APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.12.2013

BEFORE
THE HON'BLE DR. DHANANJAYA YESHWANT CHANDRACHUD, CJ.
THE HON'BLE SANJAY MISRA, J.

Special Appeal No.1943 of 2013

Committee of Management Janta Inter College & Anr. Appellants
Versus
State of U.P. and Ors. Respondents

Counsel for the Appellants:
Sri Ashok Khare, Sri Lakshmi Kant Trigunait

Counsel for the Respondents:
C.S.C., Sri S.P. Singh

U.P. Intermediate Education Act 1921-Section-16-A(2)(b)-Amendment in scheme of administration-become effective only after approval of director-the term of management extended from three year to five year-benefit of extended period available only those management who got elected after approval-the management running prior to amended scheme of administration-can not avail the benefit of extended period-appointment of authorized controller as well as the view taken by Learned Single Judge-held-proper-appeal dismissed.

Held: Para-14
For these reasons, we have arrived at a conclusion that the learned Single Judge was not in error in declining to interfere with the order passed by the Joint Director of Education. Besides, in either view of the matter, it has now been clear that since the election was held on 17 December 2008, even the extended term of five years has come to an end. Consequently, there is no warrant for interference in the special appeal.

Case Law discussed:
2013(5) ADJ 326(FB); 1994(24) ALR 410;2008(10) ADJ 698.

(Delivered by Hon'ble Dr. Dhananjaya Yeshwant Chandrachud, J.)

1. This special appeal seeks to impugn the correctness of an order of the learned Single Judge dated 13 November 2013.

2. By the judgment under challenge, the learned Single Judge dismissed a petition seeking the setting aside of an order dated 16 July 2013 passed by the District Inspector of Schools and an order dated 24 July 2013 of the Joint Director of Education. The Joint Director of Education has directed the appointment of an Authorised Controller in the institution of the appellants on the expiry of the term of the Committee of Management. The appellants conduct a recognized institution upto the Intermediate level, which receives grant-in-aid from the State Government. The institution is governed by the provisions of the Uttar Pradesh Intermediate Education Act, 1921. The Committee of Management was elected on 17 December 2008. The District Inspector of Schools on 15 January 2009 attested the signature of the second appellant as Manager. On 23 November 2001, the Committee of Management passed a resolution adopting a new scheme of administration by which the term of the Committee of Management was enhanced from three years to five years. The Joint Director of Education by an order dated 8 December 2011 approved the resolution of the Committee of Management.

3. The case of the appellants was that though under the scheme of administration, as originally envisaged, the term of the Committee of Management

(which had been elected on 17 December 2008) would come to an end on 16 December 2011, by virtue of the amendment which has been approved by the Joint Director of Education, the existing Committee of Management was entitled to continue until 16 December 2013. The appellants were aggrieved because the District Inspector of Schools by his order dated 16 July 2013, recommended the appointment of an Authorised Controller to the Joint Director of Education on the ground that the three years' term of the existing Committee of Management had come to an end as well as by the order of the Joint Director of Education appointing an Authorised Controller.

4. The Uttar Pradesh Intermediate Education Act 1921 (hereinafter referred to as 'the Act') governs and regulates the affairs of the institution in question. The institution is a recognized Intermediate College within the meaning of Section 2 (b) of the Act. Under Section 16-A of the Act, it has been envisaged that there shall be a scheme of administration for every institution which shall, amongst other things, provide for the constitution of a Committee of Management which is vested with the authority to manage and conduct the affairs of the institution. Sub-section (5) of Section 16-A of the Act requires that the scheme of administration of every institution shall be subject to the approval of the Director and no amendment to or change in the scheme of administration shall be made at any time without the prior approval of the Director. Sub-section (6) of Section 16-A of the Act provides that every recognized institution shall be managed in accordance with the scheme of administration framed under and in accordance with sub-section (1) to sub-section (5) and Sections 16-B and 16-C. The regulations which have been framed under the Act inter alia, deal with the scheme of administration. Regulation 14 provides the principles on which approval to a scheme of administration shall be accorded. Amongst them, in clause b is the procedure for constituting a Committee of Management and the term of its office.

5. A circular was issued by the Director of Education on 4 August 2003. The circular relates to the enhancement in the term of the Committee of Management from three years to five years. By this circular, the Director prescribed that besides requiring the resolution of the general body, the enhanced term from three years to five years will take effect in respect of the elections which are held after the amendments have been approved. In other words, the circular of the Director envisages that the benefit of the enhancement of the term from three years to five years will not enure to the Committee of Management which had been elected prior to the amendment of the scheme of administration. Hence, the benefit of the enhanced term would not be available to the Committee of Management, which had passed the proposal for enhancing the term.

6. A Full Bench of this Court in Committee of Management, Saltnat Bahadur Post Graduate College, Badlapur, Jaunpur and another Vs. State of U.P. & Others1 was constituted in order to resolve a conflict between two decisions of the Division Benches of this Court. These judgments of the Division Benches were in (i) The Committee of Management, M.M.I. Inter College,

Bijnor Vs. Dy. Director of Education, 10th Circle and others2; and (ii) Committee of Management, Arya Kanya Inter College, Bulandshahar and another Vs. State of U.P. and Others 3.

7. The learned Single Judge in that case had referred the following two questions for determination by the Full Bench:

(1)Whether the amendment will become effective from the date of the amendment?

(2)Whether the amendment, extending the term of the Committee of Management, will apply to the existing Committee of Management, which has made the amendment or it applies to the Committee of Management which will be formed after the election being held after the amendment?

The Full Bench held on the first question that an amendment to the scheme of administration will become effective from the date of the amendment. The second question which was referred for decision was answered as follows:

"The second question is answered by holding that the amendment, extending or curtailing the term of the Committee of Management, will become effective immediately and as a result, then existing Committee shall have its term extended or modified in accordance with the amendment. We may add here by way of precaution that if the authority competent to make the amendment itself chooses to specify that the amendment shall be effective from a future date then the amendment shall apply from such later date as may be specified. Similarly, if the approving authority has the necessary powers to lay down similar stipulation, then the amendment may apply as per conditions or stipulations laid down by the approving authority. In absence of such special feature or stipulation, the amendment shall apply to the Committee of Management existing on the date amendment comes into force."

8. Now before we consider the impact of the judgment of the Full Bench, it would be necessary to note that the case which was referred to the Full Bench involved the application of the U.P. State Universities Act, 1973 since the petitioner before the Court was a Committee of Management of a Post Graduate College, which was governed by the Act and by the Statutes of the University. The Full Bench considered the correctness of the view which was taken by the Division Bench of this Court in Committee of Management, Arya Kanya Inter College (supra). The judgment of the Division Bench in Committee of Management, Arya Kanya Inter College (supra) involved the elections of the Committee of Management in respect of an institution which was governed by the U.P. Intermediate Education Act, 1921. The Division Bench in that case took note of the circular which was issued by the Director of Education on 4 August 2003. The Division Bench was of the view that since the Director of Education had clarified that where by an amendment of the scheme of administration, the enhancement in the term of the elected office bearers is approved, this would take effect only in respect of the Committee of Management of which election is held subsequent to the date of the resolution proposing the amendment in the scheme of administration. The view of the Division Bench was that since under sub-

section (5) of Section 16-A of the Act an amendment to or change in the scheme of administration requires the prior approval of the Director, the powers of the Director would include within its ambit all ancillary powers for the effective exercise of the powers conferred in the statutory provisions. Hence, in the view of the Division Bench, the Director had the competence to impose such conditions while approving the amendment as may be fair and just. In that context, the Division Bench held as follows:-

"We, therefore, arrive at a conclusion that the Director of Education, while approving the amendments in the scheme of administration, is entitled to impose fair and just conditions. It is within his competence to provide that if any existing Committee of Management seeks amendments in the clause provided for the term of the elected office bearers (in the facts of the present case 3 years to 5 years), then while approving such amendments in the scheme of administration, it is always open to the Director of Education to provide that such extension of term (3 years to 5 years) would be applicable only in respect of Committee of Management, which is elected subsequent to the date of resolution of the Committee of Management proposing amendment. Such condition imposed by the Director of Education cannot be said to be arbitrary and unfair. The condition so imposed would be within his statutory competence and within the framework of the power as conferred by Section 16-A (5) of 1921 Act.

9. Moreover, in the view of the Division Bench, it was open to the Director, in whom the power to grant his prior approval has been vested by Section 16-A (5) of the Act, to issue guidelines by way of a circular, which would bind the Regional Joint Directors of Education who are only his delegatees. The issuance of such circular was in the view of the Division Bench necessary so that all the Regional Joint Directors of Education should act in an uniform manner. In that context, the Division Bench made the following observations:

"As already recorded above, power to approve the amendments in the scheme of administration continues to be that of the Director and the Regional Joint Directors of Education are only delegatees, who in fact exercise the power of the Director only. There are large number of Regional Joint Directors of Education in the State of Uttar Pradesh appointed for various regions; it is well within the competence of the Director (principal authority) to issue circulars/letters for regulating the exercise of power to approve the amendments in the scheme of administration by the delegatees in an uniform manner. Such circulars requiring the delegatees to act uniformally, while approving the amendments in the scheme of administration has the effect of treating all similarly situate persons in similar manner and at par. It further obviates the chances of different orders being passed by the different delegatees, Regional Joint Directors of Education in respect of similar proposals seeking amendments in the scheme of administration qua extension of the terms of the elected Committee of Management. Such circular or letter of the Director is therefore, in furtherance of his principal power to approve the amendments in the scheme of administration and for ensuring that delegatees, while approving the amendments in the scheme of administration treat all similarly situate Committee of Managements in the same manner."

10. Now it is necessary to note that in the judgment of the Full Bench, the decision of the Division Bench in Committee of Management, Arya Kanya Inter College (supra) was not disapproved. What the Full Bench held was that certain observations contained in one of the paragraphs of the judgment in Committee of Management, Arya Kanya Inter College were an obiter dicta and did not constitute a precedent. Those observations which have been specifically referred to in paragraph 13 of the reported judgment of the Full Bench are to the following effect:-

"Even otherwise, we feel that it is appropriate and it is fitness of things that the Committee of Management, which is elected in accordance with the provisions of the scheme of administration must be permitted to continue only for the term, which was applicable at the time of the elections. The extension of the term so provided by seeking permission of its own term and by suggesting amendments in the scheme of administration cannot be approved of by this Court."

It was in this view of the matter that the Full Bench held that there was really no divergence of opinion on the principles which have been enunciated in the two earlier Division Bench judgments.

11. In the present case, the learned Single Judge has held that in view of the circular which has been issued by the Director of Education on 4 August 2003, any amendment in the scheme of administration of the institution for extending the term by two years, would be applicable to the term of office of the newly elected Committee of Management after the election is held on a date subsequent to the date on which the proposal for extending the term of office is accepted by the Joint Director of Education. The Director of Education had in fact, in the present case, clarified by a communication dated 3 December 2012 that the enhancement of the term of the Committee of Management from three years to five years will not enure to the benefit of the existing Committee of Management which has been elected before the resolution for the enhancement of the term has been passed and would apply to the Committee of Management which would be constituted after the elections were held afresh.

12. On behalf of the appellants, it has been submitted that the learned Single Judge while taking note of the judgment of the Full Bench and of the earlier decision of the Division Bench in Committee of Management, Arya Kanya Inter College (supra) has lost sight of the fact that in the case before the Division Bench the approval which was granted by the Joint Director of Education contained a specific provision to the effect that the benefit of the extended term will entail to the Committee of Management of which elections were held subsequent to the date of approval. In the present case, it was submitted that the Joint Director of Education while approving the amendment did not impose any such stipulation and hence, the enhancement of the term must also enure to the benefit of the existing Committee of Management.

13. It is not possible to accept the submission for more than one reason. Firstly, as the judgment of the Full Bench now holds, if the approving authority has the power in law to lay down a stipulation that an amendment shall be effective from a future date, then the amendment would apply in accordance with the condition or

stipulation laid down by the approving authority. In the absence of any such special feature or stipulation, the amendment shall apply to the Committee of Management existing on the date on which the amendment comes into force. Applying this observation in the context of the U.P. Intermediate Education Act, 1921, it is clear that sub-section (5) of Section 16-A of the Act requires the prior approval of the Director to every amendment or change in the scheme of administration. Since the Director is vested with a statutory power to grant or refuse his prior approval, incidental to the exercise of power, it is open to the Director to stipulate that the approval shall not enure to the body which has proposed by a resolution, the enhancement of the term. Secondly, the Director has, by his circular of 4 August 2003, clarified the matter beyond doubt by stipulating that when the term of a Committee of Management is enhanced from three years to five years by an amendment in the scheme of administration, the benefit of the amendment will enure only to the Committee of Management that would be elected after fresh elections are held. As a Division Bench has held in the Committee of Management, Arya Kanya Inter College (supra), such a provision has been made by the Director in his circular to ensure that all the Joint Directors subject to his control who act as his delegates should follow a uniform approach in dealing with such cases. Otherwise, there would be a grievance of discriminating treatment if the amendments are approved in the case of certain institutions with immediate effect giving a benefit of an enhanced term to the existing Committee, while in respect of other Committees the enhancement of term would apply only to the bodies elected in future. Clearly, the Director of Education who is vested with the statutory power under Section 16-A (5) of the Act has the power to impose such a condition that ensures even handed treatment. If the Director himself decides every case, it would be open to him to impose such a stipulation on a case by case basis in every case. However, since the power of the Director is delegated to the Joint Directors, he has made general stipulations to that effect, which must have equal force. The object is clear and it is to ensure that the enhancement of the term of a Committee of Management does not become a method of merely seeking continuance in office by the bodies of the existing Managements. Thirdly, there is no reason to hold that there has been any change in this position by the issuance on 25 August 2011 by the State Government of a model scheme of administration. Clearly, despite the circular of the State Government dated 25 August 2011 providing for a model scheme of administration, it has been envisaged that the Managements of the concerned institutions would have to bring their schemes of administration in line with the model scheme. That would not, in any manner, affect the statutory powers which have been conferred upon the Director under Section 16-A (5) of the Act.

14. For these reasons, we have arrived at a conclusion that the learned Single Judge was not in error in declining to interfere with the order passed by the Joint Director of Education. Besides, in either view of the matter, it has now been clear that since the election was held on 17 December 2008, even the extended term of five years has come to an end. Consequently, there is no warrant for interference in the special appeal.

15. The special appeal shall, accordingly, stand dismissed. There shall be no order as to costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.12.2013

BEFORE
THE HON'BLE ASHOK BHUSHAN, J.
THE HON'BLE V.K. SHUKLA, J.
THE HON'BLE VIPIN SINHAN, J.

Civil Misc. Writ Petition No. 24620 Of 2013

Indrapal Singh... Petitioner
Versus
State of U.P. and Ors.... Respondents

Counsel for the Petitioner:
Sri Ajay Bhanot, Sri J.K.S. Sikarwar

Counsel for the Respondents:
C.S.C., Sri Pramod Kumar Sharma

Constitution of India, Art.-226-Meaning of word 'family'-whether brother residing separately-having no concern with-other brother, mother, sister etc-can be family member interpretation given in Ram Murti case-held correct Law and the condition having together taking food from common kitchen-applicable to any other member.

Held: Para-55
In view of this, the definition of family which includes brother cannot be read in a fashion to exclude brother from defined family members and throw him and club him in the category of any other member, who has been staying together and has been dining together, in view of this, the said portion of the Ram Murat's Case (supra) is not being approved of.

Words and Phrases-work family used in clause 2(o) of U.P. Sheduled commodities Distribution order 2004-shall not overrride the definition contained in para 4.7 of G.O. 03.07.1990.

Held: Para-53
Accordingly, this Court is of the view that there is no conflict whatsoever in between the provisions of Clause 2 (o) Clauses 30 and 31 of U.P. Scheduled Commodities Distribution Order, 2004 vis.a.vis with the definition of "family" as given in Government Order dated 3rd July, 1990 paragraph 4.7 and the Division Bench in Ram Murat's case 2006 (5) ADJ 396, defining the word "family" as given in Government Order dated 3rd July, 1990, Paragraph 4.7 lays down the correct law, even after enforcement of Control Order 2004, except to the extent of introducing concept of joint residence and joint kitchen in reference of Brother, whereas the definition of family is clearly inclusive of brother also and the definition of family as given in Clause 2 (o) of U.P. Scheduled Commodities Distribution Order, 2004 in no way would override the definition of family given in Paragraph 4.7 of the Government Order dated 3rd July, 1990 and the said definition has to be read in the context of issuance of ration cards and nothing beyond the same.

Case Law discussed:
(2006) (5) ADJ 396; [(1987) 1 SCC 424; 2006(3) SCC 434; AIR 2007 SC 2458; 2013(1) scale 7; 2002(3) SCC 481; AIR 1962 All 240.

(Delivered by Hon'ble V.K. Shukla, J.)

1. For getting an authoritative pronouncement, as to whether the definition of family as interpreted in the case of Ram Murat and others Vs. Commissioner, Azamgarh Division, Azamgarh and others reported in (2006) (5) ADJ 396 is correct or not, the matter has been referred to this Full Bench for answering the following two questions'

(i) Whether the judgment of the Division Bench in the case of Ram Murat (supra), defining the word 'Family' as given in Government Order dated

3.7.1990 (Para 4.7) lays down the correct law specially after the enforcement of order 2004 ?

(ii) Whether the definition of family as given in Clause 2(o) of U.P. Scheduled Commodities Distribution Order,2004, shall override the definition of family given in para 4.7 of Government order dated 3.7.1990 ?

2. The factual background in which the aforementioned issues have been raised are that petitioner of present writ petition was appointed as a fair price shop dealer in the year 1993. Petitioner's son Raj Bahadur was elected as Pradhan in the year 2010. A show cause notice dated 5th November, 2012 was issued to the petitioner to show cause as to why the shop be not cancelled, since, he is running the shop, living in the joint family, and his son has been elected as Pradhan. Petitioner submitted reply to the show cause notice dated 31.1.2013 and same was followed by the order dated 3rd April, 2013 by which petitioner's fair price shop agreement has been cancelled.

3. Petitioner at this juncture has approached this Court questioning the validity of the decision so taken cancelling his fair price shop agreement on 3rd April, 2013 and his submission has been to the effect that petitioner's son is living separately and cannot be treated to be a member of family and, accordingly, ground on the basis of which petitioner's fair price shop has been cancelled is unsustainable. Petitioner's submission has been to the effect that the definition of family as given in Government Order dated 3rd July, 1990 and as has been interpreted in Ram Murat's case (supra) does not take into consideration Clause 2 (o) and further Clauses 30 and 31 of U.P. Scheduled Commodities Distribution Order, 2004, in its correct reference and correct perspective and, in view of this, the definition of family contained in Government Order dated 3rd July, 1990 has to be accepted as superseded and effaced after the enforcement of U.P. Scheduled Commodities Distribution Order, 2004. The Division Bench of this Court noticed the arguments raised from the side of petitioner and proceeded to refer the matter in the direction of getting authoritative pronouncement.

4. Shri Ajay Bhanot, learned counsel for the petitioner, opened his arguments by contending that the Division Bench's judgment in the case of Ram Murat (supra) by accepting the definition of the word 'family' as given in Government Order dated 3rd July, 1990 paragraph 4.7 has not at all laid down the correct law after enforcement of U.P. Scheduled Commodities Distribution Order,2004 wherein a different concept and a different definition has been introduced in the shape of "house hold" which is synonyms to "family" and in such a situation definition of family as mentioned in Government Order dated 3rd July, 1990 has to be accepted as effaced and, accordingly, by placing reliance on the definition of family as given in paragraph 4.7 of Government Order dated 3rd July, 1990, such a punitive action could not have been taken, as has been done in the present case and the issue in question ought to have been dealt with on the parameters of the definition of "household", which is synonymus to family as is provided under Clause 2 (o) of in U.P. Scheduled Commodities Distribution Order,2004, as same has the overriding effect over the definition of family given in paragraph 4.7

of the Government Order dated 3rd July, 1990 and, as such, reference in question should be answered in favour of petitioner and the view as taken by the Division Bench of this Court in the case of Ram Murat's case be reversed in total and entire doubts on the subject be removed.

5. Countering the said submission Shri Ramesh Upadhyaya, Chief Standing Counsel appearing with Shri S.M. Iqbal Hasan, Advocate contended that petitioner is labouring under a misconception and the Division Bench of this Court in the case of Ram Murat (supra) has taken rightful view except at a place where "brother' has been sought to be excluded and it has been submitted by him that the definition as given in Clause 2 (o) of in U.P. Scheduled Commodities Distribution Order,2004 describing "household" in no way would override or efface the definition of family given in paragraph 4.7 of the Government Order dated 3rd July, 1990, inasmuch as, at both the places definition in question is in all together different context and under different scheme of things and, in view of this, the reference in question is to be answered in negative by taking the view that Division Bench of this Court in Ram Murat's Case (supra) has rightly been decided and the definition of family given in paragraph 4.7 of the Government Order dated 3rd July, 1990 should be read in its entirety which should be inclusive of "brother' also as well as other members, who are found to be dining in the same kitchen and, in view of this, purposive and contextual construction should be made, as in case the arguments so advanced by petitioner is accepted then it would render the other provisions redundant and otiose and would defeat the very purpose for which it has been introduced.

6. In order to appreciate the respective arguments, as has been advanced and canvassed before this Court, this Court proceeds to take note that the Parliament has enacted the Essential Commodities Act, 1955 and Section 3 of the said Act empowers the Central Government to enact different control orders for controlling production, supply, distribution etc. of essential commodities and Section 5 of the said Act empowers the Central Government to delegate this power by notified order to the State Government also and the Central Government has, accordingly, in the said direction delegated this power to the State Governments for maintaining of supply of food grains and other essential commodities and for securing of their equitable distribution through fair price shops.

7. Under the aforesaid provision State of Uttar Pradesh came up with the Uttar Pradesh Food Grains & Other Essential Articles Distribution Order, 1977, which has been published in U.P. Gazette, Extraordinary, dated 3rd December, 1977 and has been substituted by First Amendment Order dated 4th January, 1978, and under the aforementioned Control Order, Clause 2 dealt with the Definition clause and therein Clause 2 (a) defined "adult' as any person who has completed the age of five years and "child' as any person who has not completed that age. Clause 2 (b), which was substituted by First Amendment Order dated 4th January, 1978, defines the "authorized retail distributor' as a person appointed as "Agent (Retail)' by the District Magistrate, City Magistrate or Sub Divisional Magistrate for sale of Government food grains and other essential articles. Clause 2 (d) defined

"other essential article' as a commodity other than food grains specified in the Schedule II appended to this order, which is supplied or allotted by the State Government for distribution to identity card holders, as a price, fixed, from time to time, by the Central or the State Government or any other authority or office of such Government or the manufacturer, as the case may be, in respect of such commodity. Clause 2 (h) proceeds to define "holder' in relation to an identity card as a person whose name or designation appears as such on that identity card. Clause 2 (i) proceeded to define "house hold' means the collection of individuals who normally eat food prepared in the same kitchen. Clause 2 (j) defined identity card, Clause 2 (k) defined qualified resident. Clause 3 proceeded to mention that sale shall be made only through the authorized retail distributor. Clause 8 deals with the preparation of identity cards and therein a clear cut mention was made that a Food Officer may either of his motion or on an application made to him by a qualified resident issue or cause to be issued to such resident for himself and his household or establishment, if any, an identity card authorizing purchase of food grains and other essential articles. Household thus has been used in the context of issuance of identity card.

8. The State Government at the said point of time took a policy decision vide Government Order dated 28.07.1985 providing therein that in the matter of allotment of fair price shop i.e. for being appointed as authorized retail distributor, the Pradhan and his family members would be all together outside the zone of consideration, as Pradhan has a major role to play in effectuating distribution of essential commodities. The Government Order dated 28.07.1985 imposing restriction on being appointed as authorized retail distributor, qua Pradhan and his family members, has once again been reiterated in Government Order dated 10.01.1986.

9. Thereafter by means of notification dated 31st August, 1989 U.P. Scheduled Commodities (Regulation of Distribution) Order, 1989 has been enforced as the State Government in its wisdom and opinion had thought it necessary and expedient for maintaining supplies of food grains and other essential commodities and for securing its equitable distribution and availability at fair price. The said control order has been issued in exercise of its powers under Section 3 of the Essential Commodities Act, 1955 read with notification of Government of India in the Ministry of Agriculture and Irrigation (Department of Food) published under GSR 800, dated 9th June, 1978 in the Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation), published under Ka As 681 (A) and Ka Aa 682 (A) dated 30th November, 1974 and all other powers enabling on this behalf. The said order in question has also been extended to the whole of Uttar Pradesh and therein also definition had been given in Clause 2.

10. The definition of "adult' in Clause 2 (a) was the same as was provided for in the 1977 Control Order. In the 1989 Control Order, Clause 2 (f) defines holder in relation to an identity card and Clause 2 (g) defines household. The definition of holder is one and the same, as is provided for under the 1977

Control Order, mentioning therein that holder in relation to identity card means the person whose name or designation appears as such on the identity card and household here has been defined as individuals who are held together in the same house and normally eat food prepared in the same kitchen. Earlier under 1977 Control Order, household has been described as collection of individuals who normally eat food prepared in the same kitchen.

11. The said control order then defines the "identity card' in Clause 2 (h), "qualified resident' in Clause 2 (i), Clause 9 deals with preparation of identity card and here it has been clearly provided that Food Officer may either of his motion or of an application made to him by a qualified resident issue or cause to be issued to such resident for himself and his household or establishment, if any, an identity card authorizing purchase of Scheduled Commodities. Clause 10 dealt with the contents of identity card by providing that Food Officer shall prepare or cause to be prepared an identity card correctly with clearly marked on it the name and the address of the identity card holder, the number of persons of the household or establishment and the name or some other indication of the Authorized Retail Distributor from whom the identity card holder is entitled to purchase Scheduled Commodities.

12. The U.P. Food Grains and Other Essential Articles Distribution Order, 1977 published in U.P. Gazette Extraordinary dated 3rd December, 1977 and the U.P. Scheduled Commodities (Regulation of Distribution) Order, 1989 published in gazette vide notification dated 31st August, 1989 have been repealed and the provisions of Sections 6, 8 and 24 of the General Clauses Act, 1897 has been made applicable as they apply in relation to the repeal and re-enactment of Central Act by introducing U.P. Scheduled Commodities Distribution Order, 1990. The State Government has proceeded to issue the same once again for maintaining supplies of food grains and other essential commodities and for securing equitable distribution and availability of the same on fair price. The same has been framed under Section 3 of the Essential Commodities Act, 1955 (Act No. X of 1955) read with notification of Government of India in the Ministry of Agriculture and Irrigation (Department of Food) published under GSR 800, dated 9th June, 1978 in the Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation), published under Ka As 681 (A) and Ka Aa 682 (A) dated 30th November, 1974 and all other powers enabling on this behalf.

13. Under U.P. Scheduled Commodities Distribution Order, 1990, Clause 2 (b) defines the "adult' in the same way and manner, as has been described in the past, Clause 2 (c) defines the "agent' as one who is authorized to run fair price shop whereas on the earlier occasion in 1977 Control Order as well as in the 1989 Control Order in place of agent the word "Authorized Retail Distributor' has been used and same proceeds to mention that it means a person appointed as agent by the District Magistrate, City Magistrate or Sub Divisional Magistrate for sale of food grains and other essential commodities. Clause 2 (g) again borrows the same definition as has been provided under Control Orders of 1977 and 1989 by

defining the holder in relation to an identity card as a person whose name or designation appears as such on that identity card, Clause 2 (h) defines household in the same way and manner as has been defined in the Control Order of 1977 as collection of individuals who normally eat food prepared in the same kitchen, Clause 2 (i) defines identity card means a card issued under Clause 5 of this order, Clause 2 (k) defines the qualified resident as a resident of an area to which this order extends and authorized under general or special order to receive identity card on behalf of himself or a household or an establishment. Clause 3 and 4 deals with the setting up of fair price shop and running of fair price shop, relevant extract of the same is quoted below;

"3. Setting up of fair price shop - With a view to effecting fair distribution of Scheduled Commodities the State Government may issue directions to set-up such number of fair price shops in an area as it deems fit.

4.Running of fair price shop - (1) A fair price shop shall be run through such person and in such manner as the Collector subject to the directions of the State Government, may order.

(2) A person appointed to run a fair price shop under sub-clause (1) shall act as the agent of the State Government."

14. A bare perusal of those particular provisions of Clause 3 and 4 would go to show that with a view to effectuate fair distribution of Scheduled Commodities, the State Government has been conferred an authority to issue direction for setting up such number of fair price shop in an area as it deems fit and the said fair price shop are to be run through such person as the Collector subject to direction of the State Government may order and the person so appointed to run fair price shop is to act as agent of State Government. The State Government under the scheme of things provided for has ample authority to take decision as to in what way and manner the fair price shop is to be set-up and is to be run.

15. The State Government on 3rd July, 1990 has accordingly proceeded to formulate a scheme as per which fair price shop are to be opened and therein a full fledged procedure has been provided for as per which the said fair price shop are to be run and managed. The said Government Order in question has clearly proceeded to provide for that, in the matter of opening of fair price shops, the family member/relatives of Pradhan or Up-pradhan would not at all be given fair price shop. Clause 4.7 of the said Government Order reads as follows;

"4.7. ग्राम प्रधान या उप प्रधान के परिवार के सदस्यों/संबंधियों के पक्ष में उचित दर की दुकान के आबंटन का प्रस्ताव नही किया जायेगा। परिवार की परिभाषा निम्नलिखित मानी जायेगी ..... स्वयं स्त्री, पुत्र, अविवाहित पुत्री, माता, पिता, भाई या अन्य कोई सदस्य जो साथ में रहता हो तथा एक ही चूल्हे का बना खाना खाता हो"

16. The said Government Order in question clearly restricts the field of being authorized to run fair price shop qua Pradhan/Up-pradhan and his family member as defined, plus such members who stays together and eats food prepared in common kitchen. Accordingly under the 1990 Government Order a person who was elected as Pradhan/Up-pradhan and

his family members and other members residing and dining with him were prohibited from getting license for running of fair price shop. Subsequent to the same, this particular Government Order has been modified by Government Order dated 18.07.2002, and by means of such modification, so introduced, the license of fair price shop has to be cancelled, in case the licensee or his family members as mentioned therein are elected as Pradhan/Up-pradhan. Relevant extract of Government Order dated 18.07.2002 is as follows;

''प्रेषक,

श्री खंजन लाल,

प्रमुख सचिव,

उ0प्र0 शासन।

सेवा में,

समस्त जिलाधिकारी,

उ0प्र0।

खाद्य रसद अनुभाग–6 लखनऊ दिनांक 18 जुलाई, 2002

विषय– सार्वजनिक वितरण प्रणाली के अंतर्गत ग्रामीण क्षेत्र में उचित दर के दुकानदारों का चयन।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या–एफ 3967/29–ख–6–दिनांक 03 जुलाई, 1990 का कृपया संदर्भ ग्रहण करें।

2– इस संबंध में सम्यक विचारोपरांत अधोहस्ताक्षरी को यह कहने का निदेश हुआ है कि उक्त शासनादेश के प्रस्तर–4.7 के आगे प्रस्तर–4.7 अ निम्नानुसार जोड़ दिया गया हैः–

''यदि किसी दुकानदार या उसके परिवार के किसी सदस्य को जिसकी परिभाषा प्रस्तर–4.7 में दी गई है प्रधान या उप प्रधान चुन लिया जाता है तो उसकी दुकान का आवंटन निरस्त कर दिया जायेगा।

3– कृपया उक्त शासनादेश इस सीमा तक संशोधित समझा जाय।

17. Earlier, Pradhan/Up-pradhan and his family members were prohibited from getting shop for distribution of scheduled commodities, and by means of subsequent modification, in case of being elected as Pradhan/Up-pradhan, the license of fair price shop of Pradhan/Up-pradhan or his family members and members as mentioned therein has to be necessarily cancelled, as on being elected, same has to be treated as a disqualification to run a fair price shop.

18. Under Control Order of 1990, Clause 5 deals with the preparation of identity card and Clause 6 deals with the contents of identity card and therein a clear cut mention has been made that the Food Officer shall prepare or cause to be prepared an identity card correctly with clearly marked on it the name and the address of the identity card holder, the number of persons of the household or establishment and the name or some other indication of the agent from whom the identity card holder is entitled to purchase Scheduled Commodities.

19. Subsequent to the same State Government once again substituted the U.P. Scheduled Commodities Distribution Order, 1990, by issuing a new order in the year 2004 commonly termed as U.P. Scheduled Commodities Distribution Order, 2004, and therein with the same objective the State Government formed opinion that for maintaining of supply of food grains and other essential commodities and for securing of their equitable distribution and availability at fair prices, in exercise of the powers conferred under Section 3 of the Essential Commodities Act, 1955 (Act No. 10 of

1955) read with order of the Government of India, Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, published under GSR 630 (E), dated August 31, 2001 and all other powers enabling him on this behalf.

20. The said control order in question proceeded to retain the same definition of adult but in clause 2 (b) it was mentioned that "adult' or a ration unit means any person who has completed the age of five years and "child' or a half ration unit means any person who has not attained the age of five years. For the first time under the aforementioned control order pursuant to Public Distribution System (Control) Order 2001, framed by Central Government, in exercise of powers conferred by Section 3 of Essential Commodities Act, concept of identification of families below poverty line (BPL) by the State Government has been introduced, and same also inheres in itself concept of identification of Antyodaya families, and in the said direction State Governments have been asked to formulate suitable guidelines. Clause 14 of the said Control Order, has an overriding effect, as it proceeds to mention, that the provisions of the order shall have effect notwithstanding anything to the contrary contained in any order made by a State Government or by an officer of such State Government.

21. Toeing the lines of Public Distribution System Control Order, 2001, provision has been introduced for identifying "Antyodaya families' by defining Antyodaya families' in Clause 2 (d) those poor families from amongst Below the Poverty Line (BPL) families identified by a "Food Officer' and entitled to receive food grains under the Antyodaya Anna Yojana' and Clause 2 (e) defines the "APL' as those families who have been issued Above Poverty Line ration cards under this order, Clause 2 (g) defines "BPL' as those families who have, under the guidelines of the State Government, been identified by a Food Officer for issue of food grains at specially subsidized rates, and again the definition of "Holder' and "Household' in Clause 2 (n) and (o), has been provided in the same way and manner, as has been dealt with in the past, holder has been defined as a person whose name or designation appears as such on that ration card and household means the collection of individuals who normally eat food prepared in the same kitchen. Clause 2 (p) defines "Ration Card', Clause 2 (q) defines "Person', Clause 2 (r) defines "Qualified Resident' means a person resident of any part of the State of Uttar Pradesh and authorized under general or special order of the State Government for the time being in force, to receive ration card on behalf of himself or a household or an establishment, Clause 2 (s) defines "Regional Food Controller' and Clause 2 (t) defines "Scheduled Commodity'.

22. Clause 3 and 4 deals with the setting up of fair price shop and running of fair price shop, relevant extract of the same is quoted below;

"3. Setting up of fair price shop - With a view to effecting fair distribution of Scheduled Commodities the State Government may issue directions under Section 3 of the Act to set-up such number

of fair price shops in an area and in the manner as it deems fit.

4.Running of fair price shop - (1) A fair price shop shall be run through such person and in such manner as the Collector, subject to the directions of the State Government, may decide.

(2)A person appointed to run a fair price shop under sub-clause (1) shall act as the agent of the State Government.

(3)A person appointed to run a fair price shop under sub-clause (1) shall sign an agreement, as directed by the State Government regarding running of the fair price shop as per the draft appended to this order before the competent authority prior to the coming with effect of the said appointment."

23. This particular provision of setting up of fair price shop and running of fair price shop is also on the same line as it was there in the Control Order of 1990, as here also a fair price shop is to be run and managed through such a person and in such a manner, as the Collector may decide subject to the directions of the State Government and once again it has been clarified that a person appointed to run a fair price shop under sub-clause (1) shall act as the agent of the State Government and further a person appointed to run a fair price shop under sub-clause (1) shall sign an agreement, as directed by the State Government regarding running of the fair price shop as per the draft appended to the order before the competent authority prior to the coming with effect of the said appointment. Thus the earlier provision in pith and substance has been incorporated. Clause 5 deals with the identification of families living below the poverty line. Clause 6 deals with ration card and proceeds to mention that Food Officer shall ensure that no qualified resident is denied a ration card under this order and Food Officer is to ensure issuance of distinctive ration cards to APL, BPL and Antyodaya families in accordance with the orders issued by the State Government from time to time. Sub-clause (3) of Clause 6 proceeds to mention that the designated authority on being directed by the Food Officer is to issue a ration card of appropriate category within one month of the date of receipt of the application after necessary checks and verification but only after the approval of the Food Officer, Sub-clause (4) of Clause 6 deals with contents of ration card and requires that same should have clearly marked on the same, the name, sex, age, address, occupation of holders, the number of persons residing with the holder including their name, age, sex, occupation and relationship with the holder alongwith other essential details of the agent from whom the holder is entitled to purchase scheduled commodities.

24. Clauses 30 and 31 deals with the savings and provisions of the order to prevail over previous order of State Government, which is hereby quoted below;

"30. Savings - Any act performed under the provisions of the Uttar Pradesh Scheduled Commodities Order, 1990, which is hereby repealed prior to commencement of this order, shall be deemed to have been validly performed under the provisions of this order.

31. Provisions of the order to prevail over previous orders of State Government

- The provisions of this order shall have effect notwithstanding anything to the contrary contained in any order made by the State Government before the commencement of this order excepts, as respects anything done, or omitted to be done thereunder before such commencement."

25. On the parameters of the provisions noted above the arguments, as have been advanced qua the questions raised are being examined as to whether, after the enforcement of 2004 Order, the judgment of Division Bench in the case of Ram Murat, defining the word "family" as given in Government Order dated 3rd July, 1990, Paragraph 4.7 lays down the correct law, and as to whether the definition of family as given in Clause 2 (o) of 2004 Order, overrides the definition of family given in Paragraph 4.7 of Government Order dated 3rd July, 1990.

26. Concept of "household" is there right from the beginning, inasmuch as, the definition of "household" finds place in the Control Order of 1977 as collection of individuals who normally eat food prepared in the same kitchen. Similar definition of household is there in the Control Order of 1989 with slight modification, by mentioning, where individuals who are held together in the same house and normally eat food in the same kitchen and in 1990 Control Order the same definition in question has been incorporated as it has been in 1977 Control Order i.e. collection of individuals who normally eat food in the same kitchen. Once again at the point of time when Control Order of 2004 has been introduced, same definition of household as mentioned in 1977 Control Order and 1990 Control Order has been reiterated i.e. "household" means the collection of individuals who normally eat food prepared in the same kitchen.

27. "Household" under the scheme of things provided for has always been used in reference to holder of a ration card and in the matter of preparation of ration card, inasmuch as, it has to be ensured by the Food Officer that such a card is issued to qualified resident for himself and his household or establishment, authorizing purchase of food grains and other essential articles. Once ration card in question is issued to a resident for himself and his household or establishment and the said ration card in question has to carry on it the name and address of card holder, the number of persons of the household with their name and relationship with the holder, and the name of the authorized retail distributor from whom the card holder is entitled to purchase food grains and other essential commodities and based on the said ration card, based on unit, once food grain and other essential commodities are purchased by the holder from the authorized retail distributor and the ultimate destination of said essential commodity is the kitchen of the holder, then in the said context, household has to be understood as the collection of individuals who normally eat food prepared in the same kitchen.

28. At the point of time when Control Order of 1990 has been introduced the definition of household has been there as collection of individuals who normally eat food prepared in the same kitchen but the State Government in its wisdom in the matter of setting up of fair price shop and running of fair price shop has not at all proceeded to

borrow the aforementioned definition of 'household' in question and to the contrary in order to maintain transparency in Public Distribution System and in order to avoid conflict of interest, in exercise of its authority vested under Clauses 3 and 4 of the U.P. Scheduled Commodities Distribution Order, 1990 framed Government Order dated 3rd July, 1990 and therein a clear cut policy decision was taken clearly providing therein that the family members and relative of Pradhan and Up-pradhan such as himself, wife, son, unmarried daughter, mother, father, brother or any other member who stays together and has a common kitchen in no eventuality shall be entitled to be appointed as an agent to run fair price shop. Said policy decision has been taken by the State Government anticipating therein that there would be conflict of interest in running and managing the Public Distribution System, as such, prohibition should be imposed on such incumbent being engaged as agent. The definition of family, under Paragraph 4.7 of Government Order dated 3rd July, 1990 is specific, as it clearly proceeds to define family in the context of prohibition being imposed upon Pradhan/Up-pradhan and their family members and other members staying and dining together in being appointed as authorized retail dealer. Family has been defined as self, wife, son, unmarried daughter, mother, father, brother or any other member who stays together and takes meal cooked in one kitchen. This particular definition is extensive as it takes within its fold the closest of relations such as self, wife, son, unmarried daughter, mother father, brother and even those members have been taken within the fold of family i.e. who stay together and mess in a common kitchen.

