 to 12.

8. The question as to whether on the teachers of the primary section the provisions of U.P. Intermediate Education Act, 1921 and regulations framed there under are applicable or not, has been answered by a Division Bench of this Court in 1993 (2) E.S.C. 177; ***Committee of Management Vs. Director of Education and others.*** Following has been laid down in paragraphs 11 to 14 of the said judgment:-

"***11.*** *In view of the submissions made by the learned Counsel for the parties, the first question that requires consideration is whether the Act applies to the Primary Section also or not. Section 2 (b) of the Act, as amended by the Ordinance which came into force on 7th July, 1975, defines the term 'Institution' as follows:*

"Institution" means a recognised Intermediate College, Higher Secondary School or High School, and includes, where the context so requires, a part of an institution."

(emphasis supplied).

In view of this definition, the Act applied not only to Intermediate College, Higher Secondary School or High School but also to a part of such college or School. After the definition of 'institution' was amended, Appendix 'A' to the Act was also amended and minimum educational qualifications were prescribed for assistant teachers employed to teach primary classes (Classes I to V). In view of these amendments it is not possible to accept the submission of the learned Counsel for the appellant that the Act does not apply to the Primary Section. In taking this view, we have the support of the decision of a Division Bench of this Court in Smt. Samantika Chatterjee v. Regional Inspectress of Girls School, (1990) 1 UPLBEC 239. In paragraph 12 of the Report at page 246, the Division Bench after noticing the relevant provisions of the Act, has observed thus:

"In the context and setting of Regulation 7 (2), there can be no difficulty in taking the view that a teacher working in J.T.C/B.T.C. grade and assigned the task of taking the primary classes attached to a recognised Intermediate College or Higher Secondary School or High School would be considered to be working in the part of the institution."

12. *Relying upon the decision of their Lordships of the Supreme Court in* ***Km. Prem Lata Mishra's*** *case (supra), the learned Single Judge held that the Act was not applicable to the Primary Section. In the said case, the order of termination of service had been passed in the year 1970, that is, before the definition of "Institution" was amended. After the amendment of the definition this authority has become irrelevant.*

13. In Mahanand Singh and others v. State of U.P. and others, *1978 ALJ 1042, a Division Bench of this Court held that the Act was inapplicable to Junior High School Section of a High School as it did not contain any provision regulating the administration or teaching of students of Junior High School standard. In making this observation the Division Bench solely relied upon the decision of their Lordships of the Supreme Court in* ***Prem Lata Misra's*** *case (supra). It appears that the attention of the Division Bench was not invited to the amendments in Section 2 (b) and the Appendix 'A' thereof referred to hereinabove.*

14. *In view of the amendments in the Act and the law laid down in* ***Smt. Samantika Chatterjee's*** *case (supra), the*

finding of the learned Single Judge that the Primary Section of the Institution is not covered by the Act cannot be sustained."

9. Learned counsel for the contesting respondent has also very fairly drawn my attention to Appendix 'A' of Chapter-II, which provides qualifications for teachers of junior classes (6 to 8) and teachers of primary sections (Classes 1 to 5). The prescription of the qualification in Appendix 'A' clearly indicates that the teachers of the primary sections are not out of the purview of the U.P. Intermediate Education Act, 1921. The Division Bench has already held that provisions of U.P. Intermediate Act, 1921 are applicable to the teachers of primary section. Moreso, in the present case the transfer order was passed by the Regional Inspectress of Girls School specifically referring Regulations 55 to 62, thus, the transfer order itself was under the power conferred under Regulations 55 to 62. In this writ petition there cannot be any challenge to the transfer order which was passed 23 years ago nor any such challenge has been made. Regulation 59A is squarely applicable as it was existing at the relevant time, hence the petitioner's services prior to transfer has to be added for the purposes of seniority.

10. In view of the foregoing discussions, the order of Joint Director of Education, impugned in the writ petition, cannot be sustained and is hereby quashed. It is held that petitioner is senior to respondent No. 6.

11. The writ petition is allowed accordingly.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.07.2006

BEFORE
THE HON'BLE TARUN AGARWALA, J.

Civil Misc. Writ Petition No.34681 of 2006

Roop Chand Chauhan ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Ashok Khare
Sri Sunil Kumar Srivastava

Counsel for the Respondents:
Sri Vinod Kumar Rai
Sri R.P. Dubey
Sri Janardan Prasad Pandey
Sri A.B. Saran
S.C.

U.P. Secondary Education Service Commission (Procedure for Approval of Punishment) Regulation 1985-Regulation-21-Power of Board-can approve, disapprove or modify the proposal of punishment given by the management-but can not debar from exercising the power as principal-Order ceasing the financial and administrative power of the Head of Institution-Held-without jurisdiction.

Held: Para 14, 20,21

In view of the aforesaid decisions, it is clear that the Board has a power to approve or disapprove the punishment proposed by the Committee of Management including the power to modify the proposed action to be taken by the Committee of Management. The Board has the power to modify the order of proposed punishment.

The petitioner, being the head of the institution is entitled to perform the

duties and functions attached to the office of the Principal by virtue of Regulations 9, 10, 11 and 12 of Chapter I of the Regulations framed under the Intermediate Education Act. Regulation 9 provides that the Principal would perform all the duties as appertained to his post and would be responsible to the Committee of Management for the due discharge of such duties. Various powers to be exercised by the Principal is enumerated in Regulation 10 whereas Regulation 12 provides that the head of the institution would be a channel of correspondence between the staff of the institution and the Management. Consequently, if the petitioner is allowed to work as a Principal, he must be allowed to discharge all the functions and duties attached to the office and cannot be divested of its financial and its administrative powers. Such an order would not only be without jurisdiction, but in my opinion, would also be opposed to public policy, especially when the salary is paid to the petitioner from the State exchequer without taking work from him.

There is also another aspect of the matter. Divestation of financial and administrative powers is normally used as a temporary measure. Such a direction could be issued where a person has been suspended and was not entitled to perform his duties or exercise the powers attached to the office. Such a direction could also be issued so long as he holds the office until legally dismissed or discharged, but once the order of suspension is lifted, then he has a right to perform the duties and functions attached to that office. Simultaneously, once an order of proposed termination or dismissal is removed and the petitioner is allowed to function on the post of Principal he should consequently be allowed to discharge his duties attached to that post and could not be divested of the financial and administrative powers. Similar view has been expressed by this Hon'ble Court in Committee of Management of Vasu Dev Mishra Higher Secondary School, Kanpur Nagar and another vs. Deputy Director of Educations, Kanpur Region, Kanpur and others, 1992(2) UPLBEC 1325. I am in complete agreement with the aforesaid judgment.

(Delivered by Hon'ble Tarun Agarwala, J.)

