NARESH K. AGGARWALA AND CO.
v.
CANBANK FINANCIAL SERVICES LTD. AND ANR.
(Civil Appeal No. 5173 of 2004)

MAY 5, 2010

[B. SUDERSHAN REDDY AND SURINDER SINGH NIJJAR, JJ.]

Shares and Securities:

Appellant entered into a transaction for purchase of 1 lakh RIL shares with the respondent 1 – After few days entered into another transaction for purchase of 1 lakh RIL shares with the respondent 1 – Respondent no.1 delivered only 1 lakh RIL shares – Claim by appellant for balance 1 lakh RIL shares – Held: Not sustainable as the first transaction was cancelled by appellant – The entries made in the statement of account of appellant showed that the delivery of shares pertained to the second transaction – Appellant did not produce documentary evidence to show that in his books of accounts, the contract was shown as incomplete.

Securities Contract Regulation Act, 1956 – s.16 – Circular dated 27.6.1969 – In terms of the Circular, transactions into securities which were permissible were spot delivery contract; contract for cash; hand delivery and special delivery – Contract note issued by the appellant in relation to the transaction in question showed that it was not a spot delivery contract – Thus, transaction was contrary to the circular and was not capable of being enforced.

Plea – Plea of bias against the Presiding Officer – Held: It has become a common practice for the losing party after receiving an unfavourable verdict, to make allegations of bias – On facts, wild and bald allegation of bias was without any basis hence rejected.

Words and phrases: 'Spot delivery contract – Meaning of, in the context of s.2(i) of Securities Contract Regulation Act, 1956.

On 14.2.1992, a contract was entered into between the appellant and the respondent no.1 for purchase of one lakh shares of RIL at a price of Rs.154 per share. On 23.3.1992, the appellant entered into another contract with the respondent no.1 for purchase of one lakh shares of RIL at a price of Rs.375 per share. On 27.2.1992, another contract was entered into by the appellant for purchase of 5 lakh shares of SAIL at a price of Rs.51 per share.

It was the case of appellant that the balance one lakh RIL shares pursuant to contract dated 23.3.1992 were not delivered by respondent no.1, inspite of assurances given by respondent no.1 from time to time. On 27.7.1992, appellant requested respondent no.1 that the transaction with regard to the SAIL shares be squared up at the time when the shares were purchased. They were priced at Rs.51 per share and market rate according to appellant on 27.7.1992 was Rs.130 per share. Appellant asked respondent no.1 to credit Rs.79 per share for five lakh shares of SAIL to the account of appellant. By letter dated 17.9.1992, respondent no.1 resiled from the contract regarding sale of shares of SAIL. On 27.5.1993 respondent no.1 issued a notice demanding an amount of Rs.2.56 crores. By letter dated 14.6.1993, the appellant informed the respondent no.1 that after reconciliation of the account, the respondent no.1 was liable to pay to the appellant an amount of Rs.2.59 crores. The appellant further claimed that according to its statement of account as on 31.7.1993 an amount of Rs.3.18 crores was due to it from respondent no.1. Appellant filed suit for recovery of Rs.3.18 crores together with interest @ 24% .

Respondent no.1 opposed the claim and also filed counter claim of the amount of Rs.2.53 crores with interest w.e.f. 22.4.1992. It stated that the appellant had agreed to purchase one lakh shares of RIL on 14.2.1992 @ Rs.154/- per share, but this contract was cancelled by the appellant on the very same date. Thereafter, the appellant intimated about another contract for purchase of one lakh shares of RIL on 23.3.1992. Against the said contract, the delivery of one lakh shares was made by the respondent No.1 to the appellant on 22.4.1992. After the receipt of a letter dated 15.9.1992 when the Management of respondent No.1 changed, the appellant started claiming that the delivery of one lakh shares on 22.4.1992 had been adjusted against the cancelled contract dated 14.2.1992. The counter claim by respondent No.1 was based on the difference of price in shares between two periods of contract i.e. 14.2.1992 and 23.3.1992.

The Special Court allowed the counter claim of respondent No.1 and dismissed suit filed by the appellant. It held that the transaction dated 27.2.1992 was illegal and therefore was not capable of being enforced. It also held that the appellant was not entitled to make any claim either in relation to RIL shares or in relation to SAIL shares. Hence the appeal.

Dismissing the appeal, the Court

Held: 1. It is true that in the examination-in-chief, the appellant had stated that he had made the claim against respondent No.1 on the basis of difference in price of RIL shares as on 14.2.1992 and as on 23.3.1992, i.e., Rs.375-Rs.154 for one lakh shares. The Special Court correctly observed that in the absence of pleadings the statement made by the appellant had to be ignored. Respondent No.1 took a categorical plea that contract dated 14.2.1992 was cancelled by appellant on the same day. The conduct

of the appellant showing delivery made on 22.4.1992 as delivery against the contract dated 23.3.1992 indicated that he was also treating the contract dated 14.2.1992 to be cancelled. Had that not been so, he would have made entries in the books of account to show that the delivery of shares were against the contract dated 14.2.1992. Till 27.7.1992, the RIL shares were not in issue. The letter written by the appellant to the Respondent No 1 talked only of the SAIL shares. Therefore it was for the appellant to produce documentary evidence to show that in his books of accounts, the contract was shown as incomplete. But the appellant failed to produce the necessary evidence. [Para 17] [20-F-H; 21-A-D]

2.1. It is clear from the circular dated 27.6.1969 issued under Section 16 of the Securities Contract Regulation Act 1956 that transactions into securities by spot delivery contract; contract for cash; hand delivery and special delivery were only permitted. A Spot delivery contract as defined in Section 2(i) is the contract where actual delivery of the securities and the payment of price is either on the same day or on the next day. Admitted position is that the contract note issued by the appellant in relation to this transaction showed that it was not a spot delivery contract. In terms of the circular dated 27.6.1969, if the rules made under the Act, bye laws and regulations of a recognized Stock Exchange permit contract for cash, hand delivery or special delivery, those types of transactions would also be permitted by the circulars. The provisions of the bye-laws of Delhi Stock exchange clearly permitted spot delivery transaction, hand delivery transaction and special delivery transaction. The appellant was aware of the illegality of the transaction. It is evident from the letter dated 27.7.1992 written by the appellant to the respondent No.1 wherein it was clearly stated that "technically this was

incorrect since contracts relating to unquoted shares would be outside the purview of Delhi Stock Exchange rules, bye-laws and regulations." [Paras 18, 19] [22-F-H; 23-A-D-F; 24-C-D]

2.2. Admittedly the contract note issued in relation to the transaction for SAIL shares by the appellant did not show that it was a spot delivery contract, therefore the transaction was clearly contrary to the circular. Consequently in terms of the provisions of Sub-section(2) of Section 16 the transaction was illegal and was not capable of being enforced. Special Court correctly held that the appellant was not entitled to make any claim either in relation to the RIL Shares or in relation to contract for SAIL shares. Further as the appellant was not entitled to claim any amount from the respondent on account of those transactions, there was no question of the appellant being entitled to any interest. [Paras 20, 21] [25-B-E]

2.3. The contract with regard to SAIL shares being contrary to law was void *ab initio*. Therefore, the appellant could not possibly claim anything against the SAIL shares on account of any difference in the contracted rate and the rate when the same were listed on the Delhi Stock Exchange. Therefore, the appellant was liable to pay to respondent No.1 for the RIL Shares @ Rs.375/- per share, the contract dated 14.2.1992 having been cancelled. Thus the Special Court, correctly concluded that the appellant was liable to pay to the respondent No.1 the amount of Rs.2.53 crores. [Para 22] [27-B-D]

3. Apart from the bald submissions, there was no material placed on the record to indicate that the judgment of the Special Court was coloured and affected by bias. It has become a common practice for the losing party after receiving an unfavourable verdict, to make allegations of bias against the Presiding Officer. Such wild and bald submissions without any factual basis is rejected. [Para 24] [27-F-H; 28-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5173 of 2004.

From the Judgment & Order dated 15.04.2004 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act 1992 at Bombay in Suit No. 4 of 1998.

Rupinder Singh Suri, Sanjay Agnihotri, Kripa Shankar Prasad, Chanchal Kumar Ganguli for the Appellant.

Jayant Bhushan, Sunita Dutt, Nilesh Parikh, Rajiv Mehta, Subramonium Prasad for the Respondents.

The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. This Statutory First Appeal under Section 10 of the Special Court (Trial of offences relating to Transactions in Securities) Act, 1992 (in short the 'Special Court Act') is directed against the judgment and decree dated 15.4.2004 passed by the Special Court at Bombay in Suit No.4 of 1998.

2. The aforesaid suit was initially filed by the appellant in the High Court of Delhi at New Delhi on its original side being Suit No.1827/1993. It was transferred to the Special Court in view of the appellant being notified on or about 17.6.1997 under the provisions of the Special Court and thereafter the suit was numbered as Suit No.4/98 before the Special Court. The appellant had prayed for money decree in the amount of Rs.3,18,06,868/- together with interest at the rate of 24%. Respondent No.1, Can Bank Financial Services Limited, had opposed the claim and also lodged a counter claim, claim and decree in the amount of Rs.2,53,75,000/- from the appellant with interest w.e.f. 22.4.1992. The appellant claims to be a stock broker, being a sole proprietory concern of Mr. Naresh K. Aggarwala. The respondent No.1, Can Bank Financial Services Limited, is a wholly owned subsidiary of Canara Bank.

3. The appellant had prayed for a decree against respondent No.1 in respect of net amount payable arising out of two sets of transactions in shares i.e.; (i) two transactions in the shares of Reliance Industries Limited (RIL) (ii) one transaction in respect of Steel Authority of India Limited (SAIL). It is claimed that on 14.2.1992 a contract was entered into between the appellant and Can Bank for purchase of one lakh shares of RIL at a price of Rs.154 per share inclusive of all charges. On 23.3.1992 another contract was entered into by the appellant with Can Bank for purchase of one lakh shares of RIL at a price of Rs.375 per share net. On 27.2.1992 another contract was entered into by the appellant for purchase of five lakh shares of SAIL at a price of Rs.51 per share net and a contract note was issued. In the plaint it was averred that of the two lakh RIL shares purchased by the appellant only one lakh shares were delivered by respondent No.1. These shares according to the appellant were appropriated towards the contract dated 14.2.1992. It was the case of the appellant that the balance one lakh RIL shares pursuant to contract dated 23.3.1992 have not been delivered by respondent No.1. According to the appellant, respondent No.1 had been wrongly claiming that the entire two lakh shares had been duly delivered to the appellant. The appellant claims that this fact is amply borne out from the various letters written by respondent No.1 to the appellant wherein respondent No.1 claims to have delivered one lakh shares to its Bombay office and the remaining one lakh shares allegedly to a broker/one Mr. Hiten P. Dalal. The appellant states that on inquiry Mr. Dalal has sated that no such shares had been delivered on behalf of respondent No.1. In communication dated 07.08.1992 respondent No.1 acknowledges only one delivery and seeks intimation whether his broker, Mr. Hiten P. Dalal, on their account has delivered one lakh shares or not. Therefore respondent No.1 is, in fact, aware that no such delivery had been made. Respondent No.1, in fact, in its communication dated 15.09.1992 acknowledges the factum of both the contract notes. In letter dated 28.09.1992, the appellant reiterated that at no stage it had received any

share from Mr. Hiten P. Dalal on account of respondent No.1. It was also stated that Mr. Hiten P. Dalal had confirmed that he had not given any Reliance shares on account of respondent No.1 to the appellant. It was also averred that in spite of assurances having been given by respondent No.1 from time to time, the balance one lakh shares were not delivered.

4. It was further claimed by the appellant that on 27.07.92 respondent No.1 was requested that the transaction with regard to the SAIL shares should have been squared up at the time when the shares were purchased. They were priced at Rs.51 per share. The market rate, according to the appellant, on 27.7.1992 was Rs.130 per share. Therefore appellant asked the respondent No.1 to credit Rs. 79 per share for five lakh shares of SAIL to the account of the appellant-company. The appellant claimed that by letter dated 17.09.1992 respondent No.1 resiled from the contract regarding sale of shares of SAIL. The appellant therefore by letter dated 19.09.1992 once again requested for the cooperation of the respondents as the delivery had to be effected within reasonable period of time to avoid substantial losses. In this letter the appellant reiterated that one lakh shares only had been delivered and no other delivery had been made in respect of Reliance shares. Against contract note dated 14.02.1992 Rs.1,54,000/- was credited to the account of respondent No.1 but the respondent No.1 reiterated its stand in the letter dated 17.9.1992.

5. The appellant further stated that on 27.05.1993 respondent No.1 issued a notice demanding an amount of Rs.2,56,25,000/- on the basis of account maintained up to 08/02/1992. By letter dated 14.06.1993 the appellant informed the respondent No.1 that after reconciliation of the account, the appellant was liable to be paid by respondent No.1 an amount of Rs.2,59,75,000/-. It was further claimed that according to the statement of account of the appellant as on 31.7.1993 an amount of Rs.3,18,06,868/- is due to the appellant from respondent No.1. According to the appellant, respondent No.1

is liable to pay this amount to the appellant with interest at the rate of 24 % per annum.

6. Respondent No.1 in his written statement took a preliminary objection stating that the suit is wholly misconceived and a fictitious claim has been put forward solely with the intention of delaying or avoiding payment of a sum of Rs.2,53,75,000/- and interest thereon to the answering respondent No.1. It was also stated that along with the written statement respondent No.1 is preferring a counter claim against the appellant for the recovery of the aforesaid amount. The averments made in paragraph 1 to paragraph 6 of the plaint were admitted by the respondents.

7. With regard to the other averments, it is however stated that as averred by the appellant in the plaint both the parties were maintaining running accounts with regard to the business transactions with each other. The contracts dated 14.2.1992 and 23.3.1992 are admitted. It is however claimed by the respondents that the contract dated 14.2.1992 was cancelled rescinded by the appellant on the very day, namely, 14.2.1992. It was also claimed that the claim made by the appellant with regard to the running account is not correct. The running account maintained by respondent No.1 shows a sum of Rs.2,53,75,000/- as due from the appellant on 31.3.1993. Hence the counter claim had been preferred in the written statement itself. It is however, claimed that since the contract dated 14.2.1992 was cancelled, there was only one contract in existence i.e. contract dated 23.3.1992 against which delivery had been made. Therefore, nothing is payable by respondent No.1 to the appellant on account of this contract. The version of the communication between respondent No.1 and Shri Dalal as given by the appellant is denied. The query dated 7.8.1992 was necessitated to make sure that no wrong delivery or excess delivery was made by the broker, Shri Dalal, in respect of the cancelled contract dated 14.2.1992. The appellant has tried to take undue advantage of the query made

by respondent No.1 for the purpose of keeping the record straight. The appellant had admitted the non-existence of the contract dated 14.2.1992 and did not show the amount as outstanding. This position is confirmed by the appellant in the statement of account signed on 17.7.1992 and again reconfirmed on 24.8.1992. It is only after the inquiry by respondent No.1 dated 15.9.1992 about the position of one lakh shares that appellant got the *mala fide* idea of seeking illegal advantage of the cancellation entry having been recorded in respondent No.1 books. This is particularly so because by then the share prices had gone up. Under these circumstances the appellant submitted a revised statement of account on 19.9.1992. According to respondent No.1 the averments made in the plaint by the appellant do not convey the true position. Once the contract dated 14.2.1992 was cancelled, the question of delivery did not arise. Therefore nothing is payable by respondent No.1 to the appellant on account of the contract dated 14.2.1992.

8. With regard to the contract in relation to SAIL shares, the fact that the appellant entered into a deal with respondent No.1 on 27.2.1992 for purchase of five lakh shares of SAIL at the price of Rs.51 is admitted. It was however denied that a contract note was issued to evidence the transaction. It is stated that the contract note was neither in accordance with the prevalent practice, nor in accordance with the rules and bye-laws of the Delhi Stock Exchange and the contract note is also opposed to the law including the Securities Contracts (Regulation) Act, 1956 and hence void *ab initio*. It is further stated that the irregularity of the contract note was admitted by the appellant himself in his letter dated 27.7.1992. It is submitted that the contract itself being contrary to law, no amount could be claimed by the appellant against this contract.

9. In the counter claim it was pleaded that the appellant has admitted in paragraph 8(a)(i) that on 23.3.1992 a contract was entered into between respondent No.1 and the appellant

whereunder the respondent No.1 agreed to sell and the appellant agreed to purchase one lakh shares of Reliance Industries Limited on 23.3.1992 at Rs.375 per share. This averment is affirmed by respondent No.1. According to the respondent No.1 the aforesaid one lakh shares were delivered by respondent No.1 to appellant on 22.4.1992. This delivery has also been admitted by the appellant. It is further stated that appellant had wrongly contended after a long lapse of time that this delivery was in respect of another alleged contract dated 14.2.1992. The appellant, according to respondent No.1, has illegally and wrongly accounted for its liability to pay to respondent No.1 in respect of one lakh shares sold on 23.3.1992 only at Rs.154 per share instead of Rs.375 per share. Thus the difference between the rate per share at Rs.375, which was the actual contract rate, and the rate at which the appellant has accounted for i.e. Rs.154 per share comes to Rs.2,21,00,000/-. According to respondent No.1 this amount is payable by the appellant to the respondent No.1 with interest. It is accepted that there were dealings between the appellant and respondents and the accounts were settled periodically. Therefore on 31.3.1993 the statement of mutual account between the parties shows that a sum of Rs.2,53,75,000/- is due and payable by the appellant to the respondent No.1. The interest at the rate of 24% from 22.4.1992 till 31.5.1994 amounts to Rs.1,28,47,397.26/- which is also due and payable.

10. In its replication the appellant has reiterated the averments made in the plaint. It is stated that the counter claim is frivolous and is to delay and avoid payment of the contractual obligations, of respondent No.1. The appellant reiterates that the only one lakh shares of RIL were delivered against contract dated 14.2.1992. It is denied that the contract dated 14.2.1992 was cancelled by the appellant. It is further reiterated that the respondent No.1 is liable to make delivery of the remaining one lakh shares; contract is to be purchased by the appellant vide contract note dated 23.3.1992. It is further stated that the

appellant is still ready and willing to perform his part of the contract but the respondents are trying to wriggle out of their contractual obligations.

11. On the basis of the pleadings the Special Court framed the following issues:

"1. Whether Plaintiffs prove that Rs.2,59,75,000/- money is due from and payable by Defendant No.1 on account of transactions undertaken on behalf of or with Defendant No.1 after accounting for all transactions in the running account as alleged in para 7 of the Plaint?

2. Whether Plaintiffs have correctly appropriated one Lac shares delivered towards the contract note dated 14.2.1992 (i.e. for Reliance Industries Ltd. shares) purchased @ of Rs.154/- as alleged in para 8a (ii) of the Plaint?

3. Whether the Plaintiffs prove that no shares were received from the broker of Defendant No.1 towards the Contract dated 23.3.1992 as averred by the Plaintiffs in para No.8a (iv) of the Plaint?

4. Whether the Plaintiffs have correctly given credit of Rs.154/- per shares for one Lac shares delivered and since one Lac shares have not been delivered as alleged in para 8a (v) of the Plaint?

5. Whether the Contract dated 14th February 1992 for purchase of 1,00,000 shares at the rate of Rs.154/- per share of M/s. Reliance Industries Ltd. placed by the Plaintiffs on Defendant No.1 was cancelled/ rescinded as alleged by Defendant No.1 as alleged in paras 8 and 9 of the Written Statement?

6. Whether Plaintiffs' contract note dated 27.2.1992 (SAIL) had been issued as per prevalent practice

as alleged in para 8b (ii) of the Plaint?

7. Whether Defendant No.1 by its letter dated 17.9.1992 has resiled from its contractual obligations as alleged in para 8b (vi) of the Plaint?

8. Whether the Plaintiffs are entitled for a decree or Rs.3,18,08,868/-?

9. Whether the Plaintiffs are entitled for interest at the rate of 24% per annum?

10. Whether Defendant No.1 is entitled to payment of Rs.2,53,75,000/- with interest as claimed in paras 1 to 4 and 8 of the Counter Claim?

11. What orders and decree?"

12. The Special Court notices that both the parties have filed documents. On behalf of the appellant one witness has been examined. The respondent No.1 has not led any evidence. It is also noticed that some documents have been admitted in evidence by consent of the parties. Issues Nos.2 to 5 were taken up together as they relate to the transactions in RIL shares. All these issues have been decided in favour of respondent No.1 and against the appellant. It is further held that the transaction dated 27.2.1992 was illegal and therefore is not capable of being enforced. Therefore issues No.6 and 7 have also been decided against the appellant. Issues Nos. 1, 8 and 9 have also been decided against the appellant. It has been held that the appellant is not entitled to make any claim neither in relation to RIL shares nor in relation to SAIL shares. So far as issue No.10 is concerned, the Special Court has clearly held that the counter claim of respondent No.1 succeeds and is allowed.

Therefore, a decree in an amount of Rs.2,53,75,000/- with an interest at the rate of 12% per annum from 22.4.1992 till the date of realisation is passed against the appellant. The appellant was also directed to pay costs entitled to the respondents.

13. The present appeal has been filed by the appellant being aggrieved by the aforesaid judgment and decree. Mr. Rupinder Singh Suri, learned Senior Counsel for the Appellant, had made elaborate submissions in Court which have been reiterated in the written arguments, filed later. He submits that the impugned judgment in addition to being totally contrary to the facts, records and law in general, is a classic case wherein the prejudice against the appellant is writ large, owing to the fact that he is a notified person. The Special Court has totally disregarded the evidence adduced by the appellant in support of its case. The counter claim has been erroneously decreed merely on surmises and conjectures. It is also submitted that the interest at the rate of 12% w.e.f. 22.4.1982 till realisation has been illegally granted without there being any evidence in support. In support of his submission, Mr. Suri, has relied on numerous documents which were on the record. Mr. Suri has placed heavy reliance on the letter dated 7.8.1992 which pertains to the statement of account between the parties for the period 1.4.1991 to 25.7.1992. According to the learned counsel this letter will show that only one lakh shares of RIL had been delivered. Therefore, respondent No.1 was seeking confirmation that only one lakh shares had been received by the appellant. This letter would also show that respondent No.1 had intimated that suitable decision with regard to contentions of the appellant on SAIL shares will be

given in due course. He then made a reference to letter dated 15.9.1992 written by one Ashok Kumar Kini, Executive Vice-President of respondent No.1 wherein he stated that there were two contract notes. This letter shows that even according to respondent No.1 the physical delivery of one lakh shares at Rs.375/- was made by the office of respondent No.1 at Bombay and one lakh shares at Rs.154/- of RIL were delivered by Mr. Hiten P. Dalal on its behalf. The appellant had replied to the aforesaid letter on 19.9.1992 and reiterated that only one lakh shares had been received. According to Mr. Suri on 21.9.1992 respondent No.1 wrongly claimed that appellant had all along been maintaining that there was only one deal. Therefore appellant through letter dated 28.9.1992 reiterated its stand that on checking its account there seemed to have been no record of receipt of any share from Hiten P. Dalal. Mr. Suri further submitted that in the written statement in paragraph 8 respondent No.1 had wrongly claimed that the contract dated 14.2.1992 had been cancelled. In fact there was no evidence led by respondent No.1 on issue No.5 which was relevant to this claim. In support of this learned counsel relied on extract of the account for the period 1.4.1991 to 31.3.1992 which shows the existence of both the transactions. Therefore according to Mr. Suri the respondent No.1 has wrongly claimed that contract dated 14.2.1992 was cancelled. Finally it is submitted by Mr. Suri that one lakh shares were adjusted against the contract dated 23.3.1992 on the basis of trade practice. As the appellant is a broker he has corresponding commitments to every client. Mr. Suri submits that the Special Court has wrongly concluded that it was for the appellant to prove that the contract dated 14.2.1992 was not in existence. Mr. Suri further

submitted that learned Special Court has wrongly concluded that the contract with regard to SAIL shares being itself illegal could not be enforced in law. In fact respondent No.1 had all along maintained that contract note dated 27.2.1992 would be honoured in due course. It is only on 17.9.1992 that respondent No.1 for the first time tried to wriggle out of the contract by stating that the transaction was against law and hence void and unenforceable. According to Mr. Suri this plea is not acceptable and there is no bar in law for entering into such a contract. The reliance placed by the Special Court on the circular dated 27.6.1969 is totally misplaced and contrary to the facts of the case. According to learned senior counsel, Mr. Suri, the circular would not be applicable to sale/ purchase of securities on a contract for cash. It was for this reason that statement of account of respondent No.1 would show that the contract was alive till at least 31.3.1992 when it was reversed in the books of accounts. This, according to Mr. Suri, was just a ploy on the part of respondent No.1 to escape its liability under the contract dated 27.2.1992. Mr. Suri submitted that the bias of the Special Court is evident from the manner in which only selected pieces of evidence have been used to decree the counter claim of respondent No.1. The evidence, which was in favour of the appellant, had been ignored by the Special Court. According to Mr. Suri this was clearly due to the undue importance attached by the Special Court to the facts that appellant is a notified person under the Act. It is further submitted by Mr. Suri that there was no legal justification for awarding 12% interest to respondent No.1 w.e.f. 22.4.1992 as there was no evidence in support of such a claim. In any event

the Special Court could only grant interest from the date of the filing of the counter claim and not from an earlier date. Mr. Suri submitted that the Special Court also erred in law in coming to the conclusion that the requisite averments to constitute a suit for damages are absent in the present case. According to Mr. Suri a perusal of the plaint would clearly show that it is a case for damages arising out of breach of contract on the part of respondent No.1. Mr. Suri then submitted that the Special Court has wrongly drawn an adverse inference against the appellant on account of non-production of the "*sauda* books". According to the learned senior counsel the *sauda* books were not at all relevant for proving the case of the appellant. There was ample evidence on record to show that respondent No.1 was guilty of breach of contract. Therefore, respondent No.1 was liable to make good the damages suffered by the appellant. The appellant having produced the best evidence available, it was not necessary to produce the *sauda* books at all. Therefore the learned Special Court has wrongly concluded that the best evidence rule would be applicable in the facts of the present case.

14. On the other hand, Mr. Bhushan, learned senior counsel, submits that the findings of the Special Court are based on clear and cogent evidence. He has also made reference to the correspondence between the parties and submitted that the entire claim of the appellant is based on a deliberate misreading of the same. Learned senior counsel relied on letter dated 17.7.1992 which shows that by that time the Reliance shares were not on issue. This letter has been written by the appellant to respondent No.1 and talks only of the SAIL shares. In this letter appellant has, in fact, admitted that the

contract with regard to SAIL shares was technically incorrect since contract relating to unquoted shares would be outside the purview of Delhi Stock Exchange Rules, By-Laws and Regulations. It is also admitted that the shares at the relevant time were not quoted at any centre. This admission is reiterated in the letter dated 18.8.1992 seeking to make clarification in response to the letter dated 7.8.1992. It was confirmed by the appellant that only one lakh shares of RIL had been received from the Bombay office of respondent No.1 and that no delivery was received from H.P. Dalal. By letter dated 20.4.1992 it was clearly stated that barring the outstanding transaction of five lakh shares of SAIL there is nothing outstanding. Mr. Bhushan submits that the letter dated 15.9.1992 is being misinterpreted by the appellant which is merely an observation made by respondent No.1. According to Mr. Bhushan by that time the scam had been discovered, a new management had taken over and the letter had been written on going through the records. Hence it was observed that against two sale contracts of RIL, for one lakh shares each, physical delivery had been given of one lakh shares by Hiten P. Dalal. To take advantage of the aforesaid letter, the appellant writes the letter dated 19.9.1992 stating that there were two contracts for two lakh RIL shares. Against these two lakh shares, appellant had received only one lakh shares which had been credited against the contract dated 14.2.1992. The appellant further claimed delivery of one lakh shares under contract dated 23.3.1992. Having taken this stand in its letter dated 14.6.1993 the appellant does not claim any damages on account of non-delivery of one lakh shares against the contract note dated 23.3.1992 at the rate of Rs.375/- per share. The only plea is that delivery of

one lakh shares has been credited against the contract dated 23.3.1992. Therefore, credit due to respondent No.1 would be only Rs.1,54,00,000/- and not Rs.3,75,00,000/- as shown by the respondent No.1 in its account. Mr. Bhushan further submits that even if the plea of the appellant is accepted that the transaction has been shown in the account as being incomplete, it still had to be reflected in the *sauda* books. However during the course of the trial *sauda* books were not produced and therefore an adverse inference has been drawn against the appellant. With regard to the SAIL shares, Mr. Bhushan submits that the contract was contrary to law. The appellant was aware of this legal position and admitted the same in the letter dated 27.7.1992.

15. Upon consideration of the submissions made by the learned counsel for the parties we have examined the material on the record. It is not disputed before us that there were, in fact, two transactions with regard to RIL shares dated 14.2.1992 and 23.3.1992. The Special Court notices that the appellant claims to have adjusted the delivery of one lakh shares of RIL against the contract dated 14.2.1992 which is said to have been cancelled by respondent No.1. The Special Court also notices that if the case of the appellant that the contract dated 14.2.1992 was alive is accepted, then the transaction will remain incomplete and unfulfilled. The Special Court further observed as follows:

"In my opinion, even without recording any finding as to whether the contract dated 14-2-1992 was cancelled on the same day or not, the Plaintiff cannot be granted any relief in relation to the contract dated 14-2-1992, assuming

it to be outstanding because the only relief that might have been claimed by the Plaintiff if the contract dated 14-2-1992 was unfulfilled contract was relief for damages for breach of contract."

16. The Special Court also upon reading of the plaint concludes that it is not a suit filed by the appellant for a decree in the amount of damages for breach of contract. In our opinion, the aforesaid findings cannot be said to be erroneous or based on no evidence. In fact in paragraphs 6 and 7 of the plaint the appellant had stated as follows:

"6. The plaintiff and defendant No.1 have been doing regular business over a fairly long period of time and are maintaining running accounts respectively.

7. The present suit is in respect of recovery of money which is due from the defendant No.1 on account of transactions undertaken on behalf of with the defendant No.1 after accounting for all the transactions in the running accounts and the amount whereof has not been paid to the plaintiff in spite of requests for the same."

17. In the face of these averments, we find it a little difficult to appreciate the submission of Mr. Suri that the findings on these issues are erroneous or not supported by any evidence. The Special Court also notices that the appellant had, in fact, adjusted the delivery of shares towards the contract dated 23.3.1992. It is true that in the examination-in-chief appellant had stated that he had made the claim against respondent No.1 on the basis of difference in price of Reliance shares as on 14.2.1992 and as on 23.3.1992, i.e., Rs.375-Rs.154 for one lakh shares. In our opinion, the Special Court has correctly observed that in the absence of pleadings the statement made by the appellant had to be ignored. We are also unable to accept the criticism of Mr. Suri that the burden of proving the continuance of the

contract dated 14.2.1992 was not on the appellant. We may notice here that respondent No.1 had taken a categorical plea that contract dated 14.2.1992 was cancelled by appellant on the same day. The conduct of the appellant showing delivery made on 22.4.1992 as delivery against the contract dated 23.31992 indicated that he was also treating the contract dated 14.2.1992 to be cancelled. Had that not been so, he would have made entries in the books of account to show that the delivery of shares were against the contract dated 14.2.1992. In our opinion Mr. Bhusan, has rightly pointed out that till 27.7.1992, the reliance shares were not in issue. The letter written by the appellant to the Respondent No 1 talks only of the SAIL shares. Therefore it was for the appellant to produce documentary evidence to show that in his books of accounts the contract had been shown as incomplete. But the appellant failed to produce the necessary evidence, which led the Court to observe that:

"The burden was on the plaintiff to prove that the contract dated 14.2.1992 remained incomplete. In my opinion, therefore, it was for the plaintiff to produce documentary evidence to show that in his Books of Accounts the contract is shown as incomplete. It becomes necessary for the plaintiff to produce the document to show that the transaction in his Books of accounts is shown as incomplete. The conduct of the plaintiff of showing delivery made on 22.4.1992 as delivery made on 23.3.1992 indicates that he was also treating the contract dated 14.2.1992 as cancelled. Had that not been so he would have made entries in the Book of account to show that the delivery of shares were against contract dated 14.2.1992. "

In our opinion the view expressed by the special Court is an acceptable view, and does not call for any interference.