29. The State Government acquired knowledge that various incumbents in spite of the fact that they were fair price shop agents their family members/relatives falling within the prohibited category as provided under paragraph 4.7 of the Government Order dated 3rd July, 1990, have been contesting the elections and have been winning the same and such a situation has been leading to conflict of interest and, in view of this, the State Government on 18th July, 2002 in order to remedy such a situation has proceeded to issue Government Order and has clearly mentioned therein that in case any shopkeeper or his family member, who has been defined in paragraph 4.7 of the Government Order dated 3rd July, 1990, is elected as Pradhan or Up-pradhan, then his shop in question would be cancelled.

30. The said provisions in question would go to show that in the matter of setting up of fair price shop and running of fair price shop there has been a deliberate departure made by the State Government in the matter of defining family so that all those incumbents who fall within the definition of family know this fact as a matter of course that they cannot be appointed as Agent and this much has also been clarified that even if they are elected subsequent to the same, then also the shop in question would be cancelled. The State Government being conscious of such a situation that in the matter of setting up of shop and running of fair price shop anomalous situation would be created by people with vested interest by placing reliance on the definition of household as collection of individuals who normally eat food prepared in the same kitchen only, then there would be room for manipulation and maneuvering has taken a deliberate departure in the matter of defining family by specifically including self, wife, son, unmarried daughter, mother father, brother

and apart from this any other member who stays together and has a common mess, has also been included. Definition of family is of wider amplitude here as specific family members as well as other members who fall within the definition of household have also been included therein who not only dine but reside also. Wider and specific relationship has deliberately been used in order to make the scope of defined word correspondingly wider and precise.

31. "Household" and "family" in the present case has to be interpreted and understood in the context in which they have been used.

32. In Francis Bennion's Statutory Interpretation, purposive construction has been described as under :

"A purposive construction of an enactment is one which gives effect to the legislative purpose by (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

33. In 'The Interpretation and Application of Statutes' by Reed Dickerson, the author at p.135 has discussed the subject while dealing with the importance of context of the statute in the following terms:

"... The essence of the language is to reflect, express, and perhaps even affect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called "conceptual map of human experience".'

34. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. [(1987) 1 SCC 424] Apex Court stated as follows:

".....If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act....."

35. In the case of Bombay Dyeing & Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and others 2006 (3) SCC 434 Apex Court after noticing the principle of purposive construction concluded as follows;

"It is well-settled principle of law that in the absence of any context indicating a contrary intention, the same meaning would be attached to the word used in the latter as is given to them in the earlier statute. It is trite that the words or expression used in a statute before and after amendment should be given the same meaning. When the legislature uses the same words in a similar connection, it is to be presumed that in the absence of any context indicating a contrary intention, the same meaning should attach to the words."

36. Apex Court in the case of Chairman, Indore Vikas Pradhikaran Vs. M/s. Pure Industrial Cock & Chemicals Ltd AIR 2007 SC 2458 has mentioned that an act should be interpreted having regard to its history and the meaning given to a word cannot be read in a different way than what was interpreted in the earlier repealed section and the words have to be incorporated in the context in which they are used. Apex Court, once again in the case of State of Gujarat Vs. Justice R.A. Mehta, 2013 (1) scale 7, has once again reiterated the same principle, that every statute has, therefore, to be construed in the context of a scheme as a whole. Consideration of context, it is trite, is to be given the meaning to legislative intention according to the terms it has been expressed.

37. On these principles of interpretation of statutes, the history of the Control Order in question, as already noted above, clearly reflects that household has always been used in reference of preparation of ration card the document that would ensure scheduled commodity, to the holder and the persons residing with the holder, from authorized fair price shop and same contextually is referable to collection of individuals i.e. holder and persons residing with the holder, who normally eat food in the same kitchen, and at no point of time in the matter of engagement of agent and disqualification of agent, the said definition has ever been used.

38. Clause 2 (o) of U.P. Scheduled Commodities Distribution Order, 2004 defines household as collection of individuals who normally eat food prepared in the same kitchen. Suggestion is to treat and accept "Household" as synonyms to "Family" for the simple reason that in the Hindi version of U.P. Schedule Commodities Distribution Order, 2004, "Household" has been defined as "Parivar" with the embracment of all individual who normally eat food in the same kitchen.

39. Once the State Government who otherwise is empowered to issue Government Order controlling the subject of way and manner in which fair price shop dealer is to be appointed and the fair price shops are to be run and the State Government in its wisdom has proceeded to pose restriction and disqualification on an incumbent and his family members as defined in Paragraph 4.7 from being appointed as agent on Pradhan/Up-pradhan being there or being elected subsequently as Pradhan or Up-pradhan, then in said context the provision of U.P. Scheduled Commodities Distribution Order, 2004, containing the definition of household cannot be pressed into the services as by virtue of the provision of Section 24 of the U.P. General Clauses Act, 1904, the aforementioned Government Orders dated 3rd July, 1990 and 18th June, 2002 stands saved and are operating with full force as no inconsistent provision has been re-enacted. Relevant extract of Section 24 reads as follows;

"24. Constitution of appointments, notifications, orders etc. issued under enactments repealed and re-enacted:- Where any enactment is repealed and re-enacted by an (Uttar Pradesh) Act, with or without modification, then, unless it is otherwise expressly provided, any appointment, (or statutory instrument or form) made or issued under the repealed

enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, (or statutory instrument or form) made or issued under the provisions so re-enacted."

40. Apex Court in the case of State of Punjab Vs. Harnek Singh reported in 2002(3) SCC 481 has proceeded to mention that Section 24 of the General Clauses Act deals with the effect of repeal and re-enactment of an Act and the object of the section is to preserve the continuity of the notifications, orders, schemes, rules or bye-laws made or issued under the repealed Act unless they are shown to be inconsistent with the provisions of the re-enacted statute. Anything duly done or suffered thereunder, are used by legislature and saving clause, is intended with the object that unless different intention appears, the repeal of an Act would not effect. The General Clauses Act has been enacted to avoid superfluity and repetition of language in various enactments. The object of this Act is to shorten the language of Central Acts, to provide as far as possible, for uniformity of expression in Central Acts, by giving definition of series of terms in common use, to state explicitly certain convenient rules for the construction and interpretation of Central Acts, and to guard against slips and oversights by importing into every Act certain common form clauses, which otherwise ought to be inserted expressly in every Central Act. In other words the General Clauses Act is a part of every Central Act and has to be read in such Act unless specifically excluded. Even in cases where the provisions of the Act do not apply, courts in the country have applied its principles keeping in mind the inconvenience that is likely to arise otherwise, particularly when the provision made in the Act are based upon the principles of equity, justice and good conscience.

41. Apex Court in the same case of State of Punjab Vs. Harnek Singh reported in 2002(3) SCC 481 has considered in great detail for applicability of the Section 6 and Section 24 of the General Clauses Act and has held that Section 24 of the General Clauses Act, are specifically applicable to the repealing and re- enactments statue, and its exclusion has to be specific and cannot be inferred by twisting the language of the enactments. It has also been mentioned therein that once contention as has been raised by the petitioner is accepted, it would render the provision of the 1988 redundant, inasmuch as appointments notifications, orders, schemes, rules bye-laws made or issued under the repealed Act would be deemed to be non-existent making impossible the working of the re-enacted law impossible. The provisions of the 1988 Act are required to be understood and interpreted in the light of the provisions of the General Clauses Act including Sections 6 and 24 thereof.

42. On the provisions as contained under Section 24 of the U.P. General Clauses Act, 1904, it is clearly manifested that the Government Order, which has been so issued on 3rd July, 1990 and 18th June, 2002, covers the field of appointment and that of disqualification and once the said Government Order is in force and therein family has been defined in a different context altogether by mentioning

who are the specific family members who are disqualified along with others i.e. who can also be treated alternatively as family member i.e. who are dining with the family, then looking into the area and the field of operation of the two, it could not be said that there is any conflict in between the definition of household or in the definition of family. The suggestion that has come forward on behalf of petitioner that after enforcement of Control Order of 2004, the definition of family as provided in Government Order dated 3rd July, 1990, is effaced and superseded, cannot be accepted on contextual interpretation of provisions.

43. The State Government once again has reiterated the same position by issuing Government Order dated 17th May, 2010 in following terms;

''प्रेषक,

डी0के0 गुप्ता,

विशेष सचिव,

उ0प्र0 शासन।

सेवा में,

जिलापूर्ति अधिकारी,

लखनऊ।

खाद्य एवं रसद अनुभाग–6 लखनऊः दिनांक 17, मई 2010

विषयः सार्वजनिक वितरण प्रणाली के अन्तर्गत उचित दर दुकान के आवंटन के सम्बन्ध में दिशा निर्देश।

महोदय,

उपर्युक्त विषयक जिलापूर्ति अधिकारी लखनऊ को सम्बोधित शासन के पत्र संख्या–555/29–6–2007–162सा/01टीसी, दिनॉक 28 फरवरी, 2007 का कृपया सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा यह मार्ग दर्शन दिया गया है कि यदि कोई व्यक्ति पूर्व से उचित दर दुकानदार है एवं बाद में ग्राम प्रधान निर्वाचित हो जाता है तो उसका अनुबन्ध पत्र निरस्त नही होगा।

2– इस सम्बन्ध में पूर्व में निर्गत शासनादेश दिनॉक 03–07–90 को अंशतः संशोधित करते हुए शासनादेश संख्या–276/29–6–2002–162सा/01 दिनॉक 18.7.2002 द्वारा प्राविधानित किया गया है कि यदि किसी दुकानदार या उसके परिवार के किसी सदस्य को–जिसकी परिभाषा शासनादेश दिनॉक 03.07.90 के प्रस्तर–4.7 में दी गयी है–प्रधान या उपप्रधान चुन लिया जाता है तो उसकी दुकान का आवंटन निरस्त कर दिया जायेगा। शासन का पत्र संख्या संख्या–255/29.6.2008–162सा/01टीसी दिनॉक 28 फरवरी, 2007 निर्गत किये जाने के पूर्व उक्त शासनादेश दिनॉक 18.7.2002 का संज्ञान नही लिया गया है।

3– अतएव शासन स्तर पर सम्यक विचारोपरान्त शासन का पत्र संख्या–555/29.6.2007–162 सा/01टीसी दिनॉक 28 फरवरी, 2007 एतद द्वारा निरस्त किया जाता है। पुनः यह स्पष्ट किया जाता है कि इस सम्बन्ध में शासनादेश दिनॉक 18.7.2002 (सुलभ सन्दर्भ हेतु प्रति संलग्न) में उल्लिखित प्राविधान ही लागू होगें। शासन के पत्र दिनांक 28.2.2007 का लाभ जिन दुकानदारों को दिया गया हो तो कृपया उनके अनुबन्ध भी तत्काल प्रभाव से निरस्त कर दिये जाय।

कृपया उक्त आदेश का कड़ाई से अनुपालन सुनिश्चित किया जाय।

44. A bare perusal of the aforementioned Government Order would go to show that therein once again State Government has proceeded to provide that all those incumbents, who fall within the definition of family, as is provided in Government Order dated 3rd July, 1990 and in case their family members, are elected as Pradhan or Up-pradhan, then the agreement of fair price shop in question should be cancelled. Thus the State Government is clear in its mind as to in what way and manner essential commodities are to be distributed and who is entitled to distribute and in the said direction of maintaining transparency in Public Distribution System and in order to avoid conflict of interest, such a stand has

been taken. Once from the background of different control orders issued from time to time, household has been used in context of preparation of ration cards and not at all in reference to allocation of fair price shop, then it cannot be said in the context of statutory provisions that in order to cancel the fair price shop agency of petitioner one will have to go strictly by the definition of household as mentioned in 2004 Control Order, as household is conceptually different in the background of the present case. "Household" has to be understood in the context it has been defined and is to be utilized, and merely because in the Hindi version of 2004 Control Order, in place of "Household", "Parivar" has been mentioned same would efface the definition of family as provided for in Government Order dated 3rd July, 1990, cannot be accepted in the facts of case as Hindi version cannot be accepted as authoritative text even otherwise, as Full Bench of this Court in the case of Jaswant Sugar Mills Vs. P.O., AIR 1962 All 240, has taken the view that both English and Hindi version can be looked into, and in case of conflict or divergence between the two versions, the English version may reign supreme and supersede the same.

45. "Household" and "Family" are not synonyms to each other, and both the provisions would take its colour, in reference to the context it has been used, keeping in view the object and purpose sought to be achieved. This Court also proceeds to take note of the fact that the Word 'Family' is not capable of any precise definition. According to Concise Oxford English Dictionary 'family' means a group consisting of two parents and their children living together as a unit; a group of people related by blood or marriage; the children of a person or couple; all descendants of a common ancestor.

46. Black's Law Dictionary defines 'family' as (i) A group of persons connected by blood, by affinity or by law especially within two or three generations (ii) A group consisting of parents and their children (iii) A group of persons who live together and have a shared commitment to a domestic relationship.

47. According to Law Lexicon term 'family' may be said to have a well defined, broad and comprehensive meaning in general, it is one of great flexibility and is capable of many different meaning according to the connection in which it is used. Thus, it may be 'children', 'wife and children', 'blood relations' or the 'members of the domestic circle'. According to context, it may be of narrow or broad meaning as intention of the parties using the word, or as the intention of law using it, may be made to appear.

48. In its ordinary and primary sense the word 'family' signifies the collective body of persons living in one house or under one head or manager or one domestic government. What constitutes a family in a given set of circumstances or in a particular society depends upon the habits and ideas of persons constituting that society and the religious and socio-religious customs of the community to which such persons may belong.

49. According to Law Lexicon 'family' may include even domestic servants and some times persons who are merely boarders.

50. On the other hand the term "household" means the collection of individuals who normally eat food prepared in the same kitchen. In Black's Law Dictionary household has been mentioned belonging to the house and family as well as a family living together or a group of people who dwell under the same room and in the Law of Lexicon it has been described as number of persons dwelling under the same roof and composing a family and by extension all who are under one domestic head.

51. The term 'family' and 'household' are capable of wide and varying meaning and same cannot be left to be assigned a meaning in its general terms and same has to be interpreted in reference to the context it has been used keeping in view the overall object and purpose sought to be achieved.

52. The question as to whether incumbents are living together and are dining together shall always essentially be question of fact always giving a room to an incumbent to handle the situation and manipulate the situation and in order to remove all the doubts to be more precise in the matter of appointment of an agent a clear cut categorical policy decision has been taken at the first instance that Pradhan/Up-pradhan and their relatives so specified cannot be appointed as agents and secondly when Pradhan/Up-pradhan or such category of relatives in case they are elected as Pradhan or Up-pradhan, then his/her agency in question has to be terminated. The State has deliberately and intentionally defined "family" in the said context so that there is no element of doubt left on the spot that such category of incumbents who happen to be the blood relations and relations on account of marriage and also on account of dining and messing together on being elected, then the near and dear one will have to loose his/her fair price shop as there would be conflict of interest. In the definition of family there are blood relations plus relations which has been developed on account of marriage having taken place due to social orders plus members who are residing and dining together, whereas the definition of household keeps within its fold, the one who normally eat food prepared in the same kitchen. All the incumbents who fall within the definition of family may or may not be a member of household, in such a situation and in this background, the State having the absolute authority to formulate the policy for fixing the terms and conditions of appointment of agent as well as the terms and conditions for disqualification of agent the definition of family has to be seen in the said context and "household" has to be read in the context of issuance of ration card and in no other context under the scheme of things provided for. In the matter of according of agency and in the matter of incurring disqualification on relative being elected as Pradhan or Up-pradhan, there is no escape route and agency has to be cancelled.

53. Accordingly, this Court is of the view that there is no conflict whatsoever in between the provisions of Clause 2 (o) Clauses 30 and 31 of U.P. Scheduled Commodities Distribution Order, 2004 vis.a.vis with the definition of "family" as given in Government Order dated 3rd July, 1990 paragraph 4.7 and the Division Bench in Ram Murat's case 2006 (5) ADJ 396, defining the word "family" as given in Government Order dated 3rd July, 1990, Paragraph 4.7 lays down the correct

law, even after enforcement of Control Order 2004, except to the extent of introducing concept of joint residence and joint kitchen in reference of Brother, whereas the definition of family is clearly inclusive of brother also and the definition of family as given in Clause 2 (o) of U.P. Scheduled Commodities Distribution Order, 2004 in no way would override the definition of family given in Paragraph 4.7 of the Government Order dated 3rd July, 1990 and the said definition has to be read in the context of issuance of ration cards and nothing beyond the same.

54. The Full Bench proceeds to clarify that in the case of Ram Murat (supra) the brother has been taken outside the scope of the defined family members as it has been mentioned therein that agency would be cancelled only in the event if brother is found that he has been dining together and has been staying under the same roof.

55. The Full Bench does not approve of the aforementioned portion of judgment in the case of Ram Murat (supra), inasmuch as, it is running contrary to the spirit of the Government Order dated 3rd July, 1990 and the purport and intention of Government Order when it proceeds to define the family members in the matter of engagement as well as disqualification of agent as himself, wife, son, unmarried daughter, mother, father, brother or any other member who stays together and who shares common kitchen, then by no stretch of imagination as per the spirit of aforementioned Government Order brother could have been disjuncted from the definition of family members and could have been clubbed with such category of members who were residing together and dining together. The definition of family members is specific i.e. inclusive of himself, wife, son, unmarried daughter, mother, father, brother or any other member who stays together and dines together in the common kitchen. "Or" word is normally disjunctive and same in its natural sense denotes an alternative, and intention of using such a word has to be gathered from its context. Here contextual situation clearly reflects that self, wife, son, unmarried daughter, mother, father, brother are identified class of family members, and on anyone of them being elected as Pradhan/Up-pradhan, the agency will have to be terminated/cancelled. Not only this, other members who are residing and dining together, on their being also elected as Pradhan/Up-pradhan disqualification is to be incurred. Distinction drawn by the Division Bench, in the case of Ram Murat, by putting the brother along with other members who are residing and dining together, has no rational for it and merely on the assumption and presumption that brother don't have such close tie as compared to other family member defined, brother should be clubbed with other incumbents who are residing together and dining together cannot be approved of. On plain reading of the provision, i.e. definition of family, there are defined category of relatives such as self, wife, son, unmarried daughter, mother, father, brother and there are undefined category of relatives, who can be accepted at par with relatives defined, provided they are dining and residing together. The Courts have no authority to re-write the definition, and specially when same on its plain reading is clear and categorical, with no ambiguity worth name. Apex Court in the case of Phool Patti Vs. Ram Singh 2009 (13) SCC 22 has clearly ruled that Courts cannot add words to statute, or change its language, particularly when on plain reading meaning becomes

clear. In view of this, the definition of family which includes brother cannot be read in a fashion to exclude brother from defined family members and throw him and club him in the category of any other member, who has been staying together and has been dining together, in view of this, the said portion of the Ram Murat's Case (supra) is not being approved of.

56. In view of the above, our answer to the referred questions is as follows:-

(i)The Division Bench judgment in Ram Murat's case (supra) defining the word 'family' as given in the Government order dated 3.7.1990 (Paragraph 4.7) lays down the correct law except that the word 'brother' shall also be included in self, wife, son, unmarried daughter, mother, father and the condition of having living together and taking food from common kitchen shall apply only to 'any other member (अन्य कोई सदस्य)' which has been separated by word 'Or (या)' in the definition.

(ii)The definition of word 'family' as given in Clause 2 (o) of U.P. Scheduled Commodities Distribution Order, 2004 shall not override the definition of word 'family' as given in Paragraph 4.7 of the Government order dated 3.7.1990.

57. Let our answer be placed before the appropriate Bench hearing the writ petition.

I agree

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.12.2013

BEFORE
THE HON'BLE TARUN AGARWALA, J.

Civil Misc. Writ Petition No. 39671 of 2010 alongwith W.P. No. 62595 of 2009

Rajendra Ban... Petitioner
Versus
Motor Accident Claim Tribunal/Upper District Judge & Anr. ....Respondents

Counsel for the Petitioner:
Sri Jagdish Prasad Tripathi Sri A.D. Saunders

Counsel for the Respondents:
S.C., Sri Vinay Khare.

Motor Vehicle Act 1988-Section 174- Application by insurance company-to recover the amount from owner of vehicle-against award of Tribunal-appeal dismissed by High Court-finding regarding liability of owner to pay compensation-got finality-argument that in absence of direction to recover-by Tribunal-can not be recovered as such application u/s 174 not maintainable-held-misconceived-application maintainable.

Held: Para-12
In the operative portion of the award, the Tribunal directed the insurance company to pay the amount awarded to the claimants. The contention of the petitioner that since the operative portion did not give any direction to the insurance company to recover the amount from the owner, such application could not be filed under Section 174 of the Act of 1988.

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

1. An accident occurred on Haridwar Nazibabad road wherein a Motorcycle dashed into a parked truck resulting in the death of one person and injury to the other person. The heirs of the deceased filed a Claim Application No.432 of 2007 before the Motor Accident Claims Tribunal, Muzaffarnagar. The injured person also filed a Claim Application

No.130 of 2008 before the same Tribunal. In Claim Application No.432 of 2007, the Tribunal gave an award dated 6th November, 2008 directing the insurance company to pay Rs.1,79,500/- along with interest to the claimants. In this award issue no.4 was decided leaving it open to the insurance company to recover the amount from the owner of the vehicle.

2. In so far as Claim Application No.130 of 2008 is concerned the Tribunal gave an award dated 7th March, 2009 directing the insurance company to pay a sum of Rs.3,24,173/- along with interest to the claimants. In this award, the Tribunal did not give any direction to the insurance company to recover the amount from the owner of the vehicle.

3. Against this award dated 7th March, 2009, the insurance company filed First Appeal From Order No.1967 of 2009 before the High Court. The Appellate Court did not find any fault in the impugned award holding that no case was made out in favour of the insurance company. The appeal was, however, disposed of permitting the insurance company to make an appropriate application for the purpose of recovery of amount, if any, from the owner of the vehicle. The Appellate Court directed that in the event, such an application is filed, the Tribunal would dispose of the same within three weeks. For facility, the direction of the Appellate Court dated 1st July, 2009 is extracted hereunder:

"... In totality, we do not find any case in favour of the insurance company. The appeal is treated to be disposed of granting liberty to the appellant-insurance company to make an appropriate application in the selfsarne proceeding before the tribunal within a period of one week from this date for the purpose of recovery of amount, if any, from the owner and in case such an application is filed, upon sufficient notice and giving fullest opportunity of hearing to the parties, tribunal will dispose of the same within a period of three weeks thereafter but under no circumstance the payment of compensation to the claimant will be stalled. Accordingly, the appeal is disposed of at the state of admission, however, without any order as to cost..."

4. Pursuant to the aforesaid direction, the insurance company filed an application purported to be under Section 174 of the Motor Vehicles Act, 1988 seeking permission to recover the amount as per the award from the owner of the vehicle. The Tribunal, after hearing the parties concerned, passed an order dated 3rd June, 2010 directing the recovery of the amount as per the award from the owner of the vehicle. The owner, the petitioner, being aggrieved by the said order, has filed Writ Petition No.39671 of 2010.

5. A similar application for recovery against the owner was also filed in Claim Application No.432 of 2007 in which an order was also passed directing recovery of the amount from the owner. The petitioner, being aggrieved, filed Writ Petition No.62595 of 2009. Both the writ petitions have been connected and are being decided together.

6. Heard Sri A.D. Saunders, the learned counsel for the petitioner and Sri Vinay Khare, the learned counsel for the Insurance Company.

7. The learned counsel for the petitioner submitted that no recovery right

was given to the insurance company in the operative portion of the award and, therefore, no such application could be filed by the insurance company for recovery of the amount under Section 174 of the Motor Vehicles Act.

8. The learned counsel for the petitioner submitted that it is only the amount in the operative portion of the order that can be recovered and any observation made elsewhere in the body of the judgment is only an obiter dicta and that no right accrues to the insurance company nor can the insurance company take such advantage pursuant to such observation by filing an application for recovery under Section 174 of the Motor Vehicles Act. The learned counsel submitted that the operative portion of the award is a decree and only the amount mentioned in the decree can be recovered and since the decree did not mention the fact that the amount could be recovered from the owner, no such right accrued upon the insurance company to file such an application nor did the Tribunal had any jurisdiction to entertain or pass orders on such application.

9. On the other hand, the learned counsel for the Insurance Company submitted that a specific finding has been given by the Tribunal on issue no.4 in the award passed in Claim Application No.432 of 2007 permitting the insurance company to recover the amount from the petitioner. Pursuant to the said finding, the application under Section 174 of the Motor Vehicles Act was maintainable and the order passed therein was rightly passed. The learned counsel submitted that since similar finding was required to be given in the second Claim Application No.130 of 2008 and since the same was not given by the award, the High Court while disposing of the appeal permitted the insurance company to move an appropriate application before the Tribunal for recovery. Based on such direction, the application was filed, which was maintainable and the Tribunal passed the order in accordance with law.

10. In order to appreciate the submission of the rival counsel for the parties, it would be appropriate to refer to the provision of Section 174 of the Act of 1988, which is extracted hereunder:-

"174. Recovery of money from insurer as arrear of land revenue.-- Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue."

11. The aforesaid provision makes it apparently clear that an application is required to be filed before the Tribunal for recovery of the amount as per the award as arrears of land revenue. The amount must be due under the award, which would entitle a person to recover the amount as arrears of land revenue.

12. In the award dated 6th November, 2008 passed in Claim Application No.432 of 2007, issue no.4 was decided against the owner of the vehicle, namely, that the insurance company was directed to pay the amount to the claimant since the vehicle was insured and further leaving it open to the insurance company to recover the amount from the owner of the vehicle. In the operative portion of the award, the

Tribunal directed the insurance company to pay the amount awarded to the claimants. The contention of the petitioner that since the operative portion did not give any direction to the insurance company to recover the amount from the owner, such application could not be filed under Section 174 of the Act of 1988.

13. The submission of the learned counsel for the petitioner is patently erroneous. The award as a whole is required to be implemented and under the operative portion of the award, the amount awarded has to be recovered as arrears of land revenue. The finding on issue no.4 has not been attacked or challenged by the owner of the vehicle, namely, the petitioner in an appropriate appeal. The said award along with its findings has become final and binding upon the petitioner.

14. No doubt the Tribunal becomes functus officio the moment it gives an award but gets limited jurisdiction to entertain an application. In the instant case, since the Tribunal permitted the insurance company to recover the amount from the owner of the vehicle, that limited right was given to the insurance company to file an appropriate application under Section 174 of the Act of 1988. The application filed by the insurance company was thus maintainable and a correct order was passed by the Tribunal. The Court does not find any illegality in the said order or in the award and, consequently, the Court is of the opinion that there is no merit in Writ Petition No.62595 of 2009 and is consequently, dismissed.

15. With regard to the award dated 7th March, 2009 passed in Claim Application No.130 of 2008, the Court finds that the Tribunal only directed the insurance company to pay the awarded amount to the claimants and did not issue any direction for recovery of the amount from the owner of the vehicle on account of breach of policy. The appeal filed by the insurance company before the High Court failed. The insurance company did not get any relief and only permitted the insurance company to file an appropriate application, if any, for recovery against the owner. Such direction of the Court did not mean that an application could be filed, even where no such direction was given by the Tribunal for recovery. The order of the Appellate Court did not mean that the application of the insurance company under Section 174 of the Act of 1988 would become maintainable.

16. In the instant case, the Court finds that under the award dated 7th March, 2009 the amount due from any person under the award was only against the insurance company and, consequently, such application, if any, can only be filed for recovery against the insurance company. Since no right was given to the insurance company to recover the amount from the owner, the application of the insurance company under Section 174 of the Act of 1988 was not maintainable. The order passed by the Tribunal dated 3rd June, 2010 was without jurisdiction and cannot be sustained.

17. There is another reason for the Court to arrive at this conclusion, namely, that an order passed under Section 174 of the Act of 1988 would amount to modification of the award, which in the instant case cannot be permitted, inasmuch as the said award has been affirmed by the appellate court in the appeal filed by the insurance company.

18. For the reasons stated aforesaid, the Writ Petition No.62595 of 2009 fails and is dismissed. The order dated 3rd June, 2010 is quashed and the Writ Petition No.39671 of 2010 is allowed.

19. In the circumstances of the case, parties shall bear their own cost.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.12.2013

BEFORE
THE HON'BLE TARUN AGARWALA, J.

Civil Misc. Writ Petition No.41139 of 2012

M/s Torrent Power Ltd.... Petitioner
Versus
The State of U.P. and Ors... .Respondents

Counsel for the Petitioner:
Sri Ashutosh Srivastava

Counsel for the Respondents:
C.S.C., Sri M.L. Jain

Constitution of India, Art.-226-Jurisdiction of permanent Lok Adalat-consumer found-using electricity power for commercial purpose-having valid connection for domestic use-on inspection fine imposed under section 126-instead of filing appeal-complaint filed before Lok Adalat-offence of unauthorise use of electricity amounts to theft-compoundable under Section 152-Lok Adalat can entertain the claim-but without making effort for conciliation-can not give adjudication on merit-order passed by Lok Adalat-quashed-general direction issued for strict compliance.

Held: Para-27
In the light of the aforesaid, the matter relating to theft of energy is an offence under the Electricity Act, 2003 and even though such offence is compoundable, the Permanent Lok Adalat has the jurisdiction to entertain the dispute for the purpose of conciliation and settlement but upon its failure, the Permanent Lok Adalat could not proceed to decide the matter on merits.

Case Law discussed:
2012(8) SCC 261; 2012(8) SCC 243; 2008(7) SCC 454.

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

1. The petitioner is a distribution franchise of Dakshinanchal Vidyut Vitran Nigam Ltd. and is authorized to operate and maintain the distribution system for supplying electricity to the consumers in the urban areas of Agra. Respondent no.3 is a consumer of electricity having obtained a sanctioned load of 7.5 KVA for domestic purposes. It transpires that an inspection was carried out on 19th September, 2011 at the premises of respondent no.3 and it was found that respondent no.3 was using the domestic connection for commercial purposes, namely, for office purposes. Since the consumption of energy was being used unauthorizedly for a purpose other than for what it was given, a report was submitted by the inspection team for unauthorized use of electricity. Based on this inspection report, a provisional assessment was made by the petitioner under Section 126 of the Electricity Act, 2003 (hereinafter referred to as the Act of 2003) demanding a sum of Rs.42,266.30. The respondents, instead of filing an appeal under Section 127 of the Act of 2003, filed an application before the Permanent Lok Adalat for the quashing of the assessment bill as well as the inspection report. The petitioner appeared and contended that the Permanent Lok Adalat had no jurisdiction to entertain such claim as it related to the unauthorized use of electricity, which was an offence and, consequently, the Permanent Lok Adalat

had no jurisdiction to entertain the claim or decide the dispute on merits. The petitioner further contended that an assessment was made under Section 126 of the Act of 2003, against which an appeal lies under Section 127 of the Act of 2003 and, therefore, the respondent had a remedy under the Electricity Act, 2003.

2. The Permanent Lok Adalat without deciding the issue of jurisdiction and without conciliating in the matter proceeded to decide the matter on merit and issued an award dated 21st June, 2012 allowing the claim by setting aside the inspection report and the assessment bill.

3. Heard Sri Ashutosh Srivastava, the learned counsel for the petitioner and Sri M.L. Jain, the learned counsel for respondent no.3.

4. The learned counsel for the petitioner submitted that a complaint relating to theft of energy was not maintainable as it was an offence and, consequently, the Permanent Lok Adalat did not have the jurisdiction to entertain or decide the dispute on merits. The learned counsel further submitted that the primary object of the Permanent Lok Adalat was to conciliate and settle the matter at the pre-litigation stage and only upon failure of the conciliation, that it was open to the Permanent Lok Adalat to proceed and decide the matter on merits. The learned counsel submitted that in the instant case, no effort whatsoever was made for conciliation and the Permanent Lok Adalat proceeded from the very inception as if it only had an adjudicatory role to play.

5. On the other hand, the learned counsel for the respondent no.3 submitted that it was a case of wrong billing, which could be raised and decided by the Permanent Lok Adalat.

6. In order to appreciate the submissions of the learned counsel for the parties, it would be essential to refer to some of the provisions of The Legal Services Authorities Act, 1987 and The Electricity Act, 2003. Chapter VIA of The Legal Services Authorities Act, 1987 was inserted by Act No.37 of 2002. The title of this chapter states pre-litigation, conciliation and settlement. Section 22-A(a) defines Permanent Lok Adalat to mean a Permanent Lok Adalat under sub-Section (1) of Section 22B. Public utility service has been defined under Section 22-A(b), to mean:

"(i) transport service for the carriage of passengers or goods by air, road or water; or

(ii) postal, telegraph or telephone service; or

(iii) supply of power, light or water to the public by any establishment; or

(iv) system of public conservancy or sanitation; or

(v) service in hospital or dispensary; or

(vi) insurance service,"

7. Section 22-C provides the procedure for raising a dispute. For facility, the entire provision of Section 22-C is extracted hereunder:

"22C. Cognizance of cases by Permanent Lok Adalat - (1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute:

Provided that the Permanent Lok Adalat shall not have jurisdiction in

respect of any matter relating to an offence not compoundable under any law:

Provided further that the Permanent Lok Adalat shall not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees:

Provided also that the Central Government, may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the

Central Authority.

(2) After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

(3) Where an application is made to a Permanent Lok Adalat under subsection (1), it--

(a) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds andshall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;

(b) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;

(c) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.

(4) When statement, additional statement and reply, if any, have been filed under sub-section (3), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute.

(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

(6) It shall be the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

(7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.

(8) Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute."

8. A perusal of the aforesaid provision provides that any party to a dispute may make an application to the Permanent Lok Adalat for the settlement of the dispute before such dispute is brought before any court. The provision also limits the jurisdiction of the Permanent Lok Adalat, namely, that the Permanent Lok Adalat would not have any jurisdiction to deal with any matter relating to an offence not compoundable under any law. The second proviso puts a further cap on the pecuniary jurisdiction, which provides that the Permanent Lok Adalat will not have jurisdiction where the value of the property in dispute exceeds Rs.10 lacs, which has now been enhanced to Rs.25 lacs. Sub-section (2) of Section 22-C further puts an embargo on the parties to a dispute, namely, that after an application has been made before the Permanent Lok Adalat, the parties could not invoke the jurisdiction of any other court with regard to the same dispute.

9. Section 22-C (3) provides the procedure to be followed by the Permanent Lok Adalat, which relates to the filing of a written statement by each party stating therein the facts and nature of the dispute and highlighting the points or issues in such dispute and the documents and other evidence in support of their claim or objection. The Permanent Lok Adalat under sub-clause-(4) of Section 22-C may require any party to the application to file an additional statement or document and upon completion of the aforesaid procedure, the Permanent Lok Adalat under sub-clause-(5) of Section 22-C would proceed with the conciliation proceedings and assist the parties to reach an amicable settlement in relation to the dispute. During the conciliation proceedings, the Permanent Lok Adalat is obliged to assist the parties in an independent and impartial manner. In the event, there is likelihood of a settlement, the Permanent Lok Adalat under sub-clause-(7) of Section 22-C is required to formulate the terms of a possible settlement of the dispute and where parties reach an agreement, such settlement shall be drawn and signed, which will become an award. Sub-clause-(8) of Section 22-C provides that where parties fail to reach an agreement and if the dispute does not relate to an offence, in that case, the Permanent Lok Adalat will decide the dispute on merit.

10. The validity of Chapter-VI-A of the Legal Services Authorities Act was upheld by the Supreme Court in the case of S.N. Pandey Vs. Union of India and another, 2012 (8) SCC 261 and Bar Council of India Vs. Union of India, 2012 (8) SCC 243.

11. In Bar Council of India's case (supra) the Supreme Court held that it should be kept in mind that the dispute relating to public utility services have been entrusted to a Permanent Lok Adalat only if the process of conciliation and settlement fails. The emphasis is on settlement in respect of disputes concerning public utility services through the medium of Permanent Lok Adalat and that settlement of dispute between the parties in matters of public utility services is the main theme. The Supreme Court further held that where despite the endeavour and efforts of the Permanent Lok Adalat fails and the settlement between the parties does not come through, the said dispute is required to be determined and adjudicated by the Permanent Lok Adalat to avoid delay in the adjudication of disputes relating to public utility services.

12. Similarly, in United India Insurance Company Limited Vs. Ajay Sinha and another, 2008 (7) SCC 454 the Supreme Court in paragraph 41 held that the Permanent Lok Adalat must exercise its power with due care and caution and that the Permanent Lok Adalat must not give any impression that it has only an adjudicatory role to play in relation to its jurisdiction without going into the statutory provision and restrictions imposed thereunder.

13. In the instant case, the Court finds that from a perusal of the award that no effort whatsoever was made by the Permanent Lok Adalat to settle the dispute through conciliation. It is clear that the Permanent Lok Adalat has proceeded from the very inception as it had only an adjudicatory role to play. The procedure adopted by the Permanent Lok Adalat was in total violation of the mandate given under Chapter VI-A of the State Legal Services Authorities Act and the decisions of the Supreme Court in the case of Bar Council of India (supra) and United India Insurance Company Ltd. (supra). On this short ground the award cannot be sustained.

14. However, the matter does not end here. The question is, whether such an application questioning the assessment order, which relates to an offence could be entertained and decided on merits by the Permanent Lok Adalat. In this regard, the provisions of the Act of 2003, is required to be considered.

15. Section 126 of the Act of 2003 relates to making a provisional assessment where it is found that a consumer is indulging in unauthorize use of electricity. For facility, the said provision is extracted hereunder:-

"126. Assessment.- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months

immediately preceding the date of inspection.;

(6) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation.--For the purposes of this section,--

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity--

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee;

or (iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was Authorized ; or

(v) for the premises or areas other than those for which the supply of electricity was authorised."

16. Explanation (b)(iv) provides that the usage of electricity for the purpose other than for which the usage of electricity was authorized would amount to unauthorized use of electricity.

17. In the instant case, an inspection was made and it was found that the consumer, who was granted a load for domestic purposes was using it for commercial purposes and, therefore, the usage of electricity was being used for a purpose other than for which the usage was authorized. On this basis, an assessment bill was issued under Section 126 of the Act of 2003.

18. Part-XIV of the Electricity Act relates to offences and penalties. Section 135 of the Act of 2003 which comes under Part-XIV provides that whoever dishonestly uses electricity for the purposes for which the usage of electricity was authorized so as to abstract or consume electricity shall be punished with an imprisonment for a term. For facility, Section 135 (i) (e) is extracted hereunder:

"135(1) Theft of electricity.- Whoever, dishonestly,-

.... (e) uses electricity for the purpose other than for which the usage of electricity was authorized,

So as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both."

19. In the light of the provision of Section 126 read with Section 135 of the Electricity Act, it is apparently clear, that usage of electricity for the purposes other than for which the usage of electricity was authorized amounts to a theft of electricity and, is an offence punishable with an imprisonment for a specified term.

20. The first proviso to Section 22-C(1) of the Legal Services Authorities Act provides that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law. In the instant case, admittedly the matter is an offence but the proviso to Section 22-C directs that if the matter relates to an offence which is not compoundable by law, in that event, the Permanent Lok Adalat will not have any jurisdiction.

21. Section 152 of the Electricity Act provides for compounding of certain

offences. For facility, Section 152 is extracted hereunder:

"152. Compounding of offences.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorised by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE

Name of Service	Rate at which the sum of money for compounding to be collected per Kilowatt (KW)/ Horse Power (HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere (KVA) of contracted demand for High Tension (HT)
-1	-2
1. Industrial Service	Twenty thousand rupees;
2. Commercial Service	Ten thousand rupees;
3. Agricultural Service	Two thousand rupees;
4. Other Services	Four thousand rupees:

22. Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) The compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer."

23. A perusal of the aforesaid provision will clearly indicate that an offence relating to theft of electricity is compoundable.

24. In the light of the aforesaid provision, an application by a consumer in a matter relating to theft of energy can be filed before the Permanent Lok Adalat. The Permanent Lok Adalat will have jurisdiction to entertain such an application for conciliation and for settlement of the said dispute, in view of first proviso to Section 22-C of the Act.