1. The petitioner was selected in the year 1999 for the post of Principal by the U.P. Secondary Education Service Selection Board and, in pursuance thereof, the petitioner joined the post of Principal in the institution concerned. On 30.5.2002, a charge-sheet was issued to the petitioner and was simultaneously placed under suspension. Subsequently by an order dated 22.7.2002, the District Inspector of Schools revoked the suspension order and allowed the petitioner to discharge the duties of the post of Principal. In November 2002, the petitioner was placed again under suspension and a second charge-sheet was issued. It transpires that on the basis of an inquiry report, the Committee of Management passed a resolution dated 25.1.2003 proposing to dismiss the petitioner from the service. By another order dated 25.1.2003, the District Inspector of Schools revoked the suspension order against which the Committee of Management filed Writ Petition No.7356 of 2003 which was allowed by judgment dated 19.2.2003 holding that the District Inspector of Schools had no jurisdiction to pass an order and remanded the matter back for reconsideration. The Court however, restrained the petitioner from functioning as the Principal till the disposal of the matter. The District Inspector of Schools by an order dated 28.3.2003 disapproved the order of suspension, against which the Committee of Management filed Writ

Petition No.16307 of 2003. This writ petition was dismissed by a judgment dated 17.4.2003. A Special Appeal No.339 of 2003 was filed which was disposed of directing the Selection Board to take a decision in the matter of the proposed punishment. The Court further directed that the order of suspension would remain in operation for a period of two months. Since the Board did not take action within six weeks, the District Inspector of Schools by an order dated 9.7.2003 directed the reinstatement of the petitioner. Subsequently, the District Inspector of Schools by an order dated 7.10.2003 revoked his earlier order dated 9.7.2003. The petitioner filed writ petition No.47583 of 2003 in which an interim order dated 28.10.2003 was issued staying the operation of the order dated 7.10.2003 passed by the District Inspector of Schools. Since November 2003, the petitioner is consequently working as the Principal and is discharging his duties. It has also come on record that the petitioner would retire on 30.6.2007.

2. The Selection Board by an order dated 18.5.2006 found that the charges leveled against the petitioner stood proved but in its wisdom did not approve the recommendation of the Committee of Management for the dismissal of the petitioner and, directed on humanitarian ground, to permit the petitioner to function as the Principal but divested the financial and administrative powers. The said order of the Board was communicated to the petitioner vide letter dated 26.5.2005. Aggrieved by the order of the Board, the petitioner has filed the present writ petition.

3. Heard Sri Ashok Khare, the learned senior counsel assisted by Sri Sunil Kumar Srivastava, Advocate, for the petitioner, the learned Standing Counsel for the respondent Nos.1, 3 and 4, Sri R. P. Dubey for respondent No.2 and Sri A.B.Saran, senior counsel for respondent No.5.

4. Since disputed questions of fact are not involved in the present writ petition and the only controversy which is required to be addressed is whether the Selection Board could have passed such an order of punishment, the writ petition is being disposed of at the admission stage itself without calling for a counter affidavit.

5. The learned counsel for the petitioner submitted that the inquiry report was vague and did not consider the material facts and evidence nor was the objection of the petitioner considered by the Selection Board. The learned counsel further submitted that the order of punishment passed by the Selection Board was in violation of Section 21 of the Act of 1981 read with Regulations 35, 36, and 37 of Chapter III of the Regulations framed under the Intermediate Education Act. The learned counsel submitted that the such an order of divesting the petitioner from exercising the administrative and financial powers of the post of Principal could not be passed by the Selection Board.

6. Sri R.P. Dubey, the learned counsel for the Selection Board submitted that the Board has ample power to pass such an order and in support of his submissions has relied upon a decision of the Court in **Committee of Management vs. U.P. Secondary Education Services Commission, Allahabad 2004 AWC(1) 181**. Sri A.B. Saran, the learned senior

counsel, appearing for the Committee of Management submitted, that the Selection Board had ample power to pass any order under Regulation 8 of the Uttar Pradesh Secondary Education Services Commission (Procedure for Approval of Punishment) Regulations, 1985 and that the order had been passed on humanitarian ground taking into consideration that the petitioner would retire on 30.6.2007. Consequently, there was no infirmity in the order passed by the Selection Board.

7. Before proceeding any further, it would be appropriate to refer to a few provisions.

Section 21 of the Uttar Pradesh Secondary Education (Services Selection Board)Act, 1982 provides as under:

"21. Restriction on dismissal etc. of teachers.- The Management shall not, except with the prior approval of the [Board] dismiss any teacher or remove him from service or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such prior approval shall be void.

Regulations 31 and 33 of the Chapter III of the Regulations framed under the Intermediate Education Act states as under:-

"31. Punishment to employees for which prior sanction from Inspector or Regional Inspectress would be essential may be any one of the following:-

(1) Discharge,
(2) Removal or Termination,
(3) Demotion in grade,
(4) Reduction in employments.

Principal or Headmaster would be competent to give above punishment to Fourth class employees. In case of punishment awarded by competent officer, the Fourth class employee may appeal to Management Committee. This appeal must be preferred within one month of the date of intimation of the punishment and Management Committee on receipt of appeal will decide the matter within six weeks. On consideration of all necessary record and after giving an opportunity of hearing to the employee, if he wants to appear before the Management Committee, it will give its decision.

Fourth class employee would also have a right to represent against the decision of the Management Committee on his appeal to the District Inspector of Schools/Regional Inspectress of Girls Schools within one month of the date of intimation of the decision;

Provided that if Management Committee does not give its decision on above appeal within stipulated period of six weeks, the concerned employee after the expiry of above six weeks may represent directly to District Inspector of School/Regional Inspectress of Girls School.

District Inspector of School/Regional Inspectress of Girls Schools would give its decision within three months from the date of receipt of the representation and his decision would be final.

Regulations 86 to 98 of this Chapter would apply to presentation, consideration and decision of the representation with necessary changes.

33. (1) An employee may also be punished by stoppage of increment in a

time-scale for any period with temporary or permanent effect.

(2) An appeal against such an order shall lie to the Inspector/Regional Inspectress within thirty days of the communication of this order to the employee and his/her decision shall be final."

8. From a perusal of the aforesaid provisions, it is clear that the Committee of Management has the power to dismiss, remove, reduce the emoluments, withhold increments or stop the increments or reduce the rank of a teacher or of the principal, as the case may be. Apart from the aforesaid, the Committee of Management cannot pass any other order of punishment. The punishment indicated in Section 21 of the Act is exhaustive in nature. But the order of punishment is required to be approved or disapproved by the Selection Board. The Selection Board is required to apply its mind to the facts and circumstances of the case and the material brought on record in order to determine as to whether the Committee of Management had acted in consonance with the principles of natural justice and whether the punishment awarded commensurate with the gravity of the charges. Section 21 of the Act was designed to control the arbitrary exercise of powers vested in the Committee of Management. Consequently, the Selection Board was required to look into the matter including the quantum of punishment.

9. The power of the Selection Board is given under Regulation 8 of the Regulation of 1985 which states as under:-

"8. Disposal by Commission.- The Commission shall after due consideration approve or disapprove the punishment proposed or may issue any other directions as may be deemed fit in the case."