18. With regard to issues no 6 & 7, we again do not find

any merit in the submissions of Mr. Suri. Admitted position is that on the date when the contract with regard to the SAIL shares was entered into, the shares were unlisted. It is also the admitted position that on that day, the circular dated 27.6.1969 issued under Section 16 of the Securities Contract Regulation Act 1956 was in existence and in force. Relevant portion of the afore said circular reads as follows:

> " S.O. 2561 In exercise of the powers conferred by sub-section (1) of Securities Contract (Regulation) Act 1956 (42 of 1956) the Central Government being of opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declares that no person in the territory to which the said Act extends shall save with the permission of the Central Government enter into any Contract for the sale or purchase of securities other that such
>
> Spot delivery contract or
>
> Contract for cash or
>
> Hand delivery or
>
> Special Delivery
>
> in any securities as is permissible under the said act and the rules, bye laws and regulations of a recognized Stock Exchange."

It is thus clear from the circular that after issuance of these Circular, transactions into securities by (i) Spot delivery contract; (ii) Contract for cash; (iii) Hand delivery and (iv) Special Delivery are only permitted. The term 'spot delivery' is defined in Section 2 (i) of the Act, which reads as under:-

"Spot delivery contract means a contract which provides for :-

(a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner when such securities are dealt with by a depository; ”

A perusal of the aforesaid definition would show that spot delivery contract is the contract where actual delivery of the securities and the payment of price is either on the same day or on the next day. Admitted position is that the contract note issued by the appellant in relation to this transaction shows that it was not a spot delivery contract.

19. As regards the other types of contracts, the terms, contract for cash, hand delivery or special delivery are not defined by the Act. Therefore in terms of the circular dated 27.6.1969 quoted above, if the rules made under the act, bye laws and regulations of a recognized Stock Exchange permit contract for cash, hand delivery or special delivery, those types of transactions would also be permitted by the circulars. The provisions of the bye-laws of Delhi Stock exchange clearly permits spot delivery transaction, hand delivery transaction and special delivery transaction. It was noticed by the Special court that

“It was not even the case of the Plaintiff that the transaction into SAIL shares in relation to which contract note has been issued by the plaintiff was either hand delivery, spot delivery or special delivery contract.”

It was argued before the Special Court that the transaction

was a cash delivery contract. The Special Court negated such contention, observing as follows:

“Firstly there are no pleadings to that effect. There is no evidence to that effect and there is no provision to that effect either in the Act, rules framed by the Delhi Stock Exchange. Therefore cash delivery contract unless it is permitted by the Act, bye laws and regulations of the Stock Exchange is prohibited by the circulars.”

The appellant was aware of the illegality of the transaction. It is evident from the letter dated 27th of July, 1992 written by the appellant to the respondent No.1 wherein it is clearly stated that “technically this was incorrect since contracts relating to unquoted shares would be outside the purview of Delhi Stock Exchange rules, bye-laws and regulations.” In the face of such an dmission, the Special Court, in our opinion, has correctly concluded, as noticed above. In our opinion the view expressed by the Special Court does not call for any interference.

20. The contention that the circular did not apply to unlisted securities was duly considered and rejected by the Special Court. The Special Court thoroughly considered the term ‘securities’ as defined in Section 2(h) of the Act. It reads as under:-

“2(h) Securities include-

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes.

(ii) Government securities;

(iia) such other instruments as may be declared by the central Government to be securities; and

(iii) rights or interests in securities; "

Perusal of the above quoted definition shows that it does not make any distinction between listed securities and unlisted securities and therefore it is clear that the Circular will apply to the securities which are not listed on the Stock Exchange. Admittedly the contract note issued in relation to this transaction by the appellant does not show that it was a spot delivery contract, therefore the transaction was clearly contrary to the circular. Consequently in terms of the provisions of Sub-section(2) of Section 16 the transaction was illegal and is not capable of being enforced.

21. With regard to issues no 1,8 & 9, it was correctly observed by the Special Court that the Plaintiff i.e. Appellant herein is not entitled to make any claim either in relation to the Reliance Industries Shares nor in relation to contract for SAIL shares. Further as the appellant is not entitled to claim any amount from the respondent on account of the aforesaid transactions, there is no question of the appellant being entitled to any interest.

22. On Issue No.10, Mr.Suri has submitted that the Special Court has illegally allowed the counter claim of respondent No.1. It was submitted that the Special Court has come to a contrary conclusion even though the fact situation was identical in the claim put forward by both the parties. We are unable to accept the submissions made by the learned senior counsel. Once it is concluded that the appellant is not entitled to claim any amount from respondent No.1 in relation to the aforesaid three transactions i.e. contract dated 14.2.1992, contract dated 23.3.1992 for one lakh RIL shares each and contract dated 27.2.1992 relating to one lakh SAIL share. It needed to be determined as to whether the appellant in fact needed to

compensate respondent No.1. In the counter claim, the respondent No.1 clearly stated that the appellant had agreed to purchase one lakh shares of RIL on 14.2.1992 @ Rs.154/- per share, but this contract was cancelled by the appellant on the very same date. Thereafter, the appellant had intimated about another contract for purchase of one lakh shares of RIL on 23.3.1992 @ Rs.375/- per share. Against the aforesaid contract, the delivery of one lakh shares was made by the respondent No.1 to the appellant on 22.4.1992. After the receipt of a letter dated 15.9.1992 when the Management of respondent No.1 had changed, the appellant started claiming that the delivery of one lakh shares on 22.4.1992 had been adjusted against the cancelled contract dated 14.2.1992. The respondent No.1 had based the counter claim on the difference of price in shares between two periods of contract i.e. 14.2.1992 and 23.3.1992. The difference of amount of Rs.2,21,00,000/- was claimed as the amount due from the appellant to the respondent No.1. A perusal of the letter dated 27.5.1993, which contains a statement of account with the subject "settlement of outstanding" clearly shows that the respondent No.1 is claiming a sum of Rs.2,56,25,000/- as outstanding against the appellant from various transactions as per the details given therein. Against the entry dated 4.3.1992, there is a clear entry with regard to the sale of one lakh RIL shares @ Rs.375/- per share given a total consideration of Rs.3,75,00,000/-. The respondent No.1 had clearly requested the appellant to settle account by paying Rs.2,56,25,000/- immediately. In the letter dated 14.6.1993, the appellant offered its comment on the statement of account for payment by respondent No.1 on 27.5.1993. Herein, the appellant states that the credit claimed by the respondent No.1 should be Rs.2,21,00,000/- instead of Rs.2,56,25,000/-. This balance was claimed by the appellant on the ground that the credit claimed by respondent No.1 of Rs.3,75,00,000/- has to be reduced by Rs.1,56,00,000/- i.e. the difference in price of shares of the two contracts dated 14.2.1992 and 23.3.1992. The appellant also claimed that a sum of Rs.2,95,00,000/- was also required to be adjusted in respect

of SAIL shares. The appellant had claimed the difference in contract price of shares of SAIL @ Rs.51/- per share against the official quotation of the Delhi Stock Exchange @ Rs.110/- per share. Thus he had claimed that respondent No.1 was liable to pay for the difference of Rs.59/- per share (Rs.110/-Rs.51/- per share amounting to Rs.2,95,00,000). It was held by the Special Court, which finding has been affirmed by us, that the contract with regard to SAIL shares being contrary to law was void ab initio. Therefore, the appellant could not possibly claim anything against the aforesaid SAIL shares on account of any difference in the contracted rate and the rate when the same were listed on the Delhi Stock Exchange. Therefore, the irresistible conclusion was that the appellant was liable to pay to respondent No.1 for the RIL Shares @ Rs.375/- per share, the contract dated 14.2.1992 having been cancelled. Thus the Special Court, in our opinion, correctly concluded that the appellant was liable to pay to the respondent No.1 the amount of Rs.2,53,75,000/-. In view of the above, we find no reason to interfere with the findings of the Special Court on Issue No.10 also.

23. We also do not find any cogent reason to interfere or to reduce the amount of interest awarded by the Special Court in the peculiar facts and circumstances of this case.

24. Mr.Suri had submitted that the entire approach of the Special Court was biased against the appellant simply because the sole proprietor of the appellant was duly notified under the Special Courts Act. We are of the considered opinion that the aforesaid submission has to be merely stated to be rejected. The allegations of bias and mala fide had to be proved by cogent and clear evidence. In the present case, apart from the bald submissions made by Mr.Suri, no material was placed on the record to indicate that the judgment of the Special Court was coloured, let alone being affected by any bias. It seems to have become a common practice these days for the losing party after receiving an unfavourable verdict, to make allegations of

bias against the Presiding Officer. We decline to give any credence to such wild and bald submissions without any factual basis.

25. In view of the above, we find no merit in this appeal and the appeal is dismissed. No order as to costs.

D.G. Appeal dismissed.

BONDU RAMASWAMY
v.
BANGALORE DEVELOPMENT AUTHORITY & ORS.
(Civil Appeal No. 4097 of 2010 etc.)

MAY 5, 2010

[K.G. BALAKRISHNAN, CJI., R.V. RAVEENDRAN AND D.K. JAIN, JJ.]

Bangalore Development Authority Act, 1976:

Whether the Act repugnant to Land Acquisition Act – Held: The Act is not repugnant to Land Acquisition Act – Repugnancy under Article 254 arises only when two laws relate to subjects in List III – Article 254(1) will have no application if the State law in pith and substance relates to a matter in List II and incidentally touches upon some item in List III – If the law covered by Entry in List II contains a provision directly and substantially relating to the matter enumerated in List III, the repugnant provision of List II might be void unless it could co-exist and operate without repugnancy to the provisions of the existing law – Bangalore Development Authority Act in pith and substance falls under Entry 5 of List II and is not referable to Entry 42 of List III – The main object of the Act is development of the city and acquisition for such development is incidental to the main object – Constitution of India, 1950 – Article 254; Seventh Schedule List II Entry 5 and List III Entry 42 –Land Acquisition Act, 1894 – ss. 4 to 6 – Doctrine of pith and substance.

Enforcement of the Act– Validity of, in absence of assent of President – Held: Article 31(3) of the Constitution did not render the Act invalid in absence of assent of the President – Though the Act did not receive the assent of the President, but once Article 31(3) was omitted from the Constitution, need for such assent disappeared –Constitution of India, 1950 – Article 31(3).

ss. 15 to 19 – Acquisition of land – By Development Authority – For planned development of city – Preliminary notification proposing to acquire land – The objections of land-holders considered – State Government granting sanction for acquisition after noting that certain land was excluded from the proposed extent of land – Final declaration issued – Writ petitions challenging the acquisition – Entire acquisition quashed by Single Judge of High Court – Writ appeals – Division Bench of High Court upheld the acquisition – However, finding that there was discrimination in acquisition of certain lands and in deletion of similar lands, gave liberty to land-owners to seek withdrawal of their lands from acquisition – On appeal, held: Acquisition was in compliance with the provisions of the Act – But there was arbitrariness and discrimination in the matter of inclusions and exclusions of the lands – Decision of Division Bench of High Court is affirmed – However, the liberty granted to land-owners would lead to further litigations and complications – Therefore, it would be equitable to uphold the directions issued by High Court, subject to the condition that the Development Authority provides an option to land-losers to secure some additional benefits as an incentive to accept the acquisition – Direction issued to provide preferential allotment of some plots at prevailing market price in addition to compensation to the land-losers – Such directions not in conflict with Allotment Rules – Bangalore Development Authority (Allotment of Sites) Rules, 1984.

ss. 19(1) and 36 – Land acquisition – Final declaration u/s. 19(1) – Published beyond one year from the date of publication of preliminary notification u/s. 17(1) and (3) of the Act – Whether valid on account of delay in view of amendment of s. 6 of Land Acquisition Act, providing a time limit for issue of final declaration – Held: The final declaration does not suffer from any infirmity – In view of limited application of Land Acquisition Act in terms of s. 36, provisions of ss. 4 to 6 of Land Acquisition Act would not apply in respect of scheme

for acquisition u/s. 15 to 19 of the Act – Thus, amendment to s. 6 also not applicable – Land Acquisition Act, 1894 – s. 6.

s. 15 r/w s. 2(c) – Power of Development Authority to draw up schemes for development of metropolitan area – Whether became inoperative on coming into force of Parts IX and IXA of the Constitution – Held: Provisions of the Act would not become inoperative on Parts IX and IXA coming into force – Parts IX and IXA are applicable to the municipality and not to development authority – Article 243ZF which provided for giving opportunity to State Government to bring the existing law relating to municipality in conformity with Parts IX and IXA, is not applicable to the Act – Mere existence of Municipal Corporation Act duly amended to bring it in conformity with Part IXA would not nullify or render the Act redundant – Constitution of India, 1950 – Parts IX and IXA –Karnataka Municipal Corporation Act, 1976.

Land Acquisition Act, 1894 – ss. 4, 5A and 6 – Applicability of – To acquisition under Bangalore Development Authority Act – ss. 4 to 6 would not apply to acquisition under BDA Act – In view of s. 36 of BDA Act, only such provisions of Land Acquisition Act are applicable to the acquisition under BDA Act, for which a corresponding provision is not found in the BDA Act – ss. 17 to 19 of the BDA Act are the corresponding provisions to ss. 4 to 6 – Bangalore Development Authority Act, 1976 – ss. 17 to 19 and 36.

Constitution of India, 1950:

Article 31(1), (2) and (3) – Acquisition of land under Bangalore Development Authority Act – Whether violative of fundamental Right provided in Article 31 – Held: BDA Act does not violate any provision of Article 31 – Since the State had the legislative competence to enact the BDA Act, clause (1) is not violated – In view of s. 36 of BDA Act Land Acquisition Act was applicable for determination of

compensation, hence clause (2) is not violated – Since Clause (3) does not specify any fundamental right and only provides the procedure, it does not nullify any law – However, once the requirement of assent of the President disappeared on omission of Article 31, the provisions relating to acquisition became enforceable – Bangalore Development Authority Act, 1976.

Article 14 – Illegal favours shown to land-owners by acquisition authority, in deleting their lands from proposed acquisition – Plea of other land-owners seeking deletion of their lands on the ground of equality – Held: Article 14 guarantees equality before law and not equality in subverting law nor equality in securing illegal benefits – Negative equality cannot be enforced – Land owners not entitled to seek deletion on the ground of equality –But where large extent of land has been indiscriminately and arbitrarily deleted, making the development scheme inexecutable, or resulted in abandonment, relief can be granted on the adoption of common factor – Land Acquisition.

Land Acquisition:

Acquisition of land for planned development of city – Deletion from the proposed acquisition – Basis for – Held: Deletion should be only with regard to areas which are already well-developed in a planned manner – Sporadic small unauthorized constructions in unauthorized colonies are not to be deleted – If hardship is the reason for deletion, appropriate course is to give preference to the land-owners in allotment of developed plots and help them to resettle – Development authority should either provide orderly development or should stay away from development – Urban Development.

Land acquisition governed by Land Acquisition Act – Present system of – Held: Requires urgent attention of the State Government and Development Authorities – It is

necessary to evolve tailor-made schemes to suit particular acquisition to make it smooth, speedy, litigation free and beneficial to all concerned – Acquisition should be for the benefit of society and improve the city and not to benefit the development authority – Need for the Law Commission and the Parliament to revisit the Land Acquisition Act – Land Acquisition Act, 1894.

Interpretation of Statutes – Vague and ambiguous provision – An interpretation that would avoid absurd results should be adopted – When the object or policy of a statute can be ascertained, imprecision in its language not to be allowed in the way of adopting a reasonable construction which avoids absurdities and incongruities and carries out the object or policy – A court cannot supply a real casus omissus nor can it interpret a statute to create a casus omissus when there is really none.

Doctrines:

Doctrine of casus omissus – Applicability of.

Doctrine of Pith and Substance – Applicability of.

Civic Agencies – 'Municipal Corporation' and 'Development Authority' – Difference between – Discussed.

Writ petitions were filed challenging the acquisition of land by Bangalore Development Authority (BDA) under Bangalore Development Authority Act, 1976 (BDA Act). The same were allowed by Single Judge of High Court quashing the entire acquisition. Writ appeals were allowed by Division Bench of High Court. Hence the present appeals.

The questions which arose for consideration in the present appeals were: (i) Whether the BDA Act, in so far as it provides for compulsory acquisition of property, is still-born and ineffective as it did not receive the assent of the President, as required by Article 31(3) of the Constitution of India. (ii) Whether the provisions of the

BDA Act, in particular Section 15 r/w Section 2(c) dealing with the power of BDA to draw up schemes for development for Bangalore Metropolitan Area became inoperative, void or was impliedly repealed, by virtue of Parts IX and IX(A) of the Constitution inserted by the 73rd and 74th Amendments to the Constitution. (iii) Whether the sixteen villages where the lands have been acquired, fall outside the Bangalore Metropolitan Area as defined in Section 2(c) of the BDA Act and therefore, the Bangalore Development Authority has no territorial jurisdiction to make development schemes or acquire lands in those villages. (iv) Whether the amendment to Section 6 of the Land Acquisition Act, 1894 requiring the final declaration to be issued within one year from the date of publication of the preliminary notification is applicable to the acquisitions under the BDA Act; and whether the declaration u/s. 19(1) of BDA Act, having been issued after the expiry of one year from the date of the preliminary notification u/s. 17(1) and (3) of BDA Act, is invalid. (v) Whether the provisions of Sections 4, 5A, 6 of Land Acquisition Act, would be applicable in regard to acquisitions under the BDA Act and whether non-compliance with those provisions, vitiate the acquisition proceedings (vi) Whether the development scheme and the acquisitions are invalid for non-compliance with the procedure prescribed u/ss. 15 to 19 of the BDA Act in regard to: (a) absence of specificity and discrepancy in extent of land to be acquired; (b) failure to furnish material particulars to the Government as required u/s. 18(1) r/w Section 16 of the BDA Act; and (c) absence of valid sanction by the Government, u/s. 18(3) of the BDA Act. (vii) Whether the deletion of 1089 Acres 12 Guntas from the proposed acquisition, while proceeding with the acquisition of similar contiguous lands of appellants amounted to hostile discrimination and therefore the lands of appellants also required to be withdrawn from acquisition.

Disposing of the appeals, the Court

HELD:

<u>Question (i) – Re : Invalidity on account of non-compliance with Article 31(3) of the Constitution:</u>

1.1. It is true that the BDA Act received only the assent of the Governor and was neither reserved for the assent of the President nor received the assent of the President. But once Article 31 was omitted from the Constitution on 20.06.1979, the need for such assent disappeared and the impediment for enforcement of the provisions in the BDA Act relating to acquisition also disappeared. Article 31(3) did not render the enactment a nullity, if there was no assent of the President. Acquisition of property is only an incidental and not the main object and purpose of the BDA Act. Once the requirement of assent stood deleted from the Constitution, there was absolutely no bar for enforcement of the provisions relating to acquisition in the BDA Act. The State Legislature had the legislative competence to enact such a statute, under Entry 5 of List II of the Seventh Schedule to the Constitution. If any part of the Act did not come into effect for non-compliance with any provision of the Constitution that part of the Act may be unenforceable, but not invalid. [Para 9] [72-H; 73-A-E]

1.2. Bangalore Development Authority Act, 1976, does not violate any provision of Article 31 in Part III of the Constitution. As the BDA Act is made by the State Legislature having competence to make such law, there is no violation of Article 31(1). Clause (2) of Article 31 provided that no law shall authorise acquisition unless it provided for compensation for such acquisition and either fixed the amount of compensation, or specified the principles on which, and the manner in which, the compensation was to be determined and given. BDA Act does not fix the amount of compensation, but Section 36

thereof clearly provides that the acquisition will be regulated by the provisions of the Land Acquisition Act, 1894 so far as they are applicable. Thus the principles on which the compensation is to be determined and the manner in which the compensation is to be determined set out in the Land Acquisition Act become applicable to acquisitions under BDA Act. Thus there is no violation of Article 31(2). Article 31(3) merely provides that no law providing for acquisition shall have effect unless such law has received the assent of the President. Article 31(3) does not specify any fundamental right, but relates to the procedure for making a law providing for acquisition. It does not nullify any law, but postpones the enforcement of a law relating to acquisition, until it receives the assent of the President. There is therefore no violation of Part III of the Constitution that can lead to any part of the BDA Act being treated as a nullity. The effect of Article 31(3) was that enforcement of the provisions relating to acquisition was not possible/permissible till the assent of the President was received. Therefore, once the requirement of assent disappeared, the provisions relating to acquisition became enforceable. [Para 11] [76-A-H; 77-A]

M.P.V. Sundararamier and Co. v. The State of Andhra Pradesh and Anr. **AIR 1958 SC 468, followed**

Munithimmaiah v. State of Karnataka **2002 (4) SCC 326, relied on**

Mahendra Lal Jain v. State of U.P. and Ors. **1963 Supp (1) SCR 912, referred to**

<u>Question (ii) – Re : Invalidity with reference to Parts IX and IX-A of the Constitution</u>:

2.1. Part IX-A of the Constitution seeks to strengthen the democratic political governance at grass-root level in urban areas by providing constitutional status to

Municipalities, and by laying down minimum uniform norms and by ensuring regular and fair conduct of elections. When Part IXA came into force, the provisions of the existing laws relating to municipalities which were inconsistent with or contrary to the provisions of Part IX-A would have ceased to apply. To provide continuity for some time and an opportunity to the concerned State Governments to bring the respective enactments relating to municipalities in consonance with the provisions of Part IX-A in the meanwhile, Article 243ZF was inserted. The object was not to invalidate any law relating to city improvement trusts or development authorities which operate with reference to specific and specialised field of planned development of cities by forming layouts and making available plots/houses/apartments to the members of the public. [Para 21] [94-H; 95-A-C]

2.2. The benefit of Article 243ZF is available only in regard to laws relating to 'municipalities'. Thus Article 243ZF has no relevance to test the validity of the BDA Act or any provision thereof. If BDA Act or any provision thereof is found to be inconsistent with the provisions of Part IXA, such inconsistent provision will be invalid even from 1.6.1993, and the benefit of continuance for a period of one year permitted under Article 243ZF will not be available to such a provision of law, as BDA Act is not a law relating to Municipalities. [Para 20] [94-A-D]

2.3. The object and functions of a Municipal Corporations are completely different from the object and purpose of a development authority like BDA. BDA is not a municipality. Therefore, it cannot be said that mere existence of Municipal Corporations Act, duly amended to bring it in conformity with Part IX-A of the Constitution, will nullify or render redundant, the BDA Act. [Para 23] [97-G-H]

2.4. The declaration of metropolitan area by the Governor, as provided in clause (c) of Article 243P is specifically with reference to the law relating to municipalities. The Bangalore Metropolitan Area as defined in the Bangalore Development Authority Act is only for the purpose of development i.e. development by way of building or engineering operations in or over or under land. Therefore neither the provision defining 'metropolitan area' in Article 243P(c) nor the provision for constitution of a Metropolitan Planning Committee for preparing a draft development plan for such metropolitan area under Article 243ZE has any relevance or bearing to the Bangalore Metropolitan Area with reference to which BDA has been constituted. [Para 24] [98-D-G]

2.5. The area in which the BDA Act operates is totally different from the areas in which Part IX A of the Constitution and Municipal Corporation Act which relate to local self-government operate. The development plan to be drawn for a metropolitan area, by a Metropolitan Planning Committee should not be confused with a development scheme to be drawn by a development authority like BDA for a metropolitan area. Insofar as Bangalore is concerned, the Bangalore Metropolitan Area as defined in Section 2(c) of the BDA Act is the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949, the area where the city of Bangalore Improvement Act, 1945 was immediately before the commencement of the BDA Act in force, and such other areas adjacent to the aforesaid, as the Government may from time to time by notification specify. On the other hand, the Bangalore Metropolitan Area, referred to in Section 503-B of Municipal Corporation Act is an area to be specified by the Governor by public notification under Article 243P(c) of the Constitution of India. In fact the Governor had not even specified the Bangalore Metropolitan Area for the purpose of Municipal Corporation Act. Neither the

Bangalore Metropolitan Area nor a Metropolitan Planning Committee is in existence under the Karnataka Municipal Corporation Act. In these circumstances, it is not correct to say that the BDA Act, is no longer in force and that BDA has no jurisdiction or authority to draw up a development scheme to form layouts and acquire land to form lay outs in pursuance of any development scheme for Bangalore Metropolitan Area. [Para 25] [99-H; 100-A-B; 102-B-C]

2.6. While it is true that BDA is not an elected body like the municipality, it has several elected representatives as members. The members of the BDA represent different interests and groups, technical persons and elected representatives. Further, no development scheme can be finalised or put into effect without the sanction of the State Government which in turn has to take note of any representation by the Bangalore Municipal Corporation in regard to the development scheme. Therefore, the mere fact that BDA is not wholly elected body as in the case of a Municipal Corporation will make no difference. The membership pattern is more suited to fulfil the requirements of a specialist agency executing development schemes. Therefore, it is not correct to say that the provisions of BDA Act become inoperative, on Parts IX and IX-A of the Constitution coming into force. [Para 27] [100-G; 101-E-G]

Question (iii) – Re : BDA lacking territorial jurisdiction to draw up the development scheme:

3.1. It is not correct to say that Bangalore Development Authority does not have territorial jurisdiction to form any development scheme in regard to the 16 villages which are the subject matter of the final declaration. [Para 41] [110-D]

3.2. Section 15 empowers the BDA to draw up

development schemes or additional development schemes for the development of the Bangalore Metropolitan Area. Bangalore Metropolitan Area is defined in Section 2(c). The areas in which the City of Bangalore Improvement Act, 1945 was in force immediately before the commencement of BDA Act was the City of Bangalore and other areas adjoining the city specified by the State Government from time to time by notification (vide Section 1(2) of the said Act). [Para 29] [102-E-G]

3.3. The State Government issued a notification dated 1.11.1965, u/s. 4A (1) of the 'Town Planning Act' declaring the area comprising the City of Bangalore and other areas (218 villages) enumerated in Schedule I thereto to be the 'Local Planning Area' for the purposes of the said Act to be called as the Bangalore City Planning Area and the limits of the said planning area were as described in Schedule II thereto. All the 16 villages in which the lands were acquired for scheme in question fell within the said Bangalore City Planning Area (that is within the 'other areas' described in the I Schedule). The Government of Karnataka issued another notification dated 13.3.1984 declaring that the area comprising 325 peripheral villages around Bangalore as indicated in Schedule I to be Local Planning Area for the environs of Bangalore and the limits of the said planning area shall be as indicated in Schedule II thereto. Schedule II to the notification dated 13.3.1984 gave the boundaries of the entire local planning area of Bangalore which included not only 325 villages which were added by the said notification but the original planning area described and declared in the notification dated 1.11.1965. Thereafter, the Government of Karnataka issued a notification dated 6.4.1984 amalgamating the 'Local Planning Area of Bangalore' declared under notification dated 1.11.1965 and the 'Local Planning Area' declared for the environs of Bangalore by notification dated 13.3.1984. The Government of Karnataka issued a

notification dated 1.3.1988 in exercise of the power u/s. 2(c) of the Bangalore Development Authority Act, 1976 specifying the villages, indicated in I Schedule and within the boundaries indicated in II Schedule to the notification dated 13.3.1984, to be the areas for the purpose of the said clause. [Paras 30, 31, 32 and 33] [102-H; 103-A-H; 104-A-C]

3.4. The notification dated 1.3.1988 would show that the clear intention of the State Government was to declare the entire area declared under the notification dated 1.11.1965 and the notification dated 13.3.1984, together as the Bangalore Metropolitan Area. The notification dated 1.3.1988 clearly states that the entire area situated within the boundaries indicated in Schedule II to the notification dated 13.3.1984 was the area for the purpose of Section 2(c) of BDA Act. There is no dispute that the boundaries indicated in Schedule II to the notification dated 13.3.1984 would include not only the villages enumerated in I Schedule to the notification dated 13.3.1984 but also the area that was declared as planning area under the notification dated 1.11.1965. This is because the areas declared under notification dated 1.11.1965 are the core area (Bangalore City) and the area surrounding the core area that is 218 villages forming the first concentric circle; and the area declared under the notification dated 13.3.1984 (325 villages) surrounding the area declared under the notification dated 1.11.1965 forms the second concentric circle. Therefore, the boundaries of the lands declared under the notification dated 13.3.1984, would also include the lands which are declared under the notification dated 1.11.1965 and therefore, the 16 villages which are the subject matter of the impugned acquisition, are part of the Bangalore Metropolitan Area. [Para 34] [104-G-H; 105-A-C]

3.5. It cannot be said that the note at the end of II Schedule to the notification dated 13.3.1984 excluded the

Bangalore city planning area declared under the notification dated 1.11.1965. As the planning area that was being declared under the notification dated 13.3.1984, was in addition to the area that was declared under the notification dated 1.11.1965, it was made clear in the note at the end of the notification dated 13.3.1984 that the area declared under the notification dated 1.11.1965 is to be excluded. The purpose of the note was not to exclude the area declared under the notification dated 1.11.1965 from the local planning area. The intention was to specify what was being added, to the local planning area declared under the notification dated 1.11.1965. But in the notification dated 1.3.1988, what is declared as the Bangalore Metropolitan Area is the area that is within the boundaries indicated in schedule II to the notification dated 13.3.1984, which is the area notified on 1.11.1965 as also the area notified on 13.3.1984. The note in the notification dated 13.3.1984 was only a note for the purposes of the notification dated 13.3.1984 and did not form part of the notification dated 1.3.1988. There is therefore no doubt that the intention of the State Government was to include the entire area within the boundaries described in Schedule II, that is the area declared under two notifications dated 1.11.1965 and 13.3.1984, as the Bangalore Metropolitan Area. [Para 35] [105-D-H; 106-A-B]

3.6. It is true that the wording of the notification is clumsy and ambiguous. When there is vagueness and ambiguity, an interpretation that would avoid absurd results should be adopted. The interpretation put forth by the appellants, if accepted would mean the outer centric circle of Bangalore which consists of only the peripheral villages would be the Bangalore Metropolitan Area and neither the Bangalore city nor the 218 villages immediately adjoining and surrounding the Bangalore city would form part of Bangalore Metropolitan Area. This

is absurd and will be in direct violation of Section 2(c) of BDA Act which states that Bangalore City and the areas surrounding it where City of Bangalore Improvement Act, 1945 was in force, will form part of Bangalore Metropolitan Area. [Para 37] [106-D-H]

3.7. The doctrine of *casus omissus* is a general rule that the court may not by construction insert words or phrases in a statute or supply a *casus omissus* by giving force and effect to the language of the statute when applied to a subject about which nothing whatever is said, and which, to all appearances, was not in the mind of the legislature at the time of the enactment of law. But the position will be different where the language is ambiguous and an intelligible interpretation would require addition of words particularly when the intention of the State Government is clear and evident and it is reiterated by the State Government and the BDA. When the object or policy of a statute can be ascertained, imprecision in its language should not be readily allowed in the way of adopting a reasonable construction which avoids absurdities and incongruities and carries out the object or policy. A court cannot supply a real *casus omissus*, nor can it interpret a statute to create a *casus omissus* when there is really none. [Para 39] [107-G-H; 108-A-D]

Dr. Baliram Waman Hiray v. Justice B. Lentin and Ors. **1988 (4) SCC 419;** *S. R. Bommai and Ors. v. UOI and Ors.* **1994 (3) SCC 1;** *Padma Sunder Rao v. State of Tamil Nadu* **2002 (3) SCC 533, referred to**