25. Further, the Court is of the opinion that where the conciliation fails between the parties and no settlement is arrived at, the Permanent Lok Adalat cannot proceed any further nor can it decide the matter on merits under Section 22-C(viii) of the Act. The reason is not far to see. The adjudicatory role, which the Permanent Lok Adalat is required to follow is only with regard to a dispute, which does not relate to an offence under sub-clause-(viii) The words used are "does relate to an offence" which is totally different and distinct from the words used under the 1st proviso to Section 22-C(1),

namely, "matter relating to an offence not compoundable in law".

26. Thus, where a dispute which is an offence, but is compoundable can be entertained by the Permanent Lok Adalat for the purpose of conciliation and settlement but, upon failure, the Permanent Lok Adalat cannot proceed to decide such matters on merit, if it relates to an offence irrespective of the fact as to whether it is compoundable or not. If the dispute relates to an offence, the Permanent Lok Adalat will have no jurisdiction to decide the matter on merits.

27. In the light of the aforesaid, the matter relating to theft of energy is an offence under the Electricity Act, 2003 and even though such offence is compoundable, the Permanent Lok Adalat has the jurisdiction to entertain the dispute for the purpose of conciliation and settlement but upon its failure, the Permanent Lok Adalat could not proceed to decide the matter on merits.

28. In the present case, the Permanent Lok Adalat has decided the matter on merits, which is without jurisdiction. In the light of the aforesaid, the impugned award of the Permanent Lok Adalat cannot be sustained and is quashed. The writ petition is allowed.

29. Let a certified copy of this order be circulated by the Registrar General to all the Permanent Lok Adalats within four weeks for information and necessary action.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.12.2013

BEFORE

THE HON'BLE V.K. SHUKLA, J.
THE HON'BLE SUNEET KUMAR, J.

Civil Misc. Writ Petition No. 47279 of 2012

Poonam Gour... Petitioner
Versus
State of U.P. and Ors... .Respondents

Counsel for the Petitioner:
Sri Deepak Saxena, Sri Ranjit Saxena

Counsel for the Respondents:
C.S.C.

Constitution of India, Art.-226-Caste certificate-petitioner after competing M.B.B.S.-get admitted in M.S. course under sc/st category-alleging herself to 'Gond'-as per direction of Court earlier matter referred to govt.-Distt. level committee as well as state level committee-without affording opportunity of hearing-held-'Gond'- as kahar-the backward class pursuance to direction of court appeared final examination but result not declared-in view of law laid down by Apex Court in State of Maharashtra Vs. Milind case direction for declaration of result-given issued ignoring caste certificate-subject to outcome of decision of state level caste security committee.

(Delivered by Hon'ble V. K. Shukla, J.)

1. Poonam Gour D/o Ram Kewal resident of village and post Sihaitpur District Gorakhpur has approached this Court with a request to direct the State Level High Power Caste Scrutiny Committee, to verify the caste certificate of the petitioner of Caste Gond sub Caste Dhuriya in pursuance of the report of vigilance dated 14.06.2011 and to quash the order dated 14.10.2011 passed by State Government, Social Welfare Department wherein State Level High Power Caste Scrutiny Committee has asked the Committee constituted under Chairmanship

of District Magistrate, to make inquiry and to submit its opinion to the State Government.

2. During the pendency of the aforesaid writ petition, petitioner, by means of first amendment application, has proceeded to challenge the validity of report dated 06.08.2013 submitted by District Level Caste Scrutiny Committee, disallowing the claim of the petitioner by accepting petitioner to be belonging from "Gond" caste.

3. Thereafter by means of second amendment application, as the State Level Caste Scrutiny Committee has also taken decision, prayer has been made to quash the order dated 16.08.2013 passed State Level Caste Scrutiny Committee and further prayer has been made to direct the Moti Lal Nehru Medical College, Allahabad to declare the result of MS Course passed by the petitioner in the year 2001, the result whereof has been withheld.

4. Brief background of the case as is emanating from the record in question is that petitioner claims that she belongs to Gond caste sub caste Dhuriya and she has completed MBBS course in the year 1996 from King George Medical College (KGMC) Lucknow. Petitioner submits that she has undertaken Post Graduate entrance examination for obtaining Master's Degree in year 2001 and has been selected to undertake M.S Course from Moti Lal Nehru Medical College Allahabad. Petitioner submits that at the point of time when she has been accorded admission in M.S. Course, prior to it for enabling her to undertake said entrance examination authorities on request of petitioner has issued fresh caste certificate to her showing that petitioner belongs to "Gond" caste. Petitioner submits that thereafter, in the year 2000 her caste certificate in question has been cancelled on 14.3.2000 and in such a situation in this background she was not permitted to undertaken examination and then petitioner filed Civil Misc. Writ Petition No. 11536 of 2000 (Dr. Poonam Gour Vs. Principal, M.L.N. Medical College, Allahabad) and in the said writ petition petitioner has been accorded permission to pursue her M.S. Course. Petitioner submits that said writ petition is still pending and she has completed her M.S. Course but her result has not been declared so far due to non-finalization of issue of her caste certificate.

5. Petitioner submits that in the said direction she has been requesting that her caste status should be cleared and at the said point of time petitioner has gone to the extent of filing Civil Misc. Writ Petition No. 16817 of 2001(Poonam Gour Vs. Collector, Gorakhpur and others) and in the said writ petition this Court has proceeded to pass order directing to make an application before the Chief Secretary, Government of Uttar Pradesh Lucknow and upon such application being made, the Chief Secretary, Government of Uttar Pradesh was asked to refer the matter to the High Powered Committee constituted for determining the nature and status of the petitioners' community as to whether she is covered under the said category or not and to take appropriate decision. Petitioner submits that an application has been moved in the said direction and the copy of the judgement has also been supplied to the Chief Secretary, Government of Uttar Pradesh, Lucknow. Joint Secretary, U.P. Government Social Welfare Lucknow thereafter giving reference of letter dated

05.08.2010 and giving reference of the decision of this Court in Civil Misc. Writ Petition No. 16817 of 2001 dated 09.04.2010 wrote letter addressed to Director, Backward Classes Social Welfare Department Lucknow and mentioned therein that to verify at the Directorate Social Welfare Department there is no vigilance cell constituted to undertake exercise for verification of caste status of Scheduled Caste and Scheduled Tribes candidates as no one of the Home Department is posted therein and accordingly claim of the petitioner should be got examined by the vigilance cell constituted under Directorate meant for Backward Classes and comments be got received.

6. Thereafter vigilance cell working under the Directorate, Backward Classes Lucknow made its inquiry and submitted its report mentioning therein that it would be appropriate in case petitioner is issued certificate from Scheduled Tribes and accordingly report in question has been submitted and thereafter same has been forwarded to the Director. Director at the said point of time, proceeded to address a letter to State Government that large scale complaints are being received and matter should be got examined by the District Level Caste Scrutiny Committee. State Government accepted the said request.

7. On receiving of the said report in question, the District Level Caste Scrutiny Committee on the asking of State Level Scrutiny Committee submitted its report on 06.08.2013 and therein altogether different view was taken that petitioner has failed to substantiate her claim that she is entitled for caste certificate of belonging from Scheduled Tribes category. Thereafter after the said report in question has been submitted the State Level Caste Scrutiny Committee has taken up the matter and has not at all accepted the request of petitioner for accepting her to be from Scheduled Tribes Category and it has been mentioned therein that there is no reason to take different or contrary view as has been taken by the District Level Caste Scrutiny Committee and accordingly petitioner was not at all entitled for caste certificate of her being from Scheduled Tribes Category.

8. To the said averments which has come forward, counter affidavit has been filed and to the said counter affidavit, rejoinder affidavit has been filed and thereafter matter has been taken up for final hearing and disposal with the consent of the parties.

9. Sri Ranjit Saxena, learned counsel for the petitioner submitted with vehemence that in the present case State Level High Power Caste Scrutiny Committee has failed to perform and discharge its duty at the point of time when said committee has proceeded to form ex-parte opinion that petitioner is not at all from Scheduled Tribes category and accordingly decision in question suffers from procedural impropriety and specially in the backdrop of the case that once vigilance cell has submitted report in favour of the petitioner then there was no occasion or justification to take different and contrary view, as has been done in the present case and accordingly present writ petition in question deserves to be allowed, and caste certificate of being from Schedule Tribe, be issued accordingly, and all benefits attached to the same be also extended.

10. Countering the said submission, learned Standing counsel submitted that

in the present case on the proper analysis of the evidence available on record, rightful view has been formed that petitioner is not a member of Scheduled Tribes category and cannot be accepted to be from the said category and accordingly no interference should be made by this Court.

11. In order to answer the issue, as has been raised, this Court proceeds to examine the relevant provision of the Constitution of India that covers the field.

"Articles 341 and 342 of the Constitution of India read as under:-
"341. Scheduled Castes - (1) The President [may with respect to any State [or Union territory], and where it is a State after consultation with the Governor thereof] by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State[or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid notification issued under the said clause shall not be varied by any subsequent notification".

"342. Scheduled Tribes (1) The President [may with respect to any State [or Union territory], and where it is a State after consultation with the Governor thereof] by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled tribes in relation to that State[or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

12. By virtue of authority vested under Articles 341 and 342 of the Constitution of India, the President is empowered to issue public notification specifying the castes, races or tribes or part of or groups within castes, races, or tribes which shall, for the purposes of the Constitution be deemed to be Scheduled Caste or Scheduled Tribes in relation to a State or Union Territory, as the case may be. The language and terms of Articles 341 and 342 are virtually identical, as what has been said in relation to Article 341 mutatis mutandis applies to Article 342 also. The prime object of the said Articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to social and educational backwardness from which they have been suffering since a considerable length of time. The words `castes' or `tribes' in the expression `Scheduled Castes' and `Scheduled Tribes' are not used in the ordinary sense of the terms but are used in the sense of the definitions contained in Article 366(24) and 366(25) of the Constitution of India. In this view, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe only if they are included in the Presidential Orders issued under Articles 341 and 342 for the purpose of the Constitution. Exercising the powers vested in him, the President has issued the Constitution (Scheduled Castes) Order, 1950 and the

Constitution (Scheduled Tribes) Order, 1950 for the first time and then, subsequently, Orders have been issued under the said Articles in relation to Union Territories and other States and there have been certain amendments in relation to Orders issued introduced, by Amendment Acts passed by the Parliament.

13. On plain reading of the language of these Articles same shows (1) the President under Clause (1) of the said Articles may with respect to any State or Union Territory and where it is a State, after consultation with the Governor, by public notification specify the castes, races or tribes or parts of or groups within the castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes/Scheduled Tribes in relation to that State or Union Territory as the case may be; (2) Under Clause (2) of the said Articles, a notification issued under Clause (1) cannot be varied by any subsequent notification except by law made by Parliament. Under the scheme of things provided for, Parliament alone is competent by law to include in or exclude a caste/tribe from the list of Scheduled Castes and Scheduled Tribes specified in notifications issued under Clause (1) of the said Articles.

14. In including castes and tribes in Presidential Orders, the President is authorized to limit the notification to parts or groups within the caste or tribe depending on the educational and social backwardness. It is permissible that only parts or groups within them could be specified and further to specify castes or tribes thereof in relation to parts of the State and not to the entire State on being satisfied that it was necessary to do so having regard to social and educational backwardness. States in such matters had opportunity to present their views through Governors when consulted by the President in relation to castes or tribes, parts or groups within them either in relation to entire State or parts of State. The underlying object of Clause (1) of Articles 341 and 342 was to keep away disputes touching whether a caste/ tribe is a Scheduled Caste/Scheduled Tribe or not for the purpose of the Constitution and Presidential order in the said direction was to be accepted as final.

15. Whether a particular caste or a tribe is Scheduled Caste or Scheduled Tribe as the case may be within the meaning of the entries contained in the Presidential Orders issued under clause (1) of Articles 341 and 342 is to be determined looking to them as they are. Clause (2) of the said Articles does not permit any one to seek modification of the said orders by leading evidence that the caste / tribe (A) alone is mentioned in the Order but caste / tribe (B) is also a part of caste / tribe (A) and as such caste / tribe (B) should be deemed to be a scheduled Caste / Scheduled Tribe as the case may be. It is only the Parliament that is competent to amend the Orders issued under Articles 341 and 342.

16. In exercise of powers conferred by Clause (1) of Article 341 of Constitution, the President has issued Constitution (Schedule Caste) Order, 1950 as amended by Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976. In the said order in relation to Uttar Pradesh, the castes, races or tribes or parts of, or groups within, castes or tribes has been specified in Schedule, Part XVIII, and therein entry 36 relates to Gond, accepting Gond as schedule caste. Thereafter by means of Presidential

Order, the Schedule Castes and Schedule Tribes Order (Amendment) Act, 2002, has been published on 7.1.2003, providing therein for inclusion in the lists of Schedule Tribes, of certain tribes or tribal communities or part of or group within tribes or tribal communities, equivalent names or synonyms of such tribes or communities, removal of areas restrictions and bifurcations and clubbing of entries imposition of area restriction in respect of certain castes in the list of Schedule Castes and the exclusion of certain castes and tribes from the list of Scheduled Castes and Scheduled Tribes, in relation to various states including Uttar Pradesh. Accordingly, pursuant thereto in the Constitution (Schedule Tribes) (Uttar Pradesh) Order, 1967, after entry 5, following insertion has been made:

"6. Gond, Dhuria, Nayak, Ojha, Pathari, Raj Gond (in the districts of Mahrajganj, Sidharth Nagar, Basti, Gorakhpur, Deoria, Mau, Azamgarh, Jaunpur, Ballia, Ghazipur, Varanasi, Mirzapur and Sondhadra)

7. Kharwar, Khairwar (in the district of Deoria, Ballia, Ghazipur, Varanasi and Sonbhadra)"

17. Under the Constitutional scheme of things provided for orders once issued, cannot be varied by subsequent order or notification even by the President except by law made by Parliament.

18. Apex Court on numerous occasions, encountered with such an issue has answered in following terms.

19. In B.Basavalingappa vs. D. Munichinnappa reported in (1965) 1 SCR 316, a Constitution Bench of Apex Court held as follows :-

"It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of Caste A and therefore must be deemed to be included in caste A. It may also be accepted that wherever one caste has another name it has been mentioned in brackets after it in the Order[see Aray (Mala) Dakkal (Dokkalwar) etc.] Therefore generally speaking it would not be open to any person to lead evidence to establish that caste B (in the example quoted above) is part of caste A notified in the Order. Ordinarily therefore it would not have been open in the present case to give evidence that the Voddar caste was the same as the Bhovi caste specified in the Order for Voddar caste is not mentioned in brackets after the Bhovi caste in the Order."

(emphasis supplied)

20. Thereafter looking to the peculiar circumstances of the case, the Apex Court went on to say that :-

"The difficulty in the present case arises from the fact (which was not disputed before the High Court) that in the Mysore State as it was before the re-orgnisation of 1956 there was no caste known as Bhovi at all. The Order refers to a scheduled caste known as Bhovi in the Mysore State as it was before 1956 and therefore it must be accepted that there was some caste which the President intended to include after consultation with the Rajpramukh in the Order when the Order mentions the caste Bhovi as a scheduled caste. It cannot be accepted that the President included the caste Bhovi in the Order though there was no such caste at all in the Mysore State as it

existed before 1956. But when it is not disputed that there was no caste specifically known as Bhovi in the Mysore State before 1956, the only course open to courts to find out which caste was meant by Bhovi is to take evidence in that behalf. If there was a caste known as Bhovi as such in the Mysore State as it existed before 1956, evidence could not be given to prove that any other caste was included in the Bhovi caste. But when the undisputed fact is that there was no caste specifically known as Bhovi in the Mysore State as it existed before 1956 and one finds a caste mentioned as Bhovi in the Order, one has to determine which was the caste which was meant by that word on its inclusion in the Order. It is this peculiar circumstance therefore which necessitated the taking of evidence to determine which was the caste which was meant by the word "Bhovi" used in the Order, when no caste was specifically known as Bhovi in the Mysore State before the re-organisation of 1956."

21. Once again Constitution Bench of the Apex Court in a later decision of Bhaiyalal vs. Harikishan Singh and Others reported in (1965) 2 SCR 877 did not accept the plea of the appellant that although he was not a Chamar as such he could claim the same status by reason of the fact that he belonged to Dohar Caste which is sub-caste of Chamar. Even after referring to the case of Basavallingappa (supra) it was held that an enquiry of that kind would not be permissible in the light of the provisions contained in Article 341 of the Constitution. In that case the appellant's election was challenged inter alia on the ground that he belonged to the Dohar Caste which was not recognized as a Scheduled Caste for the district in question and so his declaration that he belonged to the Chamar Caste which was a Scheduled Caste was improper and was illegally accepted by the Returning Officer. The Election Tribunal declared that the election was invalid. On appeal the High Court confirmed the same. Apex Court thereafter also dismissed the appeal pointing out that the plea that the Dohar Caste is a sub-caste of the Chamar Caste, could not be entertained in view of the Constitution Scheduled Castes Order, 1950 issued by the President under Article 341 of the Constitution. It is also stated that in order to determine whether or not a particular caste is a Scheduled Caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. The notification referred to Chamar, Jatav or Mochi. The Court observed that the enquiry, which the Election Tribunal could hold was whether or not the appellant is a Chamar, Jatav or Mochi and held thus :-

"The plea that though the appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste, cannot be accepted. It appears to us that an enquiry of this kind would not be permissible having regard to the provisions contained in Article 341." (emphasis supplied)

22. Thereafter Apex Court, noted that allowing candidates not belonging to Scheduled Caste or Scheduled Tribes to have advantage and benefit of reservation, either in admissions or appointments leads to making mockery of the very reservation against the mandate and scheme of Constitution.

"In order to protect and promote the less fortunate or unfortunate people who

have been suffering from social handicap, educational backwardness besides other disadvantages, certain provisions are made in the Constitution with a view to see that they also have the opportunity to be on par with others in the society. Certain privileges and benefits are conferred on such people belonging to Scheduled Tribes by way of reservations in admission to educational institutions (professional colleges) and in appointments in services of State. The object behind these provisions is noble and laudable besides being vital in bringing a meaningful social change. But, unfortunately, even some better placed persons by producing false certificates as belonging to Scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognizing and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution.

In the light of what is stated above, the following positions emerge:-

1. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority.

4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in Bhaiya Ram Munda Vs. Anirudh Patar and others (1971 (1) SCR 804) and Dina vs. Narayan Singh (38 ELR 212), did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter."

23. Apex Court, in the case of State of Maharastra Vs. Milind AIR 2001 SC 393, reiterated the same principle, once again that Presidential Order can be amended only by the Parliament, and no one be it authority, courts or tribunals have any jurisdiction to alter the said list. Relevant extract of the said judgement is as follows:

"Thus it is clear that States have no power to amend Presidential Orders. Consequently a party in power or the Government of the day in a State is relieved from the pressure or burden of tinkering with the Presidential Orders either to gain popularity or secure votes. Number of persons in order to gain advantage in securing admissions in educational institutions and employment in State Services have been claiming as belonging to either Scheduled Castes or Scheduled Tribes depriving genuine and needy persons belonging to Scheduled Castes and Schedules Tribes covered by the Presidential Orders, defeating and frustrating to a large extent the very object of protective discrimination given to such people based on their educational and social backwardness. Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste; a group or part of tribe or sub-tribe is included in any one of the Entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularly so when in clause (2) of the said Article, it is expressly stated that said orders cannot be amended or varied except by law made by Parliament. The power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and vested with the Parliament and that too by making a law in that regard. The President had the benefit of consulting States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said Orders are to be amended, it is the Parliament that is in a better position to know having means and machinery unlike courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or courts or other authorities or tribunals to hold enquiry as to whether a particular caste or tribe should be considered as one included in the Schedule of the Presidential Order, when it is not so specifically included, may lead to problems. In order to gain advantage of reservations for the purpose of Articles 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Articles 341 and 342. This apart when no other authority other than the Parliament, that too by law alone can amend the Presidential Orders, neither the State Governments nor the courts nor tribunals nor any authority can assume jurisdiction to hold enquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one Entry or the other although they are not expressly and specifically included. A court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342. It is not possible to hold that either any enquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included.

24. Various issues were coming before Apex Court wherein spurious

tribes and persons not belonging to scheduled tribes were snatching away the reservation benefits given to genuine tribals, by claiming to belong to scheduled tribes, and thus making constitutional provisions redundant and otiose in such a situation and in this background, in order to see and ensure that caste certificates issued be scrutinised with utmost expedition and promptitude and there should be proper scrutiny. Apex Court in the case of Kumari Madhuri Patil Vs. Additional Commissioner, 1994 (6) SCC 241, issued directives for constitution of Caste Scrutiny Committee and issued fifteen directions as follows:

"1. The application for grant of social status certificate shall be made to the Revenue-Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the concerned Directorate.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of Scheduled Tribes, the Research Officer who has intimated knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over all charge and such number of Police Inspectors to investigate into the social status claims. .....

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed..... After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter

event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/ guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalizing the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/Miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or the Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post.

[emphasis supplied]"

25. Pursuant to directive issued by the Apex Court in the case of Kumari Madhuri Patil Vs. Additional Commissioner Tribal Development (1994) 6 SCC 241, the State Government on 05.01.1996 has provided the procedure that is to be adhered to in the matter of grant of Caste Certificates and other allied and incidental

matters connected therewith, said decision in question is as follows:

"2- उपरोक्त के क्रम में मुझे यह कहने का निर्देश हुआ है कि ''1994 (6) एस.सी.सी. 241 कुमारी माधुरी पाटिल बनाम एडिशनल कमिश्नर ट्राइबल'' नामक वाद में मा. उच्चतम न्यायालय द्वारा दिनांक 2 सितम्बर, 1994 को पारित निर्णय तथा उसके क्रम में रिट याचिका सं0 2884 (एम0बी0) आफ 1995 डा0 आनन्द प्रताप सिंह बनाम उ0प्र0 राज्य व अन्य'' में मा0 उच्च न्यायालय लखनऊ पीठ लखनऊ द्वारा पारित आदेश दिनांक 27 अक्टूबर, 1995 के अनुपालन में उपरोक्त अधिनियम की धारा–9 द्वारा प्रदत्त शक्तियों का प्रयोग करके, शासन द्वारा नीति निर्धारित करते हुए निम्नलिखित निर्णय लिये गये हैः–

1- आवेदन पत्र का प्रस्तुतीकरण व जाति प्रमाण पत्र जारी किया जाना आरक्षण अनुमन्यता हेतु जाति प्रमाण पत्र प्रदान करने के लिए आवेदन पत्र उन क्षेत्र, जिसमें संबंधित अभ्यर्थी निवास करता हो अथवा जहां उसका जन्म हुआ हो, के जिलाधिकारी या अतिरिक्त जिलाधिकारी या सिटी मजिस्ट्रेट या परगना मजिस्ट्रेट अथवा तहसीलदार को संबंधित अभ्यर्थी द्वारा यदि वह वयस्क हो, अथवा उसके माता–पिता या अभिभावक द्वारा यदि आवश्यक हो, प्रस्तुत किया जायेगा, जिसके साथ राजपत्रित अधिकारी द्वारा प्रमाणित एक शपथ पत्र के साथ अभ्यर्थी की जाति, उपजाति, जनजाति, जनजातीय समुदाय या जनजातीय–समुदाय के वर्ग या भाग व अभ्यर्थी के मूल निवास आदि से संबंधित ऐसे विवरण प्रस्तुत किये जायेगें जो अनुसूचित जाति व अनुसूचित जनजाति के संबंध में निदेशक, अनुसूचित जाति व अनुसूचित जनजाति कल्याण उत्तर प्रदेश तथा नागरिकों के अन्य पिछड़े वर्गों के संबंध में निदेशक पिछड़ा वर्ग कल्याण, उत्तर प्रदेश द्वारा विहित किये जाये।

2- उपरोक्तानुसार जिस अधिकारी को जाति प्रमाण पत्र हेतु आवेदन पत्र प्रस्तुत किया जाएगा, संतुष्ट होने पर उस अधिकारी द्वारा जाति प्रमाण पत्र जारी किया जायेगा।

3- जाति प्रमाण पत्र का सत्यापन–उपरोक्त व्यवस्था के अनुसार निर्गत किये गये जाति प्रमाण पत्र के आधार पर आरक्षण का दावा शासन द्वारा गठित की गयी निम्नलिखित स्कूटनी कमेटी द्वारा किये जाने वाले जाति प्रमाण पत्र के सत्यापन के अधीन अनुमन्य होगा जिसके लिए उक्त स्कूटनी कमेटी को यथास्थिति स्वयं अभ्यर्थी उसके माता–पिता या अभिभावक द्वारा शैक्षिक आदि संस्थाओं में प्रवेश अथवा किसी पद सेवा में नियुक्ति के यथा सम्भव 6 मास पूर्व आवेदन प्रस्तुत किया जायेगाः–

1- प्रमुख सचिव, समाज कल्याण विभाग, उ0प्र0 शासन अध्यक्ष।

2- निदेशक अनुसूचित जाति व अनुसूचित जनजाति, सदस्य (उत्तर प्रदेश अनुसूचित जातियां व अनुसूचित जन जातियां के सम्बंध में)

या

निदेशक, पिछड़ा वर्ग कल्याण उ0प्र0 (नागरिकों के अन्य पिछड़े वर्गों के संम्बन्ध में)

3- अनुसूचित जाति के सम्बंध में प्रमुख सचिव, समाज कल्याण विभाग द्वारा नामित अधिकारी जिन्हे सम्बन्धित विषय का आत्यधिक ज्ञान हो, अतिरिक्त सदस्य

अथवा

अनुसूचित जनजाति के सम्बंध में जनजाति, जनजातीय समुदाय के वर्ग/भाग के चिन्हीकरण से सम्बन्धित शोध कार्य में लगे प्रमुख सचिव समाज कल्याण विभाग उ0प्र0 शासन द्वारा नामित एक अधिकारी।

टिप्पणीः जाति प्रमाण–पत्र के सम्यापन की कार्यवाही पूरी होने के पूर्व ही यदि अभ्यर्थी को आरक्षण कोटे में शैक्षिक आदि संस्था में प्रवेश या यथास्थिति सेवा में नियुक्ति दी जानी हो तो सशर्त (प्रावीजनली) प्रवेश/नियुक्ति प्रदान की जा सकेगी, जो जाति प्रमाण–पत्र के सत्यापन के अधीन होगी।

4- उ0प्र0 अनुसूचित जाति व अनुसूचित जनजाति कल्याण निदेशायल तथा पिछडा वर्ग कल्याण निदेशालय के अधीन एक–एक सतर्कता कोष्ठक कार्य करेगा, तथा प्रत्येक कोष्ठक में पुलिस अधीक्षक स्तर के एक अधिकारी जो (सतर्कता अधिकारी) पदनामित किए जायेगे तथा अपेक्षित संख्या में पुलिस निरीक्षक होगे, जिनकी सेवायें पदों सहित शासन को गृह /पुलिस विभाग द्वारा उक्त कोष्ठकों के लिए उपलब्ध कराई जायेगी।

5- जाति प्रमाण–पत्र के सत्यापन हेतु स्कूटनी कमेटी को आवेदन–पत्र प्रस्तुत किए जाने पर वे यथाशीघ्र उसे सम्बन्धित निदेशालय को प्रेषित करेंगे, जो उसे अपने अधीन कार्यरत सतर्कता कोष्ठक को सौंपेंगे। सतर्कता कोष्ठक के सम्बन्धित पुलिस निरीक्षक अभ्यर्थी के निवास स्थान, उसके मूल निवास व सामान्यतः निवास किए जाने के स्थानों आदि पर जाकर जाति प्रमाण–पत्र की जांच करने तथा उसकी जांच पश्चात सतर्कता अधिकारी व्यक्तिगत रूप से तथ्यों का सत्यापन करेंगे तथा सम्बन्धित तथ्यों को एकत्र करेंगे। वे शैक्षिक संस्थओं के अभिलेखों, जन्म पंजीयन आदि का परीक्षण कर सकंगे तथा अभ्यर्थी

उसके माता–पिता या अभिभावक या अभ्यर्थी के सामाजिक स्तर की जानकारी रखने वाले किसी अन्य व्यक्ति का परीक्षण कर सकंगे तथा परीक्षणोपरान्त विस्तृत विवरणों सहित निर्धारित प्रपत्र पर अपनी आख्या सम्बन्धित निदेशालय की प्रस्तुत करेगे।

6- ;दि सम्बन्धित सतर्कता कोष्ठक की जांच पड़ताल के अनुसार जाति प्रमाण–पत्र सत्यापित हो जाता है तो संबंधित निदेशक द्वारा ''जाति प्रमाण पत्र का सत्यापन'' कर दिया जायेगा परन्तु जाति प्रमाण–पत्र के सत्यापित न होने की दशा में निम्नलिखित कार्यवाही की जायेगीः–

1- संबंधित निदेशक द्वारा सतर्कता अधिकारी की आख्या की प्रति भेजते हुए आवेदक को एक कारण बताओ नोटिस पावती पंजीकृत डाक द्वारा अथवा सम्बन्धित संस्था, जहां वह अध्ययनरत हो या सेवारत हो, के अध्यक्ष (हेड) के माध्यम से दी जायेगी, जिसमें नोटिस की प्राप्ति से दो सप्ताह के भीतर अभ्यर्थी से अभ्यावेदन या उत्तर, यदि वह देना चाहे, दिये जाने की अपेक्षा की जायेगी।

2- ऐसा अभ्यावेदन या उत्तर देने के लिए अभ्यर्थी के अनुरोध पर अधिक से अधिक नोटिस की प्राप्ति से 30 दिन का समय दिया जा सकता है, इससे अधिक नही।

3- समयान्तर्गत प्रस्तुत अपने अभ्यावेदन या उत्तर में यदि अभ्यर्थी सुनवाई का अवसर प्रदान करने या इस विषय में अन्वेषण (इन्क्वायरी) कराने का अनुरोध करता है तो अभ्यावेदन/उत्तर प्राप्त होने पर सम्बन्धित निदेशक स्कूटनी कमेटी और उसके अध्यक्ष को अवगत करायेगे, जो अभ्यर्थी या यथास्थिति उसके माता–पिता या अभिभावक को उक्त जाति प्रमाण–पत्र की सत्यता के पक्ष में समस्त साक्ष्य प्रस्तुत करने का युक्ति–युक्त अवसर प्रदान करेंगे और संबंधित गांव या आबादी में उद्घोषण द्वारा या अन्य सुलभ रीति से एक सार्वजनिक सूचना प्रसारित करेंगे और ऐसी सार्वजनिक सूचना पर यदि उक्त जाति प्रमाण–पत्र की सत्यता की कोई व्यक्तिगत या संगठन, स्वयं या अपने अधिवक्ता के माध्यम से विरोध करता है तो उसे अपने विरोध के पक्ष में साक्ष्य प्रस्तुत करने का अवसर प्रदान किया जायेगा। इस अवसर पर अभ्यर्थी भी अपने पक्ष को अधिवक्ता के माध्यम से प्रस्तुत कर सकेगा।

4- स्कूटनी कमेटी, अभ्यर्थी द्वारा प्रस्तुत तथ्यों व विपखियों द्वारा उठाई गई आपत्तियों आदि के प्रकाश में, विचारोपरान्त समुचित आदेश पारित करेगी, जिसमें कमेटी के निष्कर्षों के समर्थन में संक्षिप्त कारणों का भी उल्लेख किया जायेगा।

5- उपरोक्त कार्यवाही शीघ्र प्रति शीघ्र दिन–प्रतिदिन के आधार पर इस प्रकार की जायेगी कि अनाधिक 2 मास की अवधि में पूरी हो जाय।

6- कमेटी के निर्णयों से अभ्यर्थी या यथास्थिति उसके माता–पिता या अभिभावक को निर्णय लेने पर एक माह के भीतर अवगत कराया जायेगा।

26. Thereafter, as large number of issues connected with the veracity of caste certificates were coming before the Courts and the authorities, in order to streamline the situation, at Divisional Level, Appellate Forum, headed by Commissioner had been constituted, vide Government Order dated 27.01.2011, to resolve the disputes relating to the validity of caste certificate and thereafter to make things more transparent and smooth another Government Order dated 28.02.2011 has been issued, on 28.2.2011, wherein District Level Caste Scrutiny Committee has been constituted with the District Magistrate as its Chairman and after decision of District Level Caste Scrutiny Committee, Appeal has to lie before the Appellate Forum, headed by Commissioner. This entire exercise has been undertaken, pursuant to directives issued by this Court, firstly in the case of Taramuni Tharu vs. State of U.P. decided on 23.9.2010, Civil Misc. Writ Petition (M/B) No.1611 of 2008, culminating in issuance of Government Order dated 27.1.2011, and in the case of Tharu Shakti Samiti vs. State of U.P. (PIL) No.1396 of 2011, pursuant to directives issued, Government Order dated 28.2.2011 has been issued.

27. Caste Scrutiny Committee has accordingly been constituted at different level, set up for specific purpose as it serves social and constitutional purpose to prevent fraud on the Constitution. Apex Court in the case of State of Maharashtra and others Vs. Ravi Prakash Babulalsing Parmar and another reported in (2007) 1 SCC 80 toeing the same lines has taken the view that Caste Scrutiny Committee is a quasi-judicial body and it has been set up for a specific purpose to prevent fraud on

Constitution. Relevant extract of the aforesaid judgement is being extracted below:

The Caste Scrutiny Committee is a quasi-judicial body. It has been set up for a specific purpose. It serves a social and constitutional purposes. It is constituted to prevent fraud on Constitution. It may not be bound by the provisions of Indian Evidence Act, but it would not be correct for the superior courts to issue directions as to how it should appreciate evidence. Evidence to be adduced in a matter before a quasi-judicial body cannot be restricted to admission of documentary evidence only. It may of necessity have to take oral evidence. Moreover the nature of evidence to be adduced would vary from case to case. The rights of a party to adduce evidence cannot be curtailed. It is one thing to say how a quasi-judicial body should appreciate evidence adduced before it in law but it is another thing to say that it must not allow adduction of oral evidence at all. It was furthermore not proper to suggest that all such bodies should be brought within the purview of Article 235 of the Constitution of India or only judicial officers should be appointed."

28. Thereafter Apex Court in the case of Dayaram Vs. Sudhir Batham and others decided on 11.10.2011 reported in (2012) 1 SCC 333 has proceeded to mention that directives issued in the case of Madhuri Patil (Supra) were towards furtherance of the constitutional rights of Scheduled Caste/Scheduled Tribes, as the object of the same is to ensure that only genuine members of Scheduled Caste or Scheduled Tribe were afforded or extended the benefits as same are necessarily inherent to the enforcement of fundamental rights. In giving such direction, Apex Court neither re-wrote, the Constitution nor resorted to judicial legislation. The directions issued are intrinsic to fulfilment of fundamental right, and to ensure that eligible citizens entitled to affirmative action alone derive benefits of such action. Directions 1 to 15 have been reiterated to be valid and laudable, and it has been clarified that nothing contained in paragraph 15 shall be construed as placing any fetters in dealing with the writ petitions dealing with caste certificates and accordingly in reference of answer to question no. 2 has held as follows:

22. Each scrutiny committee has a vigilance cell which acts as the investigating wing of the committee. The core function of the scrutiny committee, in verification of caste certificates, is the investigation carried on by its vigilance cell. When an application for verification of the caste certificate is received by the scrutiny committee, its vigilance cell investigates into the claim, collects the facts, examines the records, examines the relations or friend and persons who have knowledge about the social status of the candidate and submits a report to the committee. If the report supports the claim for caste status, there is no hearing and the caste claim is confirmed. If the report of the vigilance cell discloses that the claim for the social status claimed by the candidate was doubtful or not genuine, a show-cause notice is issued by the committee to the candidate. After giving due opportunity to the candidate to place any material in support of his claim, and after making such enquiry as it deems expedient, the scrutiny committee considers the claim for caste status and the vigilance cell report, as also any objections that may be raised by any opponent to the claim of the candidate for caste status, and passes

appropriate orders. The scrutiny committee is not an adjudicating authority like a Court or Tribunal, but an administrative body which verifies the facts, investigates into a specific claim (of caste status) and ascertains whether the caste/tribal status claimed is correct or not. Like any other decisions of administrative authorities, the orders of the scrutiny committee are also open to challenge in proceedings under Article 226 of the Constitution. Permitting civil suits with provisions for appeals and further appeals would defeat the very scheme and will encourage the very evils which this court wanted to eradicate. As this Court found that a large number of seats or posts reserved for scheduled castes and scheduled tribes were being taken away by bogus candidates claiming to belong to scheduled castes and scheduled tribes, this Court directed constitution of such scrutiny committees, to provide an expeditious, effective and efficacious remedy, in the absence of any statute or a legal framework for proper verification of false claims regarding SCs/STs status. This entire scheme in Madhuri Patil will only continue till the concerned legislature makes appropriate legislation in regard to verification of claims for caste status as SC/ST and issue of caste certificates, or in regard to verification of caste certificates already obtained by candidates who seek the benefit of reservation, relying upon such caste certificates.

23. Having regard to the scheme for verification formulated by this Court in Madhuri Patil, the scrutiny committees carry out verification of caste certificates issued without prior enquiry, as for example the caste certificates issued by Tehsildars or other officers of the departments of Revenue/Social Welfare/Tribal Welfare, without any enquiry or on the basis of self- affidavits about caste. If there were to be a legislation governing or regulating grant of caste certificates, and if caste certificates are issued after due and proper inquiry, such caste certificates will not call for verification by the scrutiny committees. Madhuri Patil provides for verification only to avoid false and bogus claims. The said scheme and the directions therein have been satisfactorily functioning for the last one and a half decades. If there are any shortcomings, the Government can always come up with an appropriate legislation to substitute the said scheme. We see no reason why the procedure laid down in Madhuri Patil should not continue in the absence of any legislation governing the matter."

29. Apex Court, once again in the case of Collector Bilaspur vs. Ajit P.K. Jogi, decided on 13.10.2011 and reported in AIR 2012 SC 44, has reiterated the situation, that once an issue is raised about social status of ones caste, then verification proceedings are required to be undertaken by duly constituted Scrutiny Committee, who shall undertake the exercise of verification/scrutiny of social status certificate. Such issues, on being raised are required to be answered and cannot be shut. Apex Court, once again in the case of Anand vs. Committee for Scrutiny and verification of Tribe claims and others, decided on 8.11.2011 and reported in AIR 2012 SC 314, has proceeded to law down broad parameters that has to be kept in view, while dealing with caste claim, as follows:

"(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first

generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.

19. Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinise the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim. "

30. On the parameter of the aforesaid Government Order dated 5.1.1996 and on the parameter of the dictum as has been laid down by the Apex Court from time to time, it is reflected that in the present case initially petitioner has been issued Caste Certificate on 07.4.1998 by Tehsildar, Bansgaon mentioning therein that she belongs to Scheduled Caste category and subsequent to the same her caste certificate in question has been cancelled on 14.3.2000 by Tehsildar, Bansgaon and said order has been affirmed by Sub-Divisional Magistrate on 30.6.2000. Thereafter pursuant to directives issued by this Court claim of petitioner has been referred to the State Level Caste Scrutiny Committee for making inquiry into the matter. The State Level Caste Scrutiny Committee got the matter examined by the vigilance cell and after report of vigilance cell has been received on the request of the Director SC/ST Welfare directives have also been issued to get report from the District Level Caste Scrutiny Committee and after report in question has been so received, the State Level Caste Scrutiny Committee has taken decision on the subject matter, and as said decision has gone adverse to the petitioner, she is before this Court.

31. Petitioner's precise case before this Court is that once Vigilance Cell had submitted its report in favour of petitioner then there was no occasion for the State Level High Power Caste Scrutiny

Committee as well as District Level Caste Scrutiny Committee to take different or contrary view and the only option left open to them was to verify the same and ensure restoration of caste certificate in favour of petitioner of being Scheduled Caste Category (now notified as Scheduled Tribe category)

32. In the present case, facts as are reflected that as per the policy decision of the State Government dated 05.01.1996 and as per the judgment of Apex Court in the case of Kumari Madhuri Patil (Supra), directives have been issued to constitute Vigilance cell consisting of Superintendent of Police as over all incharge and such number of Police Inspectors to investigate into the social status claims. Separate Vigilance Cell is required to be constituted under the Directorate of SC/ST Welfare as well as under the Directorate of OBC Welfare. Vigilance Cell is required to investigate the claim, by collecting facts, examining the record, examining relations or friend who have knowledge about the social status of candidate. Thereafter Director concerned, on receipt of the report from the vigilance officer is required to confirm the caste claim.