10. From the aforesaid, it is clear that the Selection Board has the power to approve or disapprove the punishment proposed by the Committee of Management, and could also issue any other directions.

In **Committee of Management of M. L. M. L. Inter College, Faizabad Vs. District Inspector of Schools, Faizabad and another, 1980 LIC 595**, a Division Bench of this Court held as under:-

"When power is given to the D.I.O.S. to approve or disapprove of an order of punishment or suspension, that authority is bound to sit in judgment over the decision of the Management. Jurisdiction of these authorities is not akin to the jurisdiction of a Civil Court. Although the proposal sent to the D.I.O.S. by the Management is for approval and the word 'appeal' is not mentioned in the statutory provisions, it is obvious that the D.I.O.S., as the authority required to take a decision on the proposal, can review the findings and also the validity of the proceedings.

11. In **Committee of Management Bishambhar Sharan Vaidic Inter College, Jaspur, Nainital and another vs. U.P. Secondary Education Service Commission and others 1995 Supp.(3)SCC 244**, the Supreme Court held-

"According to us, in view of the provisions of the said Section 21, the Commission while deciding whether or not to grant approval for the removal of a

teacher, has necessarily to go into the merits of the case and apply its mind independently to the question whether the evidence on record justified the removal. It must be remembered that the Commission appointed under the Act is a high-powered body and as a body entrusted with the important function of supervising the actions taken by the Management against the teachers, it has to discharge its responsibility circumspectively. It cannot exercise its function effectively unless it scrutinises the material and applies its mind carefully to the facts on record. Hence, if the Commission goes through the entire record and the merit of the action taken, its action cannot be faulted."

12. In **Pradumna Kumar Jain vs. U.P. Secondary Education Service Commission, Allahabad and others**, 1997(3)AWC 1573, this Court held :-

"that the power to approve or disapprove includes the power to modify, which power is implicit in it and is an established principle by now. It is an established principle that when an order is open to a superior authority to decide on the merits of it for the purpose of either affirming or reversing the same, the same is also akin to approving or disapproving, inasmuch as though two different terms have been used, they mean the identical situation. To approve or to disapprove has the same meaning for all practical purposes to affirm or reverse. In respect of the appellate jurisdiction, it is the consistent view of the High Courts and the Apex Court that the power to affirm or reverse includes the power to modify. Unless such power or jurisdiction is barred by express provision, the same is always explicit in its. But in the present case, the including of the phrase "or may issue any other directions deemed fit in the case" indicates the very existence of the power to modify. Such expression cannot be interpreted to narrow down the meaning so as to make the provision ineffective.

It further held-

"Then again unless an act is expressly prohibited by law, the Court is not supposed to presume as a matter of general principle that certain act is prohibited beyond what has been expressly conferred to the extent it is acceptable on the principle as enunciated in the foregoing para, namely, to the extent that the power to approve or disapprove a particular order includes the power to modify such order as well particularly when the structure of the Statute conceives of a liberal interpretation furthering the object and purpose for which the same is incorporated. The purpose and object of incorporation of the approval and disapproval has been ensured to safeguard the interest of the delinquent from the arbitrary and highhanded actions on the part of the Committee of Management."

In **Raja Ram Shukla vs. U.P. Secondary Education Services Commission, Allahabad and others**, 1998(1) AWC 513, the Court held-

"Thus, Regulation 8 gives three alternatives to the Commission; firstly, it may accept as such the recommendation of the Committee of Management, secondly, it may reject the recommendation of the Committee of Management and thirdly, it may issue any other direction as may be considered fit in

the facts and circumstances, meaning thereby, the recommendation made by the Committee of Management may be modified or altered. The power to affirm or to reverse a particular recommendation implies that the authority has also the power to modify."

13. In **Committee of Management of Madan Mohan Malviya Inter College, Karchhana, Allahabad and another vs. U.P. Secondary Education Services Commission, Allahabad and others** 2004(1)AWC 181, the Court held that the Board can pass an order imposing a lesser punishment than proposed by the Committee of Management.

14. In view of the aforesaid decisions, it is clear that the Board has a power to approve or disapprove the punishment proposed by the Committee of Management including the power to modify the proposed action to be taken by the Committee of Management. The Board has the power to modify the order of proposed punishment.

15. The question still remains to be answered, namely, whether the Selection Board could issue a direction divesting the petitioner from exercising the financial and administrative powers?

16. What does the words "any other directions" connote under Regulation 8 of the Regulations of 1985. Does it mean that the Board can pass such orders of punishment which are not contemplated under Section 21 of the Act or can the Board only pass such orders of punishment which are contemplated under the Act. Take another aspect of the matter. Can the Committee of Management pass an order of punishment divesting the Principal from exercising its financial and administrative powers? Is such a punishment contemplated under Section 21 of the Act? If the Committee of Management could not pass such an order, could the Selection Board pass such an order?

17. The Act expressly confers various types of punishment that can be awarded to a teacher including the Principal. The punishment indicated in Section 21 of the Act is exhaustive in nature and therefore, the Committee of Management can propose such orders of punishment that is contemplated under Section 21 of the Act. The Selection Board, consequently, can approve or disapprove the proposed punishment, but if the Selection Board proposes to modify the punishment, it can do so, but the modified punishment must be one as contemplated in Section 21 of the Act. The Selection Board could not pass an order of punishment which is not contemplated under Section 21 of the Act.

18. In the opinion of the Court, the direction given by the Selection Board divesting the petitioner from exercising its financial or administrative powers is without jurisdiction. The Selection Board can only pass such an order of punishment which is contemplated under Section 21 of 1982 Act. The punishment of divesting the Principal of his financial and administrative powers is not one of the punishment contemplated under Section 21 of the Act. Consequently, the Board had no jurisdiction to pass such an order.

19. There is another aspect of the matter. Regulations 9, 10, 11 and 12 of Chapter-I of the Regulations framed

under the Intermediate Education Act defines the powers, duties and functions of a Principal. The said Regulations are quoted herein under:-

"9. Powers, duties and functions of the Principal or Headmaster.- The Headmaster or the Principal shall perform in addition to all the duties of a Headmaster or Principal all such duties as appertain to his post, and shall be responsible to the Committee of Management through the Manager of the institution for the due discharge of such duties, for which he shall have the necessary powers.

10. The Headmaster or the Principal shall be solely responsible and shall have necessary powers for the internal management and discipline of his institution including;

(i) Admissions and withdrawals of students and their punishment including expulsion or recommendation for rustication; selection of text books, books and magazines for the library, reading-room and prizes; arrangements of time table and allocation of duties of members of the staff relating to the schools time table; holding of examination and test; students' promotion and detention; maintenance of all forms an schools registers and progress reports of students and sending the same to their guardians; preparation of requisition for furniture; equipment and apparatus needed for the school and for their repair and replacement; organization of games and other curricular activities; making provisions for health and medical treatment of students, utilizing the services of the staff for educational purposes and activities inside or outside the schools premises; appointment, promotion, control and punishment including removal and dismissal of the inferior servants; control or the hostel through its Superintendent.