American Jurisprudence, 2nd Series Vol. 73; Principles of Statutory Interpretation **by Justice G. P. Singh 2008 Edition – Page 65, referred to.**

3.8. Section 2(c) of BDA Act makes it clear that the city of Bangalore as defined in the Municipal Corporation Act is part of Bangalore Metropolitan Area. It also makes it clear that the areas where the city of Bangalore

Improvement Act, 1945 was in force, is also part of Bangalore Metropolitan Area. It contemplates other areas adjacent to the aforesaid areas being specified as part of Bangalore Metropolitan Area by a notification. Therefore, clearly, the area that is contemplated for being specified in a notification u/s. 2(c) is “other areas adjacent” to the areas specifically referred to in Section 2(c). But it is seen from the notification dated 1.3.1988 that it does not purport to specify the “such other areas adjacent” to the areas specifically referred to in section 2(c), but purports to specify the Bangalore Metropolitan Area itself as it states that it is specifying the “areas for the purpose of the said clause”. If the notification specifies the entire Bangalore Metropolitan Area, the interpretation put forth by the appellants that only the villages included in Schedule I to the notification dated 13.3.1984 would be the Bangalore Metropolitan Area, would result in an absurd situation. The notification dated 1.3.1988 made it clear that the Bangalore Metropolitan Area would be the area within the boundaries indicated in II Schedule to the notification dated 13.3.1984. It would mean that the three areas, namely, the central core area, the adjoining 218 villages constituting the first concentric circle area and the next adjoining 325 villages forming the second concentric circle are all included within the Bangalore Metropolitan Area. What is already specifically included by Section 2(c) of BDA Act cannot obviously be excluded by notification dated 1.3.1988 while purporting to specify the additional areas adjoining to the areas which were already enumerated. Therefore, the proper way of reading the notification dated 1.3.1988 is to read it as specifying 325 villages which are described in the First Schedule to the notification dated 13.3.1984 to be added to the existing metropolitan area and clarifying that the entire areas within the boundaries of Second Schedule to the notification dated 13.3.1984 would constitute the

Bangalore Metropolitan Area. [Para 40] [108-G-H; 109-A-H; 110-A-C]

Question (iv) – Re : Invalidity of final declaration with reference to time limit in Section 6 of Land Acquisition Act:

4. BDA Act contains provisions relating to acquisition of properties, up to the stage of publication of final declaration. BDA Act does not contain the subsequent provisions relating to completion of the acquisition, that is issue of notices, enquiry and award, vesting of land, payment of compensation, principles relating to determination of compensation etc. Section 36 of BDA Act does not make the Land Acquisition Act applicable in its entirety, but states that the acquisition under BDA Act, shall be regulated by the provisions, *so far as they are applicable*, of Land Acquisition Act. Therefore it follows that where there are already provisions in the BDA Act regulating certain aspects or stages of acquisition or the proceedings relating thereto, the corresponding provisions of LA Act will not apply to the acquisitions under the BDA Act. Only those provisions of LA Act, relating to the stages of acquisition, for which there is no provision in the BDA Act, are applied to the acquisitions under the BDA Act. The BDA Act contains specific provisions relating to preliminary notification and final declaration. In fact the procedure up to final declaration under BDA Act is different from the procedure under the Land Acquisition Act relating to acquisition proceedings up to the stage of final notification. Therefore, having regard to the Scheme for acquisition u/ss. 15 to 19 of the BDA Act and the limited application of Land Acquisition Act in terms of Section 36 of BDA Act, the provisions of Sections 4 to 6 of Land Acquisition Act will not apply to the acquisitions under the BDA Act. If Section 6 of Land Acquisition Act is not made applicable, the question of amendment to Section

6 of Land Acquisition Act providing a time limit for issue of final declaration, will also not apply. The final declaration dated 23.2.2004 does not suffer from any infirmity on account of the same having been published a few days beyond one year from the date of publication of the preliminary notification u/ss. 17 (1) and (3) of the BDA Act. [Para 43 & 44] [111-C-H; 112-A; G-H; 113-A]

Munithimmaiah vs. State of Karnataka 2002 (4) SCC 326, relied on

Question (v) – Re: Applicability of Sections 4, 5A & 6 of Land Acquisition Act:

5.1. It is not correct to say that the BDA Act has to yield to Land Acquisition Act and consequently, the provisions of Sections 4, 5 and 6 of Land Acquisition Act will be applicable and have to be complied with for acquisitions under the BDA Act. [Para 51] [119-E]

5.2. The assumption by the appellant that Chapter III of the BDA Act relating to development schemes does not provide for acquisition, is erroneous. Sections 15 to 19 of the BDA Act contemplate drawing-up of a development scheme or additional development scheme for the Bangalore Metropolitan Area, containing the particulars set down in Section 16 of the said Act, which includes the details of the lands to be acquired for execution of the scheme. Section 36 of BDA Act provides that the "*acquisition of land under this Act*", shall be regulated by the provisions, *so far as they are applicable* of the Land Acquisition Act. In view of the categorical reference in Section 36 of the BDA Act, to acquisitions under that Act, there cannot be any doubt that the acquisitions for BDA is not under the Land Acquisition Act, but under the BDA Act itself. It is also clear from Section 36 that Land Acquisition Act, in its entirety, is not applicable to the acquisition under the BDA Act, but only such of the provisions of the Land Acquisition Act for

which a corresponding provision is not found in the BDA Act, will apply to acquisitions under the BDA Act. In view of Sections 17 to 19 of the BDA Act, the corresponding provisions – Sections 4 to 6 of the Land Acquisition Act will not apply to acquisitions under the BDA Act. [Para 47] [114-E-F; 115-E-G]

5.3. The question of repugnancy arises only when both the legislatures are competent to legislate in the same field, that is, when both the Union and State laws relate to a subject in List III of Seventh Schedule of the Constitution. Article 254 has no application except where the two laws relate to subjects in List III. But if the law made by the State Legislature, covered by an Entry in the State List, incidentally touches upon any of the matters in the Concurrent List, it is well-settled that it will not be considered to be repugnant to an existing Central law with respect to such a matter enumerated in the Concurrent List. In such cases of overlapping between mutually exclusive lists, the doctrine of pith and substance would apply. Article 254(1) will have no application if the State law in pith and substance relates to a matter in List II, even if it may incidentally trench upon some item in List III. Where the law covered by an Entry in the State List made by the State Legislature contains a provision which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to the provisions of any existing law with respect to that matter in the Concurrent List, then the repugnant provision in the State List may be void unless it can co-exist and operate without repugnancy to the provisions of the existing law. The BDA Act is an Act to provide for the establishment of a development authority to facilitate and ensure planned growth and development of the City of Bangalore and areas adjacent thereto, and that acquisition of any lands, for such development, is merely incidental to the main object of the Act, that is

development of Bangalore Metropolitan area. In pith and substance, the BDA Act is one which squarely falls under Entry 5 of List II of the Seventh Schedule and is not a law for acquisition of land like the Land Acquisition Act, traceable to Entry 42 of List III of the Seventh Schedule, the field in respect of which is already occupied by the Central Act, as amended from time to time. If at all, BDA Act, so far as acquisition of land for its developmental activities is concerned, in substance and effect will constitute a special law providing for acquisition for the special purposes of BDA and the same will not be considered to be a part of the Land Acquisition Act. The appellant have erroneously assumed that BDA Act is a law referable to Entry 42 of List III, while it is a law referable to Entry 5 of List II. Hence the question of repugnancy and Section 6 of the Land Acquisition Act prevailing over Section 19 of BDA Act would not at all arise. [Para 49] [116-F-H; 117-A-H; 118-A]

M/s. Hoechst Pharmaceuticals vs. State of Bihar **- 1983 (4) SCC 45;** *Megh Raj v. Allah Rakhia* **AIR 1947 PC 72;** *Lakhi Narayan v. Province of Bihar* **AIR 1950 FC 59, relied on.**

Munithimmaiah v. State of Karnataka **2002 (4) SCC 326, referred to.**

5.4. The assumption that a final declaration u/s. 19 has to be preceded by an inquiry, similar to what is contemplated u/s. 5A of Land Acquisition Act, is without any basis. The scheme of BDA Act also contemplates consideration of objections but does not require any personal hearing or inquiry. While the scheme for acquisition under the Land Acquisition Act and the BDA Act contemplates notice to the landholders/persons interested, the procedure thereafter is markedly different. Therefore, it is impermissible to import the requirement of Section 5A of Land Acqusition Act in regard to

acquisitions under the BDA Act. [Para 50] [118-B, F-G; 119-D]

Question (vi) – Re : Non-compliance with Sections 15 to 19 of the BDA Act:

(a) Absence of Specifying and Discrepancy in extract:

6.1. The mere fact that there were some modifications from time to time between the date when the initial proposal was mooted till the issue of the notification u/s. 17(1) and (3) or that some lands were omitted/deleted in the declaration u/s. 19(1) will not affect the validity of the scheme. The changes and modifications are infact contemplated in the process of making the scheme u/ss. 15 to 19 of BDA Act. [Para 56] [123-B-D]

(b) Non-furnishing of material particulars to the Government for the purpose of sanction:

6.2. It cannot be said that the material required for seeking sanction had not been furnished by the BDA to the Government. Section 18 is clear about the material to be furnished by the BDA for seeking sanction of the scheme. On examining the records of the BDA and the Government, the Division Bench recorded a finding that all the required particulars had been furnished so that the Government can apply its mind. In fact, the notings show that in response to the further information sought by the Government, the Authority furnished the required information. The project map was not one of the documents that had to be furnished by the BDA while seeking sanction of the scheme. In fact the scheme report had been submitted on 5.2.2004 itself and that had been made available to the Government. The Government had stated therein that whatever particulars that were required to be furnished, had been furnished and they were satisfied that the scheme required to be sanctioned. It is only thereafter that sanction was granted. [Para 60] [126-D-H; 127-A-B]

(c) Absence of valid sanction by the Government:

6.3. In the instant case, the matter (relating to sanction u/ss. 18(3) of BDA Act) was placed before the Chief Minister who also happened to be the Minister–in-Charge on 20.2.2004. He granted the approval subject to ratification by the Cabinet. In view of the subsequent ratification by the Cabinet there is nothing irregular in the procedure adopted. The delay in ratification was on account of the dissolution of the House. [Para 62] [129-F-H]

6.4. It cannot be said that the sanction is void. Rule 12 requires that the matter should ordinarily be considered at a meeting of the Cabinet. This itself shows that there can be exceptional circumstances where it will not be possible to place it before the Cabinet. The approval granted by the Chief Minister, subject to the ratification of the Cabinet was treated by the Urban Development Department as approval for the sanction u/s. 18(3) and a Government order was made in the name of the Governor granting sanction u/s. 18(3) of the BDA Act. The State Government also issued a final declaration u/s. 19(1) of BDA Act. It is thus evident that the State Government proceeded on the basis that the order of approval of the Chief Minister for the sanction, was sufficient for grant of sanction. Even if it is to be assumed that such approval was irregular as it was made subject to ratification, as the ratification was subsequently made, the challenge for want of proper approval of the Cabinet for the sanction cannot be accepted. [Para 63] [130-A-D]

Question (vii) : Re : Discrimination, malafides and arbitrariness :

7.1. The State Government granted sanction for

acquisition of 2750 acres after noting that 589 acres 12 guntas was excluded from the proposed extent of 3339 acres 12 guntas, after considering the representations received in pursuance of notices issued u/s. 17(5) of BDA Act. But when the cases came up before the High Court and this court, the categorical case of BDA is that the total area notified u/s. 17(1) and (3) of the BDA Act, was 3839 acres 12 guntas and that the area deleted/excluded was 1089 acres 12 guntas. How the preliminary notification extent area increased by 500 acres and how the area deleted also increased exactly by 500 acres is not properly explained and is virtually a mystery. [Para 64] [131-D-F]

7.2. The BDA does not seriously dispute the fact that there were some amount of arbitrariness and discrimination in the matter of inclusions and exclusions. Apart from that the BDA has not come up with true and correct position. The break up of deletions and the reasons for such deletions have not been disclosed. The extent of deletion without explanation has jumped from 589.12 acres to 1089.12 acres. The BDA has not chosen to explain the exact extent of the Government land involved. Even the map produced showing the 2750 acres of acquired land and 1089 acres 12 guntas of deleted area contains several discrepancies. [Para 69, 70] [134-C-F]

7.3. The acquisition was for planned development of the city and to avoid haphazard growth. But when the layout plan is examined with reference to the preliminary notification and final declaration, several startling facts emerge. Pick and choose method was adopted with reference to two villages. Haphazard and arbitrary exclusions are in several other villages also, though not to the extent in the above-mentioned two villages. [Para 72, 73] [135-G-H; 136-A, G]

7.4. The object of establishing a development authority is to provide for orderly and planned development so that the haphazard growth of a city is checked. Large tracts of lands running into hundreds of acres are acquired to have integrated layouts. [Para 74] [138-B; 139-A]

7.5. If authorities like BDA notify 3000 acres of land for development and then delete from the proposed acquisition several pockets which aggregate to about 1000 to 1500 acres, then the result is obvious. There will be no integrated development at all. What was intended to be a uniform, contiguous and continuous layout of 3000 acres will get split into small pockets which are not connected with the other pockets or will be intersected by own illegal pockets of private colonies thereby perpetuating what was intended to be prevented, that is haphazard growth without proper infrastructure. [Para 75] [140-B-C]

7.6. The deletion from proposed acquisition should be only with regard to areas which are already well developed in a planned manner. Sporadic small unauthorised constructions in unauthorised colonies/ layouts, are not to be deleted as the very purpose of acquisition for planned development is to avoid such unauthorised development. If hardship is the reason for such deletion, the appropriate course is to give preference to the land/plot owners in making allotments and help them to resettle and not to continue the illegal and haphazard pockets merely on the ground that some temporary structure or a dilapidated structure existed therein. A development authority should either provide orderly development or should stay away from development. The power of deletion and withdrawal unless exercised with responsibility and fairly and reasonably, will play havoc with orderly development, will add to haphazard and irregular growth and create

discontent among sections of society who were not fortunate to have their lands deleted. [Paras 76 and 77] [141-C-G]

7.7. Single Judge as also the Division Bench of High Court have concurrently found that BDA had indulged in pick and choose deletions and acquisitions. They have found discrimination and irregularities, both in initial omission of certain lands and in deleting of some lands which were notified. They have also recorded a finding that having regard to the nature of deletions, the required lands do not form a continuous or contiguous area and acquisition of small extents of land surrounded by large chunks of un-acquired lands and lands which have been omitted from acquisition would make the development of acquired pockets exceedingly difficult. [Para 78] [142-D-E]

7.8. The Division Bench was of the view that quashing of the entire acquisition may not be the remedy. It, therefore, decided to salvage the situation by issuing a series of directions, whereby the land owners were permitted to apply for deletion of their lands also from acquisition on the ground that (a) the lands were situated within green belt area; (b) the lands were totally built up; (c) the lands had buildings constructed by charitable, educational and/or religious institutions; (d) the lands were used for nurseries; (e) lands where running factories had been set up; and (f) lands were similar to the adjoining lands which were not notified for acquisition. The Court directed that if the BDA comes to the conclusion that the lands of applicants were released are similar to those which have been excluded from acquisition their lands should also be deleted from acquisition. [Para 79] [142-F-H; 143-A]

7.9. The fact that an Authority has extended favours illegally in the case of several persons cannot be a

ground for courts to issue a mandamus directing repetition thereof, by applying the principle of equality. Article 14 guarantees equality before law and not equality in subverting law nor equality in securing illegal benefits. But courts cannot be silent bystanders if acquisition process is used by officers of the Authority with ulterior or *malafide* motives. [Para 81] [146-D-F]

Chandigarh Admn. and Anr. v. Jagjit Singh and Anr. **1995 (1) SCC 745;** *Gurshanan Singh and Ors. v. New Delhi Municipal Committee and Ors.* **1996 (2) SCC 459;** *State of Haryana v. Ram Kumar Mann* **1997 (3) SCC 321, relied on**

7.10. A land owner is not entitled to seek deletion of his land from acquisition, merely on the ground that lands of some others have been deleted. He should make out a justifiable cause for deleting his land from acquisition. If the Rules/Scheme/Policy provides for deletion of certain categories of land and if the petitioner falls under those categories, he will be entitled to relief. But if under the Rules or Scheme or policy for deletion, his land is not eligible for deletion, his land cannot be deleted merely on the ground that some other land similarly situated had been deleted (even though that land also did not fall under any category eligible to be deleted), as that would amount to enforcing negative equality. But where large extents of land of others are indiscriminately and arbitrarily deleted, then the court may grant relief, if on account of such deletions, the development scheme for that area has become inexecutable or has resulted in abandonment of the scheme. Alternatively, if a common factor can be identified in respect of other lands which were deleted, and if the petitioner's land also has that common factor, relief can be granted on the ground that the Authority had adopted the common factor as the criterion in the case of others and therefore adopting the same yardstick, the land of petitioners also should be deleted. These principles may be kept in view while

implementing direction of the Judgment of the Division Bench of the High Court. [Para 82] [148-G-H; 149-A-D]

7.11. Frequent complaints and grievances in regard to the following areas, with reference to the prevailing system of acquisitions governed by Land Acquisition Act,1894, requires the urgent attention of the State Governments and development authorities: (i) absence of proper or adequate survey and planning before embarking upon acquisition; (ii) indiscriminate use of emergency provisions in Section 17 of the Land Acquisition Act; (iii)notification of areas far larger than what is actually required, for acquisition, and then making arbitrary deletions and withdrawals from the acquisitions; (iv)offer of very low amount as compensation by Land Acquisition Collectors, necessitating references to court in almost all cases; (v) inordinate delay in payment of compensation; and (vi) absence of any rehabilitatory measures. [Para 84] [152-C-G]

Special Land Acquisition Officer v. Mahaboob **2009 (3) SCALE 263, referred to.**

7.12. There are several avenues for providing rehabilitation and economic security to land-losers. They can be by way of offering employment, allotment of alternative lands, providing housing or house plots, providing safe investment opportunities for the compensation amount to generate a stable income, or providing a permanent regular income by way of annuities. The nature of benefits to the landlosers can vary depending upon the nature of the acquisition. For this limited purpose, the acquisitions can be conveniently divided into three broad categories: (i) Acquisitions for the benefit of the general public or in national interest; (ii) Acquisitions for economic development and industrial growth; *and* (iii) Acquisitions for planned development of urban areas. [Para 85] [153-B-F]

7.13. Acquisitions of the first kind, does not normally create any resistance or hostility. But in acquisitions of the second kind, where the beneficiaries of acquisition are industries, business houses or private sector companies and in acquisitions of the third kind where the beneficiaries are private individuals, there is a general feeling among the land-losers that their lands are taken away, to benefit other classes of people; that their lands are given to others for exploitation or enjoyment, while they are denied their land and their source of livelihood. When this grievance and resentment remains unaddressed, it leads to unrest and agitations. The solution is to make the land-losers also the beneficiaries of acquisition so that the land-losers do not feel alienated but welcome the acquisition. [Para 86] [154-A-D]

7.14. It is necessary to evolve tailor-made schemes to suit particular acquisitions, so that they will be smooth, speedy, litigation free and beneficial to all concerned. Proper planning, adequate counselling, and timely mediation with different groups of land-losers, should be resorted. [Para 87] [154-E-F]

7.15. In acquisitions of the first kind the State should however ensure that the landloser gets reasonable compensation promptly at the time of dispossession, so that he can make alternative arrangements for his rehabilitation and survival. Where the acquisition is for industrial or business houses the State should act as a benevolent trustee and safeguard the interests of the landlosers. The Land Acquisition Collectors should also become Grievance Settlement Authorities. The various alternatives including providing employment, providing equity participation, providing annuity benefits ensuring a regular income for life, providing rehabilitation in the form of housing or new businesses, should be considered and whichever is found feasible or suitable should be made an integral process of the scheme of

such acquisitions. Where the acquisition is of the third kind, the land-losers can be given a share in the development itself, by making available a reasonable portion of the developed land to the land-loser so that he can either use it personally or dispose of a part and retain a part or put it to other beneficial use. [Para 87] [154-G-H; 155-A, D; 155-E-G]

7.16. There is also a need for the Law Commission and the Parliament to revisit the Land Acquisition Act, 1894, which is more than a century old. There is also a need to remind Development Authorities that they exist to serve the people and not *vice versa*. Any development scheme should be to benefit the society and improve the city, and not to benefit the Development Authority. [Para 88] [156-E-H]

7.17. Where arbitrary and unexplained deletions and exclusions from acquisition, of large extents of notified lands, render the acquisitions meaningless, or totally unworkable, the court will have no alternative but to quash the entire acquisition. But where many land-losers have accepted the acquisition and received the compensation, and where possession of considerable portions of acquired lands has already been taken, and development activities have been carried out by laying plots and even making provisional or actual allotments, those factors have to be taken note of, while granting relief. The Division Bench has made an effort to protect the interests of all parties, on the facts and circumstances, by issuing detailed directions. But implementation of these directions may lead to further litigations and complications. To salvage the acquisition and to avoid hardships to BDA and its allottees and to avoid prolonged further round litigations emanating from the directions of the High Court, a more equitable way would be to uphold the decision of the Division Bench, but subject BDA's actions to certain corrective measures

by requiring it to re-examine certain aspects and provide an option to the landlosers to secure some additional benefit, as an incentive to accept the acquisition. A direction to provide an option to the land-losers to seek allotment of developed plots in lieu of compensation or to provide for preferential allotment of some plots at the prevailing market price in addition to compensation will meet the ends of justice. Such directions will not be in conflict with the BDA (Allotment of sites) Rules, as they are intended to save the acquisitions. [Para 90] [157-G-H; 158-A-D]

Conclusion:

8.1. In regard to the acquisition of lands in two villages, BDA is directed to re-consider the objections to the acquisitions having regard to the fact that large areas were not initially notified for acquisition, and more than 50% of whatever that was proposed for acquisition was also subsequently deleted from acquisition. BDA has to consider whether in view of deletions to a large extent, whether development with respect to the balance of the acquired lands has become illogical and impractical, and if so, whether the balance area also should be deleted from acquisition. If BDA proposes to continue the acquisition, it shall file a report within four months before the High Court so that consequential orders could be passed. [Para 91] [158-G-H; 159-A-B]

8.2. In regard to villages where there are several very small pockets of acquired lands surrounded by lands which were not acquired or which were deleted from the proposed acquisition, BDA may consider whether such small pockets should also be deleted if they are not suitable for forming self contained layouts. The acquisition thereof cannot be justified on the ground that these small islands of acquired land, could be used as a stand alone park or playground in regard to a layout

formed in different unconnected lands in other villages. Similar isolated pockets in other villages should also be dealt with in a similar manner. [Para 91] [159-C-E]

8.3. BDA shall give an option to each writ petitioner whose land has been acquired for the layout in question to accept allotment of 15% (fifteen percent) of the land acquired from him, by way of developed plots, in lieu of compensation (any fractions in excessof 15% may be charged prevailing rates of allotment) or (b) in cases where the extent of land acquired exceeds half an acre, to claim in addition to compensation (without prejudice to seek reference if he is not satisfied with the quantum), allotment of a plot measuring 30' x 40' for every half acre of land acquired at the prevailing allotment price. [Para 91] [159-E-H; 160-A]

Case Law Reference:

2002 (4) SCC 326	**Relied on.**	**Paras 9, 44**
AIR 1958 SC 468	**Followed**	**Para 10**
1963 Supp (1) SCR 912	**Referred to.**	**Para 11**
1988 (4) SCC 419	**Referred to.**	**Para 39**
1994 (3) SCC 1	**Referred to.**	**Para 39**
2002 (3) SCC 533	**Referred to.**	**Para 39**
2002 (4) SCC 326	**Referred to.**	**Para 49**
1983 (4) SCC 45	**Relied on.**	**Para 49**
AIR 1947 PC 72	**Relied on.**	**Para 49**
AIR 1950 FC 59	**Relied on.**	**Para 49**
1995 (1) SCC 745	**Relied on.**	**Para 80**
1996 (2) SCC 459	**Relied on.**	**Para 80**
1997 (3) SCC 321	**Relied on.**	**Para 80**

2009 (3) SCALE 263	**Referred to.**	**Para 83**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4097 of 2010.

From the Judgment & Order dated 25.112005 of the High Court of Karnataka at Bangalore in W.A. Nos. 2625 of 2005, 2626 & 2721 of 2005 alongwith W.P. Nos. 11365 & 14771 of 2005.

With

Civil Appeal Nos. 4133, 4098, 4099, 4100, 4101, 4102, 4103, 4104, 4105, 4106, 4107, 4108, 4109, 4110, 4111, 4112, 4113, 4114, 4115, 4116, 4117, 4118, 4119, 4120, 4121, 4122, 4123, 4124, 4125, 4126, 4127, 4128, 4129, 4130, 4131, 4132 & 4179-80 of 2010, SLP.....(CC/No. 5682 of 2006)

Dushyant A. Dave, V.N. Lakshmi Naraina, K.K. Venugopal, Altaf Ahmed, P. Viswanatha Shetty, P.R. Ramesesh, Kiran Suri, Subramani, S.J. Smith, Girish Ananthamurthy, P.P. Singh, R.S. Hegde, Chandra Prakash, Rahul Tyagi, Savitri Pandy, Roy Abraham, Seema Jain, Himinder Lal, S.N. Bhat, N.P.S. Panwar, D.P. Chaturvedi, D.Pavanesh, Satya Mitra, Joseph Pookkatt, Prashant Kumar, Pooja Dhar, Atrayee Majumdar, Nikhil Majithia, Saurabh Suman Sinha, Dileep Tandon, Shailesh Madiyal, Raka Bijoy Phookan, Hrishikesh Baruah, Arjun Bobde, Mahesh Agarwal, Rishi Agrawala, E.C. Agrawala, Gaurav Goel, S.S. Shamshery, Pramod Kumar (for Dr. Kailash Chand), N.D.R. Ramchandra Rao, Vaijayanthi Girish, T.V. Ratnam, K. Subba Rao, P.S. Dinesh Kumar, Naresh Kaushik, Lalita Kaushik, B.S. Methaila, Amita Kalkal, Parag Goyal, Satish D., Kh. Nobin Singh, Nataraj R., Rajesh Mahale, Radhananda, Raghavendra S. Srivatsa, Rajesh Mahale, K.N. Manjunath, Jagjit Singh Chhabra, K.H. Soma Shekar, Prakash Kumar Singh, Priya Kasyap, Nikhil Nayyar, Ankit Singhal, Vivekananda, V.N. Raghupathy, G.V. Chandrashekar (for Anjana Chandrashekar), R.B. Phookan, (for J.S. Bhatia), S. Balaji, S. Sainivasan, Madhusmita Bora,

S.R. Sharma, M.A. Chinnasamy, K. Krishna Kumar, B.B. Chauhan, Sanjay Parikh, M.Qamaruddin, M. Qumaruddin (for Ambar Qamaruddin), S.K. Kulkarni, Anukur S. Kulkarni, Nirnimesh Dube, M. Gireesh Kumar, S.J. Aristotle, Vijay Kumar, Sanjay R.Hegde, Anil K. Mishra, Vikrant Yadav, Rajesh Srivastava, Krishnan Venugopal, Shashi Kiran Shetty, Sharan Dev Singh Thakur, Pradeep Kr. Bakshi for the appearing parties.

The Judgment of the Court was delivered by

R.V. RAVEENDRAN J. 1. Leave granted. These appeals relate to the challenge of acquisition of lands for formation of Arkavathi layout on the outskirts of Bangalore by the Bangalore Development Authority [for short 'BDA'] under the Bangalore Development Authority Act, 1976 ('BDA Act' or 'Act' for short).

2. On 2.1.2001 the Executive Engineer (North) of BDA submitted a scheme report with detailed estimates for formation of a proposed new layout in an area of 1650 acres spread over twelve villages, to be called as 'Hennur Devanahalli Layout'. On 7.10.2002 after an initial survey, the Additional Land Acquisition Officer of BDA submitted a report proposing that 3000 acres of land in the said twelve villages and two adjoining villages (Chellakere and Kempapura) and suggested that scheme may be called as 'Arkavathi Town or layout' instead of 'Hennur Devanahalli layout'. The Commissioner agreed with the proposal on 8.10.2002 and placed the matter before the Authority (that is the members constituting the Bangalore Development Authority). The Authority in its meeting held on 10.12.2002 considered the proposal and decided to issue preliminary notification under sub-sections (1) and (3) of section 17 of BDA Act proposing to acquire in all about 3000 acres of land in 14 villages. After the said resolution, lands in two more villages (Nagavara and Hebbala) were also included to provide better access to the layout. A preliminary notification dated 3.2.2003 under sub-sections (1) and (3) of section 17 of BDA Act was issued proposing to acquire 3339 acres 12 guntas.

Certain government lands, tanks, grazing lands, tank catchments area, stone quarry, burial grounds were shown in the Schedule to the notification dated 3.2.2003, but their extent was not included in the abstract of lands proposed to be acquired. The abstract apparently referred only to the private lands to be acquired. In the circumstances, a modified preliminary notification was issued in August 2003 published in the Gazette dated 16.9.2003 showing the total extent of land likely to be needed for the purpose of formation of Akravathi Layout as 3839 A, 12 G of land. The said extent of land was situated in the following 16 villages : (1) Dasarahalli (2) Byrathikhane (3) Chellakere (4) Geddalahalli (5) K. Narayanapura (6) Rachenahalli (7) Thanisandra (8) Amaruthahalli (9) Jakkur (10) Kempapura (11) Sampigehalli (12) Srirampura (13) Venkateshapura (14) Hennur (15) Hebbala and (16) Nagavara.

3. Notices were issued to land owners under section 17(5) of the Act giving an opportunity to show cause why the acquisition should not be made. Public notice was also issued in the newspapers inviting objections. No objections were received in regard to 91 acres 7 Guntas. The objections received in regard to 2658 acres were considered and rejected. The Authority decided to seek the sanction of the government for the acquisition of 2750 acres of land, after deleting 1089 A 12 G acres of land from the proposed scheme. On 3.2.2004, the authority passed a resolution to obtain the approval of the state government for implementation of the Arkavathi layout under Section 15(2) of BDA Act and requesting sanction for acquisition of 2750 acres for formation of 28600 sites of different dimensions. The scheme as modified at an estimated cost of Rs. 981.36 crores (in view of the reduction of the area to 2750 acres), along with the draft final notification and relevant records was forwarded by the BDA to the State Government, under cover of letter dated 13.2.2004. After securing certain clarification, by Government Order dated 21.2.2004, the State government accorded

sanction for the scheme under Section 18(3) of the Act. In pursuance of it, the final declaration dated 23.2.2004 was issued by the State Government, under section 19(1) of the Act (published in the Karnataka Gazette on the same day) stating that sanction had been granted for the scheme and declaring that the lands specified in the Schedule thereto in all 2750 acres (a little more or less) were needed for the public purpose of formation of Arkavathi Layout. According to BDA, in pursuance of the same, it made several awards from 12.5.2004 onwards in regard to extent of 1618.38 acres took possession of 1459.37 acres of private land and 459.16 acres of government land in all 1919.13 acres, and formed the layout by laying 14103 plots, apart from roads, drains etc.

4. Several writ petitions were filed challenging the acquisition. A learned Single Judge of the Karnataka High Court by order dated 15.4.2005 allowed the writ petitions and quashed the entire acquisition holding as follows:

(i) BDA had no jurisdiction or authority to take up any development scheme in Bangalore Metropolitan Area having regard to parts IX and IXA of the Constitution read with section 503B of the Karnataka Municipal Corporation Act, 1976.

(ii) There were several discrepancies in the scheme and the scheme was not properly framed. There was also no application of mind by the State Government or proper consideration of the scheme, before according sanction under section 18(3) of the BDA Act.