33. Here in the present case accepted position is that as far as Directorate of Social Welfare Scheduled Caste and Scheduled Tribes is concerned there has been no Vigilance cell constituted and in view of this inquiry in question has been out sourced to the Vigilance cell working under the Directorate of Other Backward Classes on the strength of the order dated 30.8.2010 passed by the State Government. Vigilance Cell accordingly conducted enquiry and submitted its report on 14.6.2011 mentioning therein that from the evidence it is reflected, that petitioner hails from 'Gond' caste with sub-caste 'Dhuria', and accordingly, it would be appropriate to issue her caste certificate as has been claimed by her. After the said report has been received, on 31.7.2011, State Government asked the concerned Directorate, to take action in consonance with Government Order dated 05.01.1996. The Director concerned, vide letter dated 19.08.2011, informed the State Government that large scale complaints are being received from the Districts, of caste certificates being procured of Gond and Kharwar caste, in view of this, it would be more appropriate, if matter is got examined by District Level Caste Scrutiny Committee constituted under Government Order dated 28.2.2011, and requisite orders be passed in the said direction. Thereafter, on 14.10.2011, District Level Caste Scrutiny Committee was asked to take decision in the light of the report of Vigilance Cell, comments submitted by District Magistrate, facts and figures submitted by petitioner in order to substantiate her claim. The District Level Caste Scrutiny Committee, considered the matter and submitted its report, contrary to the claim as set up by petitioner, on 06.08.2013 and the said report has been affirmed by the State Level Caste Scrutiny Committee.

34. Once Vigilance department conducted inquiry and submitted its report in favour of the petitioner then should that have been end of the matter by treating the same as conclusive without there being any discretion left with the authorities who are to put final seal on the veracity of caste certificate.

35. In normal course of the business, it would have been the situation but here after report has been submitted by the Vigilance department the Director of the concerned department who was obligated

to confirm the report himself asked the State Government by apprising that large scale complaints were being made in respect of caste certificates specially in reference of "Gond" and "Kharwar" caste and as such as at local level also as of now as there is District Level Caste Scrutiny Committee report should also be called for and here exactly the same has been done. Director before whom report in question has been submitted by the Vigilance department is not always duty bound to accept the same specially when there are other material before him to take different or contrary view or ask for further investigation in the matter. Director has a right to take different view but same should be preceded by reasons. Director is not supported to act as a rubber stamp, rather he has to be alive to the situation and specially when matter pertains to stop fraud on the constitution. Here Director in view of various reports received by him of manipulation being made by spurious incumbents claiming them to be either of "Gond" or "Kharwar" caste has asked the State Government to get inquiry conducted by the District Level Caste Scrutiny Committee and in enquiry made altogether different conclusions have been drawn totally contrary to the report of Vigilance Cell. District Level Caste Scrutiny Committee as well as State Level Caste Scrutiny Committee are not at all always duty bound to accept report so submitted by the Vigilance Cell blindly and they have to make independent assessment of evidence based on historical background of caste/tribe in question, oral evidence adduced as well as documentary evidence adduced. Caste Scrutiny Committee is to provide full opportunity of hearing to an incumbent who is claiming to be from a particular caste/tribe as scrutiny committee is not an adjudicating authority rather its function is administrative in nature, which verifies the fact investigates into specific claim (of caste/tribes) status and ascertains whether the caste/tribal claims is correct or not and in view of this submission as has been made by the petitioner that after vigilance report has been received same should be accepted as conclusive cannot be accepted in the facts and circumstance of the case in hand.

36. The next issue to be answered in the present case is as to whether principle of natural justice has been violated or not at the point of time when decision has been taken by the State Level Caste Scrutiny Committee.

37. Record in question reflects that report of District Level Caste Scrutiny Committee has been submitted on 06.08.2013 to the State Level Caste Scrutiny Committee. Said report in question has been considered by the State Level Caste Scrutiny Committee on 13.08.2013. Last hearing that took place before State Level Caste Scrutiny Committee has been on 01.08.2013 and thereafter at no point of time after receiving said report of District Level Caste Scrutiny Committee in question any opportunity of hearing has been provided to the petitioner.

38. Once hearing took place on 01.08.2013 before the State Level Caste Scrutiny Committee and the matter was adjourned and thereafter report has been received on 06.08.2013 then it was incumbent and obligatory on the part of the State Level Caste Scrutiny Committee to have provided opportunity of hearing to the petitioner to have her say to the report dated 06.08.2013, in view of this it is writ apparent that procedure that has been

adopted by the State Level Caste Scrutiny Committee violates the principle of natural justice.

39. Rule of fair play demanded that copy of the report of District Level Caste Scrutiny Committee ought to have been supplied to the petitioner and in case petitioner has anything to say against the aforesaid report in question then petitioner could have her to say in the matter. In view of this decision making process as adopted by State Level Caste Scrutiny Committee is not being approved of and is bad.

40. Coming to the merit of the case, this much is reflected that State Level Caste Scrutiny Committee has proceeded to mention that Gond tribe were found in the southern part of the district Mirzapur, presently said part is in district Sonebhardra Kaimoor mountain range and same was epicentre of of the aforesaid tribe in question. This has also been mentioned that in the other part of the State of U.P. incumbents declaring themselves to be Gond, originally they are "Kahar" and belong to OBC category. It has also been mentioned that all these incumbents who describe themselves as Gond their sub-caste is Kahar and all these incumbents are originally resident of Gorakhpur. It has also been mentioned that petitioner has failed to substantiate from evidence that its culture, religion, language has any affinity with Gond tribe. Further mention has been made that all public documents so maintained clearly pointed out that petitioner is Kahar, which is recognized as "Other Backward Class" in the State of Uttar Pradesh.

41. In the present case, this much is reflected that petitioner has been insisting from the very beginning that her sub-caste is "Dhuriya" of caste "Gond" and further had proceeded to mention that caste "Gond"has got sub caste "Dhuriya", Nayak, Ojha, Pathari, Rajgond and in the year 2002, "Gond" with various specified sub-caste has been included in Scheduled Tribes category. Petitioner submits that all these documents filed by the petitioner has not been considered.

42. In the present case, this Court finds that exhaustive consideration has not been made on the issue as has been raised by the petitioner as there is nothing on record to show and substantiate that Gond caste in whose favour recommendation has been made by the State Government to include them in scheduled caste initially and then to include them in scheduled tribes as to whether petitioner has got any ethnological connection with the same in any manner or petitioner has got all together different trail i.e. she is a Kahar, having remotest connection with the said caste/tribe as referred to in Presidential Order.

43. Here on admitted position, as the order passed by the State Level Caste Scrutiny Committee has been passed in violation of principle of natural justice, accordingly the order dated 16.08.2013 is hereby quashed and set aside and the State Level Caste Scrutiny Committee is directed to decide the matter afresh with next three months, keeping in view the broad parameters, as has been fixed by the Apex Court in the case of Anand Vs. Committee for Scrutiny and verification of Tribes (Supra).

44. Petitioner is submitting at last that she has already passed MBBS Course in the past and has taken admission in MS course and has also undertaken

examination in question though on the strength of interim order passed by this Court in the year 2001 and since then more than 12 years period have elapsed, in such a situation and in this background her result be directed to be declared. Petitioner submits that accepting for the purposes of case, that her claim would be rejected finally, even then directives can be issued for conferment of her degree, as Apex Court in the matters wherein finally caste certificate has not been verified has proceeded to accord relief, when courses have been pursued/completed. This Court feels that agony of the petitioner should also come to an end on the same lines as has been settled by Apex Court in the case of State of Maharastra Vs Milind and others reported in AIR 2001 (SC) 393, [Civil Appeal No. 2294 of 1986 decided on 28.11.2000]; wherein Apex Court has proceeded to mention that nobody is to be benefited in the matter of annulment of her admission as huge amount has been spent on each candidate for completion of medical course. Similar view has been taken in the case of Dayaram Vs. Sudhir Batham and others reported in (2012) 1 SCC 333 ; Priya Gupta Vs. State of Chhatisgarh and others reported in 2012 (7) SCC 433. Accordingly in the present case also result be declared. Said exercise be completed by the concern authority within a period of two months from the date of presentation of certified copy of the order passed by this Court and it is made clear that petitioner would not get any benefit of caste/tribe, as same would be totally dependent on outcome of the decision State Level Caste Scrutiny Committee.

45. In terms of above observations and directions present writ petition is allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.12.2013

BEFORE
THE HON'BLE TARUN AGARWALA, J.

Civil Misc. Writ Petition No. 50923 of 2004

M/s U.P.S.I.C. Pottery Ltd. & Anr.Petitioners
Versus
Presiding Officer, Labour Court (I) & Ors
M .....Respondents

Counsel for the Petitioner:
Sri P.S. Baghel, Sri Vivek Kumar Singh

Counsel for the Respondents:
C.S.C., Sri Anand Kumar

Constitution of India, Art.-226-Back Wages-termination on allegation-stoling watch of college-as well as misbehave with manager-disciplinary enquiry not conducted treating daily wager-from appointment letter-nothing whisper regarding daily wager-Labour Court by impugned award found termination illegal-reinstatement with full back wages-outrightly stayed by Writ Court-during this period workman not gainfully worked-entitled for wages-considering clouser of unit instead of reinstatement and in leu of back wages-lum sum amount of Rs. 5 lacs given-petition partly allowed.

Held: Para-6
In the instant case, the Court finds that the services of the workman was terminated on account of a charge of theft. This charge has not been proved. No disciplinary inquiry was initiated nor any chargesheet was served and, consequently, the Court is of the opinion that the order of termination was wholly violative of the principles of natural justice. The Labour Court was accordingly, justified in reinstating the workman.

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

1. Heard the learned counsel for the parties.

2. Respondent no.3 is a workman and was employed in the petitioner's corporation on 15th May, 1982. The workman worked continuously for more than 5 years and his services was terminated by an order dated 20th September, 1987 on the charge of stealing a watch of his colleague. The workman, being aggrieved, raised an industrial dispute. The State Government referred the matter to the Labour Court with regard to the validity and legality of the order of termination.

3. The workman contended that no inquiry nor any chargesheet was given to him before passing the order of termination. On the other hand, the Corporation took a stand that the Manager had conducted a preliminary inquiry and found that the charge stood proved. It was further contended that the workman also misbehaved with the Manager and, consequently, on this short ground also the workman's services was terminated. It was also contended that the workman was a daily wager and that no disciplinary inquiry was required for a daily wager.

4. The Labour Court, after considering the material evidence on record, gave an award dated 27th November, 1993, which was published on 22nd July, 2004 directing reinstatement of the workman with continuity of service and will full back wages. The petitioner, being aggrieved by the said award, has filed the writ petition in the year 2004, which was entertained and a complete stay of the award was granted.

5. Having heard the learned counsel for the parties at some length, the Court finds that the contention of the petitioner that the workman was employed as a daily wager and was not employed in a permanent capacity is patently misconceived. The appointment letter has been filed as annexure 1 to the writ petition, which indicates that the workman was appointed as a skilled workman on a salary including dearness allowance etc. The appointment letter does not indicate that the workman was appointed on a temporary basis or as a daily wager. This Court further finds that the workman had worked from 1982 to 1987 continuously without any break in service and, therefore, having worked for five years was entitled to be heard and disciplinary proceedings was required to be taken against the workman. The employers were required to adhere to the provisions of the Certified Standing Orders of the company and take disciplinary action in accordance with the principles of natural justice.

6. In the instant case, the Court finds that the services of the workman was terminated on account of a charge of theft. This charge has not been proved. No disciplinary inquiry was initiated nor any chargesheet was served and, consequently, the Court is of the opinion that the order of termination was wholly violative of the principles of natural justice. The Labour Court was accordingly, justified in reinstating the workman.

7. Since the order is violative of the principles of natural justice, the workman has to be reinstated and it would be open to the employer to hold an inquiry in accordance with law. The Court, however, finds that it would not be worthwhile or feasible for the employer to hold a fresh inquiry on account of lapse of time. The incident is of the year 1987 and more than 26 years have elapsed. It has been stated that the factory has also closed down.

Consequently, holding a fresh inquiry is not a feasible option.

8. With regard to reinstatement, the Court is also of the opinion that for such stale matters, reinstatement is also not a feasible option, especially when it has come to the knowledge of the Court that the factory has closed down.

9. The Court further finds that even though, the award was sent to the government on 27th November, 1993, the State Government sat over the matter for 10 years and only published it on 22nd July, 2004. For these 11 years the employer should not be saddled with paying back wages to the workman since the employer was not at fault.

10. In the light of the aforesaid, the Court is of the opinion that the only feasible option at this stage is to grant lump sum compensation to the workman in lieu of reinstatement and back wages.

11. As stated aforesaid, for calculating back wages and compensation, the period from 1993 i.e. from the date of the award till the award is published in 2004 should not be taken into consideration.

12. The workman has come forward and has stated on an affidavit that he is unemployed. The record also suggests that he is a farmer and, consequently, must be tilling his land, but no proof has been filed by the petitioner on an affidavit that the workman is gainfully employed in an industry.

13. Considering the aforesaid fact that the petitioner may have remained unemployed from 1987 onwards i.e. from the date of the award and that pursuant to the publication of the award, no amount from 2004 till date has been paid to him and considering the inflation and rise in the price index of the essential commodities, the Court is of the opinion that a lump sum payment of Rs.5,00,000/- (Rs.5 lacs) would be substantial to meet the ends of justice.

14. Consequently, the writ petition is partly allowed. The award of the Labour Court directing reinstatement with back wages is modified to the extent that the petitioner would pay compensation of Rs.5,00,000/- (Rs.5 lacs) to the workman within six weeks from today in lieu of reinstatement with back wages.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.12.2013

BEFORE
THE HON'BLE RAJES KUMAR, J.
THE HON'BLE MANOJ MISRA, J.

Civil Misc. Writ Petition No. 51811 of 2013 connected with No. 50305 of 2013, no. 50833 of 2013, no. 51295 of 2013, no. 51328 of 2013, no. 51422 of 2013, no. 51494 of 2013, no. 51694 of 2013, no. 51760 of 2013, no. 51996 of 2013, no. 52498 of 2013, no. 52548 of 2013, no. 52774 of 2013, no. 52806 of 2013, no. 52846 of 2013, no. 52885 of 2013, no. 52897 of 2013, no. 52983 of 2013, no. 53136 of 2013, no. 53227 of 2013, no. 53532 of 2013, 54445 of 2013, no. 53930 of 2013, no. 57020 of 2013, no. 56948 of 2013, no. 55848 of 2013, no. 56351 of 2013, no. 57470 of 2013, no. 57469 of 2013, no. 57536 of 2013, no. 59112 of 2013, no. 59136 of 2013, no. 59203 of 2013 and no. 62386 of 2013.

Mohd. Akram Siddeeque & Ors. Petitioners
Versus
State of U.P. and Ors.... Respondents

Counsel for the Petitioners:
Sri Rakesh Pande, Sri Murli Dhar Mishra
Sri Anil Tiwari

Counsel for the Respondents:
C.S.C., Sri Manish Goyal, Sri V.P. Mathur
Sri A.K. Sinha

Constitution of India, Art.-226-Service Law-Deletion of certain question from evaluation zone-by Public Service Commission-and distribution of those marks on proportionate basis to remaining questions-based upon expert conflicting opinion-can not be held-arbitrary-power of judicial review can not be exercised by Writ Court by sit over the wisdom of commission-follow up direction issued-petition disposed of.

Held: Para-11
Accordingly, the view taken by the Commission that there had been two conflicting expert reports, therefore, the deletion of those questions from the zone of consideration would be a safer option, cannot be said to be arbitrary in the facts and circumstances of the case, so as to call for interference in exercise of our power of judicial review. It is quite possible that the answer suggested by the petitioners may be correct, but unless we are in a position to adjudicate on their correctness, we cannot sit over the wisdom of the Commission, particularly in the light of the apex court's decision noticed herein above.

Case Law discussed:
JT 2013(9) SC 562; AIR 1983 SC 1230; JT 2010(6) SC 326.

(Delivered by Hon'ble Rajes Kumar J.)

1. In these bunch of writ petitions, we took Writ Petition No.51811 of 2013 as the lead petition and, on 26.09.2013, we passed a detailed order, which not only elucidates the controversy involved in these petitions but also seeks to partially resolve the same. As the said order is self-explanatory, it would be useful for us to reproduce the same, as under:

"Order dated 26.09.2013:

By this petition, which we take up as a leading petition, amongst a bunch of writ petitions with same or similar prayers, the petitioners have assailed the select list dated 09.09.2013 notified/ published by the U.P. Public Service Commission (hereinafter referred to as the Commission) of U.P. Judicial Service, Civil Judge (Junior Division) Preliminary Examination 2013 with a prayer to direct the respondents to permit the petitioners to appear in the U.P. Judicial Service, Civil Judge (Junior Division) Mains Examination, 2013, which are scheduled to be held from 28.09.2013 up to 30th September 2013.

We have heard learned counsel for the petitioners appearing in various petitions dealing with the same issue and Sri A.K. Sinha, who has appeared on behalf of the Commission.

The brief facts are that the Commission issued an advertisement inviting applications for U.P. Judicial Service, Civil Judge (Junior Division) Examination, 2013, which is to be conducted in two parts-- preliminary and mains. According to the petitioners, they applied pursuant to the advertisement and appeared in the preliminary examination. The preliminary examination comprises of two papers. The first paper is of General Studies comprising 150 questions of 1 mark each totaling 150 marks and the second paper is of Law comprising 150 questions of 2 marks each totaling 300 marks. Accordingly, the select list of candidates, short listed for the Main Examination, is

prepared on the basis of total marks obtained in both papers that is, out of 450 marks. According to the petitioners, which has not been disputed by the learned counsel for the Commission, the Cut Off Marks--category-wise--are as follows: 305 for the General; 303 for OBC; 270 for S.C.; 224 for S.T. and 291 for Female.

It is not disputed that the question-books for the preliminary examination were in four series i.e. A, B, C, and D. All the four series of question papers carried the same questions but in the different serial order which, according the learned counsel for the Commission, is a practice usually adopted by examining bodies to prevent use of unfair means. All questions are objective type with four alternative answers for each question. A candidate is required to select one of the four answers. The answers are to be rendered in OMR sheets, which is provided to the candidates at the examination center. The filled OMR sheet is to be submitted by the candidate at the examination center for evaluation. As per the procedure, before declaration of the result i.e. the select list, the key answers to the questions are uploaded, and thereby notified, in the website of the Commission so as to enable the candidates to submit their objections, if any, to the answers displayed in the web site. According to the petitioners, which has not been disputed by the learned counsel for the Commission, the objections are placed before an expert body i.e. a committee which consider the objections and, thereafter, decides either to correct the answer, by changing the option notified, or to delete the question itself from the zone of evaluation. It is the case of the Commission's counsel that where a decision is taken to delete a question from the zone of evaluation its assigned marks are evenly distributed to the remaining questions, which often results in awarding of marks in decimals. If the decimal count obtained is higher than 0.5 it is rounded off to the next higher digit, but where it is 0.5 or less it is rounded off to the next lower digit. Relying on the aforesaid procedure, the learned counsel for the Commission has sought to explain the award of odd marks, particularly, in those cases where a challenge has been made by some of the petitioners, based on self evaluation, that there was no possibility of receiving odd marks, as awarded to them.

According to the petitioners on 20.08.2013, the Commission published key answers to the questions on its website and invited objections, fixing 27.08.2013 as the last date. It is the case of the petitioners that there were several questions where either the key answers were not correct or the question framed was such where no answer provided, by way of option, was correct or there were multiple possible answers, by way of options, rendering evaluation meaningless. It is further the case of the petitioners that despite several objections to such questions, by a multitude of candidates, the Commission did not publish the key answers finalized after consideration of the objections, and straight away published the select list. It is the case of the petitioners that on account of faulty questions or faulty answers the final select list has been materially affected thereby affecting selection on merit, which is the primary concern for holding an open competitive examination. It has been submitted that in view of the principle of law laid down by the apex court in the case of Abhijit Sen and others Vs. State of U.P. and others: (1984) 2 SCC 319; Manish Ujwal and others Vs. Maharishi Dayanand Saraswati University

and others: (2005) 13 SCC 744; and Kanpur University through Vice-Chancellor and others Vs. Samir Gupta and others: (1983) 4 SCC 309, this court has ample power to scrutinize the questions as well as the answers so as to infer whether there has been an error on the face of record or not and to take remedial action.

Various questions and their respective answers provided as key answers, published in the website, were shown to the Court on earlier date, in various writ petitions, for the purpose of demonstrating that either the questions were faulty or the answers provided to those questions were not correct.

We, accordingly, directed Sri A.K. Sinha, learned counsel for the Commission, to seek instructions and provide to the Court the altered key answers, which were adopted by the Commission for evaluating the OMR sheets, after receipt of objection from the candidates, so as to enable the Court to satisfy itself whether the alleged mistake in the question-answer stood rectified or not.

Pursuant to our direction, Sri A.K. Sinha supplied the required information in sealed cover from which we find that in Law Paper as many as six key answers were changed and two questions were deleted whereas in the General Knowledge paper five key answers were changed and four questions were deleted. In the report, at two places, it was mentioned that the question "may be deleted" which, according to Sri A.K. Sinha, should be treated as having been deleted, therefore, we have already put them in the tally of deleted questions.

After receipt of the above information, the learned counsel for the respective petitioners were informed of the changed position in key answers and they were, accordingly, requested to confine their arguments to such questions only where the answers were either not changed or the answers, so changed, were not correct as also to such questions where the question itself was such, which required deletion.

The learned counsel for the petitioners, accordingly, drew the attention of the Court to such questions. It would, therefore, be useful for us to enumerate those questions and deal with them separately.

For convenience, we are discussing the questions subject-wise, as they figured in "A-Series" Paper. The details are being provided herein below:

LAW PAPER

Question No.10 in "A-Series" of Law Paper.

"10. Where a compromise was arrived between parties to a suit by playing fraud, misrepresentation or mistake and a decree was passed with the consent of the parties, then the suffering party may select which one of the following alternatives for setting aside such decree?

(a) Through appeal
(b) Through revision
(c) Through review
(d) Through a second suit"

According to the Commission, option "d" was the correct answer.

The submission of the learned counsel for the petitioners is that the said option was not the correct answer, inasmuch as, it fails to take into consideration Order 23 Rule 3A of the Civil Procedure Code, which was inserted in the Code with effect from 01.02.1977, which reads as follows:

"3-A. The bar to suit- No suit shall lie to set aside a decree on the ground that

the compromise on which the decree is based was not lawful."

Without expressing any authoritative opinion with regards to maintainability of a suit in view of the bar under Order 23 Rule 3A C.P.C., suffice it to say that the law on the point is in a developing stage and there may be conflicting view points taking into account different fact situations. However, for a candidate who is still to be trained in the field of law, the answer "through a second suit" is definitely not the correct answer in view of the statutory provision i.e. Order 23 Rule 3-A CPC as well as the apex court decision in the case of Pushpa Devi Bhagat Vs. Rajendra (2006) 5 SCC 566: AIR 2006 SC 2628. Although, there are few authorities which may hold that a suit would be maintainable where there is a contest on the question whether there was a compromise or not and in such a case it could be said that there was no consent decree, therefore, even the bar under section 96(3) CPC would have no application (vide Kishun Vs. Bihari 2005 (6) SCC 300), but generally speaking option (d), cannot be accepted as the correct answer. Ordinarily in objective type questions when answers are provided by way of option, the correct answer should not be debatable that is, it should be without doubt so that there is no scope for explanation.

In our view, we find that this Question No.10 in "A series" of law paper was liable to be deleted and in any case the option (d) cannot be accepted as the correct answer in view of Order 23, Rule 3-A CPC.

Question No.31 in "A-Series" of Law Paper.

"31. Under Section 41 of Criminal Procedure Code, the power of police to arrest a person

(a) covers all cases

(b) is limited to cases of mere suspicion

(c) is limited to cases of reasonable suspicion

(d) does not cover cases of Army deserters"

According to the Commission, the correct answer is "c".

The submission of the learned counsel for the petitioners is that the question itself is ambiguous as also the key answer inasmuch as the powers of police to arrest a person under Section 41 CrPC covers all cognizable offences and thus option (a) would be the right answer, while in view of the words used in Section 41 (1) (a) Cr.P.C., even option (b) could the correct answer and similarly in view of the words used in Section 41 (1) (b), even option (c) could be the correct answer.

Having examined the question carefully, we are of the view that the option (c) would not be the correct answer as the power under Section 41 is not limited to the cases of reasonable suspicion. Whether the police has power to arrest an Army deserter or not, we are unable to express any opinion, at this stage, in absence of assistance on that count. However, in any case, the option (c) cannot be countenanced. If option (d) is not the correct answer then the question is liable to be deleted.

Question No.45 in "A-Series" of Law Paper.

"45. Which one of the following is not a secondary evidence?

(a) Copies made from the original by mechanical process

(b) Copies made from or compared with the original

(c) Counterparts of documents

(d) Lithography"

According to the Commission, the correction option is (d).

Learned counsel for the petitioners placed before us Section 62 of the Indian Evidence Act, which reads as follows:-

"62. Primary evidence.- Primary evidence means the documents itself produced for in the inspection of the Court.

Explanation 1.- Where a document is executed in several parts, which part is primary evidence of the document:

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.- Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original."

Relying on Explanation-1, the learned counsel for the petitioners submitted that where a document is executed in several parts, each part is primary evidence of the document and where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it. The learned counsel for the petitioners thus pointed out that more than one option was correct and, therefore, this Question No.45 was liable to be deleted.

We find substance in the argument of the learned counsel for the petitioners as the aforesaid position is clear on a plain reading of Explanation 1 of Section 62 of the Evidence Act. Thus, question no.45 ought to have been deleted.

Question No.100 in "A-Series" of Law Paper.

"100. Does United Nations, as an organization, has the capacity to bring an international claim against a State in the International Court of Justice?

(a) Yes, because United Nations is also deemed to be a State

(b) No, because International Court of Justice is open to the State Parties in the State only

(c) Yes, because United Nations has a legal personality.

(d) None of the above is correct"

According to the Commission, the correct option is (a).

Whereas, according to the learned counsel for the petitioners, the correct option should be (b) as according to Article 34 of Chapter II of the Charter of the United Nations only States may be parties in cases before the International Court of Justice and since United Nations is not a State, therefore, it cannot bring a claim against the State in the International Court of Justice.

We are not in position to give any conclusive opinion with regards to the said question in absence of any authoritative material provided to us. However, this is a matter which may be examined and reviewed by the expert body.

Question No.122 in "A-Series" of Law Paper.

"122. The binding force behind the Directive Principles of State Policy is

(a) Public Opinion

(b) Government

(c) Constitution

(d) Administration"\

According to the Commission, the correct answer is option (a).\

The learned counsel for the petitioners submitted that the Directive Principles of State Policy may not have binding force at all, but if they have any force it is because of the Constitution and not the Public Opinion, therefore, the correct option ought to have been (c) and in any case the option (a) cannot be the correct answer.

We find substance in the argument of the learned counsel for the petitioners because if there is any force behind the Directive Principles of State Policy it is because of the Constitution. In any case, we feel that the question itself is ambiguous and the expert committee may consider deleting the same.

Question No.99 in "A-Series" of Law Paper.

"99. What was the 'theme' for the world Human Rights Day, 2012?

(a) All Human Rights for all.

(b) Women's Right as Human Right.

(c) Inclusion and the right to participation in public life.

(d) Human Rights as People's Right."

According to the Commission, the right answer for the aforesaid is option (a).

The submission of the learned counsel for the petitioners is that the original answer given in the website to Question No.99 was option (c) but it appears that on objection by some candidates it was changed to (a).

Before us, several print out obtained from various websites have been produced to demonstrate that Human Rights Day, 2012 was for inclusion and the right to participation in public life and, therefore, the learned counsel for the petitioners submitted that the original answer i.e. option (c) was correct whereas the changed answer i.e. option (a) is incorrect.

We are not in a position to authoritatively render our opinion to aforesaid question but it, prima facie, appears to us from the print out produced by the learned counsel for the petitioners that the original answer i.e. option (c) was correct and that the changed answer is not correct. However, we leave it open to the expert committee to review the same.

Question No.103 in "A-Series" of Law Paper.

"103. What is the number of States with 'nuclear capabilities' as listed in Annexure 2 of C.T.B.T. (Comprehensive Nuclear Test Ban Treaty) ?

(a) 8 States

(b) 44 States

(c) 15 States

(d) 35 States"

According to the Commission, the answer originally was option (b), which was subsequently changed to option (a) on the basis of expert opinion after receiving objection.

The submission of the learned counsel for the petitioners is that this change is not correct and the original answer option (b) is correct because there are 44 States listed in Annexure 2 of C.T.B.T. (Comprehensive Nuclear Test Ban Treaty). In order to substantiate the aforesaid submission, the learned counsel for the petitioners produced before us various print out from the websites of the U.S. Department of State--Diplomacy in Action, disclosing total number of States

listed in Annexure 2 of C.T.B.T as 44 whereas 8 out of those states have not signed CTBT.

We are not in a position, at this stage, to give any conclusive pronouncement on the aforesaid position, however, prima facie, from the material produced before us we are satisfied that this answer also requires review by the expert committee.

GENERAL KNOWLEDGE PAPER

Question No.16 in "A-Series" of General Knowledge Paper.

"16. Most of the production of Natural Gas in India comes from

(a) Andhra Pradesh Coast

(b) Gujarat Coast

(c) Bombay High

(d) Tamil Nadu Coast"

According to the Commission, the correct answer is option (a).

The submission of the learned counsel for the petitioner is that as per the website information provided by the Ministry of Petroleum and Natural Gas, Bombay High is the largest purchaser of natural gas in India, therefore, the answer i.e. option (a) is not correct. To substantiate the aforesaid contention, the learned counsel for the petitioners, vide Annexure 9 in writ petition no.51422 of 2013, has enclosed various material.

We find that, prima facie, there is some substance in the submission of the learned counsel for the petitioners with regards to the aforesaid position. However, in absence of any authoritative document, we are not in a position to render any conclusive opinion in that regard but considering the material produced before us, we find, prima facie, that this aspect also requires to be examined by the expert body by way of review.

Question No.72 in "A-Series" of General Knowledge Paper.

"72. Who is authorised to issue coins in India ?

a) RBI

(b) SBI

(c) Ministry of Finance

(d) None of the above

According to the Commission, initially correct option uploaded in the website was option (c) i.e. Ministry of Finance, which, upon objection by candidates, was changed to option (a) i.e. RBI.

Learned counsel for the petitioners submitted that under the Indian Coinage Act, 1906, vide Section 6 thereof, coins may be coined at the Mint for issue under the authority of the Central Government, of such denominations not higher than one hundred rupees, of such dimensions and designs, and of such metals or of mixed metals of such composition as the Central Government may, by notification in the official Gazette, determine. Court has been informed that no coin of a denomination higher than rupees hundred has been issued, therefore, coins can only be issued under the authority of the Finance Ministry and not by the RBI and, as such, the option (c) was the correct and it was wrongly changed to option (a).

We find, prima facie, substance in the submission of the learned counsel for the petitioners in this regard. However, it is for the expert committee to examine the provisions of law and come to a definite conclusion in this regard.

Question No.76 in "A-Series" of General Knowledge Paper.

"76. Which two countries signed agreement for the modernization of Indian Railways ?

(a) India and Belgium

(b) India and China

(c) U.S.A. And India

(d) Russia and India"

According to the Commission, the correct answer is option (a).

The learned counsel for the petitioners, relying on certain reports, submitted that there had been an agreement between Indian and China in respect of exchange of technical know how for the Railways but there has never been any agreement between India and Belgium, therefore, option (a) cannot be correct.

We are not in a position to express any authoritative opinion in that regard, particularly, in absence of any authoritative material placed by the learned counsel for the petitioners. However, we feel that this a matter which may require reconsideration by the expert body.

Question No.133 in "A-Series" of General Knowledge Paper.

"133. Which one of the following is used in making bullet proof materials ?

(a) Polyvinyl chloride

(b) Polycarbonate

(c) Polyethylene

(d) Polyamide"

According to the Commission, the correct answer is option (b).

The submission of the learned counsel for the petitioner is that Polyamide is also a substance for making bullet proof material. Certain printout obtained from website has been brought to our notice to suggest that Polyamide is also used for making bullet proof material. The submission of the learned counsel for the petitioner is that since Polyamide is also used for making bullet proof material there was no more than one correct answer, hence such question ought to have been deleted.

We are not in a position, at this stage, to render any authoritative pronouncement on the aforesaid subject in absence of authoritative material or scientific advice. We are, however, of the view, on the basis of the material provided by the learned counsel for the petitioners, that there appears some substance in the submission of learned counsel for the petitioner and, therefore, it may be reviewed by the expert body.

At this stage, we may observe that certain other questions were also placed before us so as to dispute the authenticity of their answers which, upon, prima facie, assessment, were not found worthy of our attention, we, therefore, do not consider it necessary to discuss them in our order. Further, there were questions which, according to the learned counsel for the petitioners, were wrongly deleted. However, we are of the view that as these questions were deleted upon expert advice and their marks were distributed across the board to the remaining questions it may not materially affect the result and even if it does, the opinion of the expert body in favour of deletion should be respected.

In view of our detailed examination of the disputed questions, we are, prima facie, satisfied that on account of faulty questions or their answers, the final select list declared by the Commission require review. We are satisfied that the Commission requires to re-examine those questions with a view, either, to delete the same from the zone of consideration or to review the answer provided to those questions with the aid of an expert body.

We, therefore, direct the Commission to appoint an expert body of such number of members, as it may deem fit or prescribed by the Regulations, if any, in this regard, who are well versed with the subject concerned, having good credentials, within a period of one week from today, for doing the needful exercise

of the reviewing the questions, including their answers, as enumerated herein above. The expert body, so constituted, will review the questions that have been noticed by us, in the light of the observations made in this order, and would submit its report along with material in support thereof, within one week from the date of its constitution i.e. on 10.10.2013.

In view of the fact and circumstances narrated above, as there is high probability that the final select list may have to be altered the holding of the Mains Examination, before completion of the above exercise, would be an exercise in futility. We, therefore, direct that till further orders of this Court, the Mains Examination of U.P. Judicial Service, Civil Judge, (Junior Division), 2013 scheduled to be held from 28.09.2013 to 30.09.2013 will not be held and a notice to that effect will be published by the Publish Service Commission in newspapers as well as by uploading in the website.

List on 10.10.2013 along with other connected petitions."

2. Pursuant to our order dated 26.09.2013, a fresh expert body was constituted, which submitted its report on 9.10.2013. The report was produced before us in sealed cover on 10.10.2013. As no decision was taken by the Commission on the report so submitted, we directed the matter to be taken up on 28.10.2013. On 28.10.2013, a short affidavit dated 27.10.2013 was filed on behalf of the Commission wherein, in paragraph 6 thereof, it was stated that the Commission convened a meeting on 24.10.2013 and took fresh decision as per the expert report by deleting 07 questions in total in law and 02 questions in General Knowledge. As it was not clear whether the deletions reported in the affidavit would be inclusive of the deletions made earlier, we, on 28.10.2013, passed the following order:

"Order dated 28.10.2013

A short counter affidavit filed today, is taken on record.

In paragraph no.6 of the counter affidavit, it is stated that the Commission has convened a meeting on 24.10.2013 in which the sealed cover of the expert opinion was opened and a fresh decision was taken, in the light of the expert opinion, by deleting seven questions in Law Paper and two questions in General Knowledge.

The said expert opinion has been produced before us in sealed cover.

On consideration of the entire material, we are of the view that the affidavit filed on behalf of the Commission is lacking in essential particulars, which are enumerated herein below:-

1. In our earlier order, we had noticed that the Commission deleted two questions in Law Paper and four questions in General Knowledge. There is no averment in the affidavit whether those deletions still stand, in addition to the further deletion reported in the affidavit. The averment in this regard should have been made in the affidavit.

2. In our earlier order, with respect to the law paper, we had discussed objections to as many as seven questions. Out of seven questions, we had recommended for the deletion of the question no.10, 31, 45 and 122. However, in respect of question nos.99, 100 and 103, we had asked the Commission to get fresh opinion from the expert.

The expert committee report reveals that answer of question no.99 of the Law Paper has been proposed to be changed

from "a" to "c". The answer of question no.103 of the Law Paper has been proposed to be changed from "a" to "b". The answer of question no.100 of the Law Paper has been proposed to be changed from "c" to "b". Likewise, the answer of question no.16 of the General Knowledge has been proposed to be changed from "a" to "c". The answer of question nos.72 and 76 of the General Knowledge have been maintained whereas the question no.133 of the General Knowledge has been deleted.

There is nothing in the Resolution passed in the meeting dated 24.10.2013 so as to indicate as to why the proposed changed answers were not accepted and instead the said questions were deleted. If the answer suggested by the Expert Committee has been substantiated by material and there is no contrary material on record then why those questions were deleted should be borne out from the affidavit of the Commission.

We are, therefore, of the view that proper exercise have not been undertaken by the Commission while taking the decision.

In view of the above, we direct the Commission to take a fresh decision in the matter and file affidavit making specific averments.

Such exercise be made by 13.11.2013.

List on 13.11.2013."

3. In pursuance of our order dated 28.10.2013, on 13.11.2013, on behalf of the Commission, affidavit dated 13.11.2013 was filed. In this affidavit it was clarified that before declaration of results the Commission, after inviting objections and obtaining expert report thereupon, had taken a decision to delete 2 questions in law paper and 4 questions in General Knowledge paper. Thereafter, pursuant to our order dated 26.09.2013, upon obtaining fresh expert report, 7 questions in law paper including 4 questions which we, by our order dated 26.09.2013, had suggested for deletion, were deleted along with 2 more questions in the General Knowledge paper. In paragraph 3 of the affidavit it was submitted that the deletion made after the fresh expert report was in addition to the deletions earlier made by the Commission. In the affidavit it was submitted that the decision to delete three questions in the law paper i.e. 99, 100 (incorrectly typed as 11) and 103 was taken to avoid further controversy as there were contradictory expert reports. Likewise, question no.16 in the General knowledge paper was deleted for there being contradictory expert reports. Whereas question nos.72 and 76 of the General Knowledge paper were maintained as they found support from the second report as well, though question no. 133 was deleted on the basis of the subsequent expert report.

4. Thus, in sum and substance the stand of the Commission had been that wherever there had been contradictory opinion in the two expert reports either with regard to the correctness of the answer to the question or with regards to there being more than one correct option to the question, a decision was taken to delete the same from the zone of evaluation and to add its marks on pro-rata basis to the remaining questions.

5. The learned counsel for the petitioners submitted that in respect of three questions in the law paper, namely, question Nos. 99, 100 and 103, the second expert report had advised for change of answer and as there was one correct

answer available, in the option, as per the advice of the Review Committee Report, the deletion of those questions from evaluation would affect the meritorious students, who had answered those questions correctly, therefore, the Commission should be directed to evaluate those questions with reference to the answer provided by the Review Expert Committee.

6. In addition to above, the learned counsel for the petitioners submitted that there was no justification to delete question No. 16 of the general knowledge paper as the Review Committee had supported that there was one possible correct answer in the options provided in the question paper. Thus, in sum and substance, the argument from the petitioners' side is that when the Review Expert Committee report had supported its view by some material on record, the Commission ought not to have deleted those questions from evaluation merely on ground that there had been conflicting expert reports with regards to the correctness of the answers to those questions.

7. Per Contra, Sri A.K. Sinha, learned counsel for the Commission, strenuously argued that Commission by itself is not an expert to judge whether an answer is correct or not. The correctness of the question or of the answer has to be ascertained by an Expert Body. As there were two expert bodies rendering conflicting opinions, the Commission adopted the safer course of deleting those questions from evaluation and distributing the marks of those questions on prorata basis to all the remaining questions so that no individual person would suffer. It was submitted that as the correct answer in the remaining questions would fetch higher marks, the meritorious student would not be affected by deletion of any erroneous question. Sri A.K. Sinha further submitted that the deletion of a defective question and distribution of its marks on prorata basis to the remaining questions is an accepted norm and the same has been approved by the Apex Court. In this regard, reliance has been placed on a decision of the Apex Court in the case of Vikas Pratap Singh and Ors. v. State of Chhattisgarh and Ors. : JT 2013 (9) SC 562, wherein, in paragraph 16, it was observed as follows:-

"16. In respect of the respondent-Board's propriety in taking the decision of re-evaluation of answer scripts, we are of the considered view that the respondent-Board is an independent body entrusted with the duty of proper conduct of competitive examinations to reach accurate results in fair and proper manner with the help of Experts and is empowered to decide upon re-evaluation of answer sheets in the absence of any specific provision in that regard, if any irregularity at any stage of evaluation process is found. (See: Chairman, J & K State Board of Education v. Feyaz Ahmed Malik and others, (2000) 3 SCC 59 and Sahiti and Ors. v. The Chancellor, Dr. N.T.R. University of Health Sciences and Ors., (2009) 1 SCC 599). It is settled law that if the irregularities in evaluation could be noticed and corrected specifically and undeserving select candidates be identified and in their place deserving candidates be included in select list, then no illegality would be said to have crept in the process of re- evaluation. The respondent-Board thus identified the irregularities which had crept in the evaluation procedure and corrected the same by employing the method of re-evaluation in respect of the eight questions answers to which were incorrect and by deletion of the eight incorrect questions and allotment of their marks on pro-rata basis. The said

decision cannot be characterized as arbitrary. Undue prejudice indeed would have been caused had there been re- evaluation of subjective answers, which is not the case herein."