(ii) Maintenance of service books and character rolls of teachers, clerks, librarians and inferior staff; making entries in their character rolls and communicating adverse entries to the person concerned; control and supervision of the clerks and librarians; their suspension, and making recommendations for their confirmation, promotion and crossing of efficiency bar; granting of casual leave to the staff of the institution; recommending disciplinary action against teachers; clerks and librarians to the Committee of Management, recommending to the Committee their applications for permission to appear in academic examinations; permitting teachers to undertake private tuitions.

(iii) Control and administration of all Boys' Funds; it shall be the duty of the Principal to see to it that each such fund is spent only for that item for which it is allowed; and if there is saving on any item, the stoppage of fee realisation for that fund; granting freeship and half-freeship within the number sanctioned by the Management; drawing and disbursing of stipend and scholarship money,

11. In financial and other matters for which he is not solely responsible the Headmaster or Principal shall follow the directions of the Committee of Management as issued to him through the Manager.

12. The Headmaster or Principal shall be the channel of correspondence between the staff of the institution and Management."

20. The petitioner, being the head of the institution is entitled to perform the duties and functions attached to the office of the Principal by virtue of Regulations 9, 10, 11 and 12 of Chapter I of the Regulations framed under the Intermediate Education Act. Regulation 9 provides that the Principal would perform all the duties as appertained to his post and would be responsible to the Committee of Management for the due discharge of such duties. Various powers to be exercised by the Principal is enumerated in Regulation 10 whereas Regulation 12 provides that the head of the institution would be a channel of correspondence between the staff of the institution and the Management. Consequently, if the petitioner is allowed to work as a Principal, he must be allowed to discharge all the functions and duties attached to the office and cannot be divested of its financial and its administrative powers. Such an order would not only be without jurisdiction, but in my opinion, would also be opposed to public policy, especially when the salary is paid to the petitioner from the State exchequer without taking work from him.

21. There is also another aspect of the matter. Divestation of financial and administrative powers is normally used as a temporary measure. Such a direction could be issued where a person has been suspended and was not entitled to perform his duties or exercise the powers attached to the office. Such a direction could also be issued so long as he holds the office until legally dismissed or discharged, but once the order of suspension is lifted, then he has a right to perform the duties and functions attached to that office. Simultaneously, once an order of proposed termination or dismissal is removed and the petitioner is allowed to function on the post of Principal he should consequently be allowed to discharge his duties attached to that post and could not be divested of the financial and administrative powers. Similar view has been expressed by this Hon'ble Court in **Committee of Management of Vasu Dev Mishra Higher Secondary School, Kanpur Nagar and another vs. Deputy Director of Educations, Kanpur Region, Kanpur and others**, 1992(2)UPLBEC 1325. I am in complete agreement with the aforesaid judgment.

22. In view of the aforesaid, this Court is of the opinion that the order of the Selection Board is without jurisdiction and cannot be sustained. The impugned order dated 26.5.2006 is quashed. The writ petition is allowed and the matter is remitted back to the U.P. Secondary Education Services Selection Board, the respondent No.2, to take a fresh decision in accordance with law after giving an opportunity of hearing to all the parties within two months from the date of the production of a certified copy of this order.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.07.2006

BEFORE
THE HON'BLE A.P. SAHI, J.

Civil Misc. Writ Petition No. 37265 of 2006

Ghanshyam ...Petitioner
Versus
District Magistrate, Lalitpur and others ...Respondents

Counsel for the Petitioner:
Sri A.N. Agrawal

Counsel for the Respondents:
S.C.

U.P. Police Regulation-Regulation 96-readwith Village and Road Police Act, 1873 of Oudh Laws Act, 1876, Section 36-Natural Justice-termination of village chaukidar-without show cause notice-without enquiry on the basis of G.O. 3.6.06-held-illegal-principle of natural justice violated-order can not sustain.

Held: Para 5

A perusal of the same indicates that the dismissal shall be made only if the Magistrate has reason to think that such a dismissal is required. The principles of natural justice are implicit in the said provision and therefore it was incumbent upon the District Magistrate to have at least given a show cause notice to the petitioner before dispensing his services in order to ensure fairness.

(Delivered by Hon'ble A.P. Sahi, J.)

1. Heard Sri Arvind Nath Agrawal, learned counsel for the petitioner at length, and learned Standing Counsel for the respondents.

2. The petitioner was appointed as a Chaukidar under the provisions of Regulation 96 of the U.P. Police Regulations, read with the provisions of N.W. I. Village and Road Police Act, 1873 and The Oudh Laws Act, 1876. By the impugned order dated 3rd June, 2006 the services of the petitioner have been terminated by the District Magistrate, Lalitpur with immediate effect on the basis of some recommendations having been made by the Superintendent of Police, Lalitpur.

3. The petitioner contends that the aforesaid order has been passed without offering opportunity of hearing to the petitioner and without giving a show cause to explain the allegations made against him. The petitioner further asserts that he is not aware of any such report submitted by Superintendent of Police, Lalitpur nor did the District Magistrate, Lalitpur (respondent No. 1) provide an opportunity for verifying the allegations contained in Annexure 2 to the writ petition and therefore, the impugned order is liable to be set aside as the same is in violation of principles of natural justice.

4. The dismissal of a village or road-policeman is provided for under Section 36 of The Oudh Laws Act, 1876, which is quoted hereinbelow:-

***"Dismissal of village or road-policeman.**-The Magistrate of the district may dismiss any village-policeman or road-policeman for any misconduct or neglect of duty.*

Where any village-policeman is guilty of neglect of duty or other mis-conduct, the person authorized to nominate to his office may report him for dismissal to the Magistrate of the district;

and such Magistrate shall dismiss him accordingly, unless the Magistrate has reason to think that such dismissal would be improper."

5. A perusal of the same indicates that the dismissal shall be made only if the Magistrate has reason to think that such a dismissal is required. The principles of natural justice are implicit in the said provision and therefore it was incumbent upon the District Magistrate to have at least given a show cause notice to the petitioner before dispensing his services in order to ensure fairness.

6. A perusal of the impugned order does not indicate that any show cause or opportunity was offered to the petitioner prior to the removal order. Learned counsel for the respondent has been unable to point out any recital in the said order, which could justify the aforesaid action of the District Magistrate. Accordingly, the impugned order dated 3.6.2006 is unsustainable being in violation of principles of natural justice and is hereby set aside. The District Magistrate, Lalitpur shall provide an opportunity of hearing to the petitioner and thereafter pass an appropriate order in accordance with the rules preferably, within a period of three months from the date of production of a certified copy of this order before him.

7. Accordingly, the writ petition is allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.07.2006

BEFORE
THE HON'BLE A.P. SAHI, J.

Civil Misc. Writ Petition No.39957 of 2005

Arvind Kumar ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri M.D. Singh Shekhar
Sri Jagdeo Singh

Counsel for the Respondents:
Sri Sandeep Mukherjee
S.C.