(iii) BDA Act has to yield to the provisions of the Land Acquisition Act, 1894 ('LA Act' for short) which is a central legislation and the mandatory procedures laid down in the said Central Act had to be applied and followed even in regard to acquisitions under the BDA Act to have a uniformity. Neither the procedures laid down under the LA Act nor the procedures laid down under BDA Act were

followed by BDA in regard to this acquisition.

(iv) As BDA is not elected body having the mandate of the people, and as BDA is subordinate to the state government, it cannot acquire lands for public purpose and the notification under Section 17(1) of BDA Act is bad in law, for non-issue of a notification under Section 4(1) of LA Act by the State Government.

(v) The Acquisition cannot be said to be for public purpose, as BDA did not demonstrate that 3000 acres were required for 28600 plots and no valid reasons were assigned for deleting a large extent of land from the acquisition.

(vi) The Commissioner of BDA could not authorise his subordinate, namely, the Addl. Land Acquisition Officer, to perform duties under section 4(2) of LA Act.

(vii) The 'enquiry' by the Authority to consider the objections to the acquisition was not fair, reasonable or in compliance with the principles of natural justice.

(viii) The action of BDA in forming sites for allotment, even before issuing a notification under section 16(2) of the LA Act (as amended in Karnataka), declaring that possession has been taken, was bad in law.

(ix) The amendment to BDA (Allotment of Sites) Rules, 1984, removing the restrictions on the allottee in regard to alienation/use, had the effect of reducing BDA, a statutory development authority, into a mere dealer/estate agent in real estate.

(x) Deletion of lands similar to and contiguous to the lands of the appellants, while acquiring their lands, amounts to hostile discrimination violative of Article 14 of the Constitution.

5. Feeling aggrieved, the BDA filed writ appeals which were allowed by a division bench of the High Court, by a common judgment dated 25.11.2005 and upheld the acquisition. The Division Bench however affirmed the finding of discrimination in acquisition of some lands while deleting similarly placed adjacent lands and gave liberty to land owners to file applications seeking withdrawal from acquisition on the ground of discrimination. The Division Bench held:

(i) BDA is not a municipality and the provisions of the BDA Act, which is a special legislation, are not inconsistent with Parts IX and IX(a) of the Constitution of India or the provisions of the Karnataka Municipal Corporations Act, 1976 or the Karnataka Municipalities Act, 1964; and the provisions of BDA Act are neither impliedly nor expressly repealed by Part IX or IX(A) of the Constitution.

(ii) BDA Act is a special self-contained Code enacted by the State Government for development of Bangalore Metropolitan Area under power traceable to Entry 5 of List II of Seventh Schedule. Sections 4, 5A and 6 of LA Act are not applicable and do not override the provisions of Section 17 to 19 of the BDA Act and the provisions of LA Act do not override the provisions of BDA Act.

(iii) The acquisition was for a public purpose and there is no violation of Article 19 or Article 21 of the Constitution of India.

(iv) The Commissioner of BDA, in his capacity as its Chief Executive and Administrative Officer is empowered to authorise his subordinates to enter upon the lands in question to carry out survey and measurements. The error in invoking Section 4(2) of LA Act instead of Section 52 of BDA Act for entry and measurements is only mentioning of a wrong provision of law and does not vitiate the authorisation under Section 52 of BDA Act.

(v) The sanction accorded by the State Government under Section 18(3) of BDA Act is valid and does not suffer from the vice of non-application of mind. The procedure adopted namely Chief Minister approving the scheme subject to ratification by the Cabinet and the subsequent ratification is valid and not open to question by appellants.

(vi) Though there was discrimination in the matter of acquisition, that would not invalidate the acquisition and the same could be set right by consequential directions.

6. The Division Bench therefore set aside the order of the learned Single Judge. It also allowed a writ appeal filed by a former Chief Minister and expunged certain unwarranted remarks against the former Chief Minister in para 30 of the learned Single Judge's order and further held as follows :

(C). The acquisition of the lands for the formation of Akravathi Layout is upheld subject to the following conditions :

(a) In so far as the site owners are concerned they are entitled to the following reliefs :

(i) These site owners/writ petitioners shall register themselves as applicants for allotment under the Bangalore Development Authority (Allotment of Site) Rules 1984 within a period of two months from today (extendable by another one month by BDA, if sufficient cause is shown). Petitioners will have to pay the registration fee. They need not pay initial deposit as their sites have been acquired and they have agree not to receive compensation in regard to the sites under this arrangement.

(ii) The petitioners shall file applications for allotment of sites to BDA within three months from today in the prescribed form stating that they are applicants who were the petitioners in these writ petitions.

Petitioners shall file their documents with BDA within a period of two months to enable BDA to verify the same.

(iii) BDA will treat them as applicants entitled to priority in allotment and allot each of them a site measuring 30 x 40 in Arkavathi layout or in any other nearby layouts in Bangalore at the prevailing allotment prices subject to petitioners satisfying the twin requirements for allotment under the BDA (Allotment of sites) Rules 1984, that they must be the residents of Bangalore (ten year domicile) and should not be owning any residential property in Bangalore.

(iv) If there are no rival claimants for compensation in regard to the plots claimed by petitioners, and if the ownership of the petitioners in regard to their respective sites which have been acquired is not disputed, BDA shall calculate the compensation payable to the petitioners and give credit to the same by adjusting the same towards the allotment price for the site to be allotted and call upon the petitioners to pay the balance. Petitioners shall be given six months time for making payment. [To enable petitioners to know the amount of compensation which they will be entitled and to ascertain how much balance they should pay].

(v) If there are rival claimants in regard to the survey numbers or the sites or if any petitioners title in regard to the sites are challenged, BDA shall make a reference in regard to the compensation in regard to such site/land in question, to the civil court under section 30 of the Land Acquisition Act, 1894, and the petitioners will have to sort out the matter before the reference court. In that event, such petitioners will have to pay the full allotment price within the

time stipulated, without seeking adjustment of compensation for the acquired site.

(vi) If any of the petitioners does not fulfil the requirements for allotment, under the allotment rules, their cases may be considered for allotment of 20 x 30 sites as per the Rules containing incentive scheme for voluntary surrender of lands. For the purpose of the said scheme, such petitioners will be deemed to have voluntarily surrendered the sites.

(vii) The above scheme will be available to only those who are owners, as a consequence of execution of registered sale deeds in their favour prior to the date of preliminary notification (and not to GPA/ Agreement holders).

(D) In so far as the land owners excluding the site owners, are entitled to the following reliefs : -

(i) All the petitioners who are the land owners who are seeking dropping of the acquisition proceeding in so far as their respective lands are concerned, on the ground that (a) their lands are situated within green belt area; (b) they are totally built up; (c) properties wherein there are buildings constructed by charitable, educational and/or religious institutions (d) nursery lands; (e) who have set up factories (f) their lands are similar to the lands which are adjoining their lands but not notified for acquisition at all, are permitted to make appropriate application to the authorities seeking such exclusion and exemption and producing documents to substantiate their contentions within one month from the date of this order.

It is made clear that the BDA shall consider such

request keeping in mind the status of the land as on the date of preliminary notification and to exclude any developments, improvements, constructions put up subsequent to the preliminary notification and they decided whether their cases as similar to that of the land owners whose lands, are notified for acquisition, notified and whose objections were upheld and no final notification is issued.

In the event of BDA comes to the conclusion that the lands of those persons are similarly placed, then to exclude those lands from acquisition.

(ii) Petitioners who are interested in availing this benefit shall make appropriate application within 30 days from the date of this order and thereafter the BDA shall give notice to these persons, hear them and pass appropriate orders expeditiously.

(iii) Till the aforesaid exercise is undertaken by the BDA and the application filed by the petitioners either for allotment of site or for denotifying or exemption sought for are considered their possession shall not be disturbed and the existing construction shall not be demolished. After consideration of the applications, in the light of the aforesaid directions, if the lands are not excluded then the BDA is at liberty to proceed with the acquisition.

(E) The BDA is directed to exclude the land bearing Sy. No.9/1 measuring 0.27, 10/2 measuring 1.16 and 10/3 measuring 1.02 of land which are the subject matter of WP Nos. 1353-54 of 2005 filed by University of Agricultural Science Employees House Building Cooperative Society from acquisition.

(F) W.P. No.28087 of 2004 is allowed and acquisition of land in respect of 53 acres of land in Nagavara village

which is the subject matter of the aforesaid writ petition is quashed.

7. The said judgment is challenged by the land-losers on several grounds. On the contentions urged, the following questions arise for consideration :

(i) Whether BDA Act, in so far as it provides for compulsory acquisition of property, is still-born and ineffective as it did not receive the assent of the President, as required by Article 31(3) of the Constitution of India.

(ii) Whether the provisions of the BDA Act, in particular section 15 read with section 2(c) dealing with the power of the Authority to draw up schemes for development for Bangalore Metropolitan Area became inoperative, void or was impliedly repealed, by virtue of Parts IX and IX(A) of the Constitution inserted by the 73rd and 74th Amendments to the Constitution.

(iii) Whether the sixteen villages where the lands have been acquired, fall outside the Bangalore Metropolitan Area as defined in section 2(c) of the BDA Act and therefore, the Bangalore Development Authority has no territorial jurisdiction to make development schemes or acquire lands in those villages.

(iv) Whether the amendment to section 6 of the LA Act requiring the final declaration to be issued within one year from the date of publication of the preliminary notification is applicable to the acquisitions under the BDA Act; and whether the declaration under section 19(1) of BDA Act, having been issued after the expiry of one year from the date of the preliminary notification under section 17(1) and (3) of BDA Act, is invalid.

(v) Whether the provisions of sections 4, 5A, 6 of LA Act, would be applicable in regard to acquisitions under the

BDA Act and whether non-compliance with those provisions, vitiate the acquisition proceedings.

(vi) Whether the development scheme and the acquisitions are invalid for non-compliance with the procedure prescribed under sections 15 to 19 of the BDA Act in regard to :

(a) absence of specificity and discrepancy in extent of land to be acquired;

(b) failure to furnish material particulars to the government as required under section 18(1) read with section 16 of the BDA Act; and

(c) absence of valid sanction by the government, under section 18(3) of the BDA Act.

(vii) Whether the deletion of 1089 A.12G. from the proposed acquisition, while proceeding with the acquisition of similar contiguous lands of appellants amounted to hostile discrimination and therefore the lands of appellants also required to be withdrawn from acquisition.

Question (i) – Re : Invalidity on account of non-compliance with Article 31(3) of the Constitution.

8. The contention of the appellants is as under : BDA Act was enacted by the Karnataka Legislature, received the assent of the Governor on 2.3.1976, was published in the Karnataka Gazette dated 8.3.1976 and brought into force with retrospective effect from 20.12.1975. BDA Act provides for compulsory acquisition of property, vide provisions contained in Chapters III and IV. When the BDA Act was enacted and brought into effect, Articles 19(1)(f) and 31 of the Constitution were in force. Article 31(3) provided that no law providing for acquisition of property for public purposes, made by a State Legislature shall have effect unless such law has been reserved for the consideration of the President and has received his

assent. BDA Act was not reserved for the consideration of the President, nor received his assent. Therefore, the BDA Act, in so far as it provides for acquisition of property, is still-born and ineffective. It is submitted that though Article 19(1)(f) and Article 31 were omitted from the Constitution with effect from 20.6.1979, as such omission was not with retrospective effect, any law made prior to 20.6.1979 should be tested on the touchstone of the said articles.

9. Article 31 of the Constitution dealt with compulsory acquisition of property. Clauses (1) to (3) of the said Article relevant for our purpose are extracted blow:

"(1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession of such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent."

By the Constitution (Forty Fourth Amendment) Act, 1978, the right to property was deleted from the list of fundamental rights by omitting sub-clause (f) of clause (1) of Article 19. Simultaneously, Article 31 was also deleted with effect from 20.6.1979 by the Constitution (Forty Fourth Amendment) Act, 1978. It is no doubt true that the BDA Act received only the

assent of the Governor and was neither reserved for the assent of the President nor received the assent of the President. As clause (3) of Article 31 provided that a law providing for acquisition of property for public purposes, would not have effect unless such law received the assent of the President, it was open to a land owner to contend that the provisions relating to acquisition in the BDA Act did not come into effect for want of President's assent. But once Article 31 was omitted from the Constitution on 20.6.1979, the need for such assent disappeared and the impediment for enforcement of the provisions in the BDA Act relating to acquisition also disappeared. Article 31 did not render the enactment a nullity, if there was no assent of the President. It only directed that a law relating to compulsory acquisition will not have effect unless the law received the assent of the President. As observed in *Munithimmaiah v. State of Karnataka* [2002 (4) SCC 326], acquisition of property is only an incidental and not the main object and purpose of the BDA Act. Once the requirement of assent stood deleted from the Constitution, there was absolutely no bar for enforcement of the provisions relating to acquisition in the BDA Act. The Karnataka Legislature had the legislative competence to enact such a statute, under Entry 5 of List II of the Seventh Schedule to the Constitution. If any part of the Act did not come into effect for non-compliance with any provision of the Constitution, that part of the Act may be unenforceable, but not invalid.

10. Our view is fortified by the following observations of a Constitution Bench of this Court in *M.P.V. Sundararamier & Co. v. The State of Andhra Pradesh & Anr.* [AIR 1958 SC 468] :

> "Now, in considering the question as to the effect of unconstitutionality of a statute, it is necessary to remember that unconstitutionality might arise either because the law is in respect of a matter not within the competence of the legislature, or because the matter itself being within its competence, its provisions offend some constitutional restrictions. In a Federal Constitution where legislature powers are distributed between different bodies, the competence of the legislature to enact a particular law must depend upon whether the topic of that legislation has been assigned by the Constitution Act to that legislature. Thus, a law of the State on an Entry in List I, Schedule VII of the Constitution would be wholly incompetent and void. But the law may be on a topic within its competence, as for example, an Entry in List II, but it might infringe restrictions imposed by the Constitution on the character of the law to be passed, as for example, limitations enacted in Part III of the Constitution. Here also, the law to the extent of the repugnancy will be void. Thus, a legislation on a topic not within the competence of the legislature and a legislation within its competence but violative of constitutional limitations have both the same reckoning in a court of law; they are both of them unenforceable. But does it follow from this that both the laws are of the same quality and character, and stand on the same footing for all purposes? This question has been the subject of consideration in numerous decisions in the American Courts, and the preponderance of authority is in favour of the view that *while a law on a matter not within the competence of the legislature is a nullity, a law on a topic within the competence but repugnant to the constitutional prohibitions is only unenforceable*. This distinction has a material bearing on the present discussion. If a law is on a field not within the domain of the legislature, it is absolutely null and void, and a subsequent cession of that field to the legislature will not have the effect of breathing life into what was a still-born piece of legislation and a fresh legislation on the subject would be requisite. *But if the law is in respect of a matter assigned to the legislature but its provisions disregard constitutional prohibitions, though the law would be unenforceable by reason of those prohibitions, when once they are removed, the law will*

become effective without re-enactment."

(*emphasis supplied*)

11. The appellants relied upon the following observations in *Mahendra Lal Jain v. State of UP & Ors*. [1963 Supp (1) SCR 912] :-

"Parliament and the Legislatures of States have power to make laws in respect of any of the matters enumerated in the relevant Lists in the Seventh Schedule and that power to make laws is subject to the provisions of the Constitution, including Art. 13, i.e., the power is made subject to the limitations imposed by Part III of the Constitution. The general power to that extent is limited. The Legislature, therefore, has no power to make any law in derogation of the injunction contained in Art. 13. Art. 13(1) deals with laws in force in the territory of India before the commencement of the Constitution and such laws insofar as they are inconsistent with the provisions of Part, III shall to the extent of such inconsistency be void. The clause, therefore, recognises the validity of the pre-Constitution laws and only declares that said laws would be void thereafter to the extent of their inconsistency with Part III; whereas clause (2) of that Article imposes a prohibition on the State making laws taking away or abridging the rights conferred by Part III, and declares that laws made in contravention of this clause shall to the extent of the contravention be void. There is a clear distinction between the two clauses. Under clause (1) a pre-Constitution law subsists except to the extent of its inconsistency with the provisions of Part III, whereas no post-Constitution law can be made contravening the provisions of Part III and therefore the law to that extent, though made, is a nullity from its inception".

(emphasis supplied)

On a careful consideration of the aforesaid observations, we are of the view that the said decision does not in any way express any view contrary to the clear enunciation of law in *Sundaramier.* In *Mahendra Lal Jain,* this court explained the difference between pre-constitutional laws governed by Article 13(1) and post-constitutional laws which are governed by Article 13(2) and held that any post-constitutional law made in contravention of provisions of Part III, to the extent of contravention is a nullity from its inception. Let us now examine whether any provision of the BDA Act violated any provisions of Article 31 in part III of the Constitution. Clause (1) of Article 31 provided that no person shall be deprived of his property save by authority of law. As we are examining the validity of a law made by the state legislature having competence to make such law, there is no violation of Article 31(1). Clause (2) of Article 31 provided that no law shall authorise acquisition unless it provided for compensation for such acquisition and either fixed the amount of compensation, or specified the principles on which, and the manner in which, the compensation was to be determined and given. BDA Act, does not fix the amount of compensation, but Section 36 thereof clearly provides that the acquisition will be regulated by the provisions of the Land Acquisition Act, 1894 so far as they are applicable. Thus the principles on which the compensation is to be determined and the manner in which the compensation is to be determined set out in the LA Act, become applicable to acquisitions under BDA Act. Thus there is no violation of Article 31(2). Article 31(3) merely provides that no law providing for acquisition *shall have effect* unless such law has received the assent of the President. Article 31(3) does not specify any fundamental right, but relates to the procedure for making a law providing for acquisition. As noticed above, it does not nullify any laws, but postpones the enforcement of a law relating to acquisition, until it receives the assent of the President. There is therefore no *violation* of Part III of the Constitution that can lead to any part of the BDA Act being treated as a nullity. As stated above, the effect of Article 31(3) was that enforcement

of the provisions relating to acquisition was not possible/permissible till the assent of the President was received. Therefore, once the requirement of assent disappeared, the provisions relating to acquisition became enforceable.

Question (ii) – Re : Invalidity with reference to Parts IX and IX-A of the Constitution

12. Part IX and IX-A of the Constitution, relating to Panchayats and Municipalities were inserted by the Constitution (Seventy-third Amendment) Act, 1992 and Constitution (Seventy-fourth Amendment) Act, 1992. Part IX and IX-A came into force on 24.4.1993 and 1.6.1993 respectively. The object of Part-IX was to introduce the Panchayat system at grass root level. As Panchayat systems were based on state legislations and their functioning was unsatisfactory, the amendment to the Constitution sought to strengthen the Panchayat system by giving a uniform constitutional base so that the Panchayats become vibrant units of administration in the rural area by establishing strong, effective and democratic local administration so that there can be rapid implementation of rural development programmes. The object of Part-IX as stated in the Statement of Objects & Reasons is extracted below:-

> "In many States, local bodies have become weak and ineffective on account of variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-Government.
>
> Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the Constitution, particularly for -
>
> (i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to:

> (a) the functions and taxation powers, and
>
> (b) arrangements for revenue sharing.
>
> (ii) ensuring regular conduct of elections.
>
> (iii) ensuring timely elections in the case of supersession; and
>
> (iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women".

13. We may first refer to the provisions of Part IX in brief. Clause (d) and (e) of Article 243 define 'Panchayat' and 'Panchayat area'. Article 243B deals with constitution of Panchayats, Article 243C deals with composition of Panchayats. Article 243D relates to reservation of seats. Article 243E stipulates the duration of Panchayats. Article 243F prescribes the disqualification for membership. 243G refers to powers, authorities and responsibilities of Panchayats. Article 243H refers to power to impose taxes by Panchayats and funds of the Panchayats. Article 243I directs the constitution of Finance Commissions to review the financial position. Article 243J relates to audit of accounts of Panchayats. Article 243K relates to election to Panchyats. Article 243M enumerates the areas to which the part will not apply. Article 243N provides for continuance of existing laws and Panchayats.

14. Similarly, in Part IX-A relating to Municipalities, the terms 'Metropolitan Area', 'Municipal Area', and 'Municipality' are defined by Clauses (c), (d) and (e) of Article 243P. Article 243Q and Article 243R deals with the constitution and composition of Municipalities. Article 243S deals with constitution and composition of Ward Committees. Article 243T deals with reservation of seats. Article 243U deals with duration of Municipalities. Article 243V prescribes the disqualifications for membership. Article 243W enumerates the powers, authority and responsibilities of Municipalities. Article 243X empowers

the legislature by law authorise municipalities to levy, collect and appropriate taxes, duties, tolls and fees. Article 243Y requires the Finance Commission constituted under Article 243I to review the financial position of Municipalities and make recommendations, Article 243Z requires audit of accounts of Municipalities. Article 243ZA relates to elections. Article 243ZC refers to the areas to which the part will not apply. Article 243ZD requires the constitution of Committees for district planning. Article 243ZE requires the constitution of Metropolitan Planning Committees for every Metropolitan Area and preparation of a draft development plan for the Metropolitan Area as a whole. Article 243ZF provides for the continuance of existing laws and Municipalities for a period of one year.

15. We may now extract some of the Articles in Part-IXA with reference to Municipalities, relevant for our purpose:-

"243P. Definitions.- In this Part, unless the context otherwise requires-

xxx xxx xxx

(c) "Metropolitan area" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;

(d) "Municipal area" means the territorial area of a Municipality as is notified by the Governor;

(e) "Municipality" means an institution of self-government constituted under article 243Q;

xxx xxx xxx

"243Q. *Constitution of Municipalities*.- (1) There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name callled) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:"

xxx xxx xxx

"243W. *Powers, authority and responsibilities of Municipalities, etc.*— Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters

listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule".

xxx xxx xxx

"243ZD. *Committee for district planning*.-(1) There shall be constituted in every State at the district level a District

Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole."

xxx xxx xxx

"243ZE. *Committee for Metropolitan planning.*-(1) There shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

(2) The Legislature of a State may, by law, make provision with respect to-

(a) the composition of the Metropolitan Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;

(c) the representation in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;

(d) the functions relating to planning and coordination for the

Metropolitan area which may be assigned to such Committees;

(e) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every Metropolitan Planning Committee shall, in preparing the draft development plan,-

(a) have regard to-

(i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;

(ii) matters of common interest between the Municipalities and the Panchayats, including coordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(iii) the overall objectives and priorities set by the Government of India and the Government of the State;

(iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

"243ZF. *Continuance of existing laws and Municipalities.*-Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution

(Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State".

In Karnataka, the Municipal Corporations for larger urban areas are constituted and governed by the Karnataka Municipal Corporations Act, 1976 ('KMC Act' for short) and the Municipal Councils for smaller urban areas are constituted and governed by the Karnataka Municipalities Act, 1964 ('KM Act' for short). Regulation of planned growth of land use and development and making and execution of town planning schemes in the State of Karnataka is governed by the Karnataka Town and Country Planning Act, 1961 ('Town Planning Act' for short).

16. The KMC Act was exhaustively amended by Amendment Act 35 of 1994 to bring the said Act in conformity with Chapter IXA of the Constitution of India. Section 3 empowers the Governor to specify by notification larger urban areas, having regard to the factors mentioned in Clauses (a) to (f) of Sub-section (1) and the requirements of Clause (a) to (d) of the proviso to that Sub-Section. Sub-section (1A) provides that any area specified as a larger urban area by the Governor under sub-section (1) shall be deemed to be a city and a Corporation shall be established for the said city. Section 503-A relating to preparation of a development plan and Section 503-B relating to constitution of Metropolitan Planning

Committees, inserted in KMC Act by Amendment Act 35 of 1994 are extracted below:

"503-A. *Preparation of development plan:* Every Corporation shall prepare every year a development plan and submit to the District Planning Committee constituted under Section 310 of the Karnataka Panchayat Raj Act, 1993, or as the case may be the Metropolitan Planning Committee constituted under Section 503B of this Act.".

"503-B. *Metropolitan Planning Committee*: (1) The Government shall constitute a Metropolitan Planning Committee for the Bangalore Metropolitan Area to prepare a draft development plan for such area as a whole.

Explanation: For the purpose of this section "Bangalore Metropolitan Area" means an area specified by the Governor to be a metropolitan area under clause (c) of Article 243-P of the Constitution of India.

(2) The Metropolitan Planning Committee shall consist of thirty persons of which –

(a) such number of persons, not being less than two-thirds of the members of the committee, as may be specified by the Government shall be elected in the prescribed manner by, and from amongst, the elected members of the Corporations, the Municipal Councils and Town Panchayats, and the Adhyakshas and Upadhyakshas of Zila Panchayats, Taluk Pachayats and Grama Panchayats in the metropolitan area in proportion to the ratio between the population of the city and other municipal area and that of the areas in the jurisdiction of Zilla Panchayat, Taluk Panchayat and Grama Pachayat;

(b) such number of representatives of –

(i) The Government of India and the State Government as

may be determined by the State Government, and nominated by the Government of India or as the case may be, the State Government;

(ii) such organisations and institutions as may be deemed necessary for carrying out of functions assigned to the committee, nominated by the State Government;

(3) All the members of the House of the People and the State Legislative Assembly whose constituencies lie within the Metropolitan area and the members of the Council of State and the State Legislative Council who are registered as electors in such area shall be permanent invitees of the committee.

(4) The Commissioner, Bangalore Development Authority shall be the Secretary of the Committee.

(5) The Chairman of the Metropolitan Planning Committee shall be chosen in such manner as may be prescribed.

(6) The Metropolitan Planning Committee shall prepare a draft development plan for the Bangalore Development Area as a whole.

(7) Metropolitan Planning Committee shall, in preparing the draft development plan –

(a) have regard to-

(i) the plans prepared by the local authorities in the Metropolitan Area;

(ii) matters of common interest between the local authorities including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(iii) the overall objectives and priorities set by the

Government of India and the State Government;

(iv) the extent and nature of the investments likely to be made in the Metropolitan area by agencies of the Government of India and of the State Government and the available resources whether financial or otherwise;

(a) Consult such institutions and organisations as the Governor may, by order, specify.

(8) The Chairman of the Metropolitan Planning Committee shall forward the development plan, as recommended by such committee, to the State Government".

17. The BDA Act was enacted to establish a development authority for the development of city of Bangalore and areas adjacent thereto and for matters connected therewith. The statement of objects and reasons of the said Act reads thus:

"Bangalore City with its population (as per last census) is a Metropolitan City. Different Authorities like the City of Bangalore Municipal Corporation, the City Improvement Trust Board, the Karnataka Industrial Area Development Board, the Housing Board and the Bangalore City Planning Authority are exercising jurisdiction over the area. Some of the functions of these bodies like development, planning etc., are overlapping creating thereby avoidable confusion, besides hampering co-ordinated development. It is, therefore, considered necessary to set up a single authority like the Delhi Development Authority for the city areas adjacent to it which in course of time will become part of the city.

For the speedy implementation of the above said objects as also the 20-point programme and for establishing a co-coordinating Central Authority, urgent action was called for. Moreover, the haphazard and irregular growth would

continue unless checked by the Development Authority and it may not be possible to rectify or correct mistakes in the future."

Section 3 of BDA Act relates to constitution and incorporation of the Bangalore Development Authority. It provides for the State Government, by notification, constituting an Authority for the Bangalore Metropolitan Area, to be called as Bangalore Development Authority. Section 2(c) of the BDA Act defines 'Bangalore Metropolitan Area' as follows:

"Bangalore Metropolitan Area" means the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949 (Karnataka Act 69 of 1949), the areas where the City of Bangalore Improvement Act, 1945 (Karnataka Act 5 of 1945) was immediately before the commencement of this Act in force and such other areas adjacent to the aforesaid as the Government may from time to time by notification specify.

Clause (j) of Section 2 of the BDA Act defines "development" as follows:

"Development" with its grammatical variations means the carrying out of building, engineering, or other operations in or over or under land or the making of any material change in any building or land and includes redevelopment.

Section 15 empowers Authority to undertake works and incur expenditure for development etc. The said section is extracted below:-

"15. *Power of Authority to undertake works and incur expenditure for development, etc* **.-** (1) The Authority may,-

(a) draw up detailed schemes (hereinafter referred to as "development scheme") for the development of the Bangalore Metropolitan Area ; and

(b) with the previous approval of the Government, undertake from time to time any works for the development of the Bangalore Metropolitan Area and incur expenditure therefor and also for the framing and execution of development schemes.

(2) The Authority may also from time to time make and take up any new or additional development schemes,-

(i) on its own initiative, if satisfied of the sufficiency of its resources, or

(ii) on the recommendation of the local authority if the local authority places at the disposal of the Authority the necessary funds for framing and carrying out any scheme; or

(iii) otherwise.

(3) Notwithstanding anything in this Act or in any other law for the time being in force, the Government may, whenever it deems necessary require the Authority to take up any development scheme or work and execute it subject to such terms and conditions as may be specified by the Government".

Section 16 enumerates the particulars to be provided in a development scheme and the said section is extracted below:-

"16. *Particulars to be provided for in a development scheme***.-** Every development scheme under section 15,-

(1) shall, within the limits of the area comprised in the scheme, provide for,-

(a) the acquisition of any land which, in the opinion of the Authority, will be necessary for or affected by the execution of the scheme ;

(b) laying and re-laying out all or any land including the

construction and reconstruction of buildings and formation and alteration of streets;

(c) drainage, water supply and electricity ;

(d) the reservation of not less than fifteen percent of the total area of the layout for public parks and playgrounds and an additional area of not less than ten percent of the total area of the layout for civic amenities.

(2) may, within the limits aforesaid, provide for,-

(a) raising any land which the Authority may consider expedient to raise to facilitate better drainage ;

(b) forming open spaces for the better ventilation of the area comprised in the scheme or any adjoining area ;

(c) the sanitary arrangements required ;

[(d) x x x [omitted by Act 17 of 1984].

(3) may, within and without the limits aforesaid provide for the construction of houses".

Section 17 lays down the procedure on completion of scheme and is extracted below:-

"17. *Procedure on completion of scheme* **.-** (1) When a development scheme has been prepared, the Authority shall draw up a notification stating the fact of a scheme having been made and the limits of the area comprised therein, and naming a place where particulars of the scheme, a map of the area comprised therein, a statement specifying the land which is proposed to be acquired and of the land in regard to which a betterment tax may be levied may be seen at all reasonable hours.

(2) A copy of the said notification shall be sent to the Corporation which shall, within thirty days from the date of

receipt thereof, forward to the Authority for transmission to the Government as hereinafter provided, any representation which the Corporation may think fit to make with regard to the scheme.

(3) The Authority shall also cause a copy of the said notification to be published in [x x x] the official Gazette and affixed in some conspicuous part of its own office, the Deputy Commissioner's Office, the office of the Corporation and in such other places as the Authority may consider necessary.

(4) If no representation is received from the Corporation within the time specified in sub-section (2), the concurrence of the Corporation to the scheme shall be deemed to have been given.

(5) During the thirty days next following the day on which such notification is published in the official Gazette the Authority shall serve a notice on every person whose name appears in the assessment list of the local authority or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the Authority proposes to recover betterment tax requiring such person to show cause within thirty days from the date of the receipt of the notice why such acquisition of the building or land and the recovery of betterment tax should not be made.

(6) The notice shall be signed by or by the order of the (Commissioner) and shall be served,-

(a) by personal delivery or if such person is absent or cannot be found, on his agent, or if no agent can be found, then by leaving the same on the land or the building ; or

(b) by leaving the same at the usual or last known place of

abode or business of such person ; or

(c) by registered post addressed to the usual or last known place of abode or business of such person.