8. It has further been submitted that in the case of Kanpur University and others v. Samir Gupta and others : AIR 1983 SC 1230, vide paragraph 18 thereof, the apex court endorsed the principle of deletion of a question with any defect in a key answer or any ambiguity in the question itself.

9. On the other hand the learned counsel for the petitioners, relying on paragraph 17 of the judgment of the apex court in Kanpur University case (supra) submitted that deletion of a question from zone of consideration should be taken as a last option and should be resorted to only when the Commission finds that there is a serious difference of opinion between two views and where the matter is beyond the realm of doubt then deletion of that question would be to penalise a candidate who had answered the said question correctly. It has been submitted that since the subsequent Expert Committee Report was supported by material and the Commission could not place any material in support of the earlier expert report, its decision to delete those questions from the zone of evaluation was not legally justified.

10. We have given our thoughtful consideration to the respective submissions. In the seven questions of law paper that we have analyzed, in detail, in our earlier order dated 26.09.2013, four questions were recommended by us for deletion and there is no doubt in respect of those questions and the Commission readily accepted our proposal. With regards to the remaining three questions, in our order, we had stated that we are not having sufficient material to make an authoritative pronouncement on those questions. We, however, noticed the submissions of the petitioners, in our last order dated 26.09.2013, and referred the matter for the Expert Body to analyze. No doubt, the Expert Body accepted the suggestions of the petitioners in its report but the Commission thought it proper to delete those questions rather than to change their answers because there were two conflicting expert reports before it. The material that has been placed before us, along with the second expert report, was in no way different than what has been placed along with writ petition. On the material placed before us, in respect of those questions, in our earlier order dated 26.09.2013, we were unable to form a conclusive opinion in respect of those questions, therefore, we had referred the matter to the expert body. The review expert body seemingly referred to that material only and rendered its opinion. Later, when we heard the matter finally, no effort was made by the learned counsel for the petitioners to demonstrate to us, by producing some authoritative text, that the answers that they suggested were without doubt, so as to enable us to come to our own conclusion, which, in any case, might not have been permissible, in view of the observations of the apex court in the case of H.P. Public Service Commission v. Mukesh Thakur & ors. JT 2010 (6) SC 326 (para 19), where it has been stated as follows:

"20. In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for

the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court."

11. Accordingly, the view taken by the Commission that there had been two conflicting expert reports, therefore, the deletion of those questions from the zone of consideration would be a safer option, cannot be said to be arbitrary in the facts and circumstances of the case, so as to call for interference in exercise of our power of judicial review. It is quite possible that the answer suggested by the petitioners may be correct, but unless we are in a position to adjudicate on their correctness, we cannot sit over the wisdom of the Commission, particularly in the light of the apex court's decision noticed herein above.

12. We, therefore, accept the decision taken by the Commission to delete as many as nine law questions (two were deleted earlier and seven subsequent to our order dated 26.09.2013). Likewise, we accept the decision of the Commission to delete six questions in the general knowledge paper (four questions were deleted earlier by the Commission and two questions were deleted pursuant to our order dated 26.09.2013). The Commission will evaluate the answers of the respective candidates on the basis of its decision, as approved herein above, and would publish a fresh merit list of the U.P. Judicial Service, Civil Judge (Junior Division) Preliminary Examination 2013, in accordance with law, within three weeks from today, and would thereafter hold the Mains Examination, in accordance with law.

13. With the aforesaid observations/directions, the writ petitions stand disposed of.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.12.2013

BEFORE
THE HON'BLE ARUN TANDON, J.
THE HON'BLE ANJANI KUMAR MISHRA, J.

Writ C No. 56485 of 2013 connected with no. 53710 of 2013, no. 54482 of 2013, no. 57531 of 2013, no. 55784 of 2013, no. 56837 of 2013, no. 19095 of 2009, no. 59969 of 2012, no. 60468 of 2013, no. 38066 of 2012, no. 62690 of 2013, no. 54466 of 2013, no. 60841 of 2013, no. 64151 of 2013, no. 63362 of 2013, no. 67155 of 2013, no. 63173 of 2010, no. 67381 of 2013, no. 67155 of 2013, no. 20280 of 2013, no. 67153 of 2013.

Smt. Rekha Rani... Petitioner
Versus
State of U.P. and Ors.... Respondents

Counsel for the Petitioner:
Sri R.K. Sharma

Counsel for the Respondents:
C.S.C., Sri A.P. Paul, Sri Vrindavan Mishra.

U.P. Urban Planning & Development Act, 1973-Section-15(2-A)-Demand of external and internal development fees, sub-division charges, compounding fee in respect of sub-division-whether can be held proper-held-'No'-so long statutory Rules by exercising power under section 15(2-A), 38-A not framed-development authorities restrained from collecting any development fees-until statutory rules are framed-amount already recovered-should be returned withing month.

Held: Para-93
In view of the aforesaid settled legal provisions as also in view of the fact that the State Government for years has not chosen to frame any rules under section 15(2-A) or Section 38-A of Act, 1973, we have no hesitation to hold that the Development Authority has no competence to levy or realise any development fee, mutation charges, stacking fees and water charges etc. which are required to be prescribed under section 15(2A) of the 1973 Act as well as city development charges and land use conversion charges, as are to be prescribed under Section 38-A of Act, 1973.

U.P. Urban Planning & Development Act 1973-Section-38-A-Demand towards sub-division and compounding charges-to set off the area required to be left open-illegal.

Held:Para-104
Therefore, we hold that the Development Authority cannot levy any sub division charge or compounding fee to set off the area which is required to be left open under the building bye-laws.

Demand of Bank guarantee advance-Towards rain water harvesting system-whether can be realised from allottees?-held-'No'-such condition can be in sanctioning order-if not obeyed should be held responsible.

Held:Para-119
We, therefore, hold that the demand of bank guarantee in advance for the cost of rain water harvesting system to be installed in the building is uncalled for. However, we clarify that it shall be open to the development authority to take all actions as permissible under Act, 1973 without any leniency whatsoever, if the conditions mentioned in the sanctioning order are not obeyed by the developer or by the person concerned.

Case Law discussed:
(996) 10 SCC 425; W.P. No. 23281 of 2001; (2006) 6 SCC 699; (2013) 8 SCC 693; 2006(1) AWC 834; (2010) 4 ADJ 368; W.P. No. 48415 of 2007; W.P. No. 23793 of 2010; (2011) 5 SCC 360; (1992) 3 SCC 285; 2006(1) AWC page 834; 2010(4) ADJ 368; 2009(8) SCC 492; 2012(4) SCC page 578; 2011(5) SCC 360.

(Delivered by Hon'ble Arun Tandon, J.)

1. The above mentioned writ petitions have been filed challenging the orders of the various Development Authorities constituted under Section 4 of the U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as the "Act, 1973") demanding (a) External development fee (b) Internal development fee (c)Sub-division charges (d) park fee (e) compounding fee in respect of sub-division charges, (f) inspection/ supervision charges, (g) labour cess, (h) bank guarantee for the value of the cost of the land and the constructions which are required to be raised by a developer of more than 3000 sq. meters of land and above, under the Government Order dated 26.9.2011 (k) bank guarantee for rain water harvesting system to be installed in the buildings and lastly (l) Impact fee, which is being demanded by the Gorakhpur Development Authority only.

2. We have heard Sri H.N. Singh, Senior Advocate, Sri Anoop Trivedi, Sri Rajeev Kumar Saini, Sri R.K. Saini, Sri R.K. Sharma, Sri K.D. Tripathi, Sri Pankaj Kumar Shukla, Sri Neeraj Kumar Srivastava, Sri Arvind Srivastava, Sri Bheem Singh, Sri Sauraubh Tiwari, Sri Sushil Singh, Sri Vinay Khare, Sri Satish Chaturvedi, Sri Ajit Ray, Sri Jamal Khan and Sri Promod Kumar Srivastava advocates on behalf of petitioners, we have also heard Sri Ramesh Upadhay Chief Standing Counsel on behalf of the State, and Sri Ashwani Mishra, Senior Advocate assisted by Sri A.B. Paul Advocate on behalf of Allahabad Development Authority, Sri H.N. Singh Advocate on behalf of Aligarh Development Authority, Sri B.D. Pandey on Advocate behalf of

Gorakhpur Development Authority, Sri Dhamendra Shukla Advocate on behalf of Bareilly Development Authority, Sri Rajesh Kumar Pandey Advocate on behalf of Muzaffar Nagar Development Authority, Sri J.N. Maurya Advocate on behalf of Agra Development Authority and Sri Prem Prakash Yadav Advocate on behalf of Bulandshahar Development Authority.

3. These writ petitions raise common question of facts and law with regard to the competence of the Development Authorities constituted under Act 1973 to levy and demand the aforesaid fees before sanctioning the building plan as per the application submitted under Section 14 of the 1973.

4. The petitioners have been clubbed together and are being decided under this common judgement.

5. It may be recorded that the demand under the following heads: i.e. (a) permit fees (b) malwa fee (c) water fees (d) Triveni Mahotsav fee, has not been challenged before us. The petitioners have no objection to the payment thereof.

6. The petitioners question the levy of external development fee, internal development fee, referable to Section 15(2-A) of Act, 1973.

7. The other fees, which are questioned in the present writ petitions, namely, the sub division charges, the compounding fees in respect of the sub-division, supervision fee and inspection fees, are not covered by Section 15(2-A) of the Act, 1973.

8. In addition to the above, there is a challenge to the demand of bank guarantee for the value of the land and the constructions required to be raised qua the houses for the economically weaker section and lower income group persons as also to the demand of bank guarantee for the rain water harvesting system which is to be provided in terms of and under the Government Order issued on the subject, in new buildings to be constructed.

9. When the petitioners before this Court had filed plans for grant of sanction under Section 14 of the Act, 1973, demand has been made by respondent-Development Authorities to deposit the fees under various heads including those detailed herein above before grant of such sanction.

10. At the very outset it may be recorded that the Apex Court in the case of State of U.P. & Others Vs. Malti Kaul (Smt.) & Another, reported in (1996) 10 SCC 425, had upheld the power to demand the development fee by the Development Authorities having regard to language of Sections 33, 41 read with Section 14 and Section 56 (2) of Act, 1973 but subsequent thereto, there has been amendments in the Act, 1973 which have materially altered the legal position.

11. The amendments, which have been introduced by U.P. Act No. 3 of 1997 and U.P. Act No. 1 of 2008, material for our purposes, are as follows:

12. City development charge has been defined under Section 2 (ddd). Development fee has been defined under Section 2 (ggg). Section 2 (ii) defines mutation charges. Section 2 (kk) defines stacking fees. Section 2 (ll) defines water fees. Amended Section 15 (2-A) of Act, 1973 provides for levy of development fees, mutation charges, stacking fees and water fees. 3rd Proviso to Section 15 (3) of Act, 1973 confers a right upon the Development Authority to get the fees and

charges levied under sub-section (2-A) deposited before granting permission as required under Section 14 of Act, 1973.

13. The amendments made in the definition clause of Act, 1973 read as follows:

"2. Definitions.---In this Act unless the context otherwise requires----

...

(ddd) 'city development charge' means the charge levied on a private developer under Section 38-A for the development of the land;

(ggg) 'development fee' means the fee levied upon a person or body under Section 15 for construction of road, drain, sewer line, electric supply and water-supply lines in the development area by the Development Authority;

(ii) "mutation charges" means the charges levied under Section 15 upon the person seeking mutation in his name of a property allotted by the Authority to another person;

[(kk) "stacking fees" means the fees levied under Section 15 upon the person or body who keeps building materials on the land of the Authority or on a public street or public place;

[(ll) "water fees" means the fees levied under Section 15 upon a person or body for using water supplied by the Authority for building operation or construction of buildings;]"

14. The other provisions of the Act, 1973 relevant for resolving the issue involved are:

"Section 7. Objects of the Authority.- The objects of the Authority shall be promote and secure the development of the development area according to plan and for that purpose the Authority shall have the Power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and electricity to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:

Provided that save as provided In this Act nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force."

15. Section 8 of the Act, 1973 contemplates the preparation of the master plan for the development area and Section 9 of the Act, 1973 provides for the Zonal development plans. The sections read as follow:-

"8. Civil survey of, and master plan for the development area:-

(1) The Authority shall, as soon as may be, prepare a master plan for the development area.

(2) The master plan shall-define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and

serve as a basic pattern of framework within which the Zonal development plans of the various zones may be prepared.

(3) The master plan may provide for any other matter which may be necessary

for the proper development of the development area.

9. Zonal Development plans.-

(1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development" plan for each of the zones into which the development area may be divided.

(2) A zonal development plan may-

(a) contain a site-plan and use-plan for the development of the zone and show the approximate locations and extents of land uses proposed in the zone for such things as public buildings and other public works and utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces and other categories of public and private uses;

(b) specify the standards of population density and building density;

(c) show every area in the zone which may, in the opinion of the Authority, be required or declared for development or re-development; and

(d) In particular, contain, provisions regarding all or any of the following matters, namely-

(i) the division of any site into plots for the erection of buildings;

(ii) the allotment or reservation of land for roads, open spaces, gardens, recreation-grounds, schools, markets and other public purposes:

(iii) the development of any area into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out,

(iv) the erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and height and character of buildings:

(v) the alignment of buildings of any site;

(vi) the architectural features of the elevation or frontage of any building to be erected on any site,

(vii) the number of residential buildings which may be erected on plot or site;

(viii) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection of buildings and the person or authority by whom or at whose expense such amenities are to be provided:

(ix) the prohibitions or restrictions regarding erection of shops. work-shops, warehouses of factories or buildings of a specified architectural feature or buildings designed for particular purposes in the locality,

(x) the maintenance of walls, fences, hedges or any other structural or architectural construction and the height at which they shall be maintained:

(xi) the restrictions regarding the use of any site for purposes other than erection of buildings;

(xii) any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for preventing buildings being erected haphazardly, in such zone or area."

16. Section 10 of the Act, 1973 contemplates submission of the plans to the State Government and its power to issue directions in the matter of the modification etc. of such plans.

17. Section 11 of the Act, 1973 provides for the approval of the plans by the State Government.

18. Section 14 of the Act, 1973 deals with the development of land in the development area and prohibits any development activities being undertaken or continued except in accordance with the plans and without approval of the development authority.

19. Section 15 of the Act, 1973 provides for making of an application in writing before the Vice-Chairman for permission under Section 14 in such manner, as may be prescribed by bye-laws and has to contain such particulars, as may be prescribed by rules. Sub-section (2-A) of Section 15 permits levy of development fees, mutation charges, stacking fees and water fees in such manner and at such rates as may be prescribed.

20. Relevant portion of Section 15 (2-A) of Act, 1973 is quoted below:-

"15. Application for permission.--(1) Every person or body (other than any department of Government or any local authority) desiring to obtain the permission referred to in Section 14 shall make an application in writing to the [Vice-Chairman] in such form and containing such particulars in respect of the development to which the application relates as may be prescribed by (bye-laws].

(2) Every application under sub-section (1) shall be accompanied by such particulars as may be prescribed by rules.

[(2-A) The Authority shall be entitled to levy development fees, mutation charges, stacking fees and water fees in such manner and at such rates as may be prescribed :

Provided that the amount of stacking fees levied in respect of an area which is not being developed or has not been developed, by the Authority, shall be transferred to the local authority within whose local limits such area is situated.]

(3) On the receipt of an application for permission under sub-section (1), the [Vice-chairman] after making such inquiry as it considers necessary in relation to any matter specified in clause (d) of sub-section (2) of Section 9 or in relation to any other matters, shall, by order in writing either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission :

Provided that before making an order refusing such permission, the applicant shall be given a reasonable opportunity to show cause why the permission should not be refused :

Provided further that the [Vice-Chairman] may before passing any order of such application give an opportunity to the applicant to make any correction therein or to supply any further particulars of documents or to make good any deficiency in the requisite fee with a view to bringing it in conformity with the relevant rules or regulations :

[Provided also that before granting permission, referred to in Section14, the Vice-chairman may get the fees and the charges levied, under sub-section (2-A) deposited;]

....."

21. Section 33 of the Act, 1973 provides for development activities to be carried on by the development authority on behalf of the owner and in the event of his default to levy cess in certain cases.

22. Section 34 of the Act, 1973 permits the development authority to transfer the developed areas with or without amenities to the local bodies on

the conditions to be settled by the Government.

23. Section 35 of the Act, 1973 provides for levy of betterment charges and reads and follows:-

"35. Power of Authority to levy betterment charges.-

(1) Where in the opinion of the Authority, as a consequence of any development scheme having been executed by the Authority in any development area, the value of any property in that area which has been benefited by the development, has increased or will increase, the Authority shall be entitled to levy upon the owner of the property or any person having an interest therein a betterment charge in respect of the increase in value of the property resulting from the execution of the development:

Provided that no betterment charge shall be levied in respect lands owned by Government:

Provided further that where any land belonging to Government has been granted by way of lease or licence by Government to any person, then that land and any building situate thereon shall be subject to a betterment charge under this section.

(2) Such betterment charge shall be an amount-

(i) in respect of any property situate in the township or colony if any developed or in other area developed or redeveloped, equal to one third of the amount, and

(ii) in respect of property situated outside such township, colony or other area, as aforesaid, not exceeding one-third of the amount,

by which the value of the property on the execution of the development scheme, estimated as if the property were clear of buildings exceeds the value of the property prior to such execution, estimated in like manner."

24. Section 36 of the Act, 1973 provides for assessment of the betterment charges by the development authority after opportunity to the person concerned.

25. Section 38-A of the Act, 1973 confers a power upon the authority to levy the land use conversion charges and the city development charges which reads as follows:-

"38-A. Power of Authority to levy land use conversion charge and city development charge:-(1) Where in any development area, the land use of a particular land is changed as a result of amendment of Master Plan or Zonal Development Plan under Section 13, the Authority shall be entitled to levy land use conversion charge on the owner of such land and in such manner and at such rates as may be prescribed:

Provided that the land use conversion charge shall be recovered from the owner of land by the Authority prior to final notification under sub-section (4) of Section 3 of this Act:

Provided further that where the land use of a particular land is changed as a result of coming into operation of Master Plan or Zonal Development Plan, no land use conversion charge shall be levied upon the owner of such land.

(2) Where in any development area a license has been granted to private developer for assembly and development of land, the Authority shall be entitled to levy city development charge on the private developer of such land and in such manner and at such rates as may be prescribed."

26. Section 39-A of the Act, 1973 provides for toll for amenities and Section 39-C of the Act, 1973 provides for levy of licence fee on the licence to be granted to the private developers.

27. Section 41 of the Act, 1973 confers a power upon the State Government to issue directions to the authority and the Chairman and Vice-Chairman for efficient administration of the Act as well as to exercise of its powers and discharge of its functions by the authority.

28. Section 55 of Act, 1973 confers a power upon the State Government to make rules for carrying out the purposes of the Act by notification in the official gazette and Section 55 (3) mandates that the rules so framed shall be laid before each House of the State Legislature within the period specified therein.

29. Section 55 of the Act, 1973 reads as follows:-

"55. Power to make rules.- (1) The State Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the force going power, such rules may provide for all or any of the following matters, namely-

(a) the levy of fee on a memorandum of appeal under Sub-section (5) of Section 15 or under Sub-section (2) of Section 27)

(b) the procedure to be followed by the [Chairman] in the determination of betterment charge, and the powers that it shall have for that purpose;

(c) any other matter which has to be, or may be, prescribed by rules.

(3) All rules made under this Act shall, as soon as may be after they are made, be laid before each House of the State Legislature, while it is in session, for a total period of not less than thirty days, extending in its one session, or more than one successive session, and shall, unless some later date is appointed, take effect from the date of their publication in the Gazette, subject to such modifications or annulment as the two Houses of the Legislature may, during the said period, agree to make, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder."

30. Section 56 of the Act, 1973 confers the power to make regulations with the approval of the State Government upon the authority and Section 57 of the Act, 1973 provides for framing of the bye-laws by the authority for the purpose of carrying out the provisions of the Act with the approval of the State Government.

31. From the simple reading of the aforesaid statutory provisions it is apparently clear that the basic purpose for constituting a development authority and for declaring any area to be a development area under the Act, 1973, is to ensure that the development in the area takes place according to the plan, and not otherwise. The purpose is to have a

planned development. The object of the development authority, as provided for under Section 7, is to hold and manage the land to carry on the Engineering and other managing activities and further to execute works in connection with the supply of water and electricity, to dispose of sewage and to provide other services and amenities and to do everything which is necessary or expedient for the purposes of such development and for purposes incidental thereto.

32. It is therefore clear that the purpose of the development authority is not only to sanction maps in the matter of raising of constructions but also to ensure that necessary works are carried out in the development area in connection with supply of water, electricity, disposal of sewage, and maintenance of other services and amenities which would include amenities like provisions for school, medical help, open areas parks which are all essential for a pollution free environment for the residents of the development area and for basic amenities of life being made available to them.

33. In the aforesaid background Section 8 contemplates preparation of a master plan for the development area. Sub-section (2) specifically provides that each development area has to be divided into zones for the purposes of development and to the manner in which the land in each zone is proposed to be used and the stages by which such development shall be carried out. It is to serve as the basic pattern of framework within which the zonal development plan of various zones may be prepared.

34. From Section 8 itself it is clear that the master plan is to be framed as a platform for the purposes of carrying out the development work in the various zones and for preparation of the zonal development plans. The stages in which such development is to be carried out is also to be necessarily indicated in the master plan in order to ensure that the development as provided for is done in accordance with the basic pattern as disclosed in the master plan.

35. Section 9 contemplates preparation of the zonal development plans. These zonal development plans have to be prepared simultaneously with the preparation of the master plan or as soon as may be possible, subsequent to the preparation of the master plan. These zonal plans have to provide for a site plan and use-plan for the development of the zone. It has to depict approximate locations and extents of land use proposed in the zone for such things as public buildings, public works and utilities, roads, sewage, drains, business areas, markets, schools, hospitals, public and private open spaces and other categories of public and private uses.

36. The standards of population and building density are also to be depicted in the zonal plans. Clause (d) provides for the matters which must necessarily be provided for in a zonal plan and these have been stated in sub clauses (i) to (xii) which have already been quoted above.

37. In the affidavit filed by the Principal Secretary, Housing and Urban Planning dated 04.12.2013 vide paragraphs no. 10 and 11 he has disclosed the role and function of development authorities.

38. For ready reference paragraphs no. 10 and 11 are quoted herein below :

"10. That keeping in view the various provisions of the Act, the role and functions of the development authorities may be classified into following four categories :

(1) Urban Planning Function : it includes 3 levels of planning :-

(a) Master Plans,

(b) Zonal Development Plans,

(c) Sub-division/Layout Plans.

(2) Development Function: it includes following activities:

(a) Land acquisition,

(b) Infrastructure development,

(c) Execution of housing and other schemes.

(3) Regulatory Function : it comprises of following regulations :-

(a) Enforcement of zoning regulations through land use permissions,

(b) Development control or enforcement of Building Bye- laws through grant of development and building permit by way of plan approval,

(c) Architectural Control,

(d) Compounding and Regularization.

(4) Facilitator Role : The development authority facilitates following sectors for promoting and securing planned development of the development area :-

(a) Private Sector (both organized as well as individuals),

(b) Cooperative Sector,

(c) Public-Private-Partnerships,

(d) Public interface : Authority is also responsible for implementation of the Citizen Charter, redressal of public grievances and dissemination of information, Government Policies and Guidelines, etc. for the use of public.

11. That as per the prevailing approach and methodology, there are three levels of Urban Planning :-

(1) Master Plan,

(2) Zonal Development Plan,

(3) Sub-division/Layout Plan.

A brief description of these 3 stages is as follows :-

(1) Master Plan :- It is long-term (15-20 years) land use plan for the planned development of the city prepared under section-8, 10 and 11 of the Act. It provides comprehensive proposals for socio-economic development and spatial development indicating the manner in which the use of land and development therein shall be carried out by the Authority and other related agencies. Thus, master plan is a design for the physical, social and economic development of the city, and also to improve the quality of life as well.

(2) Zonal Development Plan :- It is a detailed plan for a zone prepared within the framework of master plan under section 9, 10 and 11 of the Act containing proposals for zone level land uses, roads and streets, parks and open spaces, community facilities, services and public utilities, etc.

(3) Sub Division plan or Layout Plan :- It is a micro land use plan showing sub-division of any land or portion thereof into more than one parcel for the purposes of sale or otherwise. Sub-division plan may be for a new area or for such land which is reclaimed after clearance of existing development especially in old build up or blighted areas of the city."

39. He has tried to explain the meaning of the expression 'Stages by which such development shall be carried out' as contained in Section 8(2)(a) of the Act to suggest that various master plans which are prepared from time to time reflect the stages by which development

has been effected. We have serious doubts with regard to the interpretation so placed.

40. However, it has been admitted in the affidavit filed on 04.12.2013 that as on date only 03 zonal plans from various development authorities throughout the State have been received and approved by the State Government.

41. We may record that the State Government and the Development Authorities through-out the State of Uttar Pradesh have made a mockery of the very purpose of planned development as conceived by Sections 8 and 9 of the 1973 Act. The indifferent attitude of the State Government and Development Authorities towards planned development as contemplated under the Act with the preparation of the master plan and zonal plans is reflected from one simple fact which is admitted on record namely that till date i.e. even after 40 years of the passing of the Act, 1973, only three zonal plans have been prepared and approved by the State Government, in the entire state of Uttar Pradesh one of which is for a part of the Zone B within the territorial limits of the Allahabad Development Authority and two in respect of the territorial limits of the Agra Development Authority.

42. It was conceived by the State Legislature under Section 9 of the Act that the zonal plan shall be prepared simultaneously with the master plan or as soon as may be thereafter. But the words 'simultaneously' and 'as soon as may be thereafter' occurring in Section 9 of the Act, 1973, have been stretched by the Development Authorities and the State government to mean as "at whatever point of time State/ the Development Authority may so desire". As till date the Development Authorities in the State of Uttar Pradesh and the State Government have not been able to understand the meaning of the simple words 'simultaneously' and 'as soon as may be'. Therefore, they have not proceeded to prepare zonal plans for the entire development area within the territorial jurisdiction of the development authority for last forty years.

43. In our opinion, unless the zonal plans are prepared and approved, the very purpose of establishment of the development authorities is frustrated. The zonal plan as noticed above are required to provide for various instructions in respect of any particular parcel of land being reserved for a particular purpose and further the notification of the areas which are to be left for public utilities like parks, private open spaces, hospital, school etc.

44. This Court made a pointed query as to what development had exactly been done by the Allahabad Development Authority in terms of the zonal plan prepared for the part of Zone B and produced before this Court being zonal plan B-4. The only information supplied to this Court is that certain roads and road crossings have been beautified by the A.D.A. Counsel for the petitioner disputes the correctness and submits that even these developments have been done from the funds provided for the Magh Mela. We may only record that the work of beautification so carried out by the A.D.A. has not been so disclosed in the Zonal Plan-4 prepared for the city of Allahabad. As a matter of fact absolutely nothing could be demonstrated to have been done by the Development Authority, so as to establish that any development

work has been carried out in terms of the zonal plan B-4 prepared by it.

45. We have no hesitation to record that the State and the Development Authorities have read the provisions of the Development act to mean only sanctioning of maps for constructions and as a source for collection of money under various heads. There has been little or no concern for the planned development as is contemplated to be done in the light of Sections 8 and 9 of the Act by preparation of the zonal plans.

46. We are further surprised by the manner in which the Secretary of the Urban Planning and Development has responded to the order passed by this Court in the present proceedings.

47. The Chief Standing Counsel on behalf of the Secretary submitted that Mr. Sadakant, Secretary of the Urban Planning and Development has assumed charge of the office of the Secretary Housing and Urban Planning only in April, 2013 and therefore the period of nine months is too short to comply with the statutory provisions and therefore the zonal plans could not be prepared. What has been done by the earlier Secretaries who had been working in the same department for last forty years has not been disclosed and as to why the State Government and the Development Authorities did not frame the zonal plans, is not known.

48. If there had existed a provision in the Act for initiation of action against the Officers who do not perform their duties as contemplated, under the Act, 1973 this Court would have directed action against them. We are constrained to direct the Chief Secretary of the State to take action against the concerned Secretaries of the concerned department and the various Vice-Chairmen of the Development Authorities, who for last forty years did not have time to understand and to prepare the zonal plans as contemplated under the said Act. It is high time for the officers being made accountable and for not being permitted to go scott free merely on the plea that they had assumed the office only nine months earlier etc.

49. Public and development work cannot be made to suffer because of the uncaring attitude of the persons, who hold office of responsibility under the Act, 1973. Responsibility must necessarily be fastened upon the officers who have violated the provisions of the Act with impunity and in complete disregard to the very purpose for which the Act, 1973 had been passed by the legislature.

50. The Chief Secretary shall make a detailed enquiry and shall take all suitable action as may be warranted, within four months from the date a certified copy is filed before him, both in the matter of fixing the accountability for non-preparation of the zonal plans during these 40 years, as also for ensuring that the zonal plans are prepared for each of the development areas under various development authorities through out the state.

51. We leave the issue at this stage with the hope that the Chief Secretary of the State shall act keeping in mind that it is in the larger interest of the public that deliberate violation of the provisions of the Act is not perpetuated by the officers responsible.

52. Now turning to the issue pertaining to the challenge made in these writ petitions qua the various fees demanded by the development authorities while granting permission to raise constructions under Section 14 of the Act, 1973.

53. At the outset, we may record that a Division Bench of this Court in the case of Sabia Khan & Another vs. Allahabad Development Authority & Another passed in Civil Misc. Writ Petition No. 23281 of 2001, had allowed the writ petition filed for challenging the legality and validity of the levy of water charges, malba charges, sub-division charges, development charges and open space charges, vide judgement and order dated 1st July, 2003. Not being satisfied, the Allahabad Development Authority preferred an special leave to appeal before the Apex Court, which was converted into Civil Appeal No. 4351 of 2004. The Apex Court vide judgement dated 11th July, 2006 reported in (2006) 6 SCC 699 (Allahabad Development Authority & Another vs. Sabia Khan & Another), set aside the order of the High Court and remanded the matter for decision afresh on the ground of non-impleadment of State of Utter Pradesh as a party in the writ petition and other technical grounds. However, it was clarified in the said judgement that the Apex Court has not applied its mind to the rival contentions of the parties and all the contentions of the parties were left open to be considered by the High Court on remand.

54. We have been informed that the matter after remand is being heard by another Bench.

55. However, pendency of the matter before the other Bench may not detain us from proceeding with the hearing of this bunch of writ petitions, which challenge other demands also not subject matter of earlier petitions. We draw support from the latest judgement of the Apex Court in the case of P. Sudhakar Rao & Others vs. U. Govinda Rao & Others, reported in (2013) 8 SCC 693, wherein it has been held that pendedcny of similar matter before a larger Bench of the Apex Court would not preclude the Court from considering the matter on merits.

56. Petitioners challenge the aforesaid demands on the ground that so far as the development fee (both external and external) is concerned, the same can be levied only by framing rules under Section 54 of Act, 1973, in view of the specific language of Section 15 (2-A) of Act, 1973. Similarly, the city development fee and land use conversion charges can be levied by framing Rules in view of Section 38A of Act, 1973. For the purpose reference is made to the meaning of word "prescribed" as contained under Section 4 (33-A) of the U.P. General Clauses Act, 1904 as well as upon the Division Bench Judgements of this Court in the case of Virendra Kumar Tyagi vs. Ghaziabad Development Authority reported in 2006 (1) AWC 834, Dr. Umesh Chandra Maheshwari vs. Mathura/Vrindavan Development Authority & Another reported in (2010) 4 ADJ 368 (DB), Pradeep Kumar Garg vs. State of U.P. & Others; Civil Misc. Writ Petition No. 48415 of 2007 decided on 4th February, 2010, Kishore Bandhu Pvt.vs. State of U.P.; Civil Misc. Writ Petition No. 23793 of 2010 decided on 25th May, 2011.

57. Reference has also been made to the latest judgement of the Apex Court in the case of Consumer Online Foundation vs. Union of India reported in (2011) 5

SCC 360, for the proposition that compulsory extractions of money is in the nature of cess/tax. Such realization can only be done by framing rules in accordance with the statutory provisions. It is explained that compulsory extractions of money in absence of a law would be contrary to Article 265 of the Constitution of India. In fiscal matters, it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee [Reference Ahmedabad Urban Development Authority vs. Sharadkumar Jayantikumar Pasawalla & Others, (1992) 3 SCC 285].

58. It is also stated that it is only the fee which is prescribed under Section 15 (2-A) of Act, 1973 that can be levied/realized before sanction of the building plans under Section 14 of Act, 1973 and this flows from simple reading of 3rd proviso to Section 15 of Act, 1973. No other fee can be levied or realized as condition for the grant of sanction.

59. So far as the other fees demanded by the respondent-authority are concerned, it is stated that same is de hors the Act, 1973. It is also stated that there is no provision authorizing the Development Authority to levy sub-divisional charges or open space charges. Section 33 of Act, 1973 does not permit levy of such charges unless development is done on the land in question and further that even if Section 33 is attracted, the procedures prescribed under Sections 34 and 36 of Act, 1973 have to be followed before such levy.

60. Sri Ashwani Kumar Mishra, learned Senior Advocate on behalf of Allahabad Development Authority and Sri Ramesh Upadhya, learned Chief Standing Counsel on behalf of the State refute the submissions made by the petitioners. Their stand is being dealt with herein below. All other counsels for the various development authorities have only adopted the submissions of Sri Mishra and Sri Upadhya.

61. We may record that the form and fees for submission of the application for sanction of plan under Section 14 of Act, 1973, as contemplated by Section 15 (1) of Act, 1973, has been prescribed by framing rules known as the Uttar Pradesh Urban Planning and Development (Fee on Application for Permission and on Appeal) Rules, 1983.

62. In the writ petition filed by Smt. Rekha Rani vs. State of Utter Pradesh being writ petition no. 56485 of 2013, a counter affidavit dated 7th November, 2013 has been filed on behalf of the Development Authority disclosing the statutory provisions and the legal authority in exercise of which various fees are being demanded by the Development Authority.

63. It is worthwhile to reproduce relevant paragraphs of the said short counter affidavit, which read as follows:

"10. That the levy of demand under the heads of Development Fee, Stacking Charges, Water-Fee are permitted by virtue of sub-section (2-A) of Section 15 of the Act of 1973. Clause 3.1.4 of the Building Bye-Laws provides that the levy of Development Fee, Inspection Fee, Betterment Fee, Stacking Fee, etc. would be on the basis of applicable government orders/decisions of the Respondent Authority.

11. That so far challenge made to the demand note in respect of sub-division charges are concerned, it is submitted that

under the Building Bye-Laws, specific provisions have been made for leaving open spaces for various purposes in case of sub-division for the use of residents themselves. This open space under Clause 2.2.1 of the Building Bye-Laws is to the extent of 15% of the total sub-divided area for residential user. In case layout would have been got approved, then, such area was mandatorily required to be left open and as, in the present case, it has not been done and 15% area is not available for being used as open space; consequently the Respondent Authority had no option but to proceed for compounding of such violation.

12. That at this juncture, it is clarified that in cases, where sub-division has been resorted to without sanctioned layout but provisions exist in the form of roads and other community services and open spaces as per building bye-laws then the compounding is levied under Item-10 of the Schedule attached with the Compounding Rules, levying charges which is to the extent of 1% of the total saleable area.

17. That under the Compounding Bye-Laws, no construction in park or in areas earmarked for parking is compoundable by virtue of Clauses-3.2.1, 3.2.6, 3.2.13 etc. of the Compounding Bye-Laws.

18. That so far as levy of various fees as precondition for sanction of the map other than sub-division is concerned, the same is being levied strictly in accordance with law.

19. That the very of Stacking Fee is on the basis of the Government Order issued by the State Government under Section 41 (1) of the Act of 1973 dated 06.08.2004, a copy whereof is enclosed herewith and is marked as Annexure. SCA-5 to this Short Counter affidavit. Similarly, for the Inspection Charges also, a Government Order had been issued on 22.01.1998, which are charges levied essentially for the purposes of carrying out inspection, for which jurisdiction exists with the Respondent Authority under various provisions of this Act of 1973 including Section 25 thereof.

20. That so far as levy of Water-Fee is concerned, the amount received by the Respondent Authority under this head gets transferred to the Jal Sansthan, Allahabad (Respondent No.4) and the rate of levy has been fixed pursuant to the decision of the Respondent Authority in its Board meeting dated 15.03.1996, a copy whereof is enclosed herewith and is marked as Annexure.SCA-6 to this Short Counter Affidavit.

21. That so far as levy of Permit Fee for submission of Plan is concerned, the same is being charged by the Respondent Authority in accordance with law. The relevant decision of the Respondent Authority taken in this regard pursuant to 1983 rules contained in the Board meeting dated 28.02.1994 vide Agenda No. 12 and Resolution No. 781 is enclosed herewith and is marked as Annexure. SCA-7 to this Short Counter Affidavit.

22. That the demand for levying of the external Development Fee from the petitioner has been raised on the basis of the computation arrived at by the Development Authority in its 105th Board meeting dated 22.12.2011, whereby previous decision of the Respondent Authority contained in the Board meeting dated 05.04.2008 has been revised. Copies of the agenda and resolution/decision of the Respondent Authority in its Board meeting dated 22.12.2011 are enclosed herewith and is marked collectively as Annexure.SCA-8 to this Short Counter Affidavit. This decision

of the Respondent Authority is clearly referable to Clause 3.1.4 of the Bye-Laws.

23. That even otherwise, for the purpose of determination of the Development charges, the State Government had previously issued a draft guidelines in February, 2008, which was circulated to all the Development Authorities by the Department of Housing. The State Government has also circulated draft rules known as "Uttar Pradesh Planned Development (Assessment, Levy & Collection of Development Fee) Rules, 2012" to all the Development Authorities vide letter of the State Government dated 31.08.2012. Copies of the draft guidelines of the State Government which was received by the Respondent Authority on 15.02.2008 as well as the draft rules circulated vide letter of the State Government dated 31.08.2012 are enclosed herewith and are marked as Annexure.SCA-9 to this Short Counter Affidavit.

24. That so far as the rate prescribed in its draft rules is concerned, the Respondent Authority has not disagreed with it. The draft rule is attaining its finalization as per law. However, the charges determined by the Respondent Authority are lesser than the charges prescribed under the draft rules circulated by the State Government."

64. It is worthwhile to mention that the draft rules known as "Uttar Pradesh Planned Development (Assessment, Levy & Collection of Development Fee) Rules, 2012", which have been referred to in the aforesaid paragraphs, do record that the same have been framed in exercise of powers under Section 15 (2-A) of Act, 1973.

65. So far as the State of U.P. is concerned, the Principal Secretary, Housing & Urban Planning, Government of U.P. Lucknow has filed his affidavit dated 25th November, 2013 disclosing the source of power to levy the said fees and new set of draft rules framed by the State Government under Act, 1973 have been brought on record.

66. On reading of the draft rules, we find that for levy and collection of Development Fee, draft rules, 2013 have been framed in exercise of powers under 15 (2-A) of Act, 1973 read with Section 55 of Act, 1973. For assessment levy and collection of City Development Charge draft rules have been framed in exercise of powers under Section 55 (2) (c) read with Section 38-A (2) of Act, 1973. For Assessment Levy and Collection of Land Conversion Charge draft rules have been framed in exercise of powers under Section 38-A (1) read with Section 55 of Act, 1973. For Assessment, Levy and Collection of Water Fees draft rules have been framed in exercise of powers under Section 15 (2-A) of Act, 1973 read with Section 55 of Act, 1973. For Assessment, Levy and Collection of Stacking Fees draft rules have been framed in exercise of powers under Section 15 (2-A) read with Section 55 of Act, 1973. for Assessment, Levy and Collection of Mutation Charges draft rules have been framed under 15 (2-A) read with Section 55 of Act, 1973. A copy of all these draft rules has been enclosed along with affidavit filed by the Principal Secretary, Housing & Urban Planning, Government of U.P. Lucknow dated 25th November, 2013.