Constitution of India Art. 226-Cancellation of Appointment-Petitioner intentionally given false affidavit-for purpose of seeking appointment-certainly reflect the character of such candidate-held-giving false affidavit to be a reasonable ground for refusal of employment.

Held: Para 15

It is true that the alleged non disclosure of a false criminal case against the petitioner may not be a ground for non suiting the petitioner but the filing of a false affidavit to gain employment will certainly reflect on the character of a candidate. The petitioner has not been able to deny the said fact and therefore, the filing of an affidavit voluntarily not disclosing correct facts in my opinion could be a reasonable basis to refuse employment.

Case law discussed:
1997 (2) UPLBEC-1201
2003 (3) SCC-437
1996 (11) SCC-605
2005 (2) SCC-746

(Delivered by Hon'ble A.P. Sahi, J.)

1. The petitioner was an applicant for the post of constable under the Provincial Armed Constabulary, a wing of the Uttar Pradesh Police Services.

2. The petitioner has prayed for a mandamus directing the respondent to permit the petitioner to join training and further for payment of allowances admissible to him on the post.

3. The petitioner has been denied appointment, even though he has been selected, on the ground that the petitioner tendered a false affidavit. Giving of an incorrect information about his antecedentss, therefore, amounted to an act which dis entitles him for any appointment. A photo stat copy of the said affidavit is appended as annexure CA 2 to the counter affidavit.

4. Challenge to the aforesaid action of the respondent is on the ground that the verification clause as contained in the form, which was required to be filled up by the petitioner did not require any information with regard to the pendency of a criminal case against the candidate. Learned counsel for the petitioner has invited the attention of the court to clause 11 of the said verification roll, which only requires an information in respect of any conviction by a court of law in a criminal case. It is urged that in the absence of any such requirement of filing an affidavit, the same can be treated as superfluous and cannot be taken into consideration for denying the appointment. Apart from this it is urged that the respondents were atleast required to give notice to the petitioner in this regard before withholding training of the petitioner. Learned counsel for the petitioner has further stated that the lodging of the F.I.R. itself was found to be false and the Judicial Magistrate on 3.1.2005 passed an order for expunging the proceedings and further launching a criminal proceeding against the first informant for having tendered a false information.

5. Sri M.D. Singh Shekhar, learned counsel for the petitioner submitted that in law it will be presumed that the there was no such proceeding pending against the petitioner and further once the Judicial Magistrate had passed an order, then there was no occasion for tendering any such information about the pendency of the case.

6. A part from this he has invited the attention of the court to the certificate/report tendered by the District Magistrate J.P. Nagar to the respondent no.3 in respect of the petitioner dated 2.3.2005 to supplement the character certification of the petitioner.

7. Relying on several decisions of this court and the Apex court Sri Shekhar has urged that the petitioner cannot in any way be held responsible for tendering incorrect information with regard to his antecedentss and therefore, he deserves to be sent on training.

8. The decisions relied upon by Sri Shekhar are in the case of **Qamrul Hoda 1997 (2) UPLBEC 1201,** which decision was affirmed by the Division Bench in the case of **Awadesh Kumar Sharma** decided on 24.1.2000 in writ petition no.3864 of 2000. Sri Shekhar next invited the attention of the court to the decision of the Apex court in the case of **Regional Manager Vs. Presiding Officer, 1999**

J.T. (1) 241 and the decision of the learned Single Judge of this court in the case of **Satish Kumar Shukla Vs. Union of India, 2002 (1) UPLBEC 610**. However, the decision on which he heavily relies on has been appended as annexure IV, in the case of Harendra Vs. State of U.P. (writ petition No.2420 of 2005) decided on 1.2.2005. Sri Shekhar then urged that tendering of an incorrect affidavit, which was not required under the rules is absolutely superfluous and therefore, the said affidavit may at best amount to swearing an incorrect affidavit and not tendering of false information. Accordingly, the same cannot be a ground for non suiting the petitioner as he has correctly filled up the form of verification.

9. After having examined the aforesaid contentions I find that the stand taken in the counter affidavit is clearly to the effect that the swearing of a false affidavit itself dis entitled the petitioner for engagement as a constable. In another case, which has been simultaneously dealt with and decided by me today, other decisions on this issue have been referred to therein. The said case is of **Krishna Kumar Vs. State of U.P. writ petition No.60896 of 2005.** The same was also with regard to the engagement of a constable in U.P. Police Services, wherein the stand taken by the respondents is that under the circular issued by the department every candidate has to tender a correct information with regard to his antecedents including the pendency of a criminal case or detention or arrest. In the instance case, the selection is prior to the said circular dated 6.2.2005. The format of the affidavit, which has been filled up by the petitioner is the same, which has been later on referred to in the said circular dated 6.2.2005. It appears that this affidavit was called for by the respondents for the purposes of verifying the character and antecedents of a candidate. Sri Shekhar has urged that even assuming that such an affidavit was required to be given even then, the same would not vitiate the selection.

10. I have already indicated in the order of Krishna Kumar's case that the case of Qamrul Hoda cannot now be pressed into service in view of the decision of the Apex court in the Case of **Kendriya Vidhalay Sanghathan Vs. Ram Ratan Yadav 2003 (3) S.C.C. 437.** The decision relied upon by Sri Shekhar in the case of Regional Manager Vs. Presiding Officer (supra) also cannot be cited as a precedent as the said decision itself makes that clear in the last line of the said judgment. The decision in the case of Satish Kumar (supra) was rendered prior to the decision in the case of Kendriya Vidhalaya Sangathan and it does not notice the decision of the Supreme Court in the case of **Delhi Administration Vs. Shushil Kumar reported in 1996 (11) S.C.C. 605.** The filing of a false affidavit has been held to be a case of moral turpitude and appointment has been denied by this court in the Division Bench decision of **Sheo Govind Singh Vs. I.G. Police 2005 (4) E.S.C. 2720.**

11. However, the decision, which now required to be considered is in the case of Harendra (supra) relied on by the learned counsel for the petitioner. The learned Single Judge has held therein that filing of an affidavit was only superfluous and thee was no requirement of furnishing any such detail. On the said basis it was held that the petitioner may be held guilty

of swearing a false affidavit, but he cannot be held guilty for swearing a false verification roll. Relying on the cases of Qamrul Hoda and Awadesh Kumar Sharma, the petition was allowed.

12. In my opinion, tendering of an affidavit does not appear to be superfluous as it was sought by the department for collecting information with regard to the character and antecedents of a candidate. It is intended to supplement additional information in this regard and is therefore not superfluous. This is evident from the nature of the affidavit and also the subsequent circular dated 6.2.2005 referred to in Krishna Kumar's case. Secondly, the affidavit is a solemn affirmation on oath tendering information and giving a solemn undertaking that the information which has been tendered is correct. The same was relied upon by the candidate for seeking employment. In neither of the cases, that is the present writ petition or Krishna Kumar's case, the petitioners have sought impounding of the affidavit or withdrawing from the contents thereof. The petitioner, therefore, cannot be permitted to resile back by simply stating that it was superfluous. The affidavit was tendered for the purpose of seeking employment and furnishing information about the antecedents and character of the petitioner.