Section 18 requires sanction of the scheme by the Government and reads thus :

"18. *Sanction of scheme* .- (1) After publication of the scheme and service of notices as provided in section 17 and after consideration of representations, if any, received in respect thereof, the Authority shall submit the scheme, making such modifications therein as it may think fit, to the Government for sanction, furnishing,-

(a) a description with full particulars of the scheme including the reasons for any modifications inserted therein ;

(b) complete plans and estimates of the cost of executing the scheme;

(c) a statement specifying the land proposed to be acquired ;

(d) any representation received under sub-section (2) of section 17;

(e) a schedule showing the rateable value, as entered in the municipal assessment book on the date of the publication of a notification relating to the land under the section 17 or the land assessment of all land specified in the statement under clause(c) ; and

(f) such other particulars, if any, as may be prescribed.

(2) Where any development scheme provides for the construction of houses, the Authority shall also submit to the Government plans and estimates for the construction of the houses.

(3) After considering the proposal submitted to it the Government may, by order, give sanction to the scheme".

Section 19 requires declaration to be published giving particulars of the land to be acquired, upon sanction of the scheme by the Government.

18. The contentions urged by learned counsel for appellants based on Parts IX and IX-A of the Constitution can be summarised thus :

(i) BDA Act is a legislation relatable to Article 243W and some of the matters listed in the Twelfth Schedule. Therefore BDA Act is deemed to be a law relating to Municipalities. Having regard to Article 243 ZF, any provision inconsistent with the provisions of Part IXA of the Constitution, law relating to municipalities ceased to be in force on the expiry of one year from 1.6.1993 - the date of commencement of the Constitution 74th Amendment Act, 1992.

(ii) After the insertion of Part IXA of the Constitution, there cannot be any 'metropolitan area' other than what is declared by the Governor as a metropolitan area, as provided under Article 243P(c). Only an area having a population of 10 lakhs or more in one or more districts and consisting of two or more municipalities or Panchayats or other contiguous areas and *specified by the Governor by a public notification to be a Metropolitan Area* can be a 'Metropolitan Area'. Consequently, the 'Bangalore Metropolitan Area' as defined under section 2(c) of the BDA Act had ceased to exist and therefore BDA could not draw up any development scheme for Bangalore Metropolitan Area.

(iii) A development scheme or an additional development scheme for Bangalore Metropolitan area which the BDA is required to draw up under Section 15 of the BDA Act

are conceptually and in effect same as the development plan with reference to a municipality referred to in Article 243W and a development plan for a metropolitan area referred to in Article 243ZE. After the insertion of Part IXA in the Constitution, a development plan for a metropolitan area can only be drawn up by a democratically elected representative body that is the Metropolitan Planning Committee by taking into account the factors mentioned in Clause (3) of Article 243ZE. Therefore on the expiry of one year from 1.6.1993 (the date on which Part IXA of the Constitution was inserted), BDA has no authority to draw up any development scheme.

19. Any statute or provision thereof which is inconsistent with any constitutional provision will be struck down by courts. Consequently, if BDA Act or any provision of the BDA Act is found to be inconsistent with any provision of Part IXA of the Constitution, it will be struck down by courts as violative of the constitution. In regard to any provision of any law relating to municipalities, Article 243ZF suspends such invalidity or postpones the invalidity for a period of one year from 1.6.1993 to enable the competent Legislature to remove the inconsistency by amending or repealing such law relating to municipalities to bring it in consonance with the provisions of Part IXA of the Constitution. Article 243ZF is a provision enabling continuance of any provision of a law relating to municipalities in spite of such provision being inconsistent with the provisions of Part IXA of the Constitution for a specified period of one year. It does not extend the benefit of continuance to any law other than laws relating to municipalities; it also does not provide for continuance of a law for one year, if the violation is in respect of any constitutional provision other than Part IXA; and it does not declare any provision of a statute to be inconsistent with it nor declare any statute to be invalid. The invalidity of a statute is declared by a court when it finds that a statute or its provision to be inconsistent with a constitutional provision.

20. The benefit of Article 243ZF is available only in regard to laws relating to 'municipalities'. The term 'municipality' has a specific meaning assigned to it under Part IX-A. Article 243P(c) defines the word as meaning an institution of self-government constituted under Article 243Q. Article 243Q refers specifically to three types of municipalities, that is, a Nagar Panchayat for a transitional area, a municipal council for a smaller urban area and a municipal corporation for a larger urban area. Thus, neither any city improvement trust nor any development authority is a municipality, referred to in Article 243ZF. Thus Article 243ZF has no relevance to test the validity of the BDA Act or any provision thereof. If BDA Act or any provision thereof is found to be inconsistent with the provisions of Part IXA, such inconsistent provision will be invalid even from 1.6.1993, and the benefit of continuance for a period of one year permitted under Article 243ZF will not be available to such a provision of law, as BDA Act is not a law relating to Municipalities.

21. The Constitution (Seventy-Fourth Amendment) Act, 1992 inserting Part IX-A in the Constitution, seeks to strengthen the system of municipalities in urban areas, by placing these local self-governments on sound and effective footing and provide measures for regular and fair conduct of elections. Even before the insertion of the said Part IX-A, Municipalities existed all over the country but there were no uniform or strong foundations for these local self-governments to function effectively. Provisions relating to composition of Municipalities, constitution and composition of Ward Committees, reservation of seats for weaker sections, duration of Municipalities, powers, authority, responsibilities of Municipalities, power to impose taxes, proper superintendence and centralised control of elections to Municipalities, constitution of Committees for District Planning and Metropolitan Planning, were either not in existence or were found to be inadequate or defective in the state laws relating to municipalities. Part IX-A seeks to strengthen the democratic political governance at grass root

level in urban areas by providing constitutional status to Municipalities, and by laying down minimum uniform norms and by ensuring regular and fair conduct of elections. When Part IX-A came into force, the provisions of the existing laws relating to municipalities which were inconsistent with or contrary to the provisions of Part IX-A would have ceased to apply. To provide continuity for some time and an opportunity to the concerned State Governments to bring the respective enactments relating to municipalities in consonance with the provisions of Part IX-A in the meanwhile, Article 243ZF was inserted. The object was not to invalidate any law relating to city improvement trusts or development authorities which operate with reference to specific and specialised field of planned development of cities by forming layouts and making available plots/houses/ apartments to the members of the public.

22. To enable the municipalities (that is municipal corporations, municipal councils and Nagar Panchayats) to function as institutions of self-government, Article 243W authorises the legislature of a state to endow to the municipalities, such powers and authority as may be necessary, by law. Such law made by the state legislature may contain provision for the devolution of powers and responsibilities upon municipalities, with respect to the following:

(i) The preparation of plans for economic development and social justice; and

(ii) The performance of functions and implementation of schemes as may be entrusted to them including those in relation to the following matters (earmarked in the twelfth schedule):

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.

3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

The aforesaid powers and authority (enumerated in the twelfth Schedule) may also be endowed to the Ward Committees which are required to be constituted, by Article 243S.

23. On the other hand, the purpose and object of the BDA is to act as a development authority for the development of the city of Bangalore and areas adjacent thereto. The Preamble of BDA Act describes it as 'an Act to provide for the establishment of a Development Authority for the development of the city of Bangalore and areas adjacent thereto and for matters connected therewith. The *development* contemplated by the BDA Act is "carrying out of building, engineering or other operations in or over or under land or the making of any material change in any building or land and includes redevelopment" (vide Section 2(j) of BDA Act. Therefore, the purpose is to make lay outs, construct buildings or carry out other operations in regard to land. Municipalities are not concerned with nor entrusted with functions similar to those entrusted to BDA under the BDA Act, that is building, engineering or other operations by forming layout of plots with all amenities, construction of houses and apartments, as a part of any scheme to develop a city. Municipalities are concerned with the overall economic development providing social justice (urban poverty alleviation and slum improvement) regulating land use and constructions, providing amenities (roads, bridges, water supply, fire services, street lighting, parking, bus stops, public conveniences), promoting education and culture etc. Neither urban town planning nor regulation of land use and construction, is similar to the 'development' as contemplated in BDA Act, that is carrying out building, engineering operations in or over or under land. It would thus be seen that the object and functions of a Municipal Corporations are completely different from the object and purpose of a development authority like BDA. BDA is not a municipality. Therefore, it cannot be said that mere existence of Municipal Corporations Act, duly amended to bring it in conformity with Part IX-A of the Constitution, will nullify or render redundant, the BDA Act.

24. Article 243ZE no doubt provides that there shall be constituted in every metropolitan area, a Metropolitan Planning Committee to prepare a draft development plan for the metropolitan area as a whole. The metropolitan area is defined in clause (c) of Article 243P as an area having a population of 10 lakhs or more comprised in one or more districts and consisting of two or more municipalities or panchayats or other contiguous areas specified by the Governor by a public notification to be a metropolitan area for the purpose of Part IXA. The Bangalore Development Authority is constituted *inter alia* to draw up a detailed scheme for the Bangalore Metropolitan Area. The Bangalore Metropolitan Area is defined in Section 2(c) of the BDA Act and the said definition need not necessarily be the same as or equivalent to any metropolitan area declared with reference to Bangalore under Article 243P(c) of the Constitution. It was submitted before the High Court that the Governor had not issued any public notification specifying any area as metropolitan area, with reference to Bangalore city. Further the declaration of metropolitan area by the Governor, as provided in clause (c) of Article 243P is specifically with reference to the law relating to municipalities. The Bangalore Metropolitan Area as defined in the Bangalore Development Authority Act is only for the purpose of development i.e. development by way of building or engineering operations in or over or under land. Therefore neither the provision defining 'metropolitan area' in Article 243P(c) nor the provision for constitution of a Metropolitan planning committee for preparing a draft development plan for such metropolitan area under Article 243ZE has any relevance or bearing to the Bangalore Metropolitan Area with reference to which BDA has been constituted.

25. Next contention urged by the appellant is that in pursuance of Article 243ZE, KMC Act has been amended inserting Section 503-B providing for constitution of a Metropolitan Planning Committee for preparing a draft development plan for the Bangalore Metropolitan Area and

therefore the Bangalore Development Authority can no longer function as an authority for development of metropolitan area, nor can it draw development schemes therefor. Development scheme to be drawn up by the BDA for development of Bangalore Metropolitan Area is specific i.e. acquisition of land, laying out or re-laying plots, formation of roads, construction of buildings, providing drainage, water supply and electricity and allot them to members of the public. On the other hand, the development plan for the metropolitan area as a whole, to be prepared by Metropolitan Planning Committee constituted under the KMC Act involves making a plan for overall development with reference to the various functions enumerated in the twelfth Schedule, that is, plans for economic and social justice, planning for economic and social development, slum improvement and upgradation, urban poverty alleviation, and providing several urban amenities and facilities referred to in the twelfth Schedule. It would thus be seen that the 'development scheme' formulated for Bangalore Metropolitan Area by BDA has nothing to do with a 'development plan' that has to be drawn by a municipality or by Metropolitan Planning Committee. The development plan to be drawn for a metropolitan area, by a Metropolitan Planning Committee should not be confused with a development scheme to be drawn by a development authority like BDA for a metropolitan area. It should also be noticed that insofar as Bangalore is concerned, the Bangalore Metropolitan Area as defined in Section 2(c) of the BDA Act is the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949, the area where the city of Bangalore Improvement Act, 1945 was immediately before the commencement of the BDA Act in force, and such other areas adjacent to the aforesaid, as the Government may from time to time by notification specify. On the other hand, the Bangalore Metropolitan Area, referred to in Section 503-B of KMC Act is an area to be specified by the Governor by public notification under Article 243P(c) of the Constitution of India. In fact the Governor had not even specified the Bangalore Metropolitan Area for the purpose of KMC Act. Neither the

Bangalore Metropolitan Area nor a Metropolitan Planning Committee is in existence under the KMC Act. In these circumstances, the contentions that the BDA Act, is no longer in force and that BDA has no jurisdiction or authority to draw up a development scheme to form layouts and acquire land to form lay outs in pursuance of any development scheme for Bangalore Metropolitan Area, is wholly untenable.

26. The appellants submitted that the powers, authority and responsibilities, to be endowed by the State Legislatiure upon the Municipalities are enumerated in Article 243W read with Twelfth Schedule; that Articles 234ZD and 243ZE require the state government to constitute a District Planning Committee at District Level and a Metropolitan Planning Committee for every Metropolitan Area; that such Metropolitan Planning Committee is required to prepare a draft development plan for the Metropolitan Area as a whole. It was contended that the BDA Act was a Legislation which related to some of the responsibilities and functions of Municipalities, enumerated in the Twelfth Schedule to the Constitution read with Article 243W and that its provisions, in particular, sections 15 to 19 were inconsistent with the provisions of Part IXA of the Constitution; that no law can entrust powers and responsibilities referred to in Article 243W including those relating to matters listed in Twelfth Schedule to an authority other than an authority having popular mandate; and that therefore the BDA Act entrusting such powers and responsibilities to a non-elected authority ceases to be in force.

27. While it is true that BDA is not an elected body like the municipality, it has several elected representatives as members. Section 3 relates to the Constitution of the Authority and provides that the Authority shall consist of 22 members and made up as follows :

- Six officers of the BDA viz., The Chairman, The Finance Member, The Engineering Member, The Town Planning Member, The Commissioner and

Secretary of the Authority. (All of them are full-time employees, three of them are specialists in finance, engineering and town planning.

- Four elected representatives, that is, two members of state legislature assembly and two counsellors of Bangalore Municipal Corporation.

- One representative of the state government and four representatives of statutory corporations, that is, the Commissioner of Bangalore Municipal Corporation and representatives of Bangalore Water Supply Sewerage Board, Karnataka Electricity Board, and Karnataka State Road Transport Corporation.

- Six members of the public (with minimum of one woman, one person belonging to SC/ST, and one representing labour)

- One Architect.

It would thus be seen that members of the BDA represent different interests and groups, technical persons and elected representatives. Further, no development scheme can be finalised or put into effect without the sanction of the State Government which in turn has to take note of any representation by the Bangalore Municipal Corporation in regard to the development scheme. Therefore, the mere fact that BDA is not wholly elected body as in the case of a municipal corporation will make no difference. The membership pattern is more suited to fulfil the requirements of a specialist agency executing development schemes. We therefore find no merit in the contention that provisions of BDA Act become inoperative, on Parts IX and IX-A of the Constitution coming into force.

28. The BDA Act empowers the Bangalore Development Authority to formulate schemes for the development of Bangalore Metropolitan Area. The word 'development' refers

to building, engineering or other operations in regard to land, that is making layouts and making available plots for allotment to members of the public. It is authorised to acquire lands for execution of development schemes, prepare layouts and construct buildings, provide drainage, water supply and electricity, provide sanitary arrangements, form open spaces, lease, sell or transfer the plots/immovable properties. The area in which the BDA Act operates is totally different from the areas in which Part IX A of the Constitution and KMC Act which relate to local self-government operate.

Question (iii) – Re : BDA lacking territorial jurisdiction to draw up the development scheme

29. The contention of appellants is that the villages in which the acquired lands are situated do not fall within the Bangalore Metropolitan Area as defined in section 2(c) of the BDA Act, and consequently the BDA has no jurisdiction to either acquire lands or make a development scheme in regard to those areas. As noticed above, section 15 empowers the BDA to draw up development schemes or additional development schemes for the development of the Bangalore Metropolitan Area. Bangalore Metropolitan Area is defined in section 2(c) as the area comprising (i) the City of Bangalore as defined in the City Bangalore Municipal Corporation Act, 1949; (ii) the areas where the City of Bangalore Improvement Act, 1945 was immediately before the commencement of this Act was in force; (iii) such other areas adjacent to the aforesaid areas as the government may from time to time by notification specify. The areas in which the City of Bangalore Improvement Act, 1945 was in force immediately before the commencement of BDA Act was the City of Bangalore and other areas adjoining the city specified by the state government from time to time by notification (vide section 1(2) of the said Act).

30. The Government of Karnataka issued a notification dated 1.11.1965, under section 4A (1) of the 'Town Planning Act' declaring the area comprising the City of Bangalore and

other areas (218 villages) enumerated in Schedule I thereto to be the 'Local Planning Area' for the purposes of the said Act to be called as the Bangalore City Planning Area and the limits of the said planning area were as described in Schedule II thereto. All the 16 villages in which the lands were acquired for Arkavathi Layout fell within the said Bangalore City Planning Area (that is within the 'other areas' described in the I Schedule).

31. The Government of Karnataka issued another notification dated 13.3.1984 under section 4A (1) of the Town Planning Act declaring that the area comprising 325 peripheral villages around Bangalore as indicated in Schedule I to be Local Planning Area for the environs of Bangalore and the limits of the said planning area shall be as indicated in Schedule II thereto. It may be mentioned that the areas added by this notification were beyond the core area (Bangalore City) and the first concentric circle area which were already notified as the Bangalore City planning area under the notification dated 1.11.1965. Schedule II to the notification dated 13.3.1984 gave the boundaries of the entire local planning area of Bangalore which included not only 325 villages which were added by the said notification but the original planning area described and declared in the notification dated 1.11.1965. The following note was added after the Schedule II to the notification dated 13.3.1984 : "This excludes the Bangalore city local planning area declared (by) government notification No.PLN/42/MNP/65/SO/3446 dated 1.11.1965."

32. Thereafter, the Government of Karnataka issued a notification dated 6.4.1984 under section 4A (3) of the Town Planning Act, amalgamating the 'Local Planning Area of Bangalore' declared under notification dated 1.11.1965 and the 'Local Planning Area' declared for the environs of Bangalore by notification dated 13.3.1984. The said notification called the amalgamated Local Planning Area as the 'Bangalore City Planning Area' with effect from 1.4.1984. Schedule I to the said

notification consolidated the areas shown in Schedule I to the notification dated 1.11.1965 and the Schedule I to the notification dated 13.3.1984 and contained the names of 538 villages. It also confirmed that the limits of the planning area shall be as indicated in II Schedule to the notifications dated 1.11.1965 and 13.3.1984.

33. The Government of Karnataka issued a notification dated 1.3.1988 in exercise of the power under section 2(c) of the Bangalore Development Authority Act, 1976 specifying the villages, indicated in I Schedule and within the boundaries indicated in II Schedule to the notification dated 13.3.1984, to be the areas for the purpose of the said clause. The contention of the petitioner is that the notification dated 1.3.1988 only specifies the villages indicated in the notification dated 13.3.1984 as Bangalore Metropolitan area; that therefore, the areas that were earlier declared as a local planning area under the notification dated 1.11.1965, were not part of Bangalore Metropolitan area; and that as all the 16 villages which were the subject matter of the impugned acquisition, were part of the local planning area declared under notification dated 1.11.1965, but not part of the local planning area declared under the notification dated 13.3.1984, the said 16 villages do not form part of the Bangalore Metropolitan Area for the purpose of section 2(c) of the BDA Act; and consequently, BDA cannot execute any development scheme in regard to the said 16 villages under section 15 of the BDA Act.

34. A careful reading of the notification dated 1.3.1988 would show that the clear intention of the state government was to declare the entire area declared under the notification dated 1.11.1965 and the notification dated 13.3.1984, together as the Bangalore Metropolitan Area. The notification dated 1.3.1988 clearly states that the entire area situated within the boundaries indicated in Schedule II to the notification dated 13.3.1984 was the area for the purpose of section 2(c) of BDA Act. There is no dispute that the boundaries indicated in Schedule II to the

notification dated 13.3.1984 would include not only the villages enumerated in I Schedule to the notification dated 13.3.1984 but also the area that was declared as planning area under the notification dated 1.11.1965. This is because the areas declared under notification dated 1.11.1965 are the core area (Bangalore City) and the area surrounding the core area that is 218 villages forming the first concentric circle; and the area declared under the notification dated 13.3.1984 (325 villages) surrounding the area declared under the notification dated 1.11.1965 forms the second concentric circle. Therefore, the boundaries of the lands declared under the notification dated 13.3.1984, would also include the lands which are declared under the notification dated 1.11.1965 and therefore, the 16 villages which are the subject matter of the impugned acquisition, are part of the Bangalore Metropolitan Area.

35. The learned counsel for the Appellants contended that the note at the end of II Schedule to the notification dated 13.3.1984 excluded the Bangalore city planning area declared under the notification dated 1.11.1965. As the planning area that was being declared under the notification dated 13.3.1984, was in addition to the area that was declared under the notification dated 1.11.1965, it was made clear in the note at the end of the notification dated 13.3.1984 that the area declared under the notification dated 1.11.1965 is to be excluded. The purpose of the note was not to exclude the area declared under the notification dated 1.11.1965 from the local planning area. The intention was to specify what was being added, to the local planning area declared under the notification dated 1.11.1965. But in the notification dated 1.3.1988, what is declared as the Bangalore Metropolitan Area is the area that is within the boundaries indicated in schedule II to the notification dated 13.3.1984, which as noticed above is the area notified on 1.11.1965 as also the area notified on 13.3.1984. The note in the notification dated 13.3.1984 was only a note for the purposes of the notification dated 13.3.1984 and did not form part of the notification dated 1.3.1988. There

is therefore no doubt that the intention of the state government was to include the entire area within the boundaries described in Schedule II, that is the area declared under two notifications dated 1.11.1965 and 13.3.1984, as the Bangalore Metropolitan Area.

36. In fact ever since 1988, everyone had proceeded on the basis that the Bangalore Metropolitan Area included the entire area within the boundaries mentioned in Schedule II to the notification dated 13.3.1984. Between 1988 and 2003, BDA had made several development schemes for the areas in the first concentric circle around Bangalore City (that is, in the 218 village described in I Schedule to the notification dated 1.11.1965) and the state government had sanctioned them. None of those were challenged on the ground that the area was not part of Bangalore Metropolitan Area.

37. It is true that the wording of the notification is clumsy and ambiguous. It refers to the villages indicated in Schedule I and it also refers to villages within the boundaries of Schedule II. It also states that the area stated in the notification is the area for the purpose of section 2(c) of BDA Act. It is well settled that when there is vagueness and ambiguity, an interpretation that would avoid absurd results should be adopted. The interpretation put forth by the appellants, if accepted would mean the outer centric circle of Bangalore which consists of only the peripheral villages would be the Bangalore Metropolitan Area and neither the Bangalore city nor the 218 villages immediately adjoining and surrounding the Bangalore city would form part of Bangalore Metropolitan Area. This, to say the least, is absurd and will be in direct violation of section 2(c) of BDA Act which states that Bangalore City and the areas surrounding it where City of Bangalore Improvement Act, 1945 was in force, will form part of Bangalore Metropolitan Area.

38. Let us view it from another angle. Bangalore City forms the central core area or the innermost circle. The adjoining 218 villages enumerated in the notification dated 1.11.1965

surrounding Bangalore City form the first concentric circle. The peripheral villages described in Schedule I to the notification dated 13.3.1984 form the second concentric circle which surrounds the central core area and the areas within the first concentric circle. To interpret Bangalore Metropolitan Area as referring only to the peripheral villages and not the core city area and its adjoining villages would be like saying the outer skin of a fruit is the fruit and the entire fruit inside does not form part of the fruit.

39. The learned counsel for the appellants submitted that if the notification dated 1.3.1988 is interpreted as including the inner areas, then it would amount to reading the words "Government of Karnataka hereby specifies the villages indicated in Schedule I and within the boundaries indicated in Schedule II to the notification dated 13.3.1984 to be the area for the purpose of the said Clause" as follows:

> "Government of Karnataka hereby specifies the villages indicated in Schedule I and *the villages* within the boundaries indicated in Schedule II to the notification dated 13.3.1984 to be the areas for the purpose of the said clause".

It is submitted that a *casus omissus* cannot be supplied by courts where the language is clear and unambiguous and is capable of an intelligible interpretation. Reliance is placed on the decisions of this court in *Dr. Baliram Waman Hiray v. Justice B. Lentin & Ors.* - 1988 (4) SCC 419, and *S.R. Bommai & Ors. v. UOI & Ors.* - 1994 (3) SCC 1 and several decisions following them, to contend that the court cannot, in interpreting a provision, supply any *casus omissus.* The doctrine of *casus omissus* was explained thus in *American Jurisprudence, 2nd Series Vol. 73 at page 397 :* "It is a general rule that the court may not by construction insert words or phrases in a statute or supply a *casus omissus* by giving force and effect to the language of the statute when applied to a

subject about which nothing whatever is said, and which, to all appearances, was not in the mind of the legislature at the time of the enactment of law". But the position will be different where the language is ambiguous and an intelligible interpretation would require addition of words particularly when the intention of the State Government is clear and evident and it is reiterated by the State Government and the BDA. Justice G.P. Singh in his *Principles of Statutory Interpretation* (2008 Edition – Page 65) expresses the view that when the object or policy of a statute can be ascertained, imprecision in its language should not be readily allowed in the way of adopting a reasonable construction which avoids absurdities and incongruities and carries out the object or policy. This Court has also repeatedly emphasised that although a court cannot supply a real *casus omissus*, nor can it interpret a Statute to create a *casus omissus* when there is really none. In *Padma Sunder Rao v. State of Tamil Nadu* 2002 (3) SCC 533, a Constitution Bench of the this Court held :

> "….. a *casus omissus* cannot be supplied by the court by judicial interpretative process, except in the case of clear necessity and when reason for it is found in the four corners of the statute itself, but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a Statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole Statute."

40. Let us now refer to the wording and the ambiguity in the notification. Section 2(c) of BDA Act makes it clear that the city of Bangalore as defined in the Municipal Corporation Act is part of Bangalore Metropolitan Area. It also makes it clear that the areas where the city of Bangalore Improvement Act, 1945 was in force, is also part of Bangalore Metropolitan Area. It contemplates other areas adjacent to the aforesaid areas

being specified as part of Bangalore Metropolitan Area by a notification. Therefore, clearly, the area that is contemplated for being specified in a notification under Section 2(c) is "other areas adjacent" to the areas specifically referred to in Section 2(c). But it is seen from the notification dated 1.3.1988 that it does not purport to specify the "such other areas adjacent" to the areas specifically referred to in section 2(c), but purports to specify the Bangalore Metropolitan Area itself as it states that it is specifying the "areas for the purpose of the said clause". If the notification specifies the entire Bangalore Metropolitan Area, the interpretation put forth by the appellants that only the villages included in Schedule I to the notification dated 13.3.1984 would be the Bangalore Metropolitan Area, would result in an absurd situation. Obviously the city of Bangalore and the adjoining areas which were notified under the city of Bangalore Improvement Act 1945 are already included in the Bangalore Metropolitan Area and the interpretation put forth by the appellants would have the effect of excluding those areas from the Bangalore Metropolitan Area. As stated above, the core area or the inner circle area, that is Bangalore City, is a part of Bangalore Metropolitan Area in view of the definition under Section 2(c). The 218 villages specified in the notification dated 1.11.1965 are the villages immediately surrounding and adjoining Bangalore city and it forms the first concentric circle area around core area of Bangalore city. The 325 villages listed in I Schedule to the notification dated 13.3.1984 are situated beyond the 218 villages and form a wider second concentric circle around the central core area and the first concentric circle area of 218 villages. That is why the notification dated 1.3.1988 made it clear that the Bangalore Metropolitan Area would be the area within the boundaries indicated in II Schedule to the notification dated 13.3.1984. It would mean that the three areas, namely, the central core area, the adjoining 218 villages constituting the first concentric circle area and the next adjoining 325 villages forming the second concentric circle are all included within the Bangalore Metropolitan Area. What is already specifically included by

Section 2(c) of BDA Act cannot obviously be excluded by notification dated 1.3.1988 while purporting to specify the additional areas adjoining to the areas which were already enumerated. Therefore, the proper way of reading the notification dated 1.3.1988 is to read it as specifying 325 villages which are described in the First Schedule to the notification dated 13.3.1984 to be added to the existing metropolitan area and clarifying that the entire areas within the boundaries of Second Schedule to the notification dated 13.3.1984 would constitute the Bangalore Metropolitan Area. There is no dispute that the boundaries indicated in the notification dated 13.3.1984 would clearly include the 16 villages which are the subject mater of the acquisition.

41. We therefore, reject the contention of the appellant that Bangalore Development Authority does not have territorial jurisdiction to form any development scheme in regard to the 16 villages which are the subject matter of the final declaration dated 23.2.2004.

Question (iv) – Re : Invalidity of final declaration with reference to time limit in section 6 of Land Acquisition Act.

42. This question arises from the contention raised by one of the appellants that the provisions of section 6 of the Land Acquisition Act, 1894 ('LA Act" for short) will apply to the acquisitions under the BDA Act and consequently if the final declaration under section 19(1) is not issued within one year from the date of publication of the notification under sections 17 (1) and (3) of the BDA Act, such final declaration will be invalid. The appellants submissions are as under : The notification under sections 17(1) and (3) of the Act was issued and gazetted on 3.2.2003 and the declaration under section 19(1) was issued and published on 23.2.2004. Section 36 of the Act provides that the acquisition of land under the BDA Act within or outside the Bangalore Metropolitan Area, shall be regulated by the provisions of the LA Act, so far as they are applicable. Section 6 of LA Act requires that no declaration shall

be made, in respect of any land covered by a notification under section 4 of the LA Act, after the expiry of one year from the date of the publication of such notification under section 4 of LA Act. As the provisions of LA Act have been made applicable to acquisitions under BDA Act, it is necessary that the declaration under Section 19(1) of BDA Act, (which is equivalent to the final declaration under Section 6 of the LA Act), should also be made before the expiry of one year from the date of publication of notification under Sections 17 (1) and (3) of BDA Act (which is equivalent to Section 4(1) of LA Act).

43. BDA Act contains provisions relating to acquisition of properties, up to the stage of publication of final declaration. BDA Act does not contain the subsequent provisions relating to completion of the acquisition, that is issue of notices, enquiry and award, vesting of land, payment of compensation, principles relating to determination of compensation etc. Section 36 of BDA Act does not make the LA Act applicable in its entirety, but states that the acquisition under BDA Act, shall be regulated by the provisions, *so far as they are applicable*, of LA Act. Therefore it follows that where there are already provisions in the BDA Act regulating certain aspects or stages of acquisition or the proceedings relating thereto, the corresponding provisions of LA Act will not apply to the acquisitions under the BDA Act. Only those provisions of LA Act, relating to the stages of acquisition, for which there is no provision in the BDA Act, are applied to the acquisitions under BDA Act. BDA Act contains specific provisions relating to preliminary notification and final declaration. In fact the procedure up to final declaration under BDA Act is different from the procedure under the LA Act relating to acquisition proceedings up to the stage of final notification. Therefore, having regard to the Scheme for acquisition under sections 15 to 19 of BDA Act and the limited application of LA Act in terms of section 36 of BDA Act, the provisions of Sections 4 to 6 of LA Act will not apply to the acquisitions under BDA Act. If section 6 of LA Act is not made applicable, the question of amendment to section 6 of LA Act

providing a time limit for issue of final declaration, will also not apply.

44. Learned counsel for the BDA submitted that the issue is no longer *res integra.* He submitted that in *Munithimmaiah vs. State of Karnataka* - 2002 (4) SCC 326, this Court held that the BDA Act is a special and self-contained code; that BDA and LA Act cannot be said to be either supplemental to each other, or *pari materia* legislations; that BDA Act could not be said to be either wholly unworkable and ineffectual if the subsequent amendments to the LA Act are not imported into BDA Act; and that the amendments to LA Act subsequent to the enactment of the BDA Act did not get attracted or become applicable to acquisitions under the BDA Act either by express provision or by necessary intendment or implication. He therefore submitted that the appellants cannot rely upon the amendment to Section 6 of LA Act requiring publication of the final declaration within one year from the date of publication of the preliminary notification, to contend that the final declaration under the BDA Act should be made within one year from the date of preliminary notification. The learned counsel for the appellants submitted that the issue whether the provisions of LA Act as amended would apply to acquisitions under laws relating to town planning has been referred to a larger Bench of this Court and the decision therein will have a bearing on the issue whether amendments to the provisions of LA Act would apply to acquisition under laws relating to City Improvement Trusts and development authorities. It is unnecessary to enter into the controversy whether the amendments to LA Act inserting Section 11A would apply to acquisitions under Town Planning Laws or City Improvement/ Development Laws, as that issue does not arise here. As noticed above, when section 6 of the LA Act itself is inapplicable to acquisition under BDA Act, the question whether amendment to Section 6 will apply will not arise. We accordingly hold that the final declaration dated 23.2.2004 does not suffer from any infirmity on account of the same having been

published a few days beyond one year from the date of publication of the preliminary notification under sections 17 (1) and (3) of the BDA Act.