67. It is, therefore, clear from the stand of the State-respondent as well as of the Development Authority that so far as the development fee, water fee, mutation charges, stacking fee are concerned, power flow from Section 15 (2-A) of Act,

1973, while the power to levy and collection of city development charges and land use conversion charge flows from Section 38-A of Act, 1973.

68. It is admitted that these draft rules of 2013 have been framed and that comments have been invited from the other departments of the State including the Nagar Vikas, Finance, Planning, Law etc. and the matter is to be placed before the Cabinet soon.

69. From a simple reading of Section 15 (2-A) of Act, 1973, it is apparent that the development authority is entitled to levy (a) development fee, (b) mutation fee, (c) stacking fee, and (d) water fee in such manner and on such rates as may be prescribed. Similarly from reading of Section 35 with Section 36 of Act, 1973, it is clear that betterment charges can be levied only after affording opportunity of hearing to the person concerned. From reading of Section 38-A of Act, 1973, it is clear that Land Use Conversion Charges and City Development Charges can be levied at such rates, as may be prescribed.

70. Section 15 (2-A) of Act, 1973 has been considered by a Division Bench of this Court in the case of Virendra Kumar Tyagi Versus Ghaziabad Development Authority and Others 2006 (1) AWC page 834. The Division Bench of this Court after taking note of Section 4(33-A) of the U.P. General Clauses Act 1904 has specifically opined that from the language of Section 15 (2-A) of the Act, 1973 it is clear that rate of mutation has to be prescribed and the word 'prescribed' means prescribed by Rules under the Act. This prescription by a rule flows from the provisions of Section 4(33-A) of the U.P. General Clauses Act, 1904 read with Section 55 of the Act, 1973. Since such prescription of the mutation fee had not been done by framing rules, the Division Bench went on to hold the demand of mutation fee was wholly illegal and without authority of law.

71. The relevant portions of the judgement is being quoted herein above:-

" The word 'prescribed' has to be done by making Rules in accordance with the provisions of Section 4 (33A) of the U.P. General Clauses Act, 1904 read with Section 55 of the Act.

18. In view of the foregoing discussions we are of the considered opinion that as the rate of mutation charges have not been prescribed by any Rules framed under Section 55(1) of the Act as required by the provisions of Section 4 (33A) of the U.P. General Clauses Act, 1904, the demand of mutation charges by means of letter dated 20th August, 1999, is wholly illegal and without authority of law. The said demand is liable to be and is hereby quashed."

72. The Court has been informed by Sri Ashwani Mishra, Senior Advocate on behalf of Allahabad Development Authority that a Civil Appeal being Civil Appeal No. 5454 of 2007 was filed by the Ghaziabad Development Authority against the said judgement of the Division Bench of this Court, before the Apex Court. The Civil Appeal was dismissed on 11.08.2011.

73. What is true in respect of the demand/levy of mutation charges provided for under Section 15(2-A) is equally true in respect of levy and

demand of development fees, stacking fees and water fees. These fees are also provided for under Section 15(2-A) of the Act, 1973. Further since the land conversion charges and city development charges under Section 38-A of Act, 1973 are to be levied at the rates prescribed. The same principle of law will apply.

74. Reference may be had to para 14 of the judgement of the Division Bench of this Court in the case of Umesh Chandra Maheshwari v. Mathura/Vrindavan Development Authority reported in 2010 (4) ADJ, 368 wherein it has been explained that 'betterment charges under Sections 35 and/or Section 36 of the Act, 1973 are different vis-a-vis the development fee' prescribed under Section 15(2)(a) of the Act.

75. It is needless to emphasize that the betterment charges, city development charges and land conversion charges as provided for under Section 35/36 or under Section 38-A of the Act, 1973 respectively, have a different meaning under the Act itself, vis-a-vis the development fee chargeable under Section 15(2-A) of the Act, 1973.

76. We may also notice that under the third proviso to sub-section 3 of Section 15(2-A), a right has been conferred upon the development authority to demand the fee as provided for under Section 15(2-A) alone before granting permission and not in respect of other fees provided for under Act, 1973.

77. From the affidavit of the Secretary dated 24.11.2013, it is admitted that the steps for framing rules under Section 15(2-A) and Section 38-A are being taken by the State Government. Draft rules have been prepared by a Committee of five Vice-Chairmen and a period of 25 days has been prayed for notifying the rules (reference paragraphs 6 and 7 of the affidavit).

78. It is therefore admitted on the record that rules as contemplated by Section 15 (2-A) and Section 38-A of Act, 1973 have not been framed by the State Government so as to entitle the Development Authority to levy/collect the development fees, mutation charges, stacking fees and water fees till date.

79. Counsel for the Development Authority and the learned Chief Standing Counsel have placed reliance upon the judgment of the Apex Court in the case of Janta Hill Truck Owners Association v. Shailang Area Coal Dealer and Truck Owner Association and others reported in 2009 (8) SCC, 492 for the proposition that the State has the competence to make laws in respect of collection of fees on subjects provided under List II of the Seventh Schedule of the Constitution of India as is evident from Entry 66. If the State itself carries on any business actually, it is entitled to law down the norms therefor as well as for the proposition that even the draft rules may be followed where no rules in accordance with the statutory provisions have been made. (Reference paragraph nos. 27 and 36 of the judgment).

80. We must also take note of the contention which has been raised by Sri Ashwani Mishra and Sri Ramesh Upadhay based on the judgment of the Apex Court in the case of Accountant General, M.P. vs. S.K. Dubey and another 2012 (4) Supreme Court cases page 578, specifically paragraphs 34 to 36 which are being quoted here under:-

"34. The statutory provision contained in Section 16(2) is quite clear. It provides that the salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government. The term `member' includes the President of the State Commission. That pension can be made a condition of service is beyond any question. 35.What is the meaning of the expression, `as may be prescribed by the State Government' occurring in Section 16(2)?

36. In my opinion, the expression "as may be prescribed by the State Government" in Section 16(2) has to be read as prescribed by the rules framed by the State Government, if any. This is the plain meaning of the above expression. If Parliament intended that salary or honorarium and other allowances and other terms and conditions of service of the President and the Members of the State Commission have to be provided in the rules framed by the State Government in exercise of its powers under Section 30 (2) and in no other manner; the provision in Section 16 (2) would have read, " the salary or honorarium and other allowances payable to, and the other terms and conditions of service of the Members of the State Commission shall only be in accordance with the rules framed by the State Government". The words "shall be such" followed by the expression " as may be prescribed" clearly indicate the legislative intent of "may" being directory and the expression "as may be prescribed" to mean "if any". The construction that I have put to the expression "as may be prescribed" gets support from the decisions of this Court in Surinder Singh v. Central Govt. (supra) and Orrissa State (Prevention & Control of Pollution) Board."

81. It is their case that 'as may be prescribed' used in Section 15 (2-A) and Section 38-A of Act, 1973, may be given a similar meaning as has been provided for under Paragraph 36 of the aforesaid judgement. They further explain that the power of the State Government to issue Government Orders providing for levy of mutation charges, stacking fees, development fees, and water fees flows from Section 41 of the Uttar Pradesh Urban Planning & Development Act, and Article 162 of the Constitution of India which provides for the executive powers of the State.

82. The contention raised on behalf of the State Development Authority as aforesaid does not appeal to us for the following reasons.

83. From a simple reading of Section 15 (2-A) and Section 38-A of Act, 1973, as quoted above, it is apparent that the entitlement of the development authority to levy the fees, as mentioned in section 15 (2-A) and Section 38-A of Act, 1973 flows from the said sections. The section itself contemplates that the manner and the rates of the fees to be so paid have to be prescribed. The word 'prescribed' takes its meaning from Section 4(33-A) of U.P. General Clauses Act which aspect of the matter has already been dealt with by the Division Bench in the case of Virendra Kumar Tyagi by a reasoned order. The Apex Court found no infirmity in the judgement of the High Court.

84. Paragraph 36 of the judgement of the Apex Court in the case of Accountant General, State of Madhya

Pradesh (supra) only records the opinion of one of the Hon'ble Judges of the Apex Court wherein the Hon'ble Judge had placed reliance upon the judgement of the Apex Court in the case of Surinder Singh vs. Central Government reported in (1986) 4 SCC 667 and Orissa State (Prevention & Control of Pollution) Board, reported in 2003 (1) SCC 421.

85. The Division Bench of this Court in Virendra Kumar Tyagi (supra), in paragraph 17, had taken note of the judgement of the Apex Court, in the case of Orissa State (Prevention & Control of Pollution) Board (supra), and had distinguished the same having regard to the language of Section 15(2A) of the Act. The Division Bench has held that the aforesaid decision of the Apex Court is not applicable in the facts and circumstances of the case as the language of Section 15 (2A) of the Act is very clear.

86. We may also refer to the judgment of the Apex Court in the case of Consumer Online Foundation and others vs. Union of India and others reported in 2011 (5) SCC, 360 with regard to the issue as to whether development fee can be levied even when rules have not been framed. In paragraph- 9 of the judgment, the contention raised on behalf of the appellant had been taken note of. The reply to the said contention of the contesting respondents no. 4 and 5 has been noticed in paragraphs 10(iv) and 11(v) respectively. Rejoinder to the same by the appellant is recorded in para 12(iii).

87. It is worthwhile to reproduce paragraphs no. 9(i), 10(iv), 11(v), 12(iii) as well as Section 22-A of the Act in question before the Apex Court as noticed on page 377 of the said judgement:-

"Contentions on behalf of the appellants

9. Mr. Fali S. Nariman, learned Senior Counsel, leading the arguments on behalf of the appellants, made these submissions:

(i) The conclusion of the High Court that the power under Section 22-A to levy and collect the development fees from the embarking passengers can be exercised without the rules, is erroneous because the language of Section 22-A of the 1994 Act prior to its amendment by the 2008 Act makes it clear that development fees could be levied and collected from the embarking passengers at the airport "at the rate as may be prescribed" and the fees so collected are to be credited to the Airports Authority and are to be regulated and utilised "in the prescribed manner". Unless, therefore, the statutory rules are made prescribing the rate at which such fees are to be collected and prescribing the regulation and manner of the utilisation of development fees, the power under Section 22-A cannot be exercised.

.....

Reply on behalf of the Union of India

10. Mr. Gopal Subramanium, learned Solicitor General appearing for the Union of India, made these submissions:

.....

(iv).Though Section 22-A of the 1994 Act, before its amendment by the 2008 Act provided that for levy of development fees "at the rate as may be prescribed" and for regulation and utilisation of the development fees "in the prescribed manner" the absence of the rules prescribing the rate of development fees or the manner of regulation and utilisation of development fees will not

render Section 22-A ineffective. The legal proposition that absence of rules and regulations cannot negate the power conferred on an authority by the legislature is settled by the decision of this Court in Orissa State (Prevention & Control of Pollution) Board v. Orient Paper Mills, U.P. SEB v. City Board, Mussoorie, Kerala SEB v. S.N. Govinda Prabhu & Bros., Surinder Singh vs. Central Government and Mysore SRTC v. Gopinath Gundachar Char.

.....

Reply on behalf of MIAL and DIAL

11. Mr. Harish N. Salve, learned Senior Counsel, and Dr. Abhishek Singhvi, learned Senior Counsel, appeared for MIAL and DIAL and made these submissions:

.....

(v).Rules prescribing the rate of development fees and regulation and the manner in which the development fees will be utilised as provided in Section 22-A of the 1994 Act cannot curtail the power to levy and collect development fees under Section 22-A of the 1994 Act.

.....Since the power to collect the development fee is already available to the Airport Authority or its lessees as part of its power to collect charges for the facilities, absence of a rule does not negate the power. The rule under Section 22-A was to be made not for purposes of conferring the power but to regulate the rate of development fees and manner of utilisation of development fee as a check on such power.

.....

Rejoinder on behalf of the appellants

12. In the rejoinder, Mr. Nariman made these submissions:

.....

(iii) The judgment relied on by the respondents in support of their contention that non-framing of rules do not negate the power to levy development fees under Section 22-A of the 1994 Act have been rendered by this Court in the context of enactments which are not in pari materia with Section 22-A of the 1994 Act.

....."

Section 22-A. Power of Authority to levy development fees at airports :- The Authority may, after the previous approval of the Central Government in this behalf, levy on, and collect from, the embarking passengers at an airport, the development fees at the rate as may be prescribed, and such fees shall be credited to the Authority and shall be regulated and utilised in the prescribed manner, for the purposes of ---

(a) funding or financing the costs of up-gradation, expansion or development of the airport at which the fee is collected; or

(b) establishment or development of a new airport in lieu of the airport referred to in clause (a); or

(c)investment in the equity in respect of shares to be subscribed by the Authority in companies engaged in establishing, owning, developing, operating or maintaining a private airport in lieu of the airport referred to in clause (a) or advancement of loans to such companies or other persons engaged in such activities.

88. The conclusion arrived at by the Apex Court after considering the rival contentions has been stated in paragraphs no. 22, 23, 24, 25, 26 and 27 of the judgement which reads as follows :

22. The nature of the levy under Section 22-A of the 2004 Act, in our

considered opinion, is not charges or any other consideration for services for the facilities provided by the Airports Authority. This Court has held in Vijalashmi Rice Mill vs. CTO that a cess is a tax which generates revenue which is utilised for a specific purpose. The levy under Section 22-A though described as fees is really in the nature of a cess or a tax for generating revenue for the specific purposes mentioned in clauses (a), (b) and (c) of Section 22-a.

23. Once we hold that the development fees levied under Section 22-A is really a cess or a tax for a special purposes, Article 265 of the Constitution which provides that no tax can be levied or collected except by authority of law gets attracted and the decisions of this Court starting from Port of Madras v. Aminchand Pyarelal, cited on behalf of the Union of India and DIAL and MIAL on the charges or tariff levied by a service or facility provided are of no assistance in interpreting Section 22-A. It is a settled principle of statutory interpretation that any compulsory exaction of money by the Government such as a tax or a cess has to be strictly in accordance with law and for these reasons a taxing statute has to be strictly construed.

24.As observed by this Court in Ahmedabad Urban Development authority v. Sharadkumar Jayantikumar Pasawalla, it has been consistently held by this Court that whenever there is compulsory exaction of money, there should be specific provision for the same and there is no room for intendment and nothing is to be read or noting is to be implied and one should look fairly to the language used. Looking strictly at the plain language of Section 22-A of the 1994 Act before its amendment by the 2008 Act, the development fees were to be levied on and collected from the embarking passengers "at the rate as may be prescribed". Since the rules have not prescribed the rate at which the development fees could be levied and collected from the embarking passengers, levy and collection of development fees from the embarking passengers was without the authority of law."

25.For the conclusion, we are supported by the Constitution Bench judgment of this Court in Mohd. Hussain Gulam Mohammad v. State of Bombay. In that case, the Court found that Section 11 of the Bombay Agricultural Produce Markets Act, 1939 provided that the Market Committee may levy market fees subject to the maxima as prescribed and the Court held that unless the State Government fixes the maxima by rule, it is not open to the Committee to fix any fees at all. We are also supported by the decision of a three-Judges Bench of this Court which held in Bhrangadhra Chemical Works Ltd. v. State of Gujarat that the mandatory provision in Section 60(a)(ii) of the Bombay Municipalities Act, 1901 requiring framing of rule for imposition of tax not having been complied with, the imposition of tax was illegal.

26.In Principles of Statutory Interpretation, 12th Edn., at p. 813, Justice G.P.Singh states :

".....There are three components of a tax statute viz. Subject of the tax, person liable to pay the tax and the rate at which the tax is levied. If there be any real ambiguity in respect of any of these components which is not removable by reasonable construction, there would be no tax in law till the defect is removed by the legislature."

27. Thus, the rate at which the tax is to be levied is an essential component of a

taxing provision and no tax can be levied until the rate is fixed in accordance with the tax provision. We have, therefore, no doubt in our mind that until the rate of development fees was prescribed by the rules, as provided in Section 22-A of the 1994 Act, development fees could not be levied on the embarking passengers at the two major airports.

89. The Apex Court in the said case had taken note of the judgements in the case of U.P.S.E.B v. City Board, Mussoorie as well as to the judgement in the case of the Orissa State (Prevention & Control of Pollution) Board (supra). A distinction has been drawn in the matter of prescription of rates for compulsory exaction of money in the matter which are to be decided by the rules.

90. The judgement in the case of Accountant General, State of Madhya Pradesh (supra) only follows what had been said in case of Orissa State (Prevention & Control of Pollution) Board (supra).

91. In our humble opinion, the facts of the cases in hand are more akin to the facts of the case in the case of Consumer Online Foundation v. Union of India.

92. The Apex Court in the case of Association of Management of Private Colleges v. All India Council for Technical Education and others, reported in (2013) 8 SCC, 271 in paragraphs 66 and 67 has held that starting from the case of Babu Verghese v. Bar Council of Kerala it has been consistently held that if the statute prescribes a particular procedure to do an act in a particular way, the act must be done in that manner or not at all. Relevant paragraph 67 of the judgement is being quoted herein below:

"67. The position of law is well settled by this Court that if the statute prescribes a particular procedure to do an act in a particular way, that act must be done in that manner, otherwise it is not at all done. In Babu Verghese v. Bar Council of Kerala11, after referring to this Court's earlier decisions and Privy Council and Chancellor's Court, it was held as under: (SCC pp. 432-33, paras 31-32)

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor12 which was followed by Lord Roche in Nazir Ahmad v. King Emperor13 who stated as under: 32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh14 and again in Deep Chand vs. State of Rajasthan15. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh16 and the rule laid down in Nazir Ahmad case13 was again upheld. This rule has since been applied to the exercise of jurisdiction by the courts and has also been recognised as a salutary principle of administrative law".

In view of the abovesaid decision, not placing the amended Regulations on the floor of the Houses of Parliament as required under Section 24 of the AICHE Act vitiates the amended Regulations in law and hence the submissions made on behalf of the appellants in this regard deserve to be accepted. Accordingly,

Points 47.4 and 47.5 are answered in favour of the appellants."

93. In view of the aforesaid settled legal provisions as also in view of the fact that the State Government for years has not chosen to frame any rules under section 15(2-A) or Section 38-A of Act, 1973, we have no hesitation to hold that the Development Authority has no competence to levy or realise any development fee, mutation charges, stacking fees and water charges etc. which are required to be prescribed under section 15(2A) of the 1973 Act as well as city development charges and land use conversion charges, as are to be prescribed under Section 38-A of Act, 1973.

94. For the aforesaid reasons, the demand of development fee (both external and internal), land use conversion charges, city development charges, are held to be without authority of law and cannot be legally sustained.

95. Now we may consider the challenge to Sub-Division Charges/Compounding Fee in respect of Sub-Division Charges.

96. It is the case of the petitioners that the Development Act, 1973 does not permit or authorise imposition or levy of any such sub-division charges. Further in the absence of any statutory provision prescribing for the quantum and rates for such levy, the demand in that regard is illegal.

97. Learned Standing Counsel for the State as well as the learned counsel for the Development Authorities were directed to place the statutory provisions where-under such fee has been levied and is being demanded.

98. On behalf of the Allahabad Development Authority, reference has been made to the Building Bye-Laws, it has been explained to the Court that if a bigger plot is to be divided into smaller plots, than a lay-out plan has to be sanctioned which would require 15% of the total area of the bigger plot left open. In cases, where sub-division into smaller plots is done without a lay-out plan being sanctioned and if a person, after purchasing such sub-divided plot, approaches the ADA for sanction of map for constructions over the sub-divided plot, then the Development Authority having regard to the provisions contained in clause 2.2 of the Building Bye-laws, will determine the total area of the open 15% land, which will fall in the share of the person claiming sanction of map for construction over the sub-divided plot and if open space for the purpose is available, the Allahabad Development Authority levies sub-division charges. If the land for open space is not available, then the Development Authority levies sub-division compounding fee at the rate notified under the compounding bye-laws of 2009 subject to the conditions prescribed thereunder.

99. The crux of the matter is that the Development Authority, in order to give benefits to the builders who do not intend to leave the required land for open area, as prescribed under the Building Bye-Laws to the extent of 15% of the total plot area as provided, are given an option to deposit money at twice the rate for the area of the land, which should leave as open area under the building bye-laws 2.2.

100. We find that the money which is being demanded towards sub division charges and compounding fee for sub-division charges is not provided for under the Act. If the charges are referable to

Section 38-A of Act, 1973, then as already held above, the rates have to be prescribed by Rules. So far as the compounding fee is concerned, we further hold that it is, in fact, a substitute in terms of money for the space as required under the Building Bye-Laws to be left open, being permitted to be constructed upon.

101. We are of the considered opinion that such a provision is per se arbitrary and illegal. It has the effect of diluting the very purpose of planned land development. Open areas are to be left so that a residential locality does not become a cluster of big and small houses. There is sufficient open space, so that fresh air and sun light may not be adversely affected, there is sufficient space for movement of vehicles, their parking etc. We, therefore, have no hesitation to record that the provision under the Building Bye-Laws for 15% of the total area of the bigger plot being left for open space has an wholesome object, it is essentially a basic factor for planned land development. It cannot be diluted by charging money in lieu of open space as compounding fee or sub division charges. The Development Authorities cannot be permitted to extract money for and in lieu of the area, which is required to be left as open space under the Building Bye-Laws.

102. In our opinion, the money cannot be a substitute for open area. The Development Authorities cannot compromise in the matter of open area which is necessarily required to be left open in a bigger plot under the Building Regulations in any circumstance whatsoever.

103. We may also record that the open space or areas which are required to be used for park, tot-lot or play ground etc. cannot be converted into constructed area and therefore, no money can be charged in the garb of diluting the requirement of such open areas. In the residential colonies required areas of land must be earmarked for tot-lot, park, play ground, parking, internal roads etc. Therefore, the Compounding bye-laws of 2009, insofar as they permit realisation of money in lieu of the land which is required to be left open for park, playground, parking, internal roads etc. cannot be levied. It is the duty of the Development Authority to ensure that required area is left open in all constructions.

104. Therefore, we hold that the Development Authority cannot levy any sub division charge or compounding fee to set off the area which is required to be left open under the building bye-laws.

105. We may record that Section 32 of Act, 1973 provides for compounding of offences but the issue of compounding of an offence arises only when the offence is committed and not otherwise. Further there are certain offences which cannot be compounded like constructions raised over Nallas / Open drains etc. Violation of open space area is also one such offence, which cannot be compounded and construction to that extent must be demolished besides other action which may be taken under law.

106. Learned counsel for the Gorakhpur Development Authority has tried to justify the levy of Impact Fee, with reference to the powers vested under Section 38-A of Act, 1973, which talks of City Development Charges. The levy and collection of the said charges can only be at such rates, as may be prescribed. The prescription can be by statutory rules

only, as held above. Therefore, in absence of rules having been framed, the demand of Impact Fee under Section 38-A of Act, 1973 cannot be legally sustained.

107. So far as the issue of park fee is concerned, we are informed that such fee is being demanded by the Gorakhpur and Bareilly Development Authority with reference to the government order dated 15.10.2012. It is contended that the Development Act, 1973 does not contemplate levy of any such charge and, therefore, regulations framed by the Development Authorities are wholly without authority of law inasmuch as the Development Authority cannot demand fee not provided for under the Act.

108. We may further record that a power under Section 41 of the 1973 Act has been conferred on the State only for the purpose of issuing directions to the Development Authorities, Chairman and Vice Chairman for necessary implementation of the Act. The said powers cannot be extended to provide for levy a fee not provided for under the Act 1973.

109. It has also been contended that under the Zoning regulations, park fee can be levied in respect of the colonies which are constructed by the Development Authority or which are constructed for it by private builders. The petitioners are residing in colonies which have been constructed by private builders for the residential purposes and not for the Development Authority. Therefore, under the zone regulations also, no park fee can be demanded from the petitioners.

110. The levy of labour cess, supervision charges/inspection charges is questioned on the ground that there is no power to levy supervision charges/inspection fee or to levy of the labour cess. The Act, 1973 does not confer any such power to realise any such cess or fee. Learned counsel for the petitioners vehemently contended that the fee/cess in the nature of compulsory extraction of money has to be specifically provided for under the Statute. There is no power in the Development Authority/State Government to levy a fee/cess over and above, what has been provided for under the Act. The fee and cess are in the nature of compulsory extraction of money has to be provided by law and there can be no intendment or implied power for the purpose.

111. We further find that U.P. (Regulation of Building Operations) Regulations/Directions, 1960 would apply only when an agreement is entered into with the local body concerned for the land and for provision of other amenities. Admittedly, the petitioners have not entered into any agreement with the local body.

112. We may further record that the Development Authority has no competence to make any amendments in the U.P. (Regulation of Building Operations) Regulations/Directions, 1960 and any resolution of Development Authority in that regard would be wholly without jurisdiction.

113. Learned counsel for the Development Authority could not disclose the source of power to levy any such cess under the Act, 1973. Reference to the general power of inspection under Section 25 of Act, 1973 for enforcing the provisions of Act, 1973 cannot be read to suggest that the Development Authority can levy or cess a fee, which is in fact compulsory extraction of money.

114. Learned counsel for the petitioners submitted that the demand of bank guarantee for the price of the land and the cost of construction in respect of houses to be built for economically weaker sections of society or for persons belonging to lower income group is also arbitrary. According to the petitioners, such constructions cannot be forced to be carried out nor bank guarantee can be demanded to enforce such constructions.

115. So far as the demand of a bank guarantee in the matter of construction of houses for economically weaker sections or for the persons belonging to the lower income group is concerned, we may record that demand of bank guarantee in advance on the presumption that such construction will not be raised as per the directions of the State Government, appears to be arbitrary. Demand of bank guarantee in advance is totally uncalled for. If the building plan has been sanctioned including construction of certain number of houses for members of lower income group or economically weaker sections of society and if such constructions are not carried out, the Development Authority can always proceed against the person in whose favour the plan was sanctioned and can even proceed to demolish the construction raised de hors the plan.

116. We hold that the demand of bank guarantee in advance is unsustainable and even otherwise not contemplated under any of the statutory provisions.

117. We record that the issue qua competence of the State Government to pass a direction for certain percentage of the LIG and EWS houses to be constructed by a developer is not being examined in these petitions and is left open to be examined in an appropriate case.

118. We are of the opinion that the development authority is justified in insisting upon rain water harvesting system being installed by a developer in residential colonies, which are to be constructed and for that purpose necessary conditions can be imposed at the time of sanction of the map/lay out. It should be ensured that such conditions incorporated in the sanctioned map/lay out are actually carried out by the developer. But the Development Authority cannot ask for a bank guarantee in advance on the mere presumption that otherwise the developer would not provide for rain water harvesting. If the Development Authority at any point of time feels that the conditions mentioned in the sanctioned map qua provision for rain water harvesting are not being carried out by the developer, it can always seal the construction and demolish the same for violation of the conditions mentioned in the sanctioned plan.

119. We, therefore, hold that the demand of bank guarantee in advance for the cost of rain water harvesting system to be installed in the building is uncalled for. However, we clarify that it shall be open to the development authority to take all actions as permissible under Act, 1973 without any leniency whatsoever, if the conditions mentioned in the sanctioning order are not obeyed by the developer or by the person concerned.

120. Having arrived at the aforesaid conclusion, we allow these writ petitions with following directions:

(a) We hold that the development fee both external and internal as well as city development charges/impact fee cannot

be levied or collected by the Development Authorities, so long as statutory rules in exercise of powers under Section 15 (2-A)/38-A of Act, 1973 are not framed.

(b) We direct that henceforth the Development Authorities shall not levy or collect any development fee both external and internal as well as city development charges/impact fee until statutory rules as required are framed.

(c) We also hold that the demand of sub-division charges, compounding fee for sub-division, as wholly illegal and the Building Bye-Laws framed in that regard need not be given effect to. The Development Authorities must insist for open space being left in accordance with the Building Bye-Laws instead of charging money for violation thereof.

(d) Demand of permit fee, supervision fee, inspection fee, park fee, impact fee, labour cess is held to be illegal, as not contemplated by any of the provision of Act, 1973.

(e) Petitioners, who have deposited the money under the aforesaid heads, (a), (c) and (d) under protest or under interim orders passed in these petitions, shall be entitled for refund of the same on an application being made before the Development Authority concerned within one month of the making of the application.

(f) All money collected by the Development Authorities from other persons under the aforesaid heads shall be transferred to the relevant account and shall be utilized for the purposes, mentioned under Act, 1973.

(g) The demand of Bank Guarantee in advance towards the cost of land and construction of houses for E.W.S. and persons belonging to lower income group, as also for installation of rain water harvesting system is also quashed subject to conditions mentioned in the body of the judgement.

121. These writ petitions are, accordingly, allowed. No order as to costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.12.2013

BEFORE
THE HON'BLE SUDHIR AGARWAL, J.

Civil Misc. Writ Petition No. 57576 of 2013 alongwith No. 63093 of 2013 and No. 60538 of 2013

Vindhyavasini Tiwari & Ors.... Petitioners
Versus
State of U.P. and Ors.... Respondents

Counsel for the Petitioners:
Sri K.M. Asthana, Sri Seemant Singh, Sri V.K. Singh

Counsel for the Respondents:
C.S.C.

Constitution of India, Art.-226-Service Law-Recruitment on post of S.I. C.P., P.C. and P.A.C.-advertisement made 19.05.2011-at that time P.S.T.-after completing 20 Km run within 60 minutes for male and 5 km. withing 35 minutes for female candidate-required subsequently due to death of a candidates-reduced to 4.8 km within 35 minutes-pursuance to that cancellation of entire selection -held-illegal-amended rule 2013 having no applicability of retrospective nature-authorities are bound to follow the recruitment procedure as available on occurrence of vacancy.

Held: Para-40
One of the well established principle of law, in the matter of recruitment and appointment, is, that recruitment procedure as was available on the date of occurrence of vacancy must be followed to fill in those

vacancies unless and until changed procedure or alteration or amendment in the rules have been made retrospectively so as to govern ongoing recruitment. When a vacancy occurs, general principle is that it shall be filled in, according to the procedure applicable at the time when vacancy occurred.

Case Law discussed:
AIR 1961 SC 751; AIR 2002 SC 2322; 2005(2) AWC 1191(FB); AIR 1983 SC 852=1983(1) SCALE 296; AIR 1983 SC 1143; AIR 1988 SC 2068-1988(Supple.) SCC 740; 1998(9) SCC 223; W.P. No> 13347 of 2001; (2007) 11 SCC 605; 1997(10) SCC 419; 2007(5) SLR 237; Special Appeal No. 1372 of 1999; 2007(2) ESC 987; AIR 1968 Allahabad 139; AIR 1975 Allahabad 280; 1986(4) LCD 196; AIR 1994 Allahabad 273.

(Delivered by Hon'ble Sudhir Agarwal, J.)

1. All these three writ petitions involve common facts and questions of law, hence, as agreed by learned counsel for the parties, have been heard together and are being decided by this common judgment.

2. Heard Sri K.M. Asthana, Sri Seemant Singh and Sri V.K. Singh, Advocates for the petitioners and Sri R.C. Yadav, learned Standing Counsel for the respondents.

3. Writ Petition No. 57576 of 2013 (hereinafter referred to as the "first petition") has been preferred by five petitioners, namely, Vindhyavasini Tiwari, Digvijay Nath Chaurasia, Akhilendra Pratap Singh, Krishna Deo Tripathi and Radhey Shyam Maurya. They are aggrieved by Government Order dated 03.09.2013 (Annexure-1 to the writ petition), whereby it has communicated to Director General of Police, U.P., Lucknow its approval for cancellation of recruitment, already held, though partially, for the post of Sub-Inspector (Civil Police) (hereinafter referred to as the "SICP") and Platoon Commander in Provincial Armed Constabulary (hereinafter referred to as the "PC, PAC") pursuant to advertisement published in 2011 and directing for taking further action accordingly; and, consequential order dated 24.09.2013 (Annexure-2 to the writ petition), issued by U.P. Police Recruitment and Promotion Board (hereinafter referred to as the "Recruitment Board") cancelling advertisement No. PRPV-Ek-1/2011 dated 19.05.2011.

4. The Writ Petition No. 63093 of 2013 (hereinafter referred to as the "second petition") is at the instance of seventeen petitioners and Writ Petition No. 60538 of 2013 (hereinafter referred to as the "third petition") is at the instance of six petitioners. In these petitions also the impugned orders are same as are in the first petition.

5. In all these three writ petitions, a further prayer of writ of mandamus has been sought directing respondents not to make any further advertisement for fresh selection in respect of vacancies, subject matter of recruitment of 2011, and not to fill in those vacancies on the basis of U.P. Sub-Inspector and Inspector (Civil Police) Service (5th Amendment) Rules, 2013 (hereinafter referred to as the "5th Amendment Rules, 2013") and, instead, proceed to complete recruitment pursuant to advertisement dated 19.05.2011.

6. The facts, in brief, giving rise to present dispute have been taken from first petition and are as under.

7. An advertisement was published by Recruitment Board on 19.05.2011 (Annexure-3 to the first petition)

notifying vacancies of SICP and PC, PAC as under:

क.सं.	श्रेणी	उपनिरीक्षक नागरिक पुलिस	प्लाटून कमाण्डर
1	सामान्य	1849	156
2	अन्य पिछड़ा वर्ग	998	84
3	अनुसूचित जाति	777	66
4	अनुसूचित जनजाति	74	6
योग		3698	312

English Translation by the Court

S.N	Category	Sub-Inspector (civil police)	Platoon Commander
1.	General	1849	156
2.	Other Backward Classes	998	84
3.	Scheduled Caste	777	66
4.	Scheduled Tribe	74	06
Total		3698	312

8. In the second column, recruitment procedure was also described, and Clause 2 thereof, reads as under:

''क.सं. 2 प्रकिया ' प्रारंम्भिक लिखित परीक्षा : शारीरिक मानक परीक्षा में सफल घोषित अभ्यर्थियों से अर्हकारी प्रकृति की प्रारम्भिक लिखित परीक्षा में सम्मिलित होने की अपेक्षा की जाएगी। यह परीक्षा वस्तुनिष्ठ प्रकार की 200 अंकों की होगी, जिसमें निम्नलिखित तीन खंड होंगे– (1) सामान्य ज्ञान –100 अंक, (2) संख्यात्मक योग्यता परीक्षा – 50 अंक, (3) तार्किक परीक्षा – 50 अंक।

न्यूनतम 50 प्रतिशत अंक प्राप्त करने वाले अभ्यर्थी ही इस परीक्षा में सफल घोषित किए जाएंगे। विशेष : अर्हकारी, इसमें सफल घोषित अभ्यर्थी ही शारीरिक दक्षता परीक्षा के लिए पात्र होंगे।''
(emphasis added)

"Serial No. 2 Procedure - Preliminary Written Examination: Candidates who are declared successful in Physical Standard Test shall be required to appear in Preliminary Written Examination of qualifying nature. This examination shall comprise objective type questions of 200 marks having three parts - (1) General Knowledge - 100 marks, (2) Numerical Ability Test - 50 marks, (3) Reasoning Test - 50 marks.

Only those candidates securing atleast 50% marks in this examination shall be declared successful. Special: Qualifying, only those candidates who are declared successful in it shall be eligible for Physical Efficiency Test." (emphasis added) (English translation by the Court)

9. An instruction book was also supplied alongwith application form by Recruitment Board and therein also in para 2.5 the procedure and other conditions for Preliminary Written Test (hereinafter referred to as the "PWT") were mentioned as under:

''प्रारम्भिक लिखित परीक्षाः– प्रारम्भिक लिखित परीक्षा अर्हकारी होगी। न्यूनतम 50 प्रतिशत अंक प्राप्त करने वाले अभ्यर्थी ही इस परीक्षा में सफल घोषित किये जायेगे। इन सफल अभ्यर्थियों में से प्राप्तांकों की श्रेष्ठता के आधार पर रिक्तियों की संख्या के अधिकतम 18 गुना अभ्यर्थी ही शारीरिक दक्षता परीक्षा में सम्मिलित होने के लिये अर्ह होंगे। प्रारम्भिक लिखित परीक्षा का पाठ्यक्रम (निर्देश पुस्तिका बिन्दु–4.1) निर्देश पुस्तिका में अंकित है।

यह परीक्षा वस्तुनिष्ठ प्रकार की 200 अंकों की होगी, जिसमें निम्नलिखित तीन खण्ड होंगे–

(1) सामान्य ज्ञान–100 अंक

(2) संख्यात्मक योग्यता परीक्षा–50 अंक

(3) तार्किक परीक्षा–50 अंक'' (emphasis added)

"Preliminary Written examination:- Preliminary Written Examination shall be of qualifying nature. Only the candidates securing atleast 50% marks in this examination shall be declared successful. Depending on merit based on the marks obtained, from amongst these successful candidates, only a maximum of 18 times as many candidates as vacancies shall qualify to

appear in the Physical Efficiency Test. The Syllabus for Preliminary Written Examination (Point 4.1 of Instruction Booklet) is available in the Instruction Booklet.

This examination shall comprise objective type questions of 200 marks with the following three parts:-

(1) General Knowledge - 100 marks

(2) Numerical Ability Test - 50 marks

(3) Reasoning Test - 50 marks" (emphasis added) (English translation by the Court)

10. Here this Court finds one condition added therein that out of the successful candidates on the basis of merit, eighteen times candidates, qua the vacancies, shall be declared successful so as to participate in next stage of selection, i.e., physical efficiency test under para 2.6, i.e., Rule 15(e) of U.P. Sub-Inspector and Inspector (Civil Police) Service Rules, 2008 (hereinafter referred to as the "CPR, 2008") and Rule 18(e) of U.P. Pradeshik Armed Constabulary Subordinate Officers Service Rules, 2008 (hereinafter referred to as the "PAC Rules, 2008"). In other respect, the instructions contained in para 2.5 are the same as contained in Rules.

11. The recruitment process was to undergo five stages, i.e., Physical Standard Test (hereinafter referred to as "PST"); Preliminary Written Test (hereinafter referred to as "PWT"); Physical Efficiency Test (hereinafter referred to as "PET"); Main Written Examination (hereinafter referred to as "MWE"); Medical Examination and Group Discussion. All the petitioners participated and qualified in PST, PWT and PET. The respondents however, deferred the selection process and now by means of the impugned orders they have cancelled the very Recruitment as also the advertisement dated 19.05.2011, hence this writ petition.

12. A counter affidavit has been filed in the first petition sworn by Sri Mahesh Mishra, Deputy Superintendent of Police on behalf of Recruitment Board. He stated that some of the candidates who appeared in PWT were declared fail on the basis of notice dated 01.01.2013 of Recruitment Board stating that only those candidates who would secure 40% marks in each section and aggregate 50% marks, shall be eligible for next level of selection. The candidates though had secured 50% marks in aggregate but in individual sections they had not secured 405 marks, were declared fail. This change was introduced by Recruitment Board vide notice dated 01.01.2013. The fail candidates challenged above change in selection, process in the midst of selection in a large number of writ petitions. 63 such petitions were decided by this Court vide judgement dated 25.07.2013. All those writ petitions were allowed and the penultimate paragraphs no. 72, 73, 74 and 75 of the judgment, read as under:

"72. In view of above discussion, I have no hesitation in holding that Recruitment Board did not possess power to introduce qualifying marks in PWT and this introduction is wholly without jurisdiction. It cannot be doubted, where the rules specifically provide something, nobody on administrative side, can tinker with efficacy of rule in any manner. Such a deviation on the part of selection body would be wholly unauthorised, illegal and lack jurisdiction. The qualifying marks when are prescribed in rules, over and above thereto, the

selection body had no jurisdiction to make, on its own, an additional qualifying marks with respect to individual sections also, though it was not so desired by rule framing authority. When something is required to be done in a particular manner, the things have to be done strictly in accordance thereto and not otherwise. Moreover such alteration is not permissible in the midst of selection.

73. Before parting I may also add that the decision of this case in favour of petitioners will not affect the candidates already selected, so as to bring one or some of them outside the list of qualified candidates, for the reason that all those candidates admittedly have obtained aggregate 50% marks and above and, therefore, have been declared qualified. This decision only would add to the list of qualified candidates by bringing in all those who have secured 50% and more in PWT irrespective of whether in individual parts/sections they have secured 40% more or less and hence none shall be prejudiced in any manner except of having a few more competitors but then that is the consequence of application of Rule of Law.

74. In the result, the writ petitions are allowed. The respondents are directed to finalise PWT in view of discussions and observations made above, and, those candidates, who have secured, in aggregate, 50% marks and above, shall be treated to qualify the aforesaid test and shall be permitted to appear in next level of recruitment.

75. The petitioners shall also be entitled to costs, which I quantify to Rs. 1000/- for each set of writ petition."

13. It appears that some other writ petitions involving similar issues remain pending, having not been listed alongwith aforesaid bunch and, therefore, remain pending. In one of such pending writ petition no. 36383 of 2013 an ex parte interim order was passed on 11.07.2013 making observation that in public interest the respondents may take a decision to make entire recruitment afresh in the light of new scheme. It is said that in view thereof a decision was taken on 13.07.2013 to cancel entire Recruitment of 2011 and proceed to make it afresh in the light of amended Rules.