13. The judgment in the case of **B.C. Naidu, 2005 (2) S.C.C.746,** was a case where a candidate was being charged with an allegation that he did not fill up the verification form correctly, but it was ultimately found that the verification form did not require tendering of any such information about the pendency of a case. The said case was not a case where any false affidavit had been sworn in addition to the information that was required in the verification roll. It was held that no such information was required to be indicated by a candidate in the verification roll.

14. The instant case and the case of Krishna Kumar stand on different footings on facts. The petitioner has voluntarily tendered an affidavit giving incorrect information. The Apex court in the case of Delhi Administration Vs. Shushil Kumar (supra) has held that it is not the gravity of a criminal offence, which has to be looked into but what is relevant is the antecedents of the candidate. This is necessary in order to enable the employer to form an opinion about the candidature of a person before inducting him into service. These aspects have not been dealt with and considered by the learned Single Judge in the judgment dated 1.2.2005 in Harendra's case. In my view the said decision would therefore not advance the cause of the petitioner.

15. It is true that the alleged non disclosure of a false criminal case against the petitioner may not be a ground for non suiting the petitioner but the filing of a false affidavit to gain employment will certainly reflect on the character of a candidate. The petitioner has not been able to deny the said fact and therefore, the filing of an affidavit voluntarily not disclosing correct facts in my opinion could be a reasonable basis to refuse employment.

16. Accordingly, I do not find this to be a fit case for interference under Article 226 of the Constitution of India.

Dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.05.2006

BEFORE
THE HON'BLE RAKESH TIWARI, J.

Civil Misc. Writ Petition No. 52517 of 2005

Rajresh Kumar Singh ...Petitioner
Versus
The Union of India and others ...Respondents

Counsel for the Petitioner:
Sri Assem Kumar Rai

Counsel for the Respondents:
Sri K.C. Sinha, A.S.G. India.
Sri Rajiv Sharma

Constitution of India-Art. 226-Compassionate Appointment-claiming parity on higher post-can not be accepted once the petitioner accepted-appointment on the post of L.D.C.-exception to normal mode of recruitment-can not claim parity with other appointee on the post of U.D.A.-rejection order held proper.

Held: Para 12

The crux of the matter of the petitioner is that he was offered appointment on compassionate ground on the post of Lower Division Assistant, which he has accepted. It is settled law that the appointment on compassionate ground is not a matter of right but is exception to normal mode of recruitment. The petitioner having accepted the post of Lower Division Assistant on compassionate ground he could not have claimed higher post on the ground of parity with some other persons who have been offered appointment on the post of U.D.C. Some of them were offered appointment on the post of U.D.C. and some of them were offered appointment on the post of L.D.C. Their case is different then the case of the petitioner and there is no question of parity. Even though the impugned order may have been passed by respondent no.3, no relief can be granted to the petitioner as he has accepted the compassionate appointment on the post of L.D.C. hence he cannot claim higher post subsequently on the ground of parity.

(Delivered by Hon'ble Rakesh Tiwari, J.)

1. Heard counsel for the parties and perused the record.

2. The petitioner was appointed as Lower Division Assistant on 16.1.1996 on compassionate ground. He made a representation-dated 28.12.98 to the respondents for appointment on the post of Upper Division Clerk claiming parity with some other persons who were appointed on compassionate ground. The representation of the petitioner was rejected by respondent no.3 vide order dated 6/9/10.11.99. The petitioner again moved an application-dated 24.12.1999 as well as reminder-dated 5.6.2000 reiterating his claim which was also rejected by respondent no.3, the Director Administration, Khadi & village Industries Commission, Lucknow.

3. Aggrieved the petitioner preferred an appeal on 5.7.2000 before the Chairman/Chief Executive Officer, Khadi and Village Industries Commission, 3, Irla Road, Vile Parley (West) Mumbai. Since the appeal was not being decided by respondent no.2, he filed writ petition no. 52369 of 2004 before this Court, which was disposed of with a direction to respondent no.2 to decide the appeal of the petitioner within a period of two months from the date of submission of a certified copy of the order.

4. It is stated that in the mean time respondent no.3 without jurisdiction decided the appeal, which has given rise to the present writ petition.

5. The contention of the counsel for the petitioner is that the appeal filed against the order rejecting the representation of the petitioner by respondent no.3 lies to respondent no.2, the Chairman/Chief Executive Officer, Khadi and Village Industries Commission, Mumabi. He urged that Director Administration, Khadi and Village Industries Commission, Lucknow could not have usurped the power of Chairman and decide the appeal against his own order.

6. The counsel for the petitioner has placed reliance upon paragraph 12 of the writ petition which is as under:-

"That one Mr. V.S. Kastwar, Assistant Director died during the service period his wife Smt. Kusum late Kastwar was appointed on the post of U.D.C. Sri P.K. Thakur Assistant Development Officer died during the service period, his wife Smt. Sulochana Thakur was appointed on the post of U.D.C. Sri V.N. Singh (Accountant) died during the service period, his son Ashok Kumar Singh was appointed on the post of Surveyor even without any training, Sri V.K. Bajpayee (Accountant) died during the service period, his wife Smt. Anjani Kumari Bajpayee was appointed on the post of U.D.C. The petitioner has made a representation dated 28.12.1998 regarding these appointments."

7. Relying upon the averments made in aforesaid paragraph 12 of the writ petition as quoted above, the counsel for the petitioner submits that Sri V.S. Kastwar, Assistant Director died during the service period, his wife was appointed on the post of U.D.C. and similarly other persons have been given appointment on the said post but the petitioner has been discriminated while giving him appointment on compassionate ground on the post of Lower Division Assistant.

8. The counsel for the respondents has relied upon paragraphs 7 and 8 of the counter affidavit in which it has been averred that the appeal of the petitioner was considered by respondent no.2 as per directions of the Court in writ petition no. 53369 of 2004. It is also averred that the order dated 15/21.2.2005 was issued under the signatures of respondent no.3 with approval of respondent no.2, the Commissioner as such there is no illegality in the impugned order. In any case the claim of the petitioner has once again been considered by respondent no. 2 who has passed a detailed and speaking order on 22.8.2005 rejecting the claim of the petitioner for compassionate appointment on higher post which has also been communicated to the petitioner.