Question (v) - Re : Applicability of sections 4, 5A and 6 of LA Act

45. The appellants contend that the provisions of sections 4, 5A and 6 of LA Act apply to the acquisitions under the BDA Act and the acquisition is liable to be quashed, as being in violation of the said provisions. Different appellants have raised two distinct and somewhat inconsistent contentions to say that sections 4 to 6 of LA Act are applicable.

46. The first contention is as follows : The BDA Act relates to development of Bangalore Metropolitan Area. It is not an Act for acquisition of property. Sections 15 and 19 when read with section 36 of BDA Act, can lead to only a conclusion that for acquisition of lands for its development schemes, BDA has to resort only to the provisions of LA Act, in entirety and BDA Act does not provide for or empower BDA to make acquisitions. Section 15 enables the authorities to draw-up development schemes or additional development schemes for development of Bangalore Metropolitan Area. Section 15 does not confer any power to acquire land. Section 16 only specifies the particulars to be provided for in the development schemes and does not empower BDA to acquire land. The reference to acquisition in clause (1)(a) of section 16 is not to empower acquisition, but merely to provide that every development scheme shall, within the limits of the area comprised in the scheme provide for acquisition of any land which will be necessary for or affected by the execution of the scheme. Section 16(1)(a) therefore refers to only identifying the lands to be acquired and does not authorise acquisition. Section 17 contains the procedure to be followed when the development scheme has been prepared. Section 18 refers to the need for the BDA to submit the scheme to the Government for its sanction, and grant of sanction by the Government. Neither

section 17 nor section 18 authorise the BDA to acquire land. Section 19 requires a declaration to be published by the Government stating that it had sanctioned a development scheme of BDA, and the lands proposed to be acquired by the authority are required for a public purpose. Therefore, the actual acquisition as such should follow the declaration under section 19 of the BDA Act by issuing a preliminary notification under section 4, by an inquiry under section 5A and a final declaration under section 6 of the LA Act, followed by an award, reference etc. Section 36 of the BDA Act provides that acquisitions shall be regulated by the provisions of LA Act, as far as they are applicable. This makes it clear that the entire acquisition will have to be made under the provisions of the LA Act. BDA has all along proceeded on a wrong assumption that it has the power to acquire property under the BDA Act when it has no such power.

47. The assumption by the appellant that Chapter III of the BDA Act relating to development schemes does not provide for acquisition is erroneous. Sections 15 to 19 of the BDA Act contemplate drawing-up of a development scheme or additional development scheme for the Bangalore Metropolitan Area, containing the particulars set down in section 16 of the said Act, which includes the details of the lands to be acquired for execution of the scheme. Section 17 requires the BDA on preparation of the development scheme, to draw-up and publish in the Gazette, a notification stating that the scheme has been made, showing the limits of the area comprised in such scheme and specifying the lands which are to be acquired. The other provisions of section 17 make it clear that the BDA has to furnish a copy of the said notification and invite a representation from the Bangalore City Corporation, affix the notification at conspicuous places in various offices, and serve notice on every person whose land is to be acquired. Thus, the notification that is issued under section 17(1) and published under section 17(3), is a preliminary notification for acquiring the lands required for the scheme under the Act. Section 17(5) and

section 18 (1) requires BDA to give an opportunity to landowners to show cause against acquisition and consider the representations received in that behalf. Section 18 (1) also requires BDA to furnish a statement of the lands proposed to be acquired to the State Government for obtaining its sanction for the scheme including the acquisition. Sub-section (1) of section 19 requires the Government to publish a declaration upon sanctioning the scheme, declaring that such a sanction has been given and declaring that the "lands proposed to be acquired by the authority" are required for public purpose. Sub-section (3) of section 19 makes it clear that the declaration published under section 19(1) should be conclusive evidence that the land is needed for a public purpose and that the Authority shall, upon publication of such declaration, proceed to execute the same. Thus, it is clear that the acquisition by the Authority for the purposes of the development scheme is initiated and proceeded with under the provisions of the BDA Act. Section 36 of BDA Act provides that the "*acquisition of land under this Act*", shall be regulated by the provisions, *so far as they are applicable* of the LA Act. In view of the categorical reference in section 36 of the BDA Act, to acquisitions under that Act, there cannot be any doubt that the acquisitions for BDA is not under the LA Act, but under the BDA Act itself. It is also clear from section 36 that LA Act, in its entirety, is not applicable to the acquisition under the BDA Act, but only such of the provisions of the LA Act for which a corresponding provision is not found in the BDA Act, will apply to acquisitions under the BDA Act. In view of sections 17 to 19 of the BDA Act, the corresponding provisions – Sections 4 to 6 of the LA Act—will not apply to acquisitions under the BDA Act. We therefore reject the contention that the BDA Act does not contemplate acquisition and that the acquisition which is required to be made as a part of the development scheme, should be made under the LA Act, applying sections 4, 5A and 6 of LA Act.

48. The second contention urged by the appellants is as

follows : A development authority is a City Improvement Trust referred to in Entry 5 of the State List (List II of the Seventh Schedule). 'Acquisition of property' is a matter enumerated in Entry 42 in the Concurrent List (List III of the Seventh Schedule). LA Act relating to acquisition of property, is an existing law with respect to a matter (Entry 42) enumerated in the Concurrent List. BDA Act providing for acquisition of property is a law made by the State Legislature under Entry 42 of the Concurrent List. Article 254 of the Constitution provides that if there is any repugnancy between a law made by the State Legislature (BDA Act) and an existing central law in regard to a matter enumerated in the Concurrent List (LA Act), then subject to the provisions of clause (2) thereof, the existing Central law shall prevail and the State law, to the extent of repugnancy, shall be void. Clause (2) of Article 254 provides that if the law made by the State Legislature in regard to any matter enumerated in the Concurrent List, contains any provision repugnant to an existing law with respect to that matter, then, the law so made by the State Legislature, if it had been reserved for the consideration of the President and has received his assent, shall prevail in that State. It is contended that the provisions of section 19 of the BDA Act are repugnant to the provisions of section 6 of the LA Act; and as BDA Act has not been reserved for consideration of the President and has not received his assent, section 6 of LA Act will prevail over section 19 of BDA Act.

49. This contention also has no merit. The question of repugnancy can arise only where the State law and the existing Central law are with reference to any one of the matters enumerated in the Concurrent List. The question of repugnancy arises only when both the legislatures are competent to legislate in the same field, that is, when both the Union and State laws relate to a subject in List III. Article 254 has no application except where the two laws relate to subjects in List III [See: *M/s. Hoechst Pharmaceuticals vs. State of Bihar* - 1983 (4) SCC 45]. But if the law made by the State Legislature, covered by an Entry in the State List, incidentally touches upon

any of the matters in the Concurrent List, it is well-settled that it will not be considered to be repugnant to an existing Central law with respect to such a matter enumerated in the Concurrent List. In such cases of overlapping between mutually exclusive lists, the doctrine of pith and substance would apply. Article 254(1) will have no application if the State law in pith and substance relates to a matter in List II, even if it may incidentally trench upon some item in List III. (See *Hoechst* (supra), *Megh Raj v. Allah Rakhia* AIR 1947 PC 72, *Lakhi Narayan v. Province of Bihar* AIR 1950 FC 59). Where the law covered by an Entry in the State List made by the State Legislature contains a provision which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to the provisions of any existing law with respect to that matter in the Concurrent List, then the repugnant provision in the State List may be void unless it can co-exist and operate without repugnancy to the provisions of the existing law. This Court in *Munithimmiah* (supra) has held that the BDA Act is an Act to provide for the establishment of a development authority to facilitate and ensure planned growth and development of the City of Bangalore and areas adjacent thereto, and that acquisition of any lands, for such development, is merely incidental to the main object of the Act, that is development of Bangalore Metropolitan area. This Court held that in pith and substance, the BDA Act is one which squarely falls under Entry 5 of List II of the Seventh Schedule and is not a law for acquisition of land like the LA Act, traceable to Entry 42 of List III of the Seventh Schedule, the field in respect of which is already occupied by the Central Act, as amended from time to time. This Court held that if at all, BDA Act, so far as acquisition of land for its developmental activities is concerned, in substance and effect will constitute a special law providing for acquisition for the special purposes of BDA and the same will not be considered to be a part of the LA Act. The fallacy in the contention of the appellants is that it assumes, erroneously, that BDA Act is a law referable to Entry 42 of List III, while it is a law referable to Entry 5 of List II. Hence the question of

repugnancy and Section 6 of the LA Act prevailing over Section 19 of BDA Act would not at all arise.

50. We may next refer to the argument that there is no enquiry as contemplated under section 5A of the LA Act. The assumption that a final declaration under section 19 has to be preceded by an inquiry, similar to what is contemplated under section 5A of LA Act, is without any basis. Section 5A of LA Act relates to hearing of objections. Sub-section (1) thereof provides that any person interested in any land which has been notified under section 4(1) as being needed or likely to be needed, for a public purpose, may, within thirty days from the date of the publication of the notification, object to the acquisition. Sub-section (2) of section 5A of LA Act provides that every objection under sub-section (1) of section 5A shall be made to the Collector and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in that behalf or by a pleader and shall after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make report/s in respect of the land which has been notified under section 4(1) to the appropriate Government, containing the recommendations on the objections, together with the record of the proceedings held by him for the decision of the Government, and the decision of the appropriate Government on the objection shall be final. We have already held that section 5A is inapplicable to acquisitions under the BDA Act. The scheme of BDA Act also contemplates consideration of objections but does not require any personal hearing or inquiry. Sub-section (5) of section 17 of the BDA Act requires that during the thirty days next following the date on which the preliminary notification under section 17(1) and (3) is published, the authorities shall serve a notice on every person whose name appears in the assessment list/land revenue register, requiring such person to show-cause within thirty days from the date of receipt of the notice why such acquisition should not be made. Sub-section (1) of section 18 provides that the authority shall,

after service of notices as provided in section 17 and after consideration of the representations, if any received in respect thereof, shall submit the scheme, making such modifications therein as it may think fit for Government for sanction. It would thus be seen that while the scheme for acquisition under the LA Act and the BDA Act contemplates notice to the landholders/persons interested, the procedure thereafter is markedly different. While LA Act requires an 'enquiry' where the Dy. Commissioner is required to give the objectors opportunity of being heard in person and conducting such further inquiry as he thinks necessary, BDA Act requires issuing notices to the persons interested to show-cause why acquisition should not be made and consider the representations received. No personal hearing or 'enquiry' is contemplated. Therefore, it is impermissible to import the requirement of section 5A of LA Act in regard to acquisitions under the BDA Act.

51. In view of the above, the contention that the BDA Act has to yield to LA Act and consequently, the provisions of sections 4, 5 and 6 of LA Act will be applicable and have to be complied with for acquisitions under the BDA Act, does not have any merit and the same is rejected.

Question (vi) – Re : Non-compliance with section 15 to 19 of the BDA Act.

52. The appellants contend that a clear and specific development scheme is fundamental pre-requisite for an acquisition and in the present case there was no such scheme before the acquisition was initiated. It is submitted that sanction of the Government to the development scheme is a condition precedent for publication of a declaration under Section 19(1) of the Act. It is submitted that the requirement of a sanction has been reduced to an empty formality, firstly by BDA not placing the necessary material before the Government, secondly, by government by rushing through the entire process without proper

application of mind and thirdly by the Chief Minister giving administrative sanction, without placing the matter before the Cabinet as required by the relevant Transaction of Business Rules. We will deal with each of these submissions separately.

(a) Absence of specificity and discrepancy in extract.

53. Chapter III of BDA Act relates to development schemes. Section 15 provides that authority may draw up a detailed scheme for the development of the Bangalore Metropolitan Area. It also provides that the Authority can also from time to time make and take up new or additional development schemes either on its own initiative or on the recommendation of the local authority or otherwise. Section 16 provides that the development scheme under section 15 shall, within the limits of the area comprised in the scheme, provide for acquisition of land which will be necessary for execution of the scheme, laying and re-laying out of land (including construction or reconstruction of buildings) and formation and alteration of streets, drainage, water supply, electricity, and reservation of space for public parks and playgrounds and civic amenities. When the development scheme is prepared the authority is required to draw up a notification as stated in Section 17(1). The said notification has to be published in the Official Gazette, and a copy thereof sent to the Bangalore City Corporation for its comments. Notices have to be served on the land holders to show cause why the land should not be acquired. After such publication and service of notices and after consideration of the representations the authority is required to submit the scheme making such modification as it may think fit to the Government for sanction furnishing the documents/ details as stated in Sub-section (1) of Section 18. On consideration of the development scheme, the Government may grant sanction for the same. Upon such sanction, the Government shall publish a declaration stating that sanction has been granted and the land proposed to be acquired by the authority for the purpose of the scheme is required for the public purpose.

54. Let us consider whether the said provisions have been complied with in this case. On 2.1.2001 the Executive Engineer (North) of BDA, submitted a scheme report dated 1.1.2001 for development of Hennur Devanahalli Road Extension covering an area of 1650 acres in 12 villages (that is Hennur, Geddalahalli, Byrathi Khare, Thanisandra, K. Narayanapura, Rachenahalli, Sriramapura, Venkateshpura, Sampigehalli, Amruthahalli, Dasarahalli, and Jakkur). It contemplated the execution of the development in three stages: laying 4524 sites in 300 acres in the first stage, 12817 sites in 850 acres in the second stage and 7539 sites in 500 acres in the third stage, in all 24880 sites. It also gave the detailed working of the cost of the development scheme and the amount expected to be realised by allotment/sale of plots and made it clear that it will be a self-financing scheme.

55. On receipt of the said scheme report, the Surveyors of BDA made a survey and reported that about 3000 acres of land will be available in 14 villages, that is, the twelve villages mentioned in the report dated 2.1.2001 and two other villages namely Kempapura and Challakere. Therefore, the Addl. Land Acquisition Officer placed a note, reporting that surveyors had located about 3000 acres of land and suggesting that the layout may be named as Arkavathi layout instead of Hennur Devanahalli Road layout. The Commissioner agreed with the proposal on 8.10.2002 and placed the scheme before the Authority. The Authority considered it in its meeting dated 10.10.2002 and approved the proposal and decided to issue a preliminary notification for 3000 acres of land in regard to 14 villages. Subsequently with a view to have proper access to the layout certain lands in Hebbala and Nagavara were also added. Thereafter, the preliminary notification dated 3.2.2003 under section 17(1) was published by the Commissioner, BDA, proposing to acquire the lands shown in the Schedule to the notification. The preliminary notification also contained an abstract of the extents of lands proposed to be acquired for formation of Arkavathi layout. It is stated that the proposal

contemplated of utilisation of about 500 acres of government land also which did not require acquisition and consequently, the total extent was shown as 3389A.12G in the abstract. A corrigendum was issued showing the extent as 3889A.12G. A copy of the notification was forwarded to the Bangalore City Corporation and notices were also issued to the persons registered as the owners of the lands proposed to be acquired requiring them to show cause why such acquisition should not be made. After consideration of the representations the authority modified the scheme by deleting 1089.12 acres and submitted the modified scheme for acquisition of 2750 acres in 16 villages to the Government for its sanction. The Government sanctioned the scheme for formation of Arkavathi layout vide Government Order No. UDD 193 MNX 204 dated 21.2.2004. Thereafter a final notification dated 23.2.2004 was issued by the Government of Karnataka under section 19(1) of the Act and published in the Gazette on the same day. The said notification stated that the Government has sanctioned the layout and the lands stated in the Schedule therein were required for the public purpose for formation of the Arkavathi layout. We have repeated the reference to the events in detail to show that there has been due compliance with the provisions of Sections 15 to 19 of the Act.

56. The mere fact that there were modifications from time to time or that some of the lands originally proposed were thereafter omitted will not in any way affect the validity of the scheme. Similarly the fact that acquisition was initially contemplated in regard to lands in only 12 villages and that two villages were added by the authority in October, 2002 for making a bigger layout or the fact that two other villages were also added to provide better access to the layout will not be in violation of the scheme. Such additions were all made by the Authority prior to the issue of preliminary notification. The fact that there were changes in extent does not make the scheme vague or uncertain. Necessarily a preparation of a development scheme would contemplate survey and ascertainment of

suitable available land for acquisition and preparation of a scheme. Before the scheme is finalised there will necessarily be modifications and changes. Even publication of a notification under sections 17(1) and (3) of the Act stating that the scheme has been made and specifying the lands which are proposed to be acquired is subject to a revision on consideration of representations/objections and deletions warranted. Therefore the mere fact that there were some modifications from time to time between 2001 when the initial proposal was mooted till the issue of the notification under Sections 17(1) and (3) or that some lands were omitted/deleted in the declaration under Section 19(1) will not effect the validity of the scheme. In fact deletion of some items of land or reducing the extent proposed to be acquired in some items of land, when issuing final declaration is made is quite common and is indeed a result of the process prescribed under any Act providing for acquisitions. The changes and modifications are infact contemplated in the process of making the scheme under Sections 15 to 19 of BDA Act.

(b) Non-furnishing of material particulars to the Government for purpose of sanction.

57. The appellants submitted that for obtaining sanction the BDA had to submit the scheme, after making such modifications as it may think fit, to the Government for sanction, furnishing (a) a description with full particulars of the scheme including the reasons for any modifications inserted therein; (b) complete plans and estimates of the cost of executing the scheme; (c) a statement specifying the land proposed to be acquired; (d) any representation received under section 17(2) of the BDA Act from the Bangalore City Corporation; (e) a schedule showing the rateable value, as entered in the Municipal assessment Book relating to the land under section 17 or the land assessment of all lands specified in the statement under clause (c); and (f) any other particulars as may be prescribed.

58. The Commissioner, addressed a letter dated 13.2.2004 to the Principal Secretary to Government, Urban Development Department, seeking sanction. The said letter referred to the preliminary notification, the subsequent consideration of representations/objections and the resolution dated 3.2.2004 to acquire 2750 acres of land, preparation of a project for formation of a layout with 28,600 sites at a cost of Rs.981.36 crores under Section 15(2) of BDA Act and requested for sanction under section 18(3) of the BDA Act and publication of the final declaration in the Official Gazette under section 19(1) of the Act. The Government having examined the proposal, sent a letter dated 17.2.2004 seeking the following clarifications/particulars: (a) Information as to how the Authority will bear the expenses for the proposed project and whether it will bear it from its own sources; (b) Copies of the project map; and (c) Copies of the final declaration. The required particulars were furnished by BDA. The state government, after considering them made an order dated 21.2.2004 granting permission as under (vide Government Order No.NAE 193 BLA 2004 made in the name of the Governor) :

> "(3) The Bangalore Development Authority has obtained the approval of the General Body to procure the sanction of the Government to the Arkavathi Layout Scheme and to procure issuances of a final notification under Section 19(1) of the Bangalore Development Authority Act, 1976 for the purpose of formation of the layout over available 2750 acres of land as per the No.43/2004 in the meeting of the Authority dated 2.3.2004. As per the approval of the General Body, the Authority has in the letters referred to above put forward a proposal seeking for the sanction of the Government for the Arkavathy Layout Scheme as well as for the issuance of the Final Notification. The Authority has informed that it will meet out of its coffers the entire expenditure that would be incurred for the proposed scheme. After executing 589 acres 12 guntas from the total extent of 3339 acres 12 guntas notified in the preliminary

A notification, the proposal for sanction of the scheme as per Section 18(3) of the Bangalore Development Authority Act, 1976 for the Arkavathy Layout Scheme in 2750 acres of land involving the following scheme particulars have been considered.

B

Sy. No.	Name of the Layout	Appro-ximate Extent Acres Guntas	Extent of land proposed to be acquired Acres Guntas	No. of sites proposed to be formed	Executed recovery (Rs. in crores)	Expected total saving (Rs. In crores)
1	Arkavathy	933-47	2750-00	28600 of varying dimens-ions	981.36	47.89

C

D The approximate cost of the Arkavathy Layout, which is being referred to in the Proposal of the Bangalore Development Authority, is Rs.933.47 crores. The approval has been given under Section 18(3) of the Bangalore Development Authority Act, 1976 subject to the following conditions:

E

1. The Bangalore Development Authority shall bear all the expenses to be incurred for the implementation of the scheme from its own resources and shall not expect any financial assistance from the Government for the same.

F

2. For the implementation of the said scheme, the Government shall not be the guarantor for any of the loans that may be taken by the BDA. It shall be the sole responsibility of the BDA to repay the said loan amount.

G

3. The Government shall to be party to any transactions that the BDA may enter into with respect to the proposed scheme.

4. With respect to the proposed scheme if the land has to be converted for using it, it shall be mandatory to get pre- H

A approval from the Government".

The zonal regulation shall be strictly followed and the requisitions shall be complied with."

B 59. The appellants contended that the fact that the non-furnishing of the said information/documents showed that the scheme was not finalised or complete when the proposal was sent to the Government for approval and BDA had not even prepared a map of the area to be acquired and therefore there was non-compliance with the requirements of section 18(1) of C the BDA Act by BDA and that in the absence of necessary material, there could not have been proper application of mind by the Government for granting the sanction.

D 60. Section 18 is clear about the material to be furnished by the BDA for seeking sanction of the scheme. On examining the records of the BDA and the Government, the Division Bench recorded a finding that all the required particulars had been furnished so that the Government can apply its mind. In fact, the notings show that in response to the further information sought E by the Government on 17.2.2004, the Authority furnished the required information, that is, the Authority will bear the entire expenses for Akravathi layout project from its own sources, it also noted that the BDA had informed that the preparation of the project map was at the final stage and will be furnished after F completion thereof. This of course shows that the project map was not ready either on 17.2.2004 when the BDA sent its reply to the letter dated 17.2.2004 or at the time the Government granted sanction on 21.2.2004. But what is relevant to be noticed is that the project map was not one of the documents G that had to be furnished by the BDA while seeking sanction of the scheme. We have already referred to the documents and particulars to be furnished by the BDA. The project map was not one of the items that had to be furnished. In fact the scheme report had been submitted by the Executive Engineer, North H Division of BDA to the Engineer Member on 5.2.2004 itself and that had been made available to the Government. The

Government in its reply stated that whatever particulars that were required to be furnished, had been furnished and they were satisfied that the scheme required to be sanctioned. It is only thereafter sanction was granted. We therefore reject the contention that the material required for seeking sanction had not been furnished by the BDA to the Government.

(c) Absence of valid sanction by the Government

61. As far as the BDA is concerned, there is thus due compliance with Sections 18 and 19 also. But the appellants would contend having regard to the provisions of the Karnataka Government Transaction of Business Rules, 1977, the sanction for the scheme under Section 18(3) could validity be given only by a decision of the Cabinet; and that in these cases, the decision of the Government was based on the order of the Chief Minister and not the Cabinet, and therefore, sanction was not a valid sanction in law. As noticed above, the BDA sent the scheme approved by the authority for the sanction of the Government by writing a letter to the Principal Secretary to the Government Urban Development Department on 13.2.2004. By the time the communication reached the Government, there was a demand for dissolution of the House on 16.2.2004 and the House was dissolved on 21.2.2004. In the meanwhile, certain clarifications were sought on 17.2.2004 which were furnished on the same day. The file was processed and the matter was placed before the Chief Minister who had the dual capacity of Chief Minister and the Minister-in-charge of Bangalore Development Authority. The Chief Minister approved the proposal on 20.2.2004. The noting placed by the concerned Ministry and the order of the Chief Minister thereon are extracted below :

> "(10) The above receipt is kept at page no.11. Kindly peruse note para 1 to 6. On the background of paras 6 to 9, few information from authority (page 10) was sought, the authority has furnished to the required information (page-11). The authority has informed in the said letter that it will

> bear the expenses required for the Arkavati layout Extension Project from its sources itself and the preparation project map is at final stage, it will be furnished after completion. And also the construction work of the Arkavati layout extension has to be taken immediately and the sites has to be distributed to the publics hence the authority has requested to give approval for the Arkavathi layout extension and the final notification has to be published.
>
> (11) The authority has informed that it will bear the expenses for the proposed project out of its source its self hence the necessity of getting ratification of the Finance Department for this proposal does not arise.
>
> (12) According to Rule 15 of Government of Karnataka (Execution of Business) Rules 1977, the ratification of the Cabinet is required for the expenses of project works which is more than 500 lakh rupees. On this background, the ratification of Cabinet has to be obtained for the below mentioned points :
>
> (a) To issue Government's approval for the Arkavathi Layout extension project approximately of Rs.981.36 crores under section 18(3) of Bangalore Development Authority Act.
>
> (b) To publish final notification under section 19(1) of Bangalore Development Authority Act for the available 2750 acres land for construction of Arkavathi layout extension (page 138-1212). It may be requested Hon'ble Chief Minister for according ratification before tabling the file for ratification of the Cabinet.
>
> xxxxxxxx
>
> Chief Minister,
>
> PSCM 1180/2004/20.2.2004

(14) Pending ratification by the Cabinet, para 12(a) and (b) is approved.

Sd/-
(S.M. Krishna)
Chief Minister"

Subsequently the matter was placed before the Cabinet and ratified.

62. The appellants contend that such an order by the Chief Minister and ratification thereof were invalid, having regard to Rules 12, 20 and 21 read with Entry 36 in the First Schedule of the Karnataka Government (Transaction of Business) Rules 1977. Rule 12 provides that there shall be a Committee of the Council of Ministers to be called the Cabinet and all matters referred to in the First Schedule to the Rules shall ordinarily be considered at a meeting of the Cabinet. Rule 20 provides that cases specified in the First Schedule to the Rules shall be brought before the Cabinet after submission to the Minister-in-charge of the Department; and cases other than those specified in the First Schedule should be brought before the Cabinet by the direction of the Chief Minister, or the Minister-in-Charge of the Department with the consent of the Chief Minister. Rule 21 provides that subject to provisions of Rule 20 all cases specified in the First Schedule to the Rules shall be brought before the Cabinet. Entry 36 of the First Schedule relates to "all self-financing schemes of local bodies including the Urban Development Authorities, the Karnataka Housing Board and such other statutory bodies". In this case the matter (relating to sanction under section 18(3) of BDA Act) was placed before the Chief Minister who also happened to be the Minister–in-Charge on 20.2.2004. He granted the approval subject to ratification by the Cabinet. In view of the subsequent ratification by the Cabinet there is nothing irregular in the procedure adopted. The delay in ratification was on account of the dissolution of the house.

63. The contentions that the sanction is void, is untenable. As noticed above, Rule 12 requires that the matter should ordinarily be considered at a meeting of the Cabinet. This itself shows that there can be exceptional circumstances where it will not be possible to place it before the Cabinet. The approval granted by the Chief Minister, subject to the ratification of the Cabinet was treated by the Urban Development Department as approval for the sanction under Section 18(3) and a Government order was made on 21.2.2004 in the name of the Governor granting sanction under section 18(3) of the BDA Act. The State Government also issued a final declaration under Section 19(1) of BDA Act. It is thus evident that the State Government proceeded on the basis that the order of approval of the Chief Minister for the sanction, was sufficient for grant of sanction. Even if it is to be assumed that such approval was irregular as it was made subject to ratification, as the ratification was subsequently made, the challenge for want of proper approval of the Cabinet for the sanction cannot be accepted.

Question (vii) : Re : Discrimination, malafides and arbitrariness :

64. We may start with the following preliminary facts :

	Date	Stage	Area proposed to be acquired
(i)	2.1.2001	Initial proposal by the Executive Engineer (North)	1650 Acres (12 villages)
(ii)	10.12.2002	Resolution of Bangalore Development Authority to issue a preliminary notification under sections 17(1) and (3) of the Act	3000 Acres (14 villages)
(iii)	3.2.2003	Area notified in the preliminary notification under section 17(3) of BDA Act	3339 acres 12 guntas (in 16 villages)

(iv)	16.9.2003	Corrigendum regarding notification u/s. 17(3) of BDA Act	3839 acres 12 guntas (in 16 villages)
(v)	3.2.2004	Resolution of BDA to implement	2750 acres
(vi)	23.2.2004	Arkavathy Scheme Declaration under section 19(1) of BDA Act.	(in 16 villages) 2750 acres (in 16 villages)

The proposal placed before the Authority and resolution dated 3.2.2004 of the Authority (approving the scheme to be placed before the Government for sanction) proceeded on the basis that the total area notified proposing acquisition was 3339 acres 12 guntas, and the area deleted/withdrawn from the said area notified in the preliminary notification on examining the representations was 589 acres 12 guntas and therefore the final declaration for acquisition was for 2750 acres. This was the scheme that was placed for approval before the state government. The state government also in the sanction order dated 21.2.2004 granted sanction for acquisition of 275 acres after noting that 589 acres 12 guntas was excluded from the proposed extent of 3339 acres 12 guntas, after considering the representations received in pursuance of notices issued under Section 17(5) of BDA Act. But when the cases came up before the High Court and this court, the categorical case of BDA is that the total area notified under section 17(1) and (3) of the BDA Act, was 3839 acres 12 guntas and that the area deleted/excluded was 1089 acres 12 guntas. How the preliminary notification extent area increased by 500 acres and how the area deleted also increased exactly by 500 acres is not properly explained and is virtually a mystery. Different explanations have been given at different points of time.

65. On behalf of BDA, an affidavit dated 14.3.2007 was filed before us wherein it is disclosed that in regard to a question put regarding deletion in the Karnataka Legislative Assembly, the following particulars were furnished on 25.1.2006:

(i) Extent of land acquired : 2626 acres 13 guntas

(ii) Extent dropped in the final Notification : 1089 acres 12 guntas

(iii) Extent of government lands Included in formation of Arkavathi layout : 487 acres 11 guntas

In a statement furnished in this Court on 20.3.2006, BDA gave the break up as under:

(i) Extent as per preliminary Notification : 3839 acres 12 guntas

(ii) Extent deleted after preliminary Notification : 1089 acres 12 guntas

(iii) Extent of government lands acquired as per final notification : 459 acres

(iv) Extent of private land acquired as per final notification : 2291 acres 2750 acres

Another statement furnished to us shows 500 acres have been deleted under the heading "religious institutions".

66. The appellants contended that the deletion of as much as 1089 acres 12 guntas from out of 3839 acres 12 guntas proposed to be acquired under the preliminary notification would mean that more than 28% was deleted. Several deletions formed islands within the acquired areas. Some of the deletions in some villages were of such a magnitude that what remained of the acquisition in those villages were small and negligible islands completely surrounded by acquired/deleted lands making it difficult or impossible to effectively use such remaining land for development. Such an extensive deletion can

lead to the following two inferences: (i) that there was total non application of mind when the proposal was made and without proper survey and by completely ignoring the ground realities about the constructed areas, suitability and availability for acquisition and other relevant circumstances, BDA in extreme haste had proposed acquisition; and/or (ii) the deletion of such vast areas showed that the deletions were arbitrarily made or to favour a chosen few.

67. The learned Single Judge after examining the facts held that there were improper inclusions and exclusions which amounted to hostile discrimination. He held that the acquisition of certain lands and non-acquisition or deletion from acquisition of some other similarly situated lands situated in the same area, was arbitrary and discriminatory, violative of Article 14 of the Constitution. He further held that the BDA had failed to furnish any plan showing the details of the lands proposed for acquisition, lands deleted from acquisition, built up areas and the lands originally not included in the acquisition, even though they were in the midst of the acquired lands. The learned Single Judge also noticed that in regard to the deletion of 500 acres, no reasons have been assigned.