14. After the aforesaid decision, instead of proceeding further, it appears that, respondents proceeded to have a somersault on the very recruitment itself and that is how the decision to cancel the same came to be taken vide orders impugned in these writ petitions, rendering everything infructuous.

15. It is this decision of cancellation of entire recruitment (part whereof had already completed), has been assailed in these writ petitions on the ground that out of five stages of recruitment process, three were already completed, and just to give undue advantage to some unsuccessful candidates and also in the teeth of statutory provision in this regard, in a most arbitrary and illegal manner, the respondents took a decision to cancel the entire recruitment, which is perverse, illegal and arbitrary, particularly when there is no element of gross malpractices and otherwise illegalities in the selection.

16. It is admitted in the counter affidavit that pursuant to advertisement dated 19.05.2011, recruitment process commenced. All the petitioners, before this Court, have qualified in first, second and third phase of recruitment. The petitioners having qualified in PWT, participated in PET

commenced on 05.02.2013, which consisted of 10 kilometers run in 60 minutes by male candidates and 5 kilometers run in 35 minutes by female candidates. All the petitioners successfully completed it.

17. However, on 18.02.2013, one candidate, Satyendra Kumar son of Sri Brijmohan Yadav while running, fell down and died. Consequently, vide Government Order dated 20.02.2013, further PET was deferred. Thereafter, statutory rules for recruitment meant for SICP and PC, PAC were amended by 5th Amendment Rules, 2013 wherein length of run is reduced to 4.8 kilometers within 35 minutes for male candidates and 2.4 kilometers within 20 minutes by female candidates.

18. The aforesaid amendment was notified on 01.03.2013 and thereafter an office memorandum was issued by Recruitment Board on 27.06.2013 to continue selection in the light of amended conditions.

19. It is said that in the light of interim order dated 11.07.2013 passed in Writ Petition No. 36383 of 2013, a meeting presided by Principal Secretary, on 13.07.2013 was held, in which Director General of Police and PAC as also the members of Recruitment Board participated. It was deliberated that since this Court has permitted them either to continue with earlier recruitment as per old rules or to conduct entire recruitment in the light of new standards, hence entire recruitment from its inception as per 5th Amendment Rules, 2013 be held and consequently, partial recruitment as also the advertisement published for 2011 be cancelled in public interest and fresh process of recruitment should commence wherein vacancies likely to occur upto June, 2015 be also included. The minutes of aforesaid meeting dated 13.07.2013 has been placed on record as Annexure-CA-8. It is said that aforesaid minutes were communicated to Recruitment Board by State Government's letter dated 07.11.2013. It is thus contended that decision has been taken to cancel an earlier Recruitment in public interest and in conformity with the order dated 11.07.2013 in Writ Petition No. 36383 of 2013.

20. The petitioners contended that decision to cancel the entire recruitment is patently illegal, arbitrary and discriminatory. There was no reason or justification to cancel the entire recruitment. The respondents for the reasons best known to them, have acted in very vagabond and whimsical manner. More than 39,000 candidates participated in PET. Only one candidate could not bear stress of running test and, due to lack of medical facilities at the site, he succumbed. Besides other reasons, the respondents themselves were responsible for the loss of his life inasmuch as, appropriate medical facilities must have been arranged by them on the field, where the candidates were to undergo running test. Recruitment was for the post of Constable, the lowest in the hierarchy of police echelon. Long duration stress, physical and otherwise, is inherent with the requirement of job and nature of duties. There ought not have been any compromise with physical standards and norms which were determined in the light of duties and conditions of service and have been continuing for decades together. The respondents however acted in a whimsical manner by not completing PET and thereafter proceeded to make amendment in Recruitment Rules and then applied the same to the ongoing

selection, though the amendment of Rules was not retrospective. When on legal front, they found serious inconvenience and flaws, taking shelter of an ex parte interim order, the impugned orders have been passed though there was no valid and justified reason for canceling the entire Recruitment. There is no allegation of mal practice or otherwise irregularity in the process of Recruitment, already undergone. The ongoing Recruitment, even otherwise, was not found vitiated being in contravention of any statutory provision etc., yet two years' exercise has been set at naught, by passing the impugned orders without considering the fact that ongoing Recruitment has already consumed a good period of candidates, who have participated in Recruitment and, for the last two years, they have been working hard to clear the entire Recruitment and get appointment at the earliest so as to earn their livelihood and also serve the country as a member of State Police Force. In nutshell, it is contended that the entire exercise is wholly irrational and arbitrary and shows a total non-application of mind on the part of the respondents.

21. Learned Standing Counsel however, endeavored to defend the decision of cancellation of Recruitment on the basis of reasons and stand taken in the counter affidavit.

22. The short question up for consideration before this Court is, "whether cancellation of entire recruitment (i.e. partially completed recruitment as well as advertisement) by respondents is sustainable in law or not".

23. From the pleadings and arguments advanced before this Court, it is not in dispute that the vacancies advertised on 19.05.2011 were existing vacancies at the time of advertisement, meaning thereby they were the vacancies of earlier period, which have already occurred in point of time, prior to advertisement. The respondents, had proceeded with the recruitment process in accordance with rules of recruitment as were applicable and available on the date of occurrence of vacancies. They were governed by relevant rules as available on the date of advertisement.

24. At this stage, it would be appropriate to have a bird eye view at the relevant statutory provisions, as also the statutory rules.

25. The general police force is governed by Police Act, 1861 (hereinafter referred to as the "Act, 1861"), enacted with the assent of the then Governor General, granted on 22.03.1861, with an objective to reorganise the police and to make it more efficient instrument for prevention and detection of crime. Apparently, it is a pre-constitutional law and has continued to be operating by virtue of Articles 313 and 372 of the Constitutions as held in State of U.P. Vs. Babu Ram Upadhyay, AIR 1961 SC 751; Chandra Prakash Tiwari Vs. Shakuntala Shukla, AIR 2002 SC 2322; and, Vijay Singh Vs. State of U.P., 2005(2) AWC 1191 (FB).

26. Section 2 of Act, 1861 talks of constitution of force and provides that entire police establishment under State Government shall, for the purposes of Act, 1861, be deemed to be one police force. Section 2 authorises the State Government to lay down conditions of service of members of subordinate ranks of police force by issuing orders, subject

to condition that the same are not inconsistent with Act, 1861. The procedure for framing rules is prescribed in Section 46 of Act, 1861.

27. In exercise of powers under Sections 2 read with 46 of Act, 1861, the U.P. Sub-Inspector and Inspector (Civil Police) Service Rules, 2008 were promulgated which came into force on 02.12.2008, vide Section 1(2) thereof. The recruitment to the post of Sub-Inspector in Civil Police is thus, governed by CPR, 2008. The aforesaid Rules, 2008 have also been amended from time to time and I shall refer the same as and when that would be necessary.

28. For the purpose of Provincial Armed Constabulary (hereinafter referred to as the "PAC") the U.P. State Legislature enacted, "U.P. Pradeshik Armed Constabulary Act, 1948" (hereinafter referred to as the "PAC Act, 1948"), which is a small Act, having 16 Sections and one schedule. It was enacted to provide for the constitution and regulation of United Provinces Armed Constabulary. Section 3 thereof talks of constitution of PAC and says that there shall be raised and maintained, by the State Government, a force, to be called PAC, and it shall be constituted in one or more Companies, in such manner and for such period, as may be prescribed.

29. The provisions of Act, 1861 in so far as they were not inconsistent with PAC Act, 1948 were applied to the members of PAC vide Section 5 of PAC Act, 1948. Section 15 confers power upon State Government to frame Rules. In exercise of powers conferred under Section 15 of PAC Act, 1948, the State Government enacted, U.P. Pradeshik Armed Constabulary Subordinate Officers Service Rules, 2008, which contain provisions for recruitment and conditions of service of member of PAC in the various cadres including Platoon Commander.

30. Rule 15 of CPR, 2008 lays down procedure for direct recruitment to the post of SICP. The procedure for receiving applications is provided in Clause (a) of Rule 15 and thereafter procedure for issuing call letters is provided in Clause (b). The candidates applying for recruitment under CPR, 2008 have to undergo Physical Standard Test (i.e. "PET") [Rule 15(c)]; Preliminary Written Test (i.e. "PWT")[Rule 15(d)]; Physical Efficiency Test (i.e. "PET"[Rule 15(e)]; Main Written Examination (i.e. "MWE") [Rule 15(f)]; Medical Examination [Rule 15(g)]; and, Group Discussion [Rule 15(h)].

31. Rule 15 as enacted initially in CPR, 2008 came to be amended by First Amendment Rules, 2009, published on 02.04.2009, as corrected by notification dated 10.06.2009 in Hindi translation; by 4th Amendment Rules, 2011, published in gazette dated 14.01.2011; and, by 5th Amendment Rules, 2013, published in gazette dated 01.03.2013. However, there is no change or alteration throughout in Rule 15(d). Though in 4th Amendment Rules, 2011 there is a substitution of existing clause by new one but I do not find that in substance there is any change at all. Rule 15(d) of CPR 2008, reads as under:

''घ. प्रारम्भिक लिखित परीक्षा

खण्ड (ग) के अधीन शारीरिक मानक परीक्षा में सफल घोषित अभ्यर्थियों से एक वस्तुनिष्ठ प्रकार / अर्हकारी प्रकृति की प्रारम्भिक लिखित परीक्षण में सम्मिलित होने की अपेक्षा की आयेगी। यह परीक्षण 200 अंको का होगा।

इसमें तीन खण्ड होंगे, अर्थात 100 अंकों का सामान्य ज्ञान (सामयिक विषय, इतिहास, भूगोल, भारत का संविधान, स्वतन्त्रता संग्राम आदि) 50 अंकों की संख्यात्मक योग्यता परीक्षा और 50 अंकों की तार्किक परीक्षा। न्यूनतम पचास प्रतिशत अंक प्राप्त करने वाले अभ्यर्थियों को उक्त परीक्षा में सफल घोषित किया जायेगा।** (emphasis added)

'D' Preliminary Written Examination

The candidates declared successful in Physical Standard Test under Clause 'C', shall be required to appear in Preliminary Written Examination of an objective type /qualifying nature. This test will be of 200 marks.

It shall have three parts, i.e. General Knowledge (Current Affairs, History, Geography, Constitution of India, Freedom Struggle etc.) of 100 marks, Numerical Ability Test of 50 marks and Reasoning Test of 50 marks. The candidates securing atleast 50% marks shall be declared successful in the afore-mentioned examination." (emphasis added) (English translation by the Court)

32. Simultaneously, for direct recruitment under PAC Rule, 2008, it is Rule 15 which prescribes the procedure. The stages therein are a Physical Standard Test (Rule 18(c) read with Appendix-7); Preliminary Written Test [Rule 18(d)]; Physical Efficiency Test (Rule 18(e) read with Appendix-8); Main Written Test (Rule 18(f) read with Appendix-9); Medical Examination (Rule 18(g) read with Appendix-10); and, Group Discussion (Rule 18(h) read with Appendix-9).

33. This Court has seen that steps for recruitment published in advertisement dated 19.05.2011 are/were consistent with aforesaid rules.

34. For the purpose of recruitment, State Government constituted a centralized body, namely, "Recruitment Board" in exercise of powers conferred vide Section 2 of Act, 1861, read with Section 15 of PAC Act, 1948. The State Government issued a notification dated 02.12.2008 amended on 02.04.2009 so as to constitute a Recruitment Board assigning it the responsibility of recruitment and promotions of police officers of all subordinate ranks governed by aforesaid two sets of rules, i.e., CPR 2008 and PAC Rules, 2008.

35. It is also not in dispute that PWT was held in accordance with aforesaid rules and PET also commenced as per the provisions existing on the date of advertisement dated 19.05.2011. In the PET, all petitioners before this Court, completed run of 10 kilometers in 60 minutes as required vide Rule 15(e) of CPR, 2008, as it stood on the date of advertisement dated 19.05.2011 as also on the date, when, as a matter of fact, the aforesaid test was conducted.

36. In para 16 of first petition it has been stated that more than 39,000 candidates who were declared successful in PWT, participated in PET i.e., run of 10 kilometers in 60 minutes for male candidates and five kilometers within 35 minutes by female candidates. Out of 39,000 and odd, only one candidate met an unfortunate fatal consequence, inasmuch as he fell on the ground and died while undergoing aforesaid running. This fact has not been disputed by respondents in reply to paras 16 and 17 of the writ petition in paras 5 and 6 of their counter affidavit. However, it is said that State Government in order to avoid such serious incidents in future, took a policy decision, and thereby amended Rule 15(e) so as to reduce the length and time of

running as 4.8 kilometers in 35 minutes for male and 2.4 kilometers in 20 minutes for female. This amendment was notified vide notification dated 01.03.2013. Rule 1(2) of 5th Amendment Rules, 2013 categorically declares that aforesaid amended rule would come into force with immediate effect. Meaning thereby the aforesaid amendment in the rules was not made retrospectively.

37. Besides the amendment made in Rule 15 there are some more amendments which admittedly have no concern with the issue in question.

38. However, the entire set of rules, copy whereof is Annexure-6 to the first petition, nowhere shows that amended rule will govern recruitment, already undergoing, in accordance with rules as applicable on the date of advertisement or that the undergoing recruitments from the stage they are, henceforth, would now be governed by amended rules. It is also interesting to notice that office memorandum dated 27.06.2013 which notified recommencing of remaining PET on 07.07.2013 provides that besides remaining candidates who have yet to participate in aforesaid part of recruitment process, even failed candidates and absentees would be permitted to complete PET, as per the amended rules, i.e., reduced length of running as also the altered period.

39. This Court is not concerned with vires of amendment made in the standard of PET by 5th Amendment Rules, 2013. The decisions to make further recruitment in the light of amended provision as also the ultimate decision, which is impugned in the writ petition cancelling the entire earlier recruitment so as to conduct the entire recruitment, afresh in accordance with amended rules, will have to be examined by considering the question, whether it was permissible for respondents to do so or not.

40. One of the well established principle of law, in the matter of recruitment and appointment, is, that recruitment procedure as was available on the date of occurrence of vacancy must be followed to fill in those vacancies unless and until changed procedure or alteration or amendment in the rules have been made retrospectively so as to govern ongoing recruitment. When a vacancy occurs, general principle is that it shall be filled in, according to the procedure applicable at the time when vacancy occurred.

41. The Apex Court in Y.V. Rangaiah and Ors. vs J. Sreenivasa Rao And Ors. AIR 1983 SC 852 =1983 (1) SCALE 296 in para 9 it was observed:

"9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Register Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-

Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules." (emphasis added)

42. In A.A. Calton Vs. The Director of Education and another, AIR 1983 SC 1143 and P. Ganeshwar Rao and others Vs. State of Andhra Pradesh and others, AIR 1988 SC 2068=1988 (Supple.) SCC 740 the same view was reiterated. Again in B.L. Gupta and another Vs. M.C.D., 1998 (9) SCC 223, the Apex Court in para 9 of the judgment held as under:-

"When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules. The Rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion. This being so, the question which arises is whether the vacancies which had arises earlier than 1995 can be filled as per the 1995 Rules. Our attention has been drawn by Mr Mehta to a decision of this Court in the case of N.T. Devin Katti Vs. Karnataka Public Service Commission. In that case after referring to the earlier decisions in the cases of Y.V. Rangaiah Vs. J. Sreenivasa Rao, P. Ganeshwar Rao Vs. State of A.P. and A.A. Calton Vs. Director of Education it was held by this Court that the vacancies which had occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules. Though the High Court has referred to these judgments, but for the reasons which are not easily decipherable its applicability was only restricted to 79 and not 171 vacancies, which admittedly existed. This being the correct legal position, the High Court ought to have directed the respondent to declare the results for 171 posts of Assistant Accountants and not 79 which it had done." (emphasis added)

43. Following the aforesaid decisions, a Division Bench of this Court (of which I was also a Member) took similar view in Ram Prakash and others Vs. Farrukhabad Gramin Bank, Farrukhabad and others (Writ Petition No. 13347 of 2001), decided on 8th May, 2007).

44. In Arjun Singh Rathore and others Vs. B.N. Chaturvedi and others, (2007) 11 SCC 605 following State of Rajasthan Vs. R. Dayal, 1997(10) SCC 419 and Y.V. Rangaiah (supra) the Court said:

"We are therefore of the opinion that the vacancies which had occurred prior to the enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein. We are therefore of the opinion that the judgment of the learned Single Judge needs to be restored. We order accordingly."

45. In State of Punjab and others Vs. Arun Kumar Aggarwal and others, 2007(5) SLR 237 the Court said:

"We would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested

right of being considered for selection is accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature."

46. In the matter of recruitment of Head Constables in U.P. Police Force to the post of Sub-Inspector, a similar issue came to be considered before a Division Bench (presided by Hon'ble Dr. B.S. Chauhan, J., as His Lordship then was) in State of U.P. and others Vs. Ranbir Singh and others, Special Appeal No. 1372 of 1999, decided on 09.12.2004 and this Court said:

"It is a settled legal proposition that the vacancy in the promotional quota has to be filled up as per the law prevailing on the date the vacancy occurred. Reference in this regard may be made to the decisions of Hon'ble Apex Court in Y.V. Rangaiah and others Vs. J. Srenivasa Rao & Ors, AIR 1983 SC 852; A.A. Calton Vs. The Director of Educatiion & Anr., AIR 1983 SC 1143; P. Gyaneshwar Rao & Ors. Vs. State of Andhra Pradesh, AIR 1988 SC 2068; P. Mahendran & Ors Vs. State of Karnataka & Ors, AIR 1990 SC 405; and Ramesh Kumar Choudha & Ors. Vs. State of Madhya Pradesh & Ors., (1196) 11 SCC 242.

We, therefore, see no cogent reason to interfere with the judgment and the order of the learned Single Judge. However, as the matter is pending since long and some of the eligible candidates may have retired by now, their cases may also be considered for grant of the national benefits. This exercise may be completed as early as possible."

47. In view thereof, the vacancies existing in 2011 in respect whereof advertisement was published on 19.05.2011, deserved to be dealt with in accordance with rules as applicable at that time and the subsequent prospective amendment would not govern the same.

48. This is one aspect which would vitiate the order impugned in these petitions, as to to proceed for a fresh selection in accordance with 5th Amendment Rules, 2013.

49. Now I come to the second aspect of the matter.

50. It is no doubt true that the competent authority can always cancel a recruitment process at any stage but when it is challenged on the ground that decision is arbitrary, it is for the cancelling authority to show that the decision has been taken for valid reasons. The only reason assigned in this case is that this Court in an interim order dated 11.07.2013 passed in Writ Petition No. 36383 of 2013 permitted respondents to take a decision for making entire recruitment in accordance with new criteria and, therefore, the above decision was taken.

51. The defence taken by respondents, when analyzed a little in depth, I find that respondents have completely misdirected themselves by misreading the interim order dated 11.07.2013. Here the observations made by this Court in the interim order are further added with the words "but following law on the issue". It is interesting to note that respondents have not at all looked into this question whether it was permissible in law or not. They have construed the order as if this Court has given an absolute power, even

to the extent of arbitrariness, to the respondents, to decide that ongoing recruitment process should be cancelled and fresh recruitment in accordance with amended rules should be held.

52. It is also worthy to notice that Writ Petition No. 36383 of 2013 subsequently came to be heard by this Court on 24.09.2013 alongwith some other cases, when it was found that the issue raised therein was squarely covered by the judgment dated 25.07.2013 passed in Writ Petition No. 1476 of 2013 (Anil Giri and others Vs. State of U.P. and others) but in view of Government Order dated 03.09.2013, since entire selection itself was cancelled, the writ petition stood dismissed as infructuous. It is in this view of the matter though ex parte interim order was allegedly followed by respondents but they did not allow the writ petition itself to be heard on merits.

53. Be that as it may, when a writ petition is dismissed, its logical effect on the interim order passed therein is, as if no interim order ever was passed and that is how no party/litigant would allow to suffer permanently on account of an interim order passed by this Court in a writ petition, which is ultimately dismissed. This issue has been considered by a Division Bench of this Court (in which I was also a member) in Smt. Vijay Rani Vs. Regional Inspectress of Girls Schools, Region-1, Meerut and others, 2007(2) ESC 987 and the Court held as under:

"An interim order passed by the Court merges with the final order and, therefore, the result brought by dismissal of the writ petition is that the interim order becomes non est. A Division Bench of this court in Shyam Lal Vs. State of U.P. AIR 1968 Allahabad 139, while considering the effect of dismissal of writ petition on interim order passed by the court has laid down as under:

"It is well settled that an interim order merges in the final order and does not exist by itself. So the result brought about by an interim order would be non est in the eye of law if the final order grants no relief. The grant of interim relief when the petition was ultimately dismissed could not have the effect to postponing implementation of the order of compulsory retirement. It must in the circumstances take effect as if there was no interim order."

The same principal has been reiterated in the following cases:

(A)AIR 1975 Allahabad 280 Sri Ram Charan Das V. Pyare Lal.

"In Shyam Lal Vs. State of U.P., AIR 1968 All 139 a Bench of this Court has held that orders of stay of injunction are interim orders that merge in final orders passed in the proceedings. The result brought about by the interim order becomes non est in the eye of law in final order grants no relief. In this view of the matter it seems to us that the interim stay became non est and lost all the efficacy, the commissioner having upheld the permission which became effective from the date it was passed."

(B)1986 (4) LCD 196 Shyam Manohar Shukla V. State of U.P.

"It is settled law that an interim order passed in a case which is ultimately dismissed is to be treated as not having been passed at all (see Shyam Lal V. State of Uttar Pradesh) Lucknow, AIR 1968 Allahabad 139 and Sri Ram Charan Das v. Pyare Lal, AIR 1975 Allahabad 280 (DB)."

(C) AIR 1994 Allahabad 273 Kanoria Chemicals & Industries Ltd. v. U.P. State Electricity Board.

"After the dismissal of the writ petitions wherein notification dated 21.4.1990 was stayed, the result brought about by the interim orders staying the notification, became non est in the eye of law and lost all its efficacy and the notification became effective from the beginning."

54. Even otherwise, it is also well settled that act of court shall prejudice none. None of the party can take shelter behind an interim order, which ultimately is not sustained since the matter, in which such an interim order was passed, itself fails and dismissed. This being the logical consequence of dismissal of Writ Petition No. 36383 of 2013, in my view, the defence taken by respondents relying on interim order, cannot sustain and the decision taken by respondents, since admitted by them is founded on aforesaid interim order, the very foundation having disappeared, the consequential decision is also bound to fail.

55. This Court also finds that respondents have taken a stand that since rules were amended by 5th Amendment Rules, 2013 by reducing the physical efficiency standard in the matter of run and some other amendments, hence they took a decision to hold recruitment afresh in the light of amended rules and this decision was taken in public interest.

56. What public interest it would have served, however, could not be clarified by respondents. Admittedly, more than 39,000 candidates have participated in PET, the third stage of recruitment test, and a large number of candidates proved their physical efficiency standard by completing rigorous running test of 10 kilometers for male candidates and 5 kilometers for female candidates. If the recruitment process would have completed as per old rules, it would have given the better physically efficient candidates to police force who have shown their strength in the more rigorous test as per the provisions applicable before 5th Amendment Rules, 2013. The candidates who have failed had no justification to ask for reappearing in the aforesaid test. The candidates who absented from participating in such test also would have to face the same consequence, unless the authorities concerned, for justified reasons, allow them to participate subsequently.

57. Be that as it may, the candidates selected through more rigorous test would be more useful for police force than those who would be selected after reduced standard. It goes beyond comprehension of any person of ordinary prudence how recruitment made with rigorous test, particularly, when the matter relates to uniform force like police, directly responsible besides other for maintenance of public law and order etc., would be less in public interest than having persons recruited with relaxed or reduced standard.

58. The respondents have also not applied their mind on the facts that earlier recruitment has already consumed almost two years and the participating candidates besides spending a good long time of their carrier making, must have also spent heavily (considering financial capacity of unemployed persons). All such expenses shall go waste without any rhyme, reason and justification. The respondents also could not give any justification if the earlier selection would have continued and for other vacancies a fresh selection in the light of amended rules would have been held, then what kind of public interest would not have been served. The police force ultimately would have been the beneficiary getting large number of recruits available for joining, particularly, when it is reeling under heavy manpower deficiency.

59. Lastly it is contended that petitioners have no locus standi to challenge the orders of cancellation inasmuch as they are not even selected candidates, hence no indefeasible right of appointment has accrued to them. They are only candidates and it is always open to employer to cancel a recruitment at any stage. The recruitment in the present case has been cancelled in the midst, hence no legal right of petitioners has been infringed.

60. As a general proposition bereft of some distinguishing niceties, the argument is quite fascinating and as a broad proposition I have no reason to express my dissent thereto but fortunately this broad proposition has several deviations also. When an action of the State is challenged being wholly irrational or arbitrary, it is for the State to satisfy the Court that action is not blatantly arbitrary.

61. The petitioners, no doubt, are candidates but they have a right to be considered for appointment. The right to be considered includes right to be considered in accordance with law. In the present case, right of consideration of petitioners in accordance with law is being denied by respondents by cancelling entire selection in the midst and this decision has been challenged on the anvil of being patently arbitrary and whimsical. Such being the challenge, onus obviously lies upon State to show that decision is not arbitrary. To this extent, the petitioners have a right to maintain this writ petition whatever little right they have, and the scope of judicial review also cannot be disputed so as to find out, whether the decision impugned in these petitions, is arbitrary or not.

62. The only defence taken by respondents to fortify impugned orders is an interim order passed by this Court and an amendment made by them in the recruitment rules that too prospectively. Both these aspects have been considered and I do not find anything in favour of respondents. No other reason for cancelling the entire selection/recruitment has come forth. In view thereof I have no hesitation to hold that the impugned orders are patently illegal and cannot be sustained.

63. At this stage, learned Standing Counsel contended that it was not only to save the life of young candidates participating in recruitment but also to provide better opportunities to the unemployed youth the Government in larger public interest has taken decision to relax standard of physical efficiency etc. and in case entire recruitment is allowed to be held under the amended provisions, it will give more opportunities of employment to unemployed youths than, if the earlier recruitment is required to be completed as per the old rules.

64. The argument though attractive but on deeper scrutiny loses its strength. One cannot forget that recruitment in question pertains to police force. The police officials must answer best standards of physical strength,endurance, stress, efficiency etc. which must be quite higher than the average common man otherwise the members of police force may not be able to perform the kind of job they are supposed to. Their job includes courage, valiant, persistent onerous physical stressed duties etc., therefore, harder standards are needed. The standard set out in pre 5th Amendment Rules, 2013 were not impossible to be achieved or such which could have been achieved only by a very few. In fact these standards have continued for decades together and well time tested. Besides the fact that large number of candidates have successfully achieved the requisite physical test as per pre 5th Amendment Rules, 2013, a

document has been placed on record by petitioners showing that when such standards were sought to be criticized being extra hard and inhuman, an officer in the rank of Director General of Police in Rajasthan, who was above the age of 55 years, himself ran twice and completed 10 kilometers run in 47 and 51 minutes respectively. Instead of giving answer on paper he offered demonstration to show that this is quite reasonable. When a person above the age of 55 years can achieve it, there is no question that the candidates who are aspiring for police carrier and young, should not be able to achieve. I am not going into the merits of amendment made by 5th Amendment Rules, 2013 but my observations in this regard made above are only to the extent they were necessary for meeting rival submissions.

65. Looking to the matter from various angles and also in the light of above discussions, in my view, the impugned orders cannot sustain. The writ petitions deserve to be allowed.

66. In the result, all the three writ petitions are allowed. The impugned Government Order dated 03.09.2013 and the consequential order dated 24.09.2013 are hereby quashed. The respondents are directed to complete recruitment of 2011 for the posts of Sub-Inspector (Civil Police) and Platoon Commander (Provincial Armed Constabulary) pursuant to advertisement dated 19.05.2011, commencing from the stage it was, in accordance with rules as they stood before 5th Amendment Rules, 2013, expeditiously, but not later than three months from the date of production of a certified copy of this order before the respondents-competent authority.

67. However, the parties shall bear their own costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.12.2013

BEFORE
THE HON'BLE TARUN AGARWALA, J.

Civil Misc. Writ Petition No. 60813 of 2013
alongwith
W.P. No. 31474 of 2013

Smt. Pushpa... Petitioner
Versus
State of U.P. and Ors.... Respondents

Counsel for the Petitioner:
Sri R.P.S. Chauhan, Sri Sudhir Kumar

Counsel for the Respondents:
C.S.C.

U.P. Panchayat Raj-Removal of Pradhan and U.P. Pradhan and Members-Enquiry Rules 1997-Rule-6- After receiving reply on show cause notice-without chargesheet-without holding enquiry as per Rule 6 removal of Pradhan by exercising power under section 95(i)(g)-held-illegal-provision of rule 6 are mandatory requirement-non compliance-order impugned-not sustainable.

Held: Para-9
Since no charges were framed against the petitioner nor any inquiry was made in accordance with Rule 6 of the Rules of 1997, which is a mandatory requirement, the impugned order dated 8.10.2013 removing the petitioner under Section 95(1)(g) of the Act was wholly illegal and in violation of the principles of natural justice. The impugned order cannot be sustained and is quashed. The writ petition No.60813 of 2013 is allowed.

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

1. Heard Sri R.P.S.Chauhan and Sri Sudhir Kumar, the learned counsel for the petitioner and the learned standing counsel.

2. The instant case discloses the manner in which the State authorities have thrown caution to the wind and have patently misused the provisions of the U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997 (hereinafter referred to 'Rules of 1997') in passing orders ceasing the financial and administrative powers of the Pradhan and thereafter removing him under Section 95(1)(g) of the U.P. Panchayat Raj Act. The manner in which the two orders have been passed are in gross violation of the provisions of Rules 3, 4, 6 and 7 of the Rules of 1997.

3. The petitioner was elected as the Pradhan and was discharging her duties. Certain persons, being aggrieved, filed a complaint on the basis of which a preliminary inquiry was instituted under Rule 3 of the Rules of 1997. A preliminary inquiry report was submitted indicating that the petitioner had not carried out the work in the right earnest and that she had misappropriated certain amount. Based on this preliminary inquiry report, a show cause notice, dated 24.4.2013, was issued. The petitioner gave a reply. The District Magistrate rejected the reply, on the short ground, that the reply was not found satisfactory and without recording any reason as to whether the petitioner, prima facie, had misappropriated any amount issued an order ceasing the financial and administrative powers. The petitioner, being aggrieved by the order dated 15.5.2013, filed writ petition No.31474 of 2013, which was entertained and an interim order dated 30.5.2013 was passed staying the impugned order, leaving it open to the District Magistrate to conclude the final inquiry under Rule 6 of the Rules of 1997.

4. Pursuant to the order of the Writ Court, a final inquiry under Section 6 was purported to be held. It transpires that an inquiry officer was appointed who submitted an inquiry report on 22.7.2013 and, based on this inquiry report, a show cause notice dated 26.7.2013 was issued to which the petitioner responded and filed a reply. The District Magistrate thereafter passed the impugned order dated 8.10.2013 removing the petitioner from the post of Pradhan under Section 95(1)(g) of the Act. The petitioner, being aggrieved by the said order, filed writ petition No.60813 of 2013, which was entertained and the Court directed the respondents to file a counter affidavit and produce the record. Further, time was again granted on 18.11.2013, inspite of which no counter affidavit has been filed.

5. The learned standing counsel has, however, produced the record today, which the Court has perused.

6. Having heard the learned counsel for the parties, the Court finds that the Rules of 1997 have not been followed at all. In the instant case, the order of the District Magistrate dated 15.5.2013, ceasing the financial and administrative powers, is not only erroneous, but, is perverse. It is not sufficient for the District Magistrate to hold that the reply of the petitioner was not satisfactory. Something more was required to be stated. The authority was required to give reasons for rejecting the reply of the petitioner. Apart from the aforesaid, the authority had to come to some prima facie conclusion that the petitioner was involved in the defalcation of the Gaon Sabha fund in order to pass an order ceasing the financial and administrative powers till conclusion of the final inquiry contemplated under Rule 6 of the Rules of 1996. In the instant case, the Court finds, that the District Magistrate has not given

any reason as to why the reply was not satisfactory nor has given any reason as to how the petitioner committed a financial irregularity of the Gaon Sabha fund. Consequently, the order dated 15.5.2013 ceasing the financial and administrative powers cannot be sustained and is quashed. The Writ Petition No.31474 of 2013 is allowed.

7. A final inquiry is required to be conducted in accordance with the procedure contemplated under Rule 6 of the Rules of 1997 and thereafter a report is required to be submitted under Rule 7 of the Rules of 1997. The procedure contemplated under Rule 6 is that the inquiry officer shall draw the articles of charges and the statements of imputation and serve such articles of charges along with the statements and relevant documents in support of such statements and the charges to the delinquent, who in the instant case is the Pradhan. Specific charges are required to be framed by the inquiry officer, so that the Pradhan can give a proper reply to each of the charges. The procedure contemplated indicates, that where the charge is denied by the Pradhan, the inquiry officer is required to conduct an inquiry by taking oral and documentary evidence after giving an opportunity to the Pradhan to cross-examine such witnesses and only thereafter the inquiry officer is required to submit an inquiry report, which would contain the articles of charge and the statement of the imputation, the defence of the Pradhan and the assessment of the evidence in respect of each articles of charge and thereafter the findings on each article of charge and the reasons thereof.

8. In the instant case, the inquiry officer has done nothing as per the procedure provided under Rule 6 of the Rules of 1997. He has neither framed the charge nor the statement of the imputation nor the list of documents or the list of witnesses that was to be relied upon by the prosecution. All that the inquiry officer has done is to hold an inquiry which is nothing but a preliminary enquiry and is not an enquiry contemplated under Rule 6 of the Rules of 1997. The Court finds from a perusal of the record that pursuant to the submission of the report, a show cause notice dated 26.7.2013 was issued by the District Magistrate, which contained the charges and upon receipt of the reply a final order has been passed. The Court finds that the procedure adopted was patently illegal. The charges so framed by the District Magistrate were not proved nor was the inquiry held in accordance with Rule 6 of the Rules of 1976. The entire exercise was wholly illegal and against the clear provisions of Rule 6 of the Rules of 1997. The inquiry report was in violation of the provisions of Rule 7 of the Rules of 1997.

9. Since no charges were framed against the petitioner nor any inquiry was made in accordance with Rule 6 of the Rules of 1997, which is a mandatory requirement, the impugned order dated 8.10.2013 removing the petitioner under Section 95(1)(g) of the Act was wholly illegal and in violation of the principles of natural justice. The impugned order cannot be sustained and is quashed. The writ petition No.60813 of 2013 is allowed.

10. Since the respondents have acted illegally in violation of the mandatory provision of the Rules of 1997 and Section 95(1)(g) of the Act and further have not filed any counter affidavit inspite of repeated time being granted, the Court

imposes a cost of Rs.50,000/-. Rs.25,000/- shall be paid to the petitioner within four weeks from today and the remaining Rs.25,000/- will be deposited by the District Magistrate before the High Court Legal Services Committee. It would be open to the State Government to recover the amount from the erring officials. If the amount is not deposited, the Member Secretary will approach the Registrar General, who in turn will proceed to recover the amount as arrears of land revenue.

11. The Registry is directed to supply a copy of this order to the Member Secretary within a week for necessary action.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.12.2013

BEFORE
THE HON'BLE RAM SURAT RAM (MAURYA), J.

Civil Misc. Writ Petition No. 64232 of 2013

Jhandu... Petitioner
Versus
The D.D.C Budaun & Ors.... Respondents

Counsel for the Petitioner:
Sri R.S. Tripathi, Sri A.P. Tiwari

Counsel for the Respondents:
C.S.C.

U.P. Consolidation of Holding Act 1953-Section-48(3)- Power of remand Deputy director of consolidation-if not satisfied with findings recorded by S.O.C.-argument that ought to have remand for fresh consideration-but can not disturb the finding of facts recorded by S.O.C.-held-mis conceived-in view of amended provision of clause 3 of 48 of the Act-power to re-appreciate oral or documentary evidence.

Held: Para-12

Settlement Officer Consolidation found that marriage of Mohkam to Maya was proved. But as Maya was not examined to prove that Mithlesh Babu was her born due to bedlock with Mohkam as such, the matter was remanded for fresh trial. Mithlesh Babu examined Satyapal and Thakuri and filed his school record. On the basis of these evidence, the Consolidation Officer recorded findings that it was proved that Mithlesh Babu was legitimate son of Mohkam. In the circumstances, the remand was wholly unnecessary and only allowing the parties to fill up the lacuna in their evidence. Respondent-1 has rightly set aside the order of the appellate Court. Finding of facts recorded by respondents-1 and 2 do not suffer from any illegality.

Case Law discussed:
2001(92) RD 79; 2003 (94) RD 614; 2003(106) RD 563; (2000) 3 SCC 103; (2009) 12 SCC 590; (2008) 8 SCC 485.

(Delivered by Hon'ble Ram Surat Ram(Maurya), J.)

1. Heard Sri A.P. Tiwari, for the petitioner.

2. The writ petition has been filed against the orders of Deputy Director of Consolidation dated 09.10.2013 and Consolidation Officer dated 03.05.2010, passed in proceedings under Section 12 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

3. The dispute relates to the land of chaks 320, 748 and 1177 of village Kurhashahpur, pargana Ujhani, district Budaun. Chaks 320 and 748 were recorded, in the name of Mohkam son of Nekram and Chak 1177 was recorded in the name of Sipattar. The petitioner filed an objection (registered as Case no. 5 of 2009-10) under Section 12 of the Act, for recording his name as an heir of Mohkam and Sipattar, the

recorded tenure holders. It has been stated by the petitioner that Mohkam was his real brother and Sipattar was his real uncle (father's brother). Both of them died issue less. The petitioner was their nearest heir under Section 171 of U.P. Act no. 1 of 1951. Thereafter, Mithlesh Babu (respondent-3) also filed an objection under Section 12 of the Act, for recording his name as an heir of Mohkam. It has been stated by respondent-3 that he was son of Mohkam, born to his legally wedded wife Smt. Maya. Sipattar died during life time of Mohkam, as issue less as such his share was jointly inherited by Jhandu and Mohkam. After death of Mohkam, he inherited his share. Both the objections were referred to the Consolidation Officer, where the parties filed written statements of the claims of each other. Subsequently one Objection was filed by Smt. Gango, mother of Mohkam, stating that Mohkam was unmarried and died issue less as such his interest was inherited by her, being his widowed mother.

4. All the objections were consolidated and tried together by Consolidation Officer (respondent-2). The petitioner examined Jhandu, Basoran, Rakshpal and Brijpal as witnesses. Mithlesh Babu examined himself, Satyapal and Thakuri as his witnesses and also filed documentary evidence. Gango examined herself and Raveran as her witnesses. The Consolidation Officer, after hearing the parties, by order dated 03.05.2010, held that all the witnesses of the petitioner admitted that Mohkam was married to Smt. Maya. Even Gango admitted that Maya was living with Mohkam as his concubine. From the Voters' List it was proved that Maya was wife of Mohkam. Satyapal and Thakuri proved that Mithlesh Babu was born to Maya, who was wife of Mohkam. From the school records and statement of the witnesses it was proved that Mithlesh Babu was son of Mohkam and Maya. Thus it was found proved that Mithlesh Babu was legitimate son of Mohkam as such name of Mithlesh Babu was directed to be recorded over the land in dispute as an heir of Mohkam.

5. The petitioner filed an appeal (registered as Appeal no. 197) from the aforesaid order. Gango did not file any appeal. The appeal was heard by Settlement Officer Consolidation, Badaun, who by order dated 09.02.2011 held that although marriage of Mohkam to Maya was proved but as the school records filed by Mithlesh Babu was not proved by the competent authority and Maya, who was the best witness to prove that Mithlesh Babu was born to her during her wedlock with Mohkam, but she was not produced as such the Consolidation Officer committed an error in recording a finding that Mithlesh Babu was son of Mohkam. On these findings, he allowed the appeal and remanded the case to Consolidation Officer for giving opportunity to the parties to lead fresh evidence and decide afresh.