9. The counsel for the respondents has urged that the appeal of the petitioner was considered by respondent no.2 and not by respondent no.3 who has only communicated the reasons for dismissal of the appeal dated 15/21.2.2005. The communication is as under:-

"Sri Rajesh Kumar Singh, was appointed as LDC with the Khadi & Village Industries Commission on Compassionate ground, consequent to the death of his father late Raj Narain Singh while employed with KVIC as Asstt. Development Officer. At the time of

sudden demise of is father Shri Rajesh Kumar Singh submitted an application for employment with the Khadi and Village Industries Commission on Compassionate ground. The case of Sri Rajesh Kumar Singh was considered keeping in view the circumstances and also the prevalent guidelines from Government of India and accordingly he was offered an appointment to the post of Lower Division Clerk vide Appointment Order No.Adm-I/NGR/Comp.Apptt/CL-III/95-96 dated 12/16.1.1996 which was duly accepted by him and he accordingly reported for duty on 29.1.1996. With the above, the family of late Raj Narain Singh was fully satisfied. While appointing Shri Singh as LDC though he was not having the prescribed typing skill, but a relaxation to pass the typing test within a period of one year by availing 3 chances from the date of his joining the services, was granted to him, which he availed and accordingly passed the typing test in the 2nd chance.

Subsequently, in 1998 Shri Rajesh Kumar Singh represented that keeping in view of is qualification, he should have been appointed as LDC as has been done in some other cases. This demand perhaps was an after thought, for which the Commission replied him suitably stating that it does not fall within the purview of Compassionate appointment.

Further he approached the Hon'ble High Court of Allahabad through a Writ Petition No. 53369 of 2004 along with which he submitted a copy of appeal purported to have been submitted by him to the Commission. The Hon'ble High Court while disposing of the writ petition of Shri Singh ordered that the respondent no.2, i.e. Chairman KVIC shall decide the appeal dated 5.7.2000 (enclosed to the petition as Annexure-VI) expeditiously preferably within a period of 2 months. Accordingly, the appeal of Sri Rajesh Kumar Singh is disposed off with the observation as under:-

1) The KVIC has followed the guidelines of the Government of India, O.M. prescribed on compassionate appointment of wards of its deceased employee on compassionate ground. While efforts are made to accommodate maximum cases, but it has been the fact that the Commission has not been able to provide employment to all, even to the lower level of post in case of all such families. However, in case of late Raj Narain Singh, his son Shri Rajesh Kumar Singh was provided the employment in the post of LDC very promptly to support the family of late Raj Narain Singh. He was offered the post of LDC and the same was accepted by him as mentioned above. Has there been any objection to his appointment as LDC on compassionate ground, he or his family could object to it before joining the post offered to him which he did not do so.

2) The comparison by Shri Rajesh Kumar Singh himself with the other compassionate appointees cannot be accepted as a valid ground for compassionate appointment. The main objective of the scheme is to grant appointment in compassionate ground to a dependent family member of a Government servant dying in harness, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant from financial destitution and to help it get over the emergency. Hence, his ward may be qualified even for higher posts does not get accommodated in the posts carrying equivalent qualifications interalia, means that the appointment on compassionate ground is not offered

matching to the qualifications of the appointee but an immediate assistance is rendered to the family with possible relaxation also, which has been done in case of Shri Rajesh Kumar Singh, by providing relaxation in typing test a basic requirement for appointment to the post of LDC which he has accepted. Therefore, the main objective to relieve the family of the deceased Government servant has been met out, and his appeal for appointment to the post of UDC cannot be acceded to.

This is issued with the approval of the Commissioner.

Sd. Illegible
DIRECTOR (ADMINISTRATION)"

10. It appears from the above communication that the authorities have followed the guidelines of the Government of India as well as the guidelines of the K.V.I.C. prescribed in Standing Order No. 1256 wherein it is clearly provided that when a person has accepted compassionate appointment to a particular post, the set of circumstances which led to his initial appointment should be deemed to have ceased to exist. The person who has accepted compassionate appointment on a particular post should strive in his career like his colleagues for future advancement. Any claims for appointment to higher post on consideration of compassion should invariably be rejected.

11. Having considered the rival submissions of the counsel for the parties I am of the opinion that the impugned order is only a communication of reasons approved by respondent no.2 to the petitioner by which he has been informed as to why his appeal has been rejected by respondent no.2.

12. The crux of the matter of the petitioner is that he was offered appointment on compassionate ground on the post of Lower Division Assistant, which he has accepted. It is settled law that the appointment on compassionate ground is not a matter of right but is exception to normal mode of recruitment. The petitioner having accepted the post of Lower Division Assistant on compassionate ground he could not have claimed higher post on the ground of parity with some other persons who have been offered appointment on the post of U.D.C. Some of them were offered appointment on the post of U.D.C. and some of them were offered appointment on the post of L.D.C. Their case is different then the case of the petitioner and there is no question of parity. Even though the impugned order may have been passed by respondent no.3, no relief can be granted to the petitioner as he has accepted the compassionate appointment on the post of L.D.C. hence he cannot claim higher post subsequently on the ground of parity.

13. In any case respondent no.2 by a fresh order dated 22.8.2005 has rejected the appeal of the petitioner ratifying the reasons given in the impugned order setting the controversy in the writ petition.

For the reasons stated above, the writ petition is dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.07.2006

BEFORE
THE HON'BLE A.P. SAHI, J.

Civil Misc. Writ Petition No.60896 of 2005

Krishna Kumar ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Neeraj Kanta Verma
Sri Siddharth Khare
Sri Avnish Kumar Srivastava
Sri Amit Srivastava
Sri Ashok Khare

Counsel for the Respondents:
Sri C.S. Singh
S.C.

Constitution of India-Art. 226-Cancellation of Selection-Petitioner was selected on the post of Police Constable during Character verification it was found that criminal case is pending-plea that in application form only information sought about the conviction in any criminal case-as per notification dated 6.2.05 petitioner given false affidavit-that he never involved in any criminal case-held-tendering false affidavit a clear impact on the character and antecedent of a candidate-held-rightly nor suited in Police service.

Held: Para 7 & 9

However, the matter does not stop here. In the instant case the petitioner has admitted the filing of an affidavit before the respondents. It is not the case of the petitioner that the affidavit was forcibly demanded from him. In this view of the matter, a clear inference can be drawn to the effect that the petitioner voluntarily submitted the said affidavit. The petitioner is an educated person and it cannot be presumed that the petitioner filed the affidavit even without reading the contents thereof. Paragraphs 4 and 5 of the affidavit clearly indicate the tendering of a correct information in respect of a pending case or a person being arrested. The petitioner, therefore, had tendered an incorrect information through the said affidavit. The explanation set up in the rejoinder affidavit that such affidavits were filled up en mass by all the candidates cannot be an excuse for the petitioner to resile back from an incorrect information tendered by him. The filing of an affidavit is a requirement for verifying the antecedents and character of a candidate. The facts of this case therefore are distinguishable from the facts of the case decided by the Apex court relied on by the learned counsel for the petitioner. In view of this clear distinction on facts, the ratio in Naidu's Case (supra) will not come to the aid of the petitioner.