68. The Division Bench agreed with the single Judge that there were improper inclusions and exclusions amounting to discrimination. The Division Bench was of the view that though the single Judge was justified in holding that there was discrimination in acquiring the land, that alone cannot be a ground for quashing the entire acquisition of 2750 acres. The Division Bench also noticed that the BDA had not traversed the allegations regarding discrimination specifically and even a bare perusal of the map showed that 2750 acres sought to be acquired, did not form a contiguous area. In particular he referred to the haphazard manner in which the acquisition of deletions were made in Kempapura and Srirampura villages. The Division Bench noticed that even in other villages small extents of acquired lands were completely surrounded by large

chunks of areas which were either not acquired or deleted from acquisition, making access to such notified land difficult. In the circumstances instead of setting aside the acquisition, in view a memo and the memo filed by the BDA proposing certain remedial measures, the Division Bench decided to give an opportunity to all the landowners (excluding site owners) who had taken the plea of discrimination to file an appropriate application before the BDA for deletion of their lands from acquisition and to substantiate their contention by producing such evidence as was available with them.

69. The BDA does not seriously dispute the fact that there were some amount of arbitrariness and discrimination in the matter of inclusions and exclusions. Apart from that we find that even in this court the BDA has not come up with true and correct position. As noticed above the break up of deletions and the reasons for such deletions have not been disclosed. The extent of deletion without explanation has jumped from 589.12 acres to 1089 acres 12 guntas. The BDA has not chosen to explain the exact extent of the government land involved.

70. Even the map produced showing the 2750 acres of acquired land and 1089 acres 12 guntas of deleted area contains several discrepancies. For example, in regard to Sampigehalli, the map produced before us shows that the entire extent of the village has been acquired except the village proper (Abadi) and survey Nos.10 and 11. But we find that survey Nos.10 and 11 are not in fact deleted and the declaration shows those survey nos. as acquired. In the same village a perusal of the preliminary notification and final declaration shows that Survey Nos.38/2A, 44/10, 44/11, 44/13, 44/14, 44/15 and 46/4 have been omitted in the final declaration but the plan shows no such omission. On the other hand, it shows the entire village as having been acquired.

71. We give below the particulars of the area notified and

deleted to get a true picture of the magnitude of deletions and the resultant discrimination:

S. No.	Name of the village	Extent notified in the preliminary notification dt. 3.2.2003	Total extent notified in the final declaration dated 23.2.2004 (in Acre. Gunta)	Extent dropped from acquisition while issuing final declaration (in Acre. Gunta)
1.	Dasarahalli	380.04	225.18	154.22
2.	Byrathikhare	86.07	77.25	8.22
3.	Chellakere	155.03	135.14	19.29
4.	Geddalahalli	210.22	133.24	76.38
5.	K. Narayanpura	195.13	133.05	62.08
6.	Rachenahalli	396.29	298.03	98.26
7.	Thanisandra	557.04	482.07	74.37
8.	Amruthahalli	196.11	139.01	56.10
9.	Jakkur	422.28	360.24	62.04
10.	Kempapura	55.13	26.38	28.15
11.	Sampigehalli	401.39	256.20	145.21
12.	Sriramapura	196.35	94.13	102.22
13.	Venkateshpura	95.65	60.13	34.28
14.	Hennur	262.22	140.21	122.01
15.	Hebbala	59.01	59.14	
16.	Nagavara	169.16	127.00	42.16
	Total	3839 A.12G.	2750 A.	1089 A. 12 G.

72. The acquisition was for planned development of the city and to avoid haphazard growth. But when the layout plan is examined with reference to the preliminary notification and final declaration, several startling facts emerge. We may first refer to the pick and choose method adopted with reference to Kempapura and Sriramapura villages, to which the division bench made specific reference.

(i) In Kempapura village, large areas, that is nearly 50% of the area of the village (Sy. No.2, 4 to 16, 23, 24, 30, 31) had not been included in the preliminary notification, even though the entire surrounding area had been notified. Only 55.13 acres were notified in the preliminary notification but the final declaration was only in regard to 26A.38G and the remaining 28A.15G (more than 51% of what was notified) were deleted. After deletion of Sy. No.1, 3, 18(Part) and 33 the entire northern portion (north of the Road bisecting the village) is free from acquisition (except part of Sy. No.17). Even in the southern portion of the village, there are haphazard deletions.

(ii) In Srirampura village, quite a few lands (Sy. No.2, 3, 7(Part), 13, 62, 64, 65) were not included in the preliminary notification even though all the surrounding areas had been notified. Further, out of total area of 196A.35G notified in the preliminary notification, only 94A.13G find a place in the final declaration and the remaining 102A.22G (more than 52% of what was notified) were deleted. The acquired lands of 94A.13G are not in a contiguous block, but in eleven odd shaped pockets. The deletions and initial omissions make it impossible to have orderly development in regard to acquisition in this village. Some of the pockets are of such odd shape and size that BDA proposes to leave them as stand alone parks/open spaces/community centres, without any development.

73. We find the haphazard and arbitrary exclusions are in several other villages also, though not to the extent in Kempapura and Sriramapura. We may refer to some of them:

(i) Venkateshapura is a comparatively small village. All the lands were proposed for acquisition under the preliminary notification (except a block consisting of Sy. No.6, 7 and

8) in all measuring 95A.05G. Virtually the entire southern and western portions of the village have been omitted in the final declaration and only 60A.13G are included in the final declaration. But the entire southern portion of the village (about 30 acres) have been deleted except four small pockets which have not been deleted :

(a) Sy. No.30 and 31 measuring 24 Guntas and 25 Guntas in all one acre and nine guntas.

(b) Sy. No.33 and 34 measuring 2A.06G and 1A.18G, in all 3A.24G;

(c) Sy No.37/2 measuring 2A.10G.

(d) Sy. No.19/1 measuring 3A.31G.

There is no explanation as to why, when all surrounding lands are deleted these small four pockets are acquired.

(ii) In Nagavara and Hennuru villages, the southern portions of the villages were not notified for acquisition. But deletions are haphazard and have left some small pockets of acquired lands. For example, in Nagavara, Sy. No.107 measuring 1A.4G, portion of Sy. No. 7 measuring 21 Guntas, Sy. No.70 measuring 25 Guntas, Sy. No.152 measuring 6A.4G bifurcated by a road form islands of acquired lands. In the entire southern part of Nagavara which runs into hundreds of acres, only part of Sy. No.152 is proposed to be acquired. In Hennuru Sy. No.103 is a small pocket (28 Guntas) which is acquired, is surrounded by lands not acquired/deleted. There are several other islands in Hennuru which are not capable of being developed due to their small extents. Their Survey Numbers are not clear in the map produced.

(iii) In Challakere also we find haphazard deletions. We may refer to two stand alone pockets, that is land to the east of Sy. No.104 and the land to the east of 100.

What we have referred above is illustrative and not exhaustive. Similar pockets of small extents of acquired lands surrounded by lands which are not acquired/deleted, exist in other villages also.

74. The object of establishing a development authority like BDA is to provide for orderly and planned development so that the haphazard growth of a city is checked. The disastrous effects of unauthorised and illegal development by some unscrupulous colonisers/developers are well known. In a planned and authorised standard residential developments, about 30% to 35% of the total area is used to provide broad and adequate roads and footpaths, drains etc., and at least another 10% to 15% of the land is earmarked for parks, playgrounds and community development or civic amenities (schools, hospitals, police stations, post offices, mini markets, community halls etc). Further the layout will have adequate provision for drainage of rain water as well as sewerage water, adequate water supply and electricity, well laid metalled roads which properly connect the layout to Main Roads and other surrounding areas, by providing approaches and linkages. But in an unauthorised or illegal development, the roads are narrow and minimal, virtually no open spaces for parks and playgrounds, and no area earmarked for civic amenities. There will be no proper water supply or drainage; and there will be a mixed use of the area for residential, commercial and industrial purposes converting the entire area into a polluting concrete jungle. The entries and exits from the layouts will be bottlenecks leading to traffic jams. Once such illegal colonies come up with poor infrastructure and amenities, it will not be possible to either rectify and correct the mistakes in planning nor provide any amenities even in future. Residents of such unauthorised layouts are forever be condemned to a life of misery and discomfort. It is to avoid such haphazard, unhealthy development activities by greedy illegal colonisers and ignorant land-owners, the State Legislatures provided for City Improvement Trusts and Development Authorities so that they could develop well

planned citizen friendly layouts with all amenities and facilities. In this background large tracts of lands running into hundreds of acres are acquired to have integrated layouts. Only when a layout is formed on a large scale, adequate provision can be made for good size parks, playgrounds and community/civil amenities. For example, if a layout is made in 1000 acres of land, the developer can provide a good sized park of twenty acres and one or two small parks of 2 to 5 acres, have playgrounds of 5 to 10 acres. Instead of such an integrated large layout, if 200 small individual layouts are made in areas ranging from 2 to 10 acres, there will obviously be no provision for a park or a playground nor any space for civil amenities. Further small private colonies/layouts will not have well aligned uniform roads and accesses. While it is true that Municipal and Town Planning authorities can by strict monitoring and licensing procedures arrest haphazard development, it is seldom done. That is why formation of small layouts by developers is discouraged and development authorities take up large scale developments. If 200 acres of land on the outskirts of a city, has to be developed, and if 30 to 50 private developers proceed to develop areas ranging from 2 to 15 acres, it will be impossible for them to provide for parks or any playgrounds of reasonable size or make provision for planned civil amenities. Further, there will be no alignment in regard to roads. Each layout will have roads to suit their own convenience and this will lead to mis-alignment and bottlenecks leading to traffic snarls. The width of the roads also will differ from layout to layout depending upon the 'greed' of each private developer, resulting in the size, shape and alignment of roads varying for every stretch of 200 to 500 meters. There will be no proper drainage of rain water or sewerage water leading to constant flooding or stagnation. Therefore large integrated layouts were found to be the answer for orderly development. No small developer can develop a good township in a few acres of land. It was also thought that developers will be mainly profit motivated and will try to minimise the roads, open spaces and community areas. It is therefore that legislature constituted

statutory development authorities to undertake large scale developments without any profit motive.

75. If authorities like BDA notify 3000 acres of land for development and then delete from the proposed acquisition several pockets which aggregate to about 1000 to 1500 acres, then the result is obvious. There will be no integrated development at all. What was intended to be a uniform, contiguous and continuous layout of 3000 acres will get split into small pockets which are not connected with the other pockets or will be intersected by own illegal pockets of private colonies thereby perpetuating what was intended to be prevented, that is haphazard growth without proper infrastructure. It will then not be possible to provide proper road connections and drainage and impossible to provide appropriate parks, playgrounds and civic amenities of appropriate and adequate size and situation. When a development authority starts developing pockets of lands measuring 2 acres to 5 acres, obviously it also cannot provide open spaces and civic amenities and may end up with one pocket having plots, another far away pocket having a playground and another far away pocket having a park and their being no uniformity or continuity of roads. As noticed above, a large layout enables formation of long and straight roads for easy movement of traffic. On the other hand, short and disjointed roads affect smooth movement of traffic. Therefore, if a development authority having acquired a large tract of land withdraws or deletes huge chunks, the development by the development authority will resemble haphazard developments by unscrupulous private developers rather than being a planned and orderly development expected from a Development Authority. Therefore when a large layout is being planned, the development authorities should exercise care and caution in deleting large number of pockets/chunks of land in the middle of the proposed layout. There is no point in proposing a planned layout but then deleting various portions of land in the middle merely on the ground that there is a small structure of 100 sq.ft

or 200 sq.ft. which may be authorized or unauthorized. Such deletions make a mockery of development. Further such deletions/exclusions encourage corruption and favouritism and bring discontent among those who are not favourably treated.

76. The complaint by appellants is that in the proposed Arkavathi layout, rich and powerful with "connections" and "money power" were able to get their lands, (even vacant lands) released, by showing some imaginary structure or by putting up some unauthorised structure overnight. Though we do not propose to go into motives, the concurrent finding by the learned Single Judge and Division Bench is that there are arbitrary unexplained deletions. While we may not comment on policy, it is obvious that deletion from proposed acquisition should be only in regard to areas which are already well developed in a planned manner. Sporadic small unauthorised constructions in unauthorised colonies/ layouts, are not to be deleted as the very purpose of acquisition for planned development is to avoid such unauthorised development. If hardship is the reason for such deletion, the appropriate course is to give preference to the land/plot owners in making allotments and help them to resettle and not to continue the illegal and haphazard pockets merely on the ground that some temporary structure or a dilapidated structure existed therein. A development authority should either provide orderly development or should stay away from development. It cannot act like unscrupulous private developers//colonisers attempting development of small bits of land with only profit motive. When we refer to private developers/colonisers by way of comparison, our intention is not to deprecate all private developers/ colonisers. We are aware that several private developers/ colonisers provide large, well planned authorized developments, some of which are even better than developments by development authorities. What is discouraged and deprecated is small unauthorized layouts without any basic amenities. Be that as it may.

77. What do we say about a 'development', where with

reference to the total extent of a village, one-third is not notified at all, and more than half is deleted from proposed acquisition of the remaining two-third and only the remaining about 20% to 30% area is acquired, that too not contiguously, but in different parcels and pockets. What can be done with such acquisition? Can it be used for orderly development? Can it avoid haphazard and irregular growth? The power of deletion and withdrawal unless exercised with responsibility and fairly and reasonably, will play havoc with orderly development, will add to haphazard and irregular growth and create discontent among sections of society who were not fortunate to have their lands deleted.

78. Learned Single Judge as also the Division Bench have concurrently found that BDA had indulged in pick and choose deletions and acquisitions. The learned Single Judge and the Division Bench have found discrimination and irregularities, both in initial omission of certain lands and in deleting of some lands which were notified. They have also recorded a finding that having regard to the nature of deletions, the acquisition lands do not form a continuous or contiguous area and acquisition of small extents of land surrounded by large chunks of un-acquired lands and lands which have been omitted from acquisition would make the development of acquired pockets exceedingly difficult.

79. The Division Bench was of the view that quashing of the entire acquisition may not the remedy. It, therefore, decided to salvage the situation by issuing a series of directions, whereby the land owners were permitted to apply for deletion of their lands also from acquisition on the ground that (a) the lands were situated within green belt area; (b) the lands were totally built up; (c) the lands had buildings constructed by charitable, educational and/or religious institutions; (d) the lands were used for nurseries; (e) lands where running factories had been set up; and (f) lands were similar to the adjoining lands which were not notified for acquisition. The Court directed that

if the BDA comes to the conclusion that the lands of applicants were released are similar to those which have been excluded from acquisition their lands should also be deleted from acquisition. This direction requires clarification.

80. The principles relating to grant of relief in cases of discrimination are well settled. The classic statement is found in *Chandigarh Admn. & Anr. v. Jagjit Singh & Anr.* [1995 (1) SCC 745], wherein this Court held:

> "Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law - indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint

> of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course - barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles".

In *Gurshanan Singh & Ors. v. New Delhi Municipal Committee & Ors.* 1996 (2) SCC 459 this court held:

> "There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in

> favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been discrimination".

In *State of Haryana v. Ram Kumar Mann* — 1997 (3) SCC 321 — this court held that the doctrine of discrimination is found upon existence of an enforceable right and that Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. This court further held that a person who has no legal right cannot be given relief merely because such relief has been wrongly given to others and a wrong order cannot be the foundation for claiming equality, nor does a wrong decision by the Government give a right to enforce the benefit thereof and claim parity or equality. There are several other decisions which reiterate this position. It is not necessary to refer to all of them.

81. We are conscious of the fact that when a person subjected to blatant discrimination, approaches a court seeking equal treatment, he expects relief similar to what others have been granted. All that he is interested is getting relief for himself, as others. He is not interested in getting the relief illegally granted to others, quashed. Nor is he interested in knowing whether others were granted relief legally or about the distinction between positive equality and negative equality. In fact he will be reluctant to approach courts for quashing the relief granted to others on the ground that it is illegal, as he does not want to incur the wrath of those who have benefited from the wrong action. As a result, in most cases those who benefit by the illegal grants/actions by authorities, get away with the benefit, while others who are not fortunate to have 'connections' or 'money power' suffer. But these are not the grounds for courts to enforce negative equality and perpetuate the illegality. The fact that an Authority has extended favours illegally in the case of several persons cannot be a ground for courts to issue a mandamus directing repetition thereof, by applying the principle of equality. Article 14 guarantees equality before law and not equality in subverting law nor equality in securing illegal benefits. But courts cannot be silent bystanders if acquisition process is used by officers of the Authority with ulterior or malafide motives. For example, let us take a case where 2000 acres are required for a project as per the Development Scheme, but the preliminary notification is issued in respect of 3000 acres; and when the land owners 'apply' or 'approach' the Authority, 1000 acres of lands are released. Or take a case where a project required 1000 acres of contiguous land for a development project, and preliminary notice is accordingly issued for acquisition of a compact contiguous extent of 1000 acres; but thereafter without any logical explanation or perceivable reason, several large areas in the midst of the proposed layout, are denotified or deleted making it virtually impossible to execute the development scheme, as proposed. In the absence of satisfactory explanations in such a case, it may be necessary to presume that there was misuse or abuse

of the acquisition process. Be that as it may.

82. We may illustrate the principle relating to positive and negative equality with reference to following notional acquisition cases:

(i) Where a petitioner's land and his neighbour's land are of similar size and have similar structures and are similarly situated, and the policy of the Development Authority is to withdraw the acquisition in respect of lands which are 'constructed', if the neighbour's land is deleted from the proposed acquisition on the ground that it has a construction of 1000 sq.ft. and the petitioner's land is not so deleted, the petitioner will be entitled to relief on the ground of discrimination. But if the neighbour's land measures 2000 sq.ft. and contains a house of 1000 sq.ft and the petitioner's land measures one acre and contains a house measuring 1000 sq.ft., the petitioner cannot obviously contend that because his neighbour's property was deleted from acquisition, being a land with a construction, his one acre land should also be deleted in entirety from the acquisition, as it had a 1000 sq.ft. construction. But it may be possible for him to contend that an extent equal to what was released to his neighbour, should be released.

(ii) Where the lands owned by two neighbours are equal in size having similar structures, but one was constructed before the preliminary notification after obtaining a licence and the other was constructed after the preliminary notification unauthorisedly, the owner of the land with the unauthorised structure cannot obviously claim parity with the owner of the land with the authorised structure, for seeking deletion from acquisition.

(iii) Where the vacant lands of 'A' and 'B' – two neighbours are acquired. The Authority had a policy to delete

properties with constructions, as on the date of preliminary notification. Both put up unauthorised structures clandestinely overnight, after the preliminary notification. The land of 'B' is deleted from acquisition on the ground that it has a construction. If 'A' approaches court and claims release of his land claiming parity with 'B', the claim will have to be rejected. But, where the Authority admits that B's land was deleted even though the construction was subsequent to preliminary notification, the court may direct the Authority to take appropriate action in accordance with law for cancelling the deletion.

(iv) If in a village all the lands are notified and subsequently all lands except two or three small pockets are deleted without any valid ground, the persons whose lands were acquired can also seek deletion, on the ground that all the surrounding lands have been deleted. Court cannot direct deletion merely because the surrounding lands were deleted, as those deletions were illegal and not based on any valid policy. But the petitioners can contend that the very purpose of acquisition had been rendered infructuous by deletion of the majority of lands from the proposed acquisition, and the project or the scheme has ceased to exist and cannot be executed only with reference to their lands. In such a case, relief can be granted not on the ground that there has been discrimination, but on the ground that the proposed development scheme became non-existent on account of most of the lands being deleted from acquisition.

Therefore, a land owner is not entitled to seek deletion of his land from acquisition, merely on the ground that lands of some others have been deleted. He should make out a justifiable cause for deleting his land from acquisition. If the Rules/ Scheme/Policy provides for deletion of certain categories of land and if the petitioner falls under those categories, he will be entitled to relief. But if under the Rules or Scheme or policy

for deletion, his land is not eligible for deletion, his land cannot be deleted merely on the ground that some other land similarly situated had been deleted (even though that land also did not fall under any category eligible to be deleted), as that would amount to enforcing negative equality. But where large extents of land of others are indiscriminately and arbitrarily deleted, then the court may grant relief, if on account of such deletions, the development scheme for that area has become inexecutable or has resulted in abandonment of the scheme. Alternatively, if a common factor can be identified in respect of other lands which were deleted, and if the petitioner's land also has that common factor, relief can be granted on the ground that the Authority had adopted the common factor as the criterion in the case of others and therefore adopting the same yardstick, the land of petitioners also should be deleted. These principles may be kept in view while implementing direction in para 105D(i)(f) of the Judgment of the Division Bench of the High Court.

83. It is necessary to refer another aspect of land acquisition for urban development. 'Public purposes' may be of different degrees of importance/priority/urgency. An acquisition for laying a road or a water supply canal may be of higher priority category when compared to acquisitions for formation of an urban residential layout. Planned urban development by forming residential layouts, is carried out not only by statutory development authorities, but also by private developers/ colonisers. The reason why legislature has created Development Authorities for executing development schemes, is because they can undertake large scale developments providing better quality facilities with no profit motives. But in trying to achieve planned development and thereby benefit the urban middle class or urban poor by providing them housing plots, the interests of agriculturists/land owners who lose their livelihood on account of such acquisition, should not be ignored. Though the legislature intended that the land-loser should get reasonable compensation at the time of dispossession or

immediately thereafter, it seldom happens in practice. This court had occasion to refer to the travails of land-losers in getting the compensation in *Special Land Acquisition Officer v. Mahaboob* [2009 (3) SCALE 263] thus:

> "The Collector (LAO) is supposed to offer fair compensation by taking all relevant circumstances relating to market value into account. To safeguard the interests of the land-loser, the Act requires the collector to make the award before the land owner is dispossessed. The intention is that the land-loser will immediately be able to draw compensation and purchase some other suitable land or make appropriate arrangements for his livelihood. But in practice the Collectors (LAOs) seldom make reasonable offers. They tend to err on the 'safer' side and invariably assess very low compensation. Such meagre awards force the land-loser to seek reference to civil court for increase in compensation in regard to almost every award made by the LAO. In fact, many a time, even the reference courts are conservative in estimating the market value and it requires further appeals by the land-loser to the High Court and Supreme Court to get just compensation for the land. We can take judicial notice of the fact that in several States the awards of the reference court or the judgments of the High Court and this court increasing the compensation, are not complied with and the land-losers are again driven to courts to initiate time consuming execution process (which also involves considerable expense by way of lawyers fee) to recover what is justly due. Resultantly the land-losers seldom get a substantial portion of proper compensation for their land in one lump sum immediately after the acquisition. The effect may be highlighted by the following illustration:
>
> "A farmer owns 3 acres of land in a village, which is his sole means of livelihood. The land is acquired for some project in the year 1990. The true market value of the land

was around Rs.1,50,000/- per acre in 1990. If he got the said price, that is, Rs. 4,50,000/- with solatium, additional amount and interest in the year 1991, he has a reasonable opportunity of purchasing some alternative land, so that he can eke out his livelihood and continue to live with dignity. But this rarely happens in practice. The final notification is made in 1992 and the LAO makes an award in the year 1993 offering Rs.50,000/- per acre. So the land-loser is constrained to seek a reference to the court. The reference court takes three to four years to decide the reference and increases the compensation to Rs. one lakh per acre in the year 1996. The increased amount is deposited in 1997-1998. The land-loser is constrained to file a further appeal to the High Court and the High Court takes another three to four years and increases the compensation to Rs.1.5 lakh per acre in the year 2000 and such increase is deposited in the year 2001-02. That is, the loser is forced to fight at least in two courts to get the compensation commensurate with the market value of Rs.1.5 lakhs per acre. To add to his woes, when the reference court or the High Court increases the compensation, the Government does not pay the increased amount immediately and drives him to execution proceedings also. This means that the land owner gets compensation piecemeal, that is, Rs. 50,000/- per acre in 1993, another Rs. 50,000/- per acre in 1997-98, and another Rs.50,000/- per acre in 2001-02. At every stage he has to incur expenses for litigation. As he does not get the full compensation in one lump sum, he is not in a position to purchase an alternative land. When the land is acquired, he loses his means of livelihood, as he knows no other type of work. The result is, he is forced to spend the compensation received in piecemeal, on sustenance of his family when he fights the legal battles for increasing the compensation and for recovering the increases granted, by levying execution. The result is that whatever compensation is received piecemeal, gets spent for the sustenance of the family, and

litigation cost during the course of prolonged litigation. At the end of the legal battle, he is hardly left with any money to purchase alternative land and by then the prices of land would have also increased manifold, making it impossible to purchase even a fraction of the land which he originally possessed. Illiteracy, ignorance, and lack of counselling add to his woes and the piecemeal compensation is dissipated leaving him with neither land, nor money to buy alternative land, nor any means of livelihood. In short, he is stripped of his land and livelihood."

84. Frequent complaints and grievances in regard to the following five areas, with reference to the prevailing system of acquisitions governed by Land Acquisition Act,1894, requires the urgent attention of the state governments and development authorities:

(i) absence of proper or adequate survey and planning before embarking upon acquisition;

(ii) indiscriminate use of emergency provisions in section 17 of the LA Act;

(iii) notification of areas far larger than what is actually required, for acquisition, and then making arbitrary deletions and withdrawals from the acquisitions;

(iv) offer of very low amount as compensation by Land Acquisition Collectors, necessitating references to court in almost all cases;

(v) inordinate delay in payment of compensation; and

(vi) absence of any rehabilitatory measures.

While the plight of project oustees and landlosers affected by acquisition for industries has been frequently highlighted in the media, there has been very little effort to draw attention to the

plight of farmers affected by frequent acquisitions for urban development.

85. There are several avenues for providing rehabilitation and economic security to landlosers. They can be by way of offering employment, allotment of alternative lands, providing housing or house plots, providing safe investment opportunities for the compensation amount to generate a stable income, or providing a permanent regular income by way of annuities. The nature of benefits to the landlosers can vary depending upon the nature of the acquisition. For this limited purpose, the acquisitions can be conveniently divided into three broad categories:

(i) *Acquisitions for the benefit of the general public or in national interest*. This will include acquisitions for roads, bridges, water supply projects, power projects, defence establishments, residential colonies for rehabilitation of victims of natural calamities.

(ii) *Acquisitions for economic development and industrial growth.* This will include acquisitions for Industrial Layouts/ Zones, corporations owned or controlled by the State, expansion of existing industries, and setting up Special Economic Zones.

(iii) *Acquisitions for planned development of urban areas.* This will include acquisitions for formation of residential layouts and construction of apartment Blocks, for allotment to urban middle class and urban poor, rural poor etc.

86. In acquisitions falling under the first category, the general public are the direct beneficiaries. In the second category, the beneficiaries are industrial or business houses, though ultimately, there will be indirect benefit to the public by way of generation of employment and overall economic development. In the third category, the beneficiaries are individual members of public who, on account of allotment of

plots/flats, will be able to lead a better quality of life by having a shelter with comforts, apart from the fact that the planned development of cities and towns is itself in public interest. At present, irrespective of the purpose, in all cases of acquisition, the landloser gets only monetary compensation. Acquisitions of the first kind, does not normally create any resistance or hostility. But in acquisitions of the second kind, where the beneficiaries of acquisition are industries, business houses or private sector companies and in acquisitions of the third kind where the beneficiaries are private individuals, there is a general feeling among the land-losers that their lands are taken away, to benefit other classes of people; that these amount to robbing Peter to pay Paul; that their lands are given to others for exploitation or enjoyment, while they are denied their land and their source of livelihood. When this grievance and resentment remains unaddressed, it leads to unrest and agitations. The solution is to make the land-losers also the beneficiaries of acquisition so that the land-losers do not feel alienated but welcome the acquisition.

87. It is necessary to evolve tailor-made schemes to suit particular acquisitions, so that they will be smooth, speedy, litigation free and beneficial to all concerned. Proper planning, adequate counselling, and timely mediation with different groups of landlosers, should be resorted. Let us consider the different types of benefits that will make acquisitions landloser-friendly.

(87.1) In acquisitions of the first kind (for benefit of general public or in national interest) the question of providing any benefit other than what is presently provided in the Land Acquisition Act, 1894 may not be feasible. The State should however ensure that the landloser gets reasonable compensation promptly at the time of dispossession, so that he can make alternative arrangements for his rehabilitation and survival.

(87.2) Where the acquisition is for industrial or business

houses (for setting-up industries or special economic zones etc.), the Government should play not only the role of a land acquirer but also the role of the protector of the land-losers. As most of the agriculturists/small holders who lose their land, do not have the expertise or the capacity for a negotiated settlement, the state should act as a benevolent trustee and safeguard their interests. The Land Acquisition Collectors should also become Grievance Settlement Authorities. The various alternatives including providing employment, providing equity participation, providing annuity benefits ensuring a regular income for life, providing rehabilitation in the form of housing or new businesses, should be considered and whichever is found feasible or suitable, should be made an integral process of the scheme of such acquisitions. If the government or Development Authorities act merely as facilitators for industrial or business houses, mining companies and developers or colonisers, to acquire large extent of land ignoring the legitimate rights of land-owners, it leads to resistance, resentment and hostility towards acquisition process.

(87.3) Where the acquisition is of the third kind, that is, for urban development (either by formation of housing colonies by Development Authorities or by making bulk allotment to colonisers, developers or housing societies), there is no scope for providing benefits like employment or a share in the equity. But the landlosers can be given a share in the development itself, by making available a reasonable portion of the developed land to the landloser so that he can either use it personally or dispose of a part and retain a part or put it to other beneficial use. We may give by way of an illustration a model scheme for large scale acquisitions for planned urban development by forming residential layouts: Out of the total acquired area, 30% of the land area can be earmarked for roads and footpaths; and 15% to 10% for parks, open spaces and civic amenities. Out of the remaining 55% to 60% area available for forming plots, the Development Authority can

auction 10% area as plots, allot 15% area as plots to urban middle class and allot 15% area as plots to economically weaker sections (at cost or subsidised cost), and release the remaining 15% to 20% area in the form of plots to the land-losers whose lands have been acquired, in lieu of compensation. (The percentages mentioned above are merely illustrative and can vary from scheme to scheme depending upon the local conditions, relevant Bye-laws/Rules, value of the acquired land, the estimated cost of development etc.). Such a model makes the land-loser a stake-holder and direct beneficiary of the acquisition leading to co-operation for the urban development scheme.

88. In the preceding para, we have touched upon matters that may be considered to be in the realm of government policy. We have referred to them as acquisition of lands affect the vital rights of farmers and give rise to considerable litigations and agitations. Our suggestions and observations are intended to draw attention of the government and development Authorities to some probable solutions to the vexed problems associated with land acquisition, existence of which can neither be denied nor disputed, and to alleviate the hardships of the land owners. It may be possible for the government and development authorities to come up with better solutions. There is also a need for the Law Commission and the Parliament to revisit the Land Acquisition Act, 1894, which is more than a century old. There is also a need to remind Development Authorities that they exist to serve the people and not *vice versa*. We have come across Development Authorities which resort to 'developmental activities' by acquiring lands and forming layouts, not with the goal of achieving planned development or provide plots at reasonable costs in well formed layouts, but to provide work to their employees and generate funds for payment of salaries. Any development scheme should be to benefit the society and improve the city, and not to benefit the development authority. Be that as it may.