6. Mithlesh Babu filed a revision (registered as Revision No.84/2013-14). The revision was heard by Deputy Director of Consolidation (respondent-1), who by order dated 09.10.2013 held that in the Voters' List of 1992, the name of Maya was recorded as the wife of Mohkam. In the school records, date of birth of Mithlesh Babu was mentioned as 05.06.1994 and his father's name was recorded as Mohkam and from the statements of Satyapal and Thakuri also, it was proved that Mithlesh Babu was son of Mohkam. The Consolidation Officer

gave full opportunity of evidence to the parties and remand for fresh evidence was illegal. On these findings, the revision was allowed and the order of Settlement Officer Consolidation, Badaun, dated 09.02.2011 was set aside and order of Consolidation Officer dated 03.05.2010 was reinstated. Hence this writ petition has been filed.

7. The counsel for the petitioner submitted that Deputy Director of Consolidation was exercising the revisional jurisdiction. In case, he was not agreeing with the findings of fact recorded by Settlement Officer, Consolidation, he ought to have remanded the case to Settlement Officer Consolidation for deciding the appeal afresh but he has exceeded his jurisdiction in recording his own findings of facts contrary to the appellate authority. He placed reliance on the judgment of Supreme Court in Gayadeen Vs. Hanuman Prasad, 2001 (92) RD 79 and the judgments of this Court in Wali Mohammad Vs. DDC and others, 2003 (94) RD 614 and Mst. Mahraji Vs. DDC and others, 2009 (106) RD 563. Findings of Deputy Director of Consolidation are based upon misconstruing of the evidence on record. It was not proved from any evidence on record that Mithlesh Babu was the legitimate son of Mohkam as such he was not heir of Mohkam. The petitioner, being the real brother of Mohkam, who died issue less, was his heir. Respondent-1 has not given any reason in his judgment and it is a cryptic order and has been passed without discussing any evidence on record.

8. I have considered the arguments of the counsel for the petitioner and examined the record. Section 48 (1) of the Act, which confers revisional jurisdiction to Deputy Director of Consolidation and Explanation (3) added to it are quoted below:-

Section 48. Revision and Reference:- (1)The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purposes of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order other than interlocutory order passed by such authority in the case or proceedings, may after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

Explanation (3).- The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to re-appreciate any oral or documentary evidence.

9. The scope of jurisdiction under Section 48 of the Act came for consideration before Supreme Court time to time. Supreme Court in Sheo Nand v. Dy. Director of Consolidation, (2000) 3 SCC 103 held that section 48 gives very wide powers to the Deputy Director. It enables him either suo motu on his own motion or on the application of any person to consider the propriety, legality, regularity and correctness of all the proceedings held under the Act and to pass appropriate orders. These powers have been conferred on the Deputy Director in the widest terms so that the claims of the parties under the Act may be effectively adjudicated upon and determined so as to confer finality to the rights of the parties and the revenue records may be prepared accordingly. Normally, the Deputy Director, in exercise of his powers, is not expected to disturb the findings of fact recorded concurrently by the Consolidation Officer and the Settlement Officer (Consolidation), but where the findings are

perverse, in the sense that they are not supported by the evidence brought on record by the parties or that they are against the weight of evidence, it would be the duty of the Deputy Director to scrutinize the whole case again so as to determine the correctness, legality or propriety of the orders passed by the authorities subordinate to him. In a case, like the present, where the entries in the revenue records are fictitious or forged or they were recorded in contravention of the statutory provisions contained in the U.P. Land Records Manual or other allied statutory provisions, the Deputy Director would have full power under Section 48 to reappraise or re-evaluate the evidence-on-record so as to finally determine the rights of the parties by excluding forged and fictitious revenue entries or entries not made in accordance with law.

10. Similar view has been taken by Supreme Court in Sheshmani Vs. DDC and others, 2000 (91) RD 210 and Gulzar Vs. DDC and others, (2009) 12 SCC 590. Due to some contradictory decisions, Explanation (3) has been added by U.P. Act No. 3 of 2002. Thus, the arguments raised by the counsel for the petitioner that in case of disagreement, Deputy Director of Consolidation ought to have remanded the case to Settlement Officer Consolidation is not liable to be accepted.

11. The practice of remand has been deprecated by Supreme Court time to time. Supreme Court in Municipal Corpn., Hyderabad v. Sunder Singh, (2008) 8 SCC 485, held that it is now well settled that before invoking the provision of Order 41 Rule 23 of the Code of Civil Procedure, the conditions precedent laid down therein must be satisfied. It is further well settled that the court should loathe to exercise its power in terms of Order 41 Rule 23 of the Code of Civil Procedure and an order of remand should not be passed routinely. It is not to be exercised by the appellate court only because it finds it difficult to deal with the entire matter. If it does not agree with the decision of the trial court, it has to come with a proper finding of its own. The appellate court cannot shirk its duties.

12. Settlement Officer Consolidation found that marriage of Mohkam to Maya was proved. But as Maya was not examined to prove that Mithlesh Babu was her born due to bedlock with Mohkam as such, the matter was remanded for fresh trial. Mithlesh Babu examined Satyapal and Thakuri and filed his school record. On the basis of these evidence, the Consolidation Officer recorded findings that it was proved that Mithlesh Babu was legitimate son of Mohkam. In the circumstances, the remand was wholly unnecessary and only allowing the parties to fill up the lacuna in their evidence. Respondent-1 has rightly set aside the order of the appellate Court. Finding of facts recorded by respondents-1 and 2 do not suffer from any illegality.

13. In view of the aforesaid discussion, the impugned orders do not suffer from any illegality. The writ petition has no merit and is dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.12.2013

BEFORE
THE HON'BLE V.K. SHUKLA, J.
THE HON'BLE SUNEET KUMAR, J.

Civil Misc. Writ Petition No. 64481 of 2012

Praveen Kumar... Petitioner
Versus
State of U.P.... .Respondent

Counsel for the Petitioner:

Sri Hira Lal Singh Kushwaha
Sri Pankaj Dube

Counsel for the Respondent:
C.S.C.

Constitution of India, Art.-226-Petitioner being registered with board of Ayurvedic & Unani,Tibbisystem-with specialization in C.C.H-claiming practice in modern medicine (alopathic)-held-dearth of doctor and rendering service to poor people-can not be allowed for transgression to another branch-petition dismissed.

Held: Para-36
This is not at all case of the petitioner that he has acquired degree or qualification as is provided for under the Indian Medical Council Act, 1956, and is registered in the State register, maintained in this regard then, in such a situation and in this background, the petitioner cannot be permitted to administer the medicine connected with the modern medicine and it may be true on the ground that large number of poorer sections of the society, being rendered service by him and various other similarly situated but the same cannot be a criteria to flout the statuary provisions, the same being in the realm of policy decision of other constitutional functionaries. Apex Court in the case of Mumbai Vs. State of Maharashtra and another reported in JT 2009 (3) SC 351 has repelled such an argument wherein plea has been raised that incumbent was rendering service to treat the poor people and there is dearth of Doctors, and accordingly, he should be permitted to prescribe medicine.

Case Law discussed:
1996(4) SCC 332; (1998) 7 SCC 579; 1998-Laws(SC)-7-81; 2000(5)SCC 80; [(2001) 2 JIC 774(All)]; 2004(2)ESC(All)960; 2004(2)ESC 976; W A No. 1260 OF 2006; AIR 1999 SC 468; W.P. No. 13696 of 2009; (2013)4 SCC 252; AIR 1995SC 922.

(Delivered by Hon'ble V.K. Shukla, J.)

1. Praveen Kumar has approached this Court praying therein for following reliefs:

(i) a writ, order or direction in the nature of mandamus commanding and directing the respondent to permit the petitioner to practice as Modern Medicines (Allopathic Medicines) alongwith Aurvedic Medicines in the wake and light of the judgment of Hon'ble Supreme Court in the case of State of Haryana Vs. Phool Singh decided on July, 20, 1998.

(ii) a writ, order or direction in the nature of mandamus commanding and directing the respondent not to disturb the petitioner's career in any way even alleging him as Jhola Chhap Doctor."

2. Petitioner claims that he has got to his credit B.A.M.S. Degree from Rajiv Gandhi University of Health Science Karnataka and is registered with registration No. 57099 with Board of Aurvedic and Unani Tibbi Systems of Medicine, U.P.. Petitioner claims that he has also done specialization course in Child Health (Paediatric) C.C.H and is having certificate no. IHSM/7903/11. Petitioner further claims that students of MBBS, BUMS, BAMS and BHMS are equally eligible for CCH Course. Petitioner submits that he is a competent B.A.M.S Doctor having knowledge and training of both modern and aurvedic medicines, as the course of B.A.M.S. comprises not only the syllabus and curriculum of Aurvedic medicines but also to great extent the syllabus and curriculum of modern medicines, in such a situation and in this background, petitioner claims that he is entitled to and deserves to practice modern medicines also alongwith Aurvedic medicines and in the said practice no obstructions should be caused by the respondents.

3. Petitioner has proceeded to mention that as there is dearth of doctors, in view of the same petitioner should be permitted to practice in morden medicines (Allopathy medicines) alongwith Aurvedic medicines and any impediment sought to be created to his practice be stopped.

4. To the said writ petition counter affidavit has been filed and therein stand has been taken that request as has been made by the petitioner cannot be accepted as petitioner does not fulfil requisite minimum eligibility criteria provided for under Indian Medical Council Act, 1956 and petitioner is not at all qualified to practice in the said field and petitioner cannot claim as a matter of right to practice in Modern Medicines and petitioner can practice in the branch of "Indian Medicine" only.

5. To the said counter affidavit, rejoinder affidavit has been filed disputing the averments mentioned therein and the judgment in the case of State of Haryana Vs. Phool Singh decided on 20.07.1998 has been appended and has been relied upon.

6. After pleadings mentioned above have been exchanged present writ petition has been taken up for final hearing and disposal.

7. Sri Hira Lal Singh Kushwaha, learned counsel for the petitioner submitted with vehemence that in the present case petitioner is fully entitled to practice even "Modern medicines" as he has knowledge and training of general use of allopathic medicine which is included in the course of B.A.M.S. Degree and there being dearth of Doctors in the State of U.P., such permission should be accorded specially keeping in view the provision of Rule 2 (ee) of the Durgs and Cosmetics Rules, 1945 as well as the provisions of Section 17 (3) (b) of the Indian Medicine Central Council Act, 1970 which gives privilege to the practitioners of Indian System of Medicine to practice alongwith "Indian medicine" any system of medicine and accordingly writ petition deserves to be allowed.

8. Countering the said submission Sri J.K.Tiwari, learned Standing counsel submitted that petitioner is entitled to practice in the Indian System of Medicine Branch comprising of Ashtang Ayurveda, Sidha the qualification recognized under the Indian Medicine Central Council Act, 1970 and is not at all entitled to practice in Allopathy medicine which is provided for under the Indian Medical Council Act, 1956, as such writ petition deserves to be dismissed.

9. In order to examine the issue as has been sought to be raised by the petitioner before this Court, this Court proceeds to take note of statutory provision which governs the field of "Modern Medicines" as well as "Indian Medicines", as well as the relevant provisions of Drugs and Cosmetics Rules , 1945.

10. To start with the provision as contained under the Drugs and Cosmetics Rules, 1945, Section 2(ee) being relevant is reproduced below:

2[(ee) "Registered medical practitioner" means a person__

(i)holding a qualification granted by an authority specified or notified under Section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916), or specified In the

Schedules to the Indian Medical Council Act, 1956 (102 of 1956); or

(ii) registered or eligible for registration in a medical register of a State meant for the registration of persons practicing the modern scientific system of medicine 3 [excluding the Homoeopathic system of medicine] ; or

(iii) registered in a medical register, 3 other than a register for the registration of Homoeopathic practitioner, of a State, who although not falling within sub-clause (i) or sub-clause (ii) declared by a general or special order made by the State Government in this behalf as a person practising the modern scientific system of medicine for the purposes of this Act; or

(iv) registered or eligible for registration in the register of dentists for a State under the Dentists Act, 1948 (16 of 1948); or

who is engaged in the practice of veterinary medicine and who possesses qualification approved by the State Government] "

11. The Indian Medical Council Act, 1956 holding the field Modern medicine (Allopathic) has been promulgated with an object for reconstitution of Medical Council of India and the maintenance of Medical Register of India. Section 2 of the Act deals with definition and Sub-Sections (d), (f), (h) and (k) being relevant are being reproduced below:

"(d) "Indian Medical Register" means the medical register maintained by the Council.

(f) "medicine" means modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery .

(h) recognised medical qualification" means any of the medical qualifications included in the Schedules.

(k) State Medical Register" means a register maintained under any law for the time being in force in any state regulating the registration of practitioners of medicine.".

12. Section 11 of this Act provides that the medical qualifications granted by any University or Medical Institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act. The First Schedule enumerates the recognised medical qualifications granted by Universities or Medical institutions in India. Section 15(1) provides that subject to the other provisions contained in this Act, the medical qualifications included in the Schedule shall be sufficient qualification for enrolment on any State Medical Register. Section 15(2)(b) provides that save as provided in Section 25 no person other than a medical practitioner enrolled on a State Medical Register, shall practise medicine in any State. Section 15(3) lays down that any person who acts in contravention of any provision of Sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

13. The Indian Medicine Central Council Act. 1970 was enacted by the Parliament and was published on 21-12-1970. Its preamble shows that it is an Act to provide for the Constitution of a Central Council of Indian Medicine and the maintenance of a Central Register of Indian Medicine and for matters connected therewith. Section 2(1) of this

Act gives the definition clause and Clauses (b), (c), (d), (e), (j) and (h) of Section 2(1) read as follows:

"(b) "Board" means a Board, Council, Examining Body or Faculty of Indian Medicine (by whatever name called) constituted by the State Government under any law for the time being in force regulating the award of medical qualifications in, and registration of practitioners of, Indian medicine;

(c) "Central Council" means the Central Council of Indian Medicine constituted under section 3;

(d) "Central Register of Indian Medicine" means the register maintained by the Central Council under this Act.

(e) "Indian Medicine" means the system of Indian medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time.

'(ea) "medical college" means a college of Indian medicine, whether known as such or by any other name, in which a person may undergo a course of study or training including any post-graduate course of study or training which will qualify him for the award of a recognized medical qualification;'.

(f) "medical institution" means any institution within or without India, which grants degrees, diploma or licenses in Indian medicine.

(g) "prescribed" means prescribed by regulation;

(h) "recognised medical qualification" means any of the medical qualifications, including Post-graduate medical qualification, of Indian medicine included in the Second, Third or Fourth Schedule;

(i) "regulation" means a regulation made under section 36;

(j) "State Register of Indian Medicine" means a register or registers maintained under any law for the time being in force in any State regulating the registration of practitioners of Indian Medicine;"

14. Section 2(1)(e) shows that "Indian Medicine" means the system of Indian medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb. Allopathic system of medicine is not at all included in the aforesaid definition. Chapter III of this Act deals with recognition of medical qualifications and Section 14 thereof provides that the medical qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Act. The Second Schedule to the Act gives a long list of recognised medical qualifications in Indian medicine granted by Universities. Boards and other Medical Institutions in India, Part 1 of this Schedule deals with Ayurveda and Siddha and Part II deals with Unani. Section 17(1) of this Act provides that subject to the other provisions contained in this Act any medical qualification included in the Second Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine. Sub¬section (2) of Section 17 imposes certain restrictions and Clause (b) thereof lays down that no person other than a practitioner of Indian medicine who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine shall practise Indian Medicine in any State. This provision clearly shows that unless a person possesses a recognised medical qualification as laid down in the Schedule of the Act and is enrolled on a State Register or the Central Register of Indian Medicines, he cannot

practise Indian Medicine. A similar restriction is contained in Clause (a) of Section 17(2) namely, that unless a person possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian medicine, he cannot hold office as Vaidya, Siddha. Hakim or Physician or any other office in Government or in any institution maintained by a local or other authority. Sub-Section (3) of Section 17 provides for by mentioning that nothing contained in sub-section (2) of Section 17 shall effect the right of practitioner of Indian Medicine. Section 17(4) provides that any person who acts in contravention of any provisions of Sub-section (2) shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

15. On the parameters of the provisions quoted above, issue as raised by petitioner is being examined by this Court.

16. The scope of Section 15 of Indian Medical Council Act, 1956 has been considered before the Apex Court in the case of Poonam Varma Vs. Ashwin Patel 1996 (4) SCC 332, wherein the practitioner registered under Bombay Homoeopathic and Biochemic Practitioner Act, 1959 proceeded to administer modern medicine, then Apex Court took the view, that he was not qualified to practice Allopathic, and had entered into prohibited field of Allopathic. Relevant extract of the said judgement is as follows:

"31. The impact of the above provisions is that no person can practice medicine in any State unless he Possesses the requisite qualification and is enrolled as a Medical Practitioner on State Medical Register. The consequences for the breach of these provisions are indicated in Sub-section

32. If a person practices medicine without possessing either the requisite qualification or enrollment under the Act on any State Medical Register, he becomes liable to be punished with imprisonment or fine or both.

32. Apart from the Central Act mentioned above, there is the Maharashtra Medical Council Act 7 1965 dealing with the registration of Medical Practitioners and recognition of qualification and medical institutions. Section 2 (d) defines 'Medical Practitioner' or 'Practitioner' as under : "Medical Practitioner or Practitioner means a person who is engaged in the practice of modern scientific medicine in any of its branches including surgery and obstetrics, but not including Veterinary medicine or surgery or the Ayurvedic, Unani, Homoeopathic or Biochemic system of medicine

(emphasis supplied)

33. It will be seen that the definition consists of two distinct parts; the first part contains the conclusive nature of phraseology and the latter part is the exclusionary part which specifically excludes Homoeopathic or Biochemic System of Medicine. A register of Medical Practitioners is to be maintained in terms of the mandate contained in Section 16(1) of the Act Under Sub-section (3), a person possessing requisite qualification and on payment of requisite fee can apply for registration of his name in the aforesaid Register.

34. A combined reading of the aforesaid Acts, namely, the Bombay Homoeopathic Practitioners Act, 1959, the Indian Medical Council Act, 1956 and the Maharashtra Medical Council Act, 1965 indicates that a person who is registered under the Bombay Homoeopathic Practitioners Act, 1959 can

practice Homoeopathy only and that he cannot be registered under the Indian Medical Council Act, 1956 or under the State Act, namely, the Maharashtra Medical Council, Act, 1965, because of the restriction on registration of persons not possessing the requisite qualification. So also, a person possessing the qualification mentioned in the Schedule appended to the Indian Medical Council Act, 1956 or the Maharashtra Medical Counsel Act, 1965 cannot be registered as a Medical Practitioner under the Bombay Homeopathic Practitioners Act, 1959, as he does not possesse any qualification in Homoeopatnic System of Medicine. The significance of mutual exclusion is relevant inasmuch as the right to practice in any particular system of medicine is dependent upon registration which is permissible only if qualification) and that too, recognised qualification, is possessed by a person in that System.

35. It is true that in all the aforesaid Systems of Medicine, the patient is always a human being. It is also true that Anatomy and Physiology of every human being all over the world, irrespective of the country, the habitat and the region to which he may belong, is the same. He has the same faculties and same systems. The Central Nervous System, the Cardio-Vascular System, the Digestive and Reproductive systems etc. are similar all over the world. Similarly, Emotions, namely, anger, sorrow, happiness, pain etc. are naturally possessed by every human being.

36. But merely because the Anatomy and Physiology are similar, it does not mean that a person having studied one System of Medicine can claim to treat the patient by drugs of another System which he might not have studied at any stage. No doubt, study of Physiology and Anatomy is common in all Systems of Medicines and the students belonging to different Systems of Medicines may be taught physiology and Anatomy together, but so far as the study of drugs is concerned, the pharmacology of all systems is entirely different.

37. an ailment, if it is not surgical, is treated by medicines or drugs. Typhoid Fever, for example, can be treated not only under Allopathic System of medicine, but also under the Ayurvedic, Unani and Homoeopathic Systems of Medicine by drugs prepared and manufactured according to their own formulate and pharmacopoeia . Therefore, a person having studied one particular System of Medicine cannot possibly claim deep and complete knowledge about the drugs of the other System of Medicine.

38. The bane of Allopathic medicine is that it always has a side-effect. A warning to this effect is printed on the trade label for the use of the person (Doctor) having studied that System of Medicine.

39. Since the law, under which Respondent No. 1 was registered as a Medical Practitioner, required him to practice in HOMOEOPATHY ONLY, he was under a statutory duty not to enter the field of any other System of Medicine as, admittedly, he was not qualified in the other system, Allopathy, to be precise. He trespassed into a prohibited field and was liable to be prosecuted under Section 15(3) of the Indian Medical Council Act, 1956. His conduct amounted to an actionable negligence particularly as the duty of care indicated by this Court in DR. LAXMAN JOSHI'S CASE (SUPRA) WAS BREACHED BY HIM ON ALL THE THREE COUNTS INDICATED THEREIN.

41. A person who does not have knowledge of a particular System of Medicine but practices in that System is a Quack and a mere pretender to medical

knowledge or skill, or to put it differently, a Charlatan.

17. As per the said judgement right to practice in particular system of medicine is dependent upon registration which is permissible only if qualification is there, and that too, if recognised qualification is possessed by a person in that system. Apex Court further made it clear that merely because the subject of Anatomy and Physiology are similar, it does not mean that a person having studied one System of Medicine can claim to treat the patient by drugs of another System which he might not have studied at any stage.

18. Thereafter once again before the Apex Court in the case of Dr. Mukhtiar Chand and others Vs. State of Punjab and others reported in (1998) 7 SCC 579, issue was raised as to whether an incumbent who is engaged in medical practice in Indian medicines can he be permitted to practise in modern medicine based on the provisions of Drugs and Cosmetics Rules 1945 vis-a vis the provisions of 1956 Act and 1970 Act. The answer has been in negative as follows:

"However, the claim of those who have been notified by Ste Government under clause (iii) of Rule 2(ee) of the Drugs Rues and those who possess degrees in integrated courses to practice allopathic medicine is sought to be supported form the definition of Indian medicine is Sence 2(e) of the 1970 Act, referred to above , meaning the system of Indian medicine commonly known as Ash tang Ayurvedic, Sridhar or USANi Tabb whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time. A lot of emphasis is laid on the words italicized to show that they indicate modern scientific medicine have been included in the syllabi. A degree-holder in integrated courses is imparted not only the therorticalknowledge of modern scenic medicine but also training there under, is the claim. We shall examine the notifications issued by the Central Council to ascertain the import of those words. In its resolution dated 11-3-1987. The Central Council elucidated the concept of "modern advances" as follows;

"This meeting of the Central Council hereby unanimously resolved that in clause (e) of sub-section (1) of of Section 2 of the 1970 Act of the IMCC Act, "the modern advances;, the drug had made advances under the various branches of modern scientific system of medicine, clinical, non-clinical biosciences, also technological innovations made from time to time and declare that the courses and curriculum conducted and recognized by the CCIM are supplemented by such modern advances."

On 30-10-1996, a clarificatiory notification was issued, which reads ads under:

"As per proven under Section 2(1) of the Indian Medicine Central Council Act, 1970, hereby the Central Council of Indian Medicine notifies that "institutionally qualified practitioners of Indian system of medicine(Ayurvedic, Sridhar and Unani) are eligible to practice Indian system of medicine and modern medicine including surgery, gynecology and obstetrics based on their training and teaching which are included in the syllabi of courses of ISM prescribed by the Central Council of Indian Medicine after approval of the Government of India.

The meaning of the word "modern medicine" (advances) means advances made in various branches of modern scientific medicine, clinical, non-clinical biosciences, also technological innovations made from time to tome and notify that the courses and curriculum conducted and recognized by the Central Council of Indian Medicine are supplemented by such modern advances"

Based on those clarifications, the arguments proceed that persons who registered under the 1970 Act and have done integrated courses, are entitled to practice allopathic medicine. In our view, all that the definition of "Indian medicine" and the clarifications issued by the Central Council enable such practitioners of Indian Medicine id to make use of the modern advances in various sciences such as radiology report, (X-ray), complete blood picture report, lipids report, ECG, etc. for purposes of practicing in their own system. However, it any State Act recognizes the qualification of integrated course as sufficient qualification for registration in the State Medical Register of that State, the prohibition of Section 15(2)(b) will not be attracted.

47. A harmonious reading of Section 15 of the 1956 Act and Section 17 of the 1970 Act leads to the conclusion that there is no scope for a person enrolled on the State Register of Indian Medicine or the Central Register of Indian Medicine to practice modern scientific medicine in any of its branches unless that person is also enrolled on a State Medical Register within the meaning of the 1956 Act.

48. The right to practice modern scientific medicine or Indian system of medicine cannot be based on the provisions of the Drugs Rules and declaration made there under by State Government.

"Neither it is averred in the writ petition nor it has been urged that the petitioner is enrolled on a State Medical register as defined in Section 2(k) of Indian Medical Council Act, 1956 and, therefore, he is not entitled to practise modern scientific medicine or to prescribe allopathic drugs. Learned counsel has also referred to certain provisions of Drugs and Cosmetics Rules but in our opinion they are wholly irrelevant as they deal with import manufacture, distribution and sale of drugs and they neither confer nor deal with the right to practise medicine."

19. The provisions of Indian Medicine Central Council Act, 1970 under the scheme of things provided for show that a person holding a qualification recognised by the aforesaid Act in the system of Indian medicine commonly known as Ashtang. Ayurveda, Siddha or Unani Tibb is entitled to practise only in the discipline in which he has acquired the qualification. The Act does not authorise him to practice in Allopathy system of medicine. The right to practice modern scientific medicine or Indian system of Medicine can not be based on the provisions of Drug Rules and for practising modern medicine, one has to have the qualifications provided for under 1956 Act, alongwith enrolment on State Medical Register.

20. Contrary to the said view, as quoted above the most surprising feature of present writ petition is that petitioner is placing reliance on the judgment of the Apex Court, in the case, State of Haryana vs. Phool Singh, 1998-Laws (SC)-7-81, decided on 20.7.1998 wherein Apex Court has held as follows:

"(1) For the last few days we have heard a batch of Civil matters in which sub-clause (iii), clause (ee) of Rule 2 of the The Drug and Cosmetics Rules 1945 has been the subject matter of debate in its widest spectrum. Prima facie conclusions drawn therefrom make us feel that the judgment of the High Court cannot be faulted with. The respondent does come within the definition of a registered medical practitioner entitled to keep allopathic medicines by virtue of his degree and registration in the state of Bihar. We thus find nothing to interfere in this appeal. The appeal is therefore dismissed."

21. Bare perusal of the said judgment would go to show, that on prima facie basis conclusions drawn by High Court has not been faulted with. Same Bench comprising of Hon'ble M.M. Punchi, C.J., and K.T. Thomas and S.M. Quadri J., based on hearing that is referred to in the judgment itself by mentioning that for last few days we have heard batch of Civil matters, wherein sub-clause (iii), clause (ee) of Rule 2 has been subject matter of debate in its widest spectrum, subsequent to the same have exhaustively dealt with the issue on 8.10.1998, while deciding the case of Dr. Mukhtar Chandra (Supra) and therein altogether different view, has been taken, then for all practical purposes,view as expressed on prima-facie basis in the case of State of Haryana vs. Phool Singh, as relied upon by petitioner, has to be accepted as virtually over-ruled. Subsequent reasoned judgment, by the same Bench will hold the field, and accordingly petitioner, cannot get any benefit or advantage of the judgment and order dated 29.7.1998, in the case of State of Haryana vs. Phool Singh.

22. As lines were repeatedly being crossed by incumbents, who were not authorised to practice allopathic branch of medicine, on 25.04.2000 the Apex Court in the case of D.K. Joshi Vs. State of U.P. reported in 2000 (5) SCC 80 came heavily by issuing following directions:

(i) All district Magistrates and the Chief Medical officers of the State shall be directed to identify, within a time limit to be fixed by the Secretary, all unqualified/ unregistered medical practitioners and to initiate legal actions against these persons immediately;

(ii) Direct all District Magistrates and the Chief Medical Officers to monitor all legal proceedings initiated against such persons;

(iii) The Secretary, Health and Family Welfare Department shall give due publicity of the names of such unqualified/ unregistered medical practitioners so that people do not approach such persons for medical treatment.

(iv) The Secretary, Health and Family Welfare Department Shall monitor the action taken by all District Magistrates and all Chief Medical Officers of the State and issue necessary directions from time to time to these officers so that such unauthorized persons cannot pursue their medical profession in the State

23. This Court also had an occasion to consider whether the persons holding degrees in Indian Medicines such as Ashang, Ayurved, Siddha, Unani Tibb are authorized to practice Allopathic system of medicines in the case of Dr. Mehboob Alam vs. State of U.P. and Ors. (06.09.2001) W.P.(Cr.) 5896 of 2000 reported in [(2001) 2 JIC 774 (All)] and after analysis of provisions of Indian Medical Council Act, 1956 took the view that the medicine means modern scientific medicine for all its branches and includes surgery, and same is entirely different from the Indian Medicine and only a person who possess the qualification enumerated in the first schedule of this order which have been

recognized and entitled to be enrolled on any State register, can only practice. A person holding qualification recognised under 1970 Act, does not authorise him to practice Allopathy system of medicine.

24. This Court once again on issue being raised as to whether incumbents who has got to his credit degree in Indian Medicine can he be permitted to practice in modern medicine, proceeded to consider the matter at length in the case of Rajesh Kumar Srivastava (II) Vs. A.P. Verma, reported in 2004 (2) ESC (All) 960, and repelled the submission, so advanced.

25. Division Bench of this Court once again reiterated the same principal in the case of Ravinder Kumar Goel vs. State of U.P. 2004 (2) ESC 976, that a person with Ayurvedic and Unani qualification, if is practising Allopathic, same is illegal.

26. The field of practice thus stands demarcated i.e. the doctors enrolled in their branch of medicine should not be allowed to practice in any other branch of medicine of which he has not acquired knowledge or has little knowledge. Under the scheme of things provided for, there is mutual exclusion i.e. one is not allowed to practice in any other branch of medicine of which he has not acquired knowledge.

27. Petitioner has next proceeded to place reliance on the Government Notification dated 25.11.1992, issued by Government of Maharashtra, under Maharashtra Medical Practitioners Act, 1961, as well as on the notification dated 22.01.2004, issued by Central Council of Indian Medicine.

28. Petitioner will not succeed on this score also, for the reason that the provisions of Maharashtra Medical Practitioner Act, 1961, cannot be pressed in reference of practice of modern medicine in the State of U.P. Coupled with this, the circular as has been issued, the same has been interpreted by Kerela High Court in the case of National Integrated Medical Association and another Vs. State of Kerala WA No. 1260 of 2006 (A) decided on the 12.12.2006 wherein the High Court of Kerela at Ernakulam held that the modern advances mentioned in Section 2(e) of the Act of 1970 can only be advanced in Ayurveda, Siddha and Unani and not Allopathic medicine. By virtue of Section 15(2) (b) of the Indian Medical Council Act, 1956 the persons having the prescribed qualifications included in the schedules alone are eligible to practice modern medicine. The words "modern medicine" would be referable to the modern advances made in the respective fields of Ayurveda, Siddha and Unani. The Kerela High Court followed Mukhtar Chand Vs. State of Punjab AIR 1999 SC 468. In support of the observations made by it and reiterated that modern advances mentioned in Section 2(3) of the Act of 1970 cannot be interpreted to mean Allopathic Medicines.

29. Against the judgment of Kerela High Court dated 12.12.2006, Special Leave to Appeal NO.6116 of 2007 had been filed, and the same has also been dismissed on 23.7.2007. Thereafter, Central Council of Indian Medicine, taking note of judicial proceedings in its 158th Meeting dated 28.6.2010 has decided to with all earlier resolutions. Madras High Court also in Writ Petition No.13696 of 2009, D.J. Kaleem Nawaz, BUMS vs. State of Tamilnadu, decided on 29.10.2010, wherein prayer was made to the similar effect, not to interfere in administering allopathic medicine, very clearly ruled that such a prayer cannot be accorded and clarifications issued by Central Council of Indian Medicine are of no

consequence, wherein it has been mentioned that practitioners of Indian System of Medicine who practised modern scientific system of medicine, allopathic medicine are protected under Section 17(3)(b) of 1970 Act is not correct as provisions of 1956 Act have been ignored.

30. This Court, also approves of the same view, and further clarifies that a statutory body created under Indian Medicine Central Council Act, 1970 such as Central Council of Indian Medicine, at the point of time when it proceeds to exercise its statutory authority the same has to be in connection with "Indian Medicine" and not at all beyond the same. Words "Modern advances" has to be contextually interpreted i.e "Modern advances" in the field of Ayurveda, Sidha and Unani and not at all in context of "Modern Medicines". In the context of, practitioners of "Indian Medicine" the practitioners of "Indian Medicine" can make use of modern advances in various sciences such as radiology report (X-ray), complete blood picture report, lipids report, ECG etc for practising in their own system. This does not mean that practitioners of "Indian Medicine" would start acting as Radiologist/Pathologist/Cardiologist. Only for the purposes of practising "Indian Medicine" they can make use of the reports and this will not at all authorize the practitioners of "Indian Medicine" to administer and prescribe modern medicines (allopathic)"

31. Recently, the Apex Court in the case of Bhanwar Kanwar Vs. R.K. Gupta and another reported in (2013) 4 SCC 252 has taken the view that wherein unauthorized medical treatment is administered, same is unfair trade practice and administering allopathic medicine by person who is qualified in Ayurvedic medicine cannot be approved of. Apex Court in the facts of case, enhanced the compensation amount from Rs.5 lacs to Rs. 15 lacs.

32. In the said judgment benefit has been sought to be taken of the Government Order dated 24.02.2003. Qua the same, Apex Court has mentioned that in connection with some cases, the High Court Allahabad has issued direction to take action against the quacks who are practising Allopathic medicine but not registered with Medical Council. In order to put restrain from practising modern medicine two further Government Orders have been issued by the State Government on 04.03.2008 and 08.06.2012 wherein State Government has clearly proceeded to issue guidelines mentioning therein that any incumbent who is authorized to practice under Indian Medicine Central Council Act, 1970 is not at all entitled and authorized to prescribe medicines under the Indian Medical Council Act, 1956. Said Government Orders still hold the field and same are in consonance with the repeated view taken by this Court and by the Apex Court that an incumbent who has obtained degree under 1970 Act cannot be permitted to prescribe modern medicine as provided for under 1956 Act.

33. Under the scheme of things provided for it is clear and categorical that the definition as has been provided for under Rule 2(ee) of the Drugs and Cosmetics Rules 1945 will not at all come to the rescue and reprieve of the petitioner. Said definition has been used in different context and same does not authorize incumbent having qualification under the Indian Medicine Central Council Act, 1970 to start prescribing medicine which the incumbents registered under Indian Medical Council Act, 1956 only can administer.

34. Petitioner cannot be permitted to prescribe allopathic/modern medicine as is provided for under Indian Medical Council Act, 1956, by any means, as a person having studied one particular system of medicine cannot possibly claim deep and complete knowledge about the drugs of the other system of medicine, and specially when right to health and medical care is fundamental right under Article 21 read with Articles 39(c), 41 and 43 of Constitution, as expressed by Apex Court, in the case of Consumer Education and Research Centre Vs. Union of India, AIR 1995 SC 922, and by further providing that right to life includes protection of health and strength and the minimum requirement to enable the persons to live with dignity. Petitioner will have to practice in his own branch, and it would be a extremely grave situation, to allow petitioner to treat and prescribe a sick incumbent with allopathic medicine. The transgression into other branches of medicine as has been prayed for is not permissible, as same would tantamount to quackery and exposing petitioner to cancellation of registration and prosecution.

35. Petitioner at last stated before this Court that there is dearth of doctors, in such a situation in this background such resources should be utilized.

36. This is not at all case of the petitioner that he has acquired degree or qualification as is provided for under the Indian Medical Council Act, 1956, and is registered in the State register, maintained in this regard then, in such a situation and in this background, the petitioner cannot be permitted to administer the medicine connected with the modern medicine and it may be true on the ground that large number of poorer sections of the society, being rendered service by him and various other similarly situated but the same cannot be a criteria to flout the statuary provisions, the same being in the realm of policy decision of other constitutional functionaries. Apex Court in the case of Mumbai Vs. State of Maharashtra and another reported in JT 2009 (3) SC 351 has repelled such an argument wherein plea has been raised that incumbent was rendering service to treat the poor people and there is dearth of Doctors, and accordingly, he should be permitted to prescribe medicine.

37. In terms of above, prayer made by the petitioner cannot be entertained, accordingly, present writ petition is dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.12.2013

BEFORE
THE HON'BLE TARUN AGARWALA, J.

Civil Misc. Writ Petition No. 64792 of 2013

Pitamber... Petitioner
Versus
Motor Accident Claim Tribunal/A.D.J. Fatehpur & Ors... .Respondents

Counsel for the Petitioner:
Sri Ram Singh

Counsel for the Respondents:

Constitution of India, Art.-226-Withdrawl of compensation-accident claim tribunal-award-fixing liability of vehicle owner-but in view of Apex Court direction-insurance company to deposit entire amount-keeping it open to recover from vehicle owner-withdrawl application rejected-as owner not furnished any security-can not be release-held-wholly misconceived-where on application of insurance company to recover the said amount-notice issued-no other safe guard required-accordingly direction issued.

Held: Para-9

In the instant case, the Court finds that the insurance company has already filed an application under Section 174 of the Act of 1988 for recovery of the amount from the owner of the vehicle and that notices has already been issued to the owner of the vehicle. The Court is of the opinion that sufficient protection has been granted to the insurance company and that there is no reason why the amount already deposited by the insurance company should not be released so that the award is satisfied.

Case Law discussed:

AIR 2004 SC 1630; 2008(2) T.A.C. 104(All.); 2006(65) ALR 5; W.P. No. 59746 of 2007; 2013(9) ADJ 444.

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

1. Heard the learned counsel for the petitioner and the learned Standing Counsel.

2. The petitioner is the claimant and had filed a claim application under the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988). The Tribunal gave an award dated 27th February, 2009 awarding compensation of Rs.55,000/- along with 6% interest per annum for a period of three years. The compensation was to be paid by the insurance company, who was given a right to recover the amount from the owner of the vehicle. Based on this award, the insurance company deposited the entire decreetal amount.

3. The petitioner, being the claimant, moved an application for withdrawal of the amount, which application was rejected on the ground that the owner of the vehicle had not provided security to the satisfaction of the Tribunal and, consequently, the amount cannot be released, since the interest of the insurance company was required to be protected. The Tribunal, while rejecting the application, relied upon a decision of the Supreme Court in Oriental Insurance Company Ltd. Vs. Nanjappan and others, AIR 2004 SC 1630 and Smt. Sheela Devi and others Vs. Additional District Judge, Court No.4, Gorakhpur, Vs. 2008 (2) T.A.C. 104 (All.). The petitioner, being aggrieved by the said order, has filed the present writ petition.

4. The Supreme Court in Nanjappan's case (supra) held:

"Before release of the amount of the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or peroperties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

5. Having heard the learned counsel for the claimant, the Court finds that the aforesaid judgments of the Supreme Court were considered in various decisions of this Court and the directions of the Supreme Court were explained.

6. In Smt. Bhuri and others Vs. Shobhrani and others decided on 8th August, 2006 (65) ALR 5, the Court held that appropriate safeguards were given to the insurance company to recover the amount from the owner of the vehicle as per the decision of the Supreme Court and, therefore,

adequate measures has been given to protect the interest and that the said purpose was satisfied and it was not meant that the Supreme Court was undermining the interest of the claimant whose welfare was supreme. The Court held that the burden of recovering the amount within the provisions of the Act itself had been placed upon the insurer and that the claimant, who has obtained the award should not made to suffer through any observation made by the Supreme Court.

7. In Smt. Nisha and others Vs. Motor Accident Claims Tribunal and others, in Writ Petition No.59746 of 2007 decided on 13th December, 2007, the Court held that since the tribunal had already issued notice to the owner of the vehicle and that the tribunal would take all steps including attachment of the vehicle and calling upon the owner of the vehicle to furnish security, was by itself sufficient not to create any impediment to the claimant for release of the amount.

8. A similar issue came up before the Court in ICICI Lombard General Insurance Company Ltd. Vs. Sirajuddin and others, 2013 (9) ADJ 444 in which this Court held that it is not mandatory that the owner of the vehicle is required to furnish security before release of the amount to the claimant and that such directions was only directory to the extent that the application should be filed by the insurance company for recovery of the amount, which by itself was sufficient to protect the interest of the insurance company.

9. In the instant case, the Court finds that the insurance company has already filed an application under Section 174 of the Act of 1988 for recovery of the amount from the owner of the vehicle and that notices has already been issued to the owner of the vehicle. The Court is of the opinion that sufficient protection has been granted to the insurance company and that there is no reason why the amount already deposited by the insurance company should not be released so that the award is satisfied.

10. In the light of the aforesaid, the Court finds that the impugned order cannot be sustained and is quashed. The writ petition is allowed. The Tribunal is directed to release the amount forthwith.