Apart from this, learned standing counsel relied on the case of Delhi Administration Vs. Shushil Kumar, 1996 (II) S.C.C. 605 to urge that the acquittal or discharge of a candidate has nothing to do with the question of judging the antecedents and character of a candidate. Inviting the attention of the court to para 3 of the said decision, learned standing counsel has urged that what is relevant is the conduct and character of a candidate to be appointed and not the actual result of the criminal case. From a perusal of the aforesaid decisions, referred to herein above, it can be said that the petitioner was not fair in his disclosure. On the contrary the affidavit filed by the petitioner amounts to tendering of a false information and therefore, the petitioner was rightly non suited for employment in the Police services.

Case law discussed:
1997 (2) UPLBEC-1201
2005 (2) SCC-746
2003 (3) SCC-437
1997 (11) SCC-605

(Delivered by Hon'ble A.P. Sahi, J.)

1. The petitioner has prayed for a mandamus permitting the petitioner to join training upon having been selected on the post of constable in U.P. Police Services.

2. The parties have exchanged affidavits and it transpires that the objection to the petitioner's candidature, on verifying the character and antecedents of the petitioner, it was found that the petitioner had concealed the pendency of a criminal case against him. A written submission has also been filed by Sri Sidharth Khare, learned counsel for the petitioner.

3. The ground on which the action of the respondents is being questioned is that the character verification form as prescribed by the respondents does not contain any such clause calling upon the candidate to declare that any criminal case is pending against him. Learned counsel has invited the attention of the court to column no. 11 of the said verification form, which is part of Annexure V to the writ petition. A perusal of the same indicates that the only question posed is whether the concerned candidate has been found guilty and convicted for any offence by any court of law or not. In view of this it is urged that there is no such other requirement and therefore, the stand taken by the respondents that the petitioner suppressed this fact of pendency of a case against him is irrelevant. Coupled with this, it is urged that the petitioner has been ultimately acquitted in the said case vide judgment dated 11.8.2005, a copy whereof is annexure VI to the writ petition and an information has been tendered to the respondents later on.

4. The respondents in their counter affidavit have stated that according to the Notification dated 6.2.2005 the petitioner was required to submit a public notary affidavit and in the affidavit so tendered by the petitioner, the aforesaid fact of the pendency of the criminal cased against the petitioner has not only been suppressed, but a false statement has been made that the petitioner was never involved in a criminal case, nor was he apprehended and prosecuted. The respondents have filed the aforesaid directives contained in the letter dated 6.2.2005 and a photo stat copy of the affidavit filed by the petitioner has also been appended as C.A. 2 to the counter affidavit. The petitioner has filed a rejoinder affidavit wherein it is urged that the affidavit was a standard affidavit, which was filled up and typed by the respondents on which the petitioner had only put his signature, and for which the petitioner cannot be held responsible as the petitioner did not get the affidavit prepared at his own level. It is also urged that all the 375 candidates including the petitioner were made to sign on similar affidavit and therefore, the contents of the said affidavit are not binding on the petitioner. It is also urged that the said circular dated 6.2.2005 was not made known to the petitioner and had it been so indicated, the petitioner might have taken a precaution in this regard. It is further urged that the petitioner cannot be held responsible for any suppression of facts or giving of false information to the respondents.

5. Sri Sidhdharth Khare has relied on two decisions in support of his submission. The first is the decision in the

case of **Qamrul Hoda Vs. Chief Security Commissioner, 1997 (2) UPLBEC 1201** and the second decision of the Apex court in the case of **Secretary Department of Home Andhra Pradesh Vs. C.B. Naidu, 2005 (2) S.C.C. 746.**

6. After having given my thoughtful consideration to the aforesaid aspects, it transpires that the verification form required only a response to the question posed therein, which was to the effect that whether the candidate was convicted in a criminal case or not. The petitioner correctly replied to the query as "not" inasmuch as the petitioner was not convicted and was later on in the trial acquitted as per the judgment brought on record. To that extent the authority of the Apex court relied upon by the learned counsel for the petitioner comes to his aid, but the Apex court in C.B. Naidu's case (supra) ultimately held that since the form did not require furnishing of any further information, in that event the candidate is not required to indicate as to whether he was arrested in any case or as to whether any case was pending against him. The Apex Court drew a distinction to the said extent from the case of **Kendriya Vidhalaya Sanghathan Vs. Ram Ratan Yadav, 2003 (3) S.C.C.437.**

7. However, the matter does not stop here. In the instant case the petitioner has admitted the filing of an affidavit before the respondents. It is not the case of the petitioner that the affidavit was forcibly demanded from him. In this view of the matter, a clear inference can be drawn to the effect that the petitioner voluntarily submitted the said affidavit. The petitioner is an educated person and it cannot be presumed that the petitioner filed the affidavit even without reading the contents thereof. Paragraphs 4 and 5 of the affidavit clearly indicate the tendering of a correct information in respect of a pending case or a person being arrested. The petitioner, therefore, had tendered an incorrect information through the said affidavit. The explanation set up in the rejoinder affidavit that such affidavits were filled up en mass by all the candidates cannot be an excuse for the petitioner to resile back from an incorrect information tendered by him. The filing of an affidavit is a requirement for verifying the antecedents and character of a candidate. The facts of this case therefore are distinguishable from the facts of the case decided by the Apex court relied on by the learned counsel for the petitioner. In view of this clear distinction on facts, the ratio in Naidu's Case (supra) will not come to the aid of the petitioner.

8. The decision relied upon in Qamrul Hoda's case also cannot be pressed into service in view of the converse view taken by the Apex court in the case of Kendriya Vidhayalaya Sanghathan (supra). In the said case, the High Court drew a conclusion that the candidate had not tendered incorrect information as the criminal case instituted against him had been with drawn by the State Govt. and the case related to an agitation by the students, which did not involve any moral turpitude disqualifying a candidate seeking employment. In Qamrul Hoda's case also the petitioner therein had participated in an agitation against the visit of the then Chief Minister of the State. The Apex court reversed the view of the High Court stating therein that the suppression of material facts and making a false statement has a clear impact of the charactyer and antecedents

of a candidate in relation to his service. The court further held that the purpose of seeking information was not to find out the nature and gravity of the offence or the ultimate result of the criminal case, but for forming a view about the character and antecedents of a candidate. In view of the aforesaid position, Qamrul Hoda's case relied on by the learned counsel for the petitioner cannot advance the cause of the petitioner.

9. Apart from this, learned standing counsel relied on the case of **Delhi Administration Vs. Shushil Kumar, 1996 (II) S.C.C. 605** to urge that the acquittal or discharge of a candidate has nothing to do with the question of judging the antecedents and character of a candidate. Inviting the attention of the court to para 3 of the said decision, learned standing counsel has urged that what is relevant is the conduct and character of a candidate to be appointed and not the actual result of the criminal case. From a perusal of the aforesaid decisions, referred to herein above, it can be said that the petitioner was not fair in his disclosure. On the contrary the affidavit filed by the petitioner amounts to tendering of a false information and therefore, the petitioner was rightly non suited for employment in the Police services.

10. Accordingly the writ petition fails and is hereby dismissed. Petition dismissed.