89. When BDA prepares a development Scheme it is required to conduct an initial survey about the availability and suitability of the lands to be acquired. While acquiring 16 villages at a stretch, if in respect of any of the villages, about 30% area of the village is not included in the notification under section 4(1) though available for acquisition, and out of the remaining 70% area which is notified, more than half (that is about 40% of the village area) is deleted when final notification is issued, and the acquisition is only of 30% area which is non-contiguous, it means that there was no proper survey or application of mind when formulating the development scheme or that the deletions were for extraneous or arbitrary reasons. Inclusion of the land of a person in an acquisition notification, is a traumatic experience for the landowner, particularly if he was eking out his livelihood from that land. If large areas are notified and then large extents are to be deleted, it breeds corruption and nepotism among officials. It also creates hostility, mutual distrust and disharmony among the villagers, dividing them on the lines of 'those who can influence and get their lands deleted' and 'those who cannot'. Touts and middlemen flaunting political connections flourish, extracting money for getting lands deleted. Why subject a large number to citizens to such traumatic experience? Why not plan properly before embarking upon acquisition process? In this case, out of the four villages included at the final stages of finalising the development scheme, irregularities have been found at least in regard to three villages, thereby emphasising the need for proper planning and survey before embarking upon acquisition.

90. Where arbitrary and unexplained deletions and exclusions from acquisition, of large extents of notified lands, render the acquisitions meaningless, or totally unworkable, the court will have no alternative but to quash the entire acquisition. But where many landlosers have accepted the acquisition and received the compensation, and where possession of considerable portions of acquired lands has already been taken, and development activities have been carried out by

laying plots and even making provisional or actual allotments, those factors have to be taken note of, while granting relief. The Division Bench has made an effort to protect the interests of all parties, on the fact and circumstances, by issuing detailed directions. But implementation of these directions may lead to further litigations and complications. To salvage the acquisition and to avoid hardships to BDA and its allottees and to avoid prolonged further round litigations emanating from the directions of the High Court, a more equitable way would be to uphold the decision of the division bench, but subject BDA's actions to certain corrective measures by requiring it to re-examine certain aspects and provide an option to the landlosers to secure some additional benefit, as an incentive to accept the acquisition. A direction to provide an option to the land-losers to seek allotment of developed plots in lieu of compensation or to provide for preferential allotment of some plots at the prevailing market price in addition to compensation will meet the ends of justice. Such directions will not be in conflict with the BDA (Allotment of sites) Rules, as they are intended to save the acquisitions. If the acquisitions are to be quashed in entirety by accepting the challenges to the acquisition on the ground of arbitrary deletions and exclusions, there may be no development scheme at all, thereby putting BDA to enormous loss. The directions of the High Court and this Court are warranted by the peculiar facts of the case and are not intended to be general directions applicable to regular acquisitions in accordance with law, without any irregularities.

Conclusion

91. In view of the foregoing, we affirm the directions of the Division Bench subject to the following further directions and clarifications:

(i) In regard to the acquisition of lands in Kempapura and Srirampura, BDA is directed to re-consider the objections to the acquisitions having regard to the fact that large areas were not initially notified for acquisition, and more

than 50% of whatever that was proposed for acquisition was also subsequently deleted from acquisition. BDA has to consider whether in view of deletions to a large extent, whether development with respect to the balance of the acquired lands has become illogical and impractical, and if so, whether the balance area also should be deleted from acquisition. If BDA proposes to continue the acquisition, it shall file a report within four months before the High Court so that consequential orders could be passed.

(ii) In regard to villages of Venkateshapura, Nagavara, Hennur and Challakere where there are several very small pockets of acquired lands surrounded by lands which were not acquired or which were deleted from the proposed acquisition, BDA may consider whether such small pockets should also be deleted if they are not suitable for forming self contained layouts. The acquisition thereof cannot be justified on the ground that these small islands of acquired land, could be used as a stand alone park or playground in regard to a layout formed in different unconnected lands in other villages. Similar isolated pockets in other villages should also be dealt with in a similar manner.

(iii) BDA shall give an option to each writ petitioner whose land has been acquired for Arkavathy layout:

(a) to accept allotment of 15% (fifteen percent) of the land acquired from him, by way of developed plots, in lieu of compensation (any fractions in excess of 15% may be charged prevailing rates of allotment).

OR

(b) in cases where the extent of land acquired exceeds half an acre, to claim in addition to compensation (without prejudice to seek reference if he is not satisfied with the quantum), allotment of a plot measuring 30' x 40' for every

half acre of land acquired at the prevailing allotment price.

(iv) Any allotment made by BDA, either by forming layouts or by way of bulk allotments, will be subject to the above.

The appeals are disposed of accordingly. All pending applications also stand disposed of.

K.K.T. Matters disposed of.

NAND KISHORE OJHA
v.
ANJANI KUMAR SINGH
(Contempt Petition (C) No.297 of 2007)
IN
Special Leave Petition (C) No.22882 of 2004

MAY 12, 2010

[ALTAMAS KABIR AND H.L. DATTU, JJ.]

Contempt of Court:

Breach of undertaking given before Court – Orders dated 23.1.2006 and 9.12.2009 passed by Supreme Court on the basis of undertaking given by State of Bihar to fill up the vacancies of Primary School Teachers by appointing trained teachers available in the State – Contempt petition filed alleging breach of the undertaking – Stand of the state that Rules have been framed to give effect to the undertaking given by the State and the orders passed by Supreme Court – ***Held:*** *It was never the intention of the Court that the conditions of the advertisement itself, which had been struck down by the High Court, were to be followed by the State Government – The advertisement was referred to only for the purpose of determining the number of vacancies which would be required to be filled up from amongst the trained teachers – It was made clear that all the 34,450 posts were to be filled up with trained teachers who were waiting for appointment, in order of seniority – The question of keeping some of the posts vacant on account of non-availability of reserved candidates was never the criterion in the order passed by the Court on 9.12.2009 – What was intended was that, after the number of candidates from the reserved category had been accommodated, the rest of the posts were to be filled up from amongst the candidates from the general category – It is once again directed that the said 34,540 posts, which have been*

created, be filled up from amongst the trained teachers in order of seniority after providing for appointment of candidates belonging to the reserved category as a one-time measure as indicated in earlier orders as also mentioned in the additional affidavit affirmed on behalf of the State Government – Matter adjourned for filing of compliance report – Bihar Special Elementary Teachers' Recruitment Rules, 2010 – Service Law – Appointment of Primary School Teachers.

CIVIL APPELLATE JURISDICTION : Contempt Petition (C) No. 297 of 2007.

IN

SLP (C) No. 22882 of 2004.

From the Judgment & Order dated 01.07.2004 of the High Court of Judicature at Patna in CWJC Nos. 13246, 6661 of 2003, 1533, 1788, 1789, 1861 & 5053 of 2004.

Paramjeet Singh Patwalia, Ramesh P. Bhatt, Rakesh Uttamchandra Upadhyay, Abhijeet Kakoti, Ankur Panda, Brij Bhusan, Sunil Kumar, Chandan Ramamurti, Dharam Bir Raj Vohra, K.N. Rai, D. Kishor, S.N. Roy, K.Kumar, Lakshmi Raman Singh, M.P. Jha, Ram Ekbal Roy, Harshvardhan Jha, Syed Ali Ahmad, Syed Tanweer Ahmed, Mohd. Shahnawaz Hasan, S.S. Bandyopadhyay, Mohan Pandey, S.K. Sabharwal, Shree Pal Singh, M.K. Michael, Amukesh Verma, Aftab Alam, Pawan Shukla, Yash Pal Dhingra, Revathy Raghavan, Ramjee Prasad, E.C. Vidya Sagar, D.K. Thakur, D. Jha, Debasis Misra, Barun Kr. Sinha, Pratibha Sinha, B.K. Satija, Prashant Chaudhary, Subhro Sanyal, Kumud Lata Das, Ambhoj Kumar Sinha, Shekhar Prit Jha, Abhijit Sengupta, Kanhaiya Priyadarsi, Ajay Kumar, Sanjeev Kumar, Jitender Pandey, Venkateswara Rao Anumolu, P.V. Yogeswaran, Praneet Ranjan, Shashi Bhushan Kumar, Gaurav Agrawal Jitendra Kumar, Amit Pawan, Vikash Verma, Devashish Bharuka, Santosh Kumar, Milind Kumar, Santosh Kumar Tripathi, Arup Banerjee, Rajeev Kumar,

R.K. Prasad, Abhishek Atrey, Mithilesh Kumar Singh, Dharmendra Kishor, Mohit Kumar Shah, Chandan Kumar, G.V. Rao, Ashok Kr. Upadhyay, P.N. Jha, Umesh Kumar, Imran Khan, Firasat Ali, Ram Swarup Sharma for the petitioner.

P.K. Shahi, Gopal Singh, Manish Kumar, L. Nageshwar Rao, Santosh Kumar, Rajeev Katiyan, Sachida Nand Singh, Mushtaq Ahmad, R.K. Ranjan, Anilendra Pandey, Priya Kashyap, Dr. Kailash Chand, Prem Sunder Jha, S.K. Sinha, In-Person, Dhruv Kumar Jha, Bijan Kumar Ghosh, Shalini Chandra, Swati Chandra, Anil Kumar Tandale, Subramonium Prasad, Vishwajit Singh Ratan Kumar Choudhuri, Akshay Shukla, Dinesh Kr. Tiwari, C.P.Yadav, Syed Md. Rafi, V.S. Mishra, N.N. Jha, Monika Kalra, Ram Ekbal Roy, Rameshwar Prasad Goyal, T. Mahipal, Pratap Shanker, Swetank Shantanu, Aniruddha P. Mayee, M.M. Singh Dharmendra Kumar Sinha, Vishnu Sharma, Anupama Sharma, Amarjyoti Sharma, Prakash Kumar Singh, Sunil Kumar Verma, Yugul Kishor Prasad, Bipin Kumar Jha, B.S. Rajesh Agrajit, Sridhar Potaraju, D.Julius Riamei, Gaichangpau Gangmei, Abhay Kumar, Aruna Gupta, Rajiv Shankar Dvivedi for the Respondent.

The Order of the Court was delivered by

ORDER

ALTAMAS KABIR, J. 1. As indicated in our order dated 9th December, 2009, this Contempt Petition has a background of alleged breach of an undertaking given on 18th January, 2006 and the order passed on the basis thereof on 23rd January, 2006 in SLP(C)Nos.22882-22888 of 2004. The said undertaking related to the commitment made by the State of Bihar to recruit and fill in the vacant posts of teachers in Primary Schools with trained teachers. The undertaking given by the State of Bihar is in that context and reads as follows :

> "That in the meantime, it has been decided that trained teachers be recruited on the vacant posts available in the State of Bihar. The Bihar Elementary Teachers Appointment Rules, 2003 having been quashed by the Patna High Court, new recruitment rules are contemplated to facilitate recruitment of trained teachers in a decentralized manner, by giving them age relaxation as ordered by the High Court.
>
> That Chapters 6 and 7 of the Bihar Education Code relating to oriental education and hostels and messes will be kept in mind, as directed by the Patna High Court, while making recruitment of teachers.
>
> That it is respectfully submitted that since the number of available trained teachers in the State is expected to be less than the available vacancies, no test for selection is required to that extent, a reference to this Bihar Public Service Commission for initiating the process of recruitment of trained teachers may not be necessary, and the order of this Hon'ble Court and of the Patna High Court in this regard may be modified"

2. The said application made for withdrawal of the Special Leave Petition was disposed of by this Court on 23rd January, 2006 on the basis of the submissions made therein.

3. Subsequently, when the State of Bihar failed to abide by its commitments and assurances, the petitioner herein, Nand Kishore Ojha, filed Contempt Petition 297 of 2006, which was disposed of on 19th March, 2007 by the following order :

> "In view of the categorical statement now made that the priority will be given to the trained teachers in appointment and also the clarification made in paragraphs 19 to 22 of the aforesaid affidavit dated 7.2.2007, we direct the State of Bihar to implement the undertaking given by the State of Bihar earlier and also now by the present affidavit dated 7.2.2007 in letter and spirit by appointing the trained teachers on priority basis."

4. Once again on the failure of the State Government to

appoint trained teachers as Assistant Teachers in the vacant sanctioned posts carrying a pay-scale, in breach of the undertaking and the assurances given by the Government, the present Contempt Petition was filed. Many applications were made in the Contempt Petition by the trained teachers similarly situated, for being impleaded as parties to the proceedings. Ultimately, the learned Attorney General appeared before us on 25th August, 2009 and assured us that it was not the intention of the State of Bihar to resile from the undertaking given on its behalf, but that the situation had changed over the years, since the undertaking had been given and had become much more complex than was thought of at that point of time. Since no workable solution could be suggested which could satisfy the undertaking given by the State Government and, at the same time, to cause minimum amount of disruption in implementing the same, this Court took note of an advertisement for appointment of Primary Teachers, which was published in December, 2003 and had been struck down by the High Court, for the limited purpose of determining the total number of vacancies which were shown as 34,540. In order to put a quietus to the entire issue, we accepted the figure relating to the vacancies to the posts shown in the advertisement to meet the claims of the trained teachers who were, at the relevant point of time, available for being appointed on a regular basis. Accordingly, notwithstanding the number of trained teachers available, this Court directed that the available 34,540 vacancies shown in the advertisement for appoint of Primary Teachers to be filled up with the said number of trained teachers as a one-time-measure to give effect to the undertaking which had been given on 18th January, 2006 and 23rd January, 2006. This Court also adjourned the Contempt Petition for implementation of the said order passed by us and for a report to be submitted on the next date as to the result of the discussions held between the petitioner and the concerned authorities.

5. Pursuant to the above directions, the matter was taken

up on 6th May, 2010, when an Additional Affidavit affirmed by the Contemnor, Shri Anjani Kumar Singh, was shown to us. The deponent indicated that he was the Principal Secretary, Human Resource Development Department, Government of Bihar, and it was mentioned in paragraph 4 of the said Affidavit that 34,540 posts of Assistant Teachers had been created as a one-time-measure for appointment in Elementary Schools of the State of Bihar and to facilitate the process of recruitment, the Bihar Special Elementary Teachers' Recruitment Rules, 2010, had been prepared and had been approved by the State Cabinet on 2nd February, 2010. On the said basis, it was averred that by creating 34,540 posts of Assistant Teachers, the State of Bihar had complied with the directions given by this Court on 9th December, 2009 as a one-time-measure.

6. Mr. P.K. Shahi, learned Advocate General for the State of Bihar, took us to the Bihar Special Elementary Teachers' Recruitment Rules, 2010, hereinafter referred to as "the 2010 Rules", and pointed out that the same had been framed to give effect to the undertakings given by the State of Bihar and the orders passed by this Court from time to time. The learned Advocate General, therefore, submitted that in view of such compliance, the contempt proceedings were liable to be dropped.

7. Appearing for the Petitioners in Contempt Petition No.297 of 2007, Mr. R.P. Bhatt, learned Senior Advocate, submitted that although apparently it would appear that by the creation of 34,540 posts, the undertakings given on behalf of the State of Bihar and the orders passed by this Court had been duly complied with, in real fact, the same did not reflect the true state of affairs in view of the framing of the 2010 Rules which were in breach and not in compliance with the said undertakings. In particular, it was pointed out that Rule 4 of the said Rules provided that only those candidates who had passed training upto 1st December, 2003, could apply, which effectively debarred those trained teachers who passed training

thereafter and were intended to be covered by the order of 6th May, 2010, for appointment as primary teachers. It was also submitted by Mr. Bhatt that teachers who had completed physical education training had not been included in the definition of the expression “training”, as provided in Rule 2(iv), although they too were to be covered by the order passed on 6th May, 2010, and the earlier orders.

8. Mr. L. Nageshwar Rao, learned Advocate, who appeared for some of the Special Leave Petitioners, submitted that the provision for reservation in Rule 6 of the aforesaid Rules would also result in the exclusion of a large number of trained teachers from the general category, since it was not expected that the total number of posts reserved would be filled from amongst trained teachers belonging to the reserved category. Mr. Rao also pointed out that the provision of Rule 9 were also prejudicial to the Petitioners, who even after their appointment would not be paid their salaries unless their certificates were found to be correct. Mr. Rao Submitted that such a condition could result in an indefinite delay in paying the salaries of the persons appointed.

9. Some of the other learned Advocates appearing for the other Petitioners and those candidates who had been permitted to intervene in these proceedings on the basis of their various applications, echoed the submissions made by Mr. Bhatt and Mr. Rao. All of them in one voice have reiterated the submission that all the 34,540 posts which have been created would have to be filled up without leaving any vacancies on the plea of reservation, as had been undertaken by the learned Advocate General for the State of Bihar, Mr. Shahi.

10. We have carefully considered the submissions made on behalf of the respective parties with regard to the affidavit of compliance filed on behalf of the State of Bihar and have also considered the submissions of the learned Advocate General for the State of Bihar with regard to the 2010 Rules.

11. While we appreciate the fact that the number of posts shown in the advertisement published in 2003 amounting to 34,540 have been created to be filled up by trained teachers, it must be said that it was never our intention that the conditions of the advertisement itself, which had been struck down by the High Court, were to be followed by the Bihar State Government. We had made it very clear in our order that we had referred to the advertisement only for the purpose of determining the number of vacancies which would be required to be filled up from amongst the trained teachers. It was very clearly our intention that all the 34,540 posts were to be filled up with trained teachers who were waiting for appointment, in order of seniority. The question of keeping some of the posts vacant on account of non-availability of reserved candidates was never the criterion in the order passed by us on 9th December, 2009. We must add that we are not for a moment suggesting that candidates from the reserved category should not be accommodated as per the reservation policy. What we intended was that after the number of candidates from the reserved category had been accommodated, the rest of the posts were to be filled up from amongst the candidates from the general category.

12. Having regard to the above, we once again direct that the said 34,540 posts, which have been created, be filled up from amongst the trained teachers in order of seniority after providing for appointment of candidates belonging to the reserved category as a one-time measure as indicated in our earlier orders and as also mentioned in the additional affidavit affirmed on behalf of the State of Bihar.

13. We would like it to be appreciated by the State of Bihar that these directions should be complied with within 31st August, 2010, without further delay. Let this matter stand adjourned till 8th September, 2010 at 3.30 p.m. for filing of compliance report.

R.P. Matter adjourned.

MADRAS CEMENTS LTD.
v.
COMMISSIONER OF CENTRAL EXCISE
(Civil Appeal No. 2037 of 2006)

MAY 06, 2010

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Central Excise Rules, 1944: Rule 57Q – Modvat credit on capital goods – Assessee claiming modvat credit under Rule 57Q in respect of components, spares and accessories – Revenue disallowing credit holding that the items in question were not capital goods – Justification of – Held: Justified as assessee failed to identify the machinery for which items in question were used.

The dispute in the appeals related to the eligibility of the appellant-assessee for Modvat Credit on certain capital goods which were said to be used as components, spares and accessories in the mining process in the manufacture of the final product for the period November and December, 1999.

Dismissing the appeals, the Court

HELD: In order to avail of Modvat/Cenvat credit, an Assessee has to satisfy the Assessing Authorities that the capital goods in the form of component, spares and accessories had been utilized during the process of manufacture of the finished product. Admittedly, the appellant was not able to identify the machinery for which the goods in question were used. In the absence of such identification, it was not possible for the Assessing Authorities to come to a decision as to whether Modvat Credit would be given in respect of the goods in question. [Paras 12, 13]

Jaypee Rewa Cement v. Commissioner of Central Excise **(2001) 6 SCC 586;** *Vikram Cement v. Commissioner of Central Excise, Indore* **(2006) 3 SCC 351;** *Commissioner of Central Excise v. J.K. Udaipur Udyog Ltd.* **(2004) 7 SCC 344;** *Vikram Cement v. Commissioner of Central Excise,* Indore **(2005) 7 SCC 741, referred to.**

Case Law Reference

(2001) 6 SCC 586	**referred to**	**Para 8**
(2006) 3 SCC 351	**referred to**	**Para 8**
(2004) 7 SCC 344	**referred to**	**Para 8**
(2005) 7 SCC 741	**referred to**	**Para 9**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2037 of 2006.

From the Judgment & Order dated 18.07.2005 of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Appeal No. E/108/04/MAS.

WITH

C.A. No. 7443 of 2008

A.K. Ganguli, A.M.P. Latha, Prabha Swami for the Appellant.

Gaurav Banerjee, ASG, Rajiv Nanda, Balaji Subramanium, B. Krishna Prasad, Shreekant N. Terdal for the Respondent.

The Judgment of the Court was delivered by.

ALTAMAS KABIR, J. 1. The short point involved in these appeals is whether the Appellant/Assessee is eligible for Modvat Credit on certain goods for the period comprising November and December, 1999.

2. The Appellant, M/s Madras Cements Ltd., Alathiyur, hereinafter referred to as 'the Assessee' is the holder of Central Excise Registration No.1/Cement/97 and is engaged in the manufacture of cement and clinker coming within the ambit of Chapter 25 of the Central Excise Tariff Act, 1985, hereinafter referred to as 'CETA, 1985'.

3. The Revenue's contention is that for the months of November and December, 1999, the Assessee had taken Modvat Credit on ineligible capital goods amounting to Rs.8,42,843/-. The further contention of the Revenue is that the Assessee was not entitled to such credit, inasmuch as, it had taken Modvat Credit on items which did not come within the purview of capital goods under Rule 57Q of the Central Excise Rules, 1944, although it was claimed by the Assessee that the said items comprised components, spares and accessories within the meaning of Explanation 1(d) of Rule 57Q(1) relating to capital goods. Accordingly, on 31st March, 2000, the Assessee was issued show cause notice no.11 of 2000 asking it to show cause as to why the amount of Modvat Credit of Rs.8,42,843/- should not be disallowed and recovered under Rule 57U(3) of the Central Excise Rules, 1944, and why interest at the rate of 20% per annum should not be demanded under Rule 57U thereof, if the Modvat Credit wrongly availed was not paid within three months from the date of receipt of the demand notice. The Assessee was also asked to show cause as to why a penalty should not be imposed under Rule 173Q(b)(b) of the aforesaid Rules.

4. Replying to the said show cause notice, the Assessee asserted that the inputs used in or in relation to the manufacture of the final products were eligible for Modvat Credit and that the ground plan had been enclosed with the application for grant of registration certificate indicating that the mines were also situated in the factory complex and were an integral part of the factory. The Assessee contended that parts of the Bucket

Elevator (8434.00) and Wagon Loaders (8431.00) were parts of machinery mentioned under serial nos.1 to 4 of the Table under Rule 57Q(1) and were eligible for Modvat Credit as per the Board's Circular No.276/110/96 TRU.

5. The show cause notice was adjudicated by the Assistant Commissioner of Excise on 4th June, 2003, and by his order No.22 of 2003, the Assistant Commissioner disallowed Modvat Credit amounting to Rs.4,31,749/- with regard to some of the items. The Assistant Commissioner held that, inasmuch as, the mandatory requirement stipulated in serial no.5 of the Table to Rule 57Q had not been complied with, he was not inclined to allow Modvat Credit in respect of the goods listed in serial nos.32 to 43 of the annexure to the notice. An appeal preferred before the Commissioner (Appeals) against the order of the Assistant Commissioner was rejected on 16th October, 2003, upon holding that the items in question were not capital goods and were not, therefore, entitled to Modvat Credit admissible under Rule 57A as well. The Commissioner (Appeals) held that the credit was not admissible on the goods listed under serial nos.32 to 43 of the show cause notice.

6. The matter was then taken in appeal before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, by way of Appeal No.E/108/04/MAS on 20th January, 2004, which upheld the order of the Commissioner (Appeals). Aggrieved by the order of CESTAT, the Appellant filed the present Appeals before this Court.

7. Appearing for the Appellant/Assessee, Mr. A.K. Ganguli, learned Senior Advocate, submitted that the case of the Assessee was squarely covered by the decision of this Court in *Jaypee Rewa Cement vs. Commissioner of Central Excise* [(2001) 8 SCC 586], wherein explosives used for the extraction of limestone for manufacture of cement were held to fall under Chapter 36 of the Schedule to CETA, 1985, and while cement comes under Chapter 25 and is a final product,

explosives fall under Column 2 and that the Assessee therein would be entitled to claim credit on the duty paid on explosives as they were used for the manufacture of the intermediate produce, namely, limestone which, in turn, was used in the manufacture of cement.

8. Mr. Ganguli also submitted that the issues in the instant case stood settled by the larger Bench in *Vikram Cement vs. Commissioner of Central Excise, Indore* [(2006) 2 SCC 351], to which the correctness of the decision in the case of *Commissioner of Central Excise vs. J.K. Udaipur Udyog Ltd.* [(2004) 7 SCC 344] had been referred. The Three-Judge Bench went on to hold that the Schemes of the Modvat and Cenvat were not different and that the conclusion of the Court in the *J.K. Udaipur Udyog Ltd.'s* case (supra) that the decision in *Jaypee Rewa Cement's* case (supra) would have no application to the case was not accepted on the ground that the Cenvat Rules only reflected the Modvat Rules where the Rules had simply been re-arranged. Mr. Ganguli submitted that, inasmuch as, the items sought to be excluded by the Assistant Commissioner were components and accessories used in the mining process for manufacture of the final product, and were covered by Sub-heading No.84.31 to the Table annexed to Rule 57Q after its substitution by Notification No.6/97-CE(NT) dated 1.3.1997, as subsequently corrected on 1.3.1997, 10.3.1997 and 9.4.1997, the Assessee would be entitled to the benefits of Rule 57Q of the Central Excise Rules, 1944 and the impugned orders of the Revenue as well of the High Court were liable to be quashed.

9. On behalf of the Respondent, Commissioner of Central Excise, it was submitted by learned Additional Solicitor General, Mr. Gaurav Banerjee, that although the Assessee had claimed the benefit of the entry at serial No.5 of the Table annexed to Rule 57Q(1) in respect of the capital goods mentioned at serial nos.32 to 43, it had failed to specify the tariff heading under which their machinery/equipment, of which

the subject capital goods were claimed to be accessories were classifiable, nor could they even disclose the identity of such machinery and equipment to the authorities. Mr. Banerjee also submitted that at no stage of the proceedings before the Tribunal or the High Court was any attempt made by the Assessee to identify the machinery in the absence whereof they would not be eligible for Modvat Credit. It was urged that as had been held in the decision of this Court in *Vikram Cement vs. Commissioner of Central Excise, Indore* [(2005) 7 SCC 74], in order to be eligible for Cenvat Credit on capital goods under the Cenvat Credit Rules, 2001 and 2002, which requires, inter alia, that such goods must be used in the factory for the manufacture of the final product. Accordingly, an item not satisfying the said condition could not be brought within the scope of "capital goods" by any interpretive process, whereby claim for Cenvat Credit on the capital goods in question could be entertained. Mr. Banerjee submitted that since the said decision, as also the decision in the case of *J.K. Udaipur Udyog Ltd.'s* case (supra), were available at the relevant time, the impugned decision arrived at by the High Court could not be assailed on account of the subsequent decision of the Constitution Bench on the reference made with regard to the views expressed in *J.K. Udaipur Udyog Ltd.'s* case (supra).

10. Mr. Banerjee urged that the impugned judgment of the Tribunal ought not, therefore, to be interfered with and the appeals of Madras Cements Ltd. were liable to be dismissed.

11. As indicated initially, the short point involved in these appeals relates to the eligibility of the Assessee for Modvat Credit on certain capital goods which were said to have been used as components, spares and accessories in the manufacturing process of the Appellant for the period in question.

12. In order to avail of Modvat/Cenvat credit, an Assessee has to satisfy the Assessing Authorities that the capital goods

in the form of component, spares and accessories had been utilized during the process of manufacture of the finished product.

13. Admittedly, in this case the Appellant was not able to identify the machinery for which the goods in question had been used. In the absence of such identification, it was not possible for the Assessing Authorities to come to a decision as to whether Modvat Credit would be given in respect of the goods in question. There is no difficulty with regard to the decisions rendered in *Jaypee Rewa Cement's* case (supra) or the Constitution Bench judgment in *Vikram Cement's* case (supra). The question is whether the Assessee was able to specify to the Assessing Authorities that the goods in question had been used as components, spares and accessories for the manufacture of the finished product. The same holds good in respect of Mr. Ganguli's assertion that the goods in question were included under paragraph 84.31 of the Table set out in Rule 57Q of the Central Excise Rules, 1944.

14. We are not, therefore, inclined to interfere with the orders of the Tribunal and the Appeals are accordingly, dismissed.

15. There will be no orders as to costs.

D.G. Appeals dismissed.

SOUTH BENGAL STATE TRANSPORT CORPORATION
v.
ASHOK KUMAR GHOSH AND ORS.
(Civil Appeal No. 4338 of 2010)

MAY 6, 2010

[R.V. RAVEENDRAN, R.M. LODHA AND C.K. PRASAD, JJ.]

Service Law:

Misconduct – Penalty – South Bengal State Transport Corporation Service Regulations – Regulations 36 and 38 – State Transport Corporation – Charges of misconduct against respondent Conductor – Findings against him by Disciplinary authority – Respondent relegated to status of Daily Rated Conductor – He challenged the action – Plea of bias – Further plea that the punishment imposed was not provided for in the Regulations – Held: Mere appointment of Enquiry Officer, while framing the charge sheet, before considering the reply of respondent, did not reflect any bias – However, punishment imposed, not being one of the punishments enumerated in Regulation 36, not permissible in law – Reinstatement directed on technical ground, hence, without back wages – Punishment modified to penalty of reduction to lowest stage in time scale of pay applicable to Conductors.

Reversion – Held: An employee cannot be reverted to a post lower than the post in which he entered service.

Reversion – Held: Reversion to a post outside the cadre i.e. from regular post to a daily wage post, is not permitted.

Respondent no.1 was a conductor in the appellant transport corporation. Disciplinary proceedings were initiated against him for allowing a ticketless passenger

to travel in the bus and for possessing excess amount in his cash bag. The disciplinary authority found the charges proved and inflicted the punishment of relegating respondent no.1 to the status of a Daily Rated Conductor.

Respondent no.1 filed writ petition before the High Court contending that appointment of the Enquiry Officer in the charge sheet itself reflected bias on the part of the authority and this itself vitiated the punishment. The High Court allowed the writ petition and quashed the order of punishment holding that initiation of disciplinary proceedings was not free from bias inasmuch as the Enquiry Officer was appointed without considering the reply submitted by respondent no.1 and the punishment inflicted was in violation of Regulation 38(2) of the South Bengal State Transport Corporation Service Regulations. Hence the present appeal.

Partly allowing the appeal, the Court

HELD: 1.1. Regulation 38 of the South Bengal State Transport Corporation Service Regulations, *inter alia*, provides the procedure for imposing penalties. From a plain reading of Regulation 38(2), it is evident that the disciplinary authority is required to draw or cause to be drawn up, the substance of imputation of misconduct into definite and distinct articles of charges and the statement of imputation of misconduct, to contain the statement of relevant facts including any admission or confession made by the employee. It also requires drawing up a list of documents by which and a list of witnesses by whom the articles of charges are proposed to be sustained. Regulation 38(3) of the Regulations obliges the disciplinary authority to deliver or cause to be delivered to the employee the articles of charges and the statement of imputation of misconduct requiring the employee to submit to the Enquiry Officer written statement of defence

within a period specified. Neither Regulation 38(2) nor Regulation 38(3) provides that before the appointment of the Enquiry Officer the reply of the delinquent employee is to be considered. [Para 11] [185-G-H; 186-A-C]

1.2. It may be open for a disciplinary authority to initiate the departmental proceedings on consideration of the reply of an employee but as an absolute proposition of law it cannot be said that before initiating departmental enquiry or appointing Enquiry Officer, reply of the delinquent employee is required to be obtained and considered unless it is the requirement of the rules. There may be cases where the charges are of such a nature that the disciplinary authority may not require any reply from the delinquent employee but straightway initiates the departmental enquiry and appoint an Enquiry Officer. In the present case, the Bus was checked by the flying squad of the appellant-Corporation itself and in view of what has been found by it, the disciplinary authority while framing the charge had appointed the Enquiry Officer. The mere appointment of Enquiry Officer while framing the charge sheet, even before considering the reply of the delinquent employee, does not reflect any bias. [Para 11] [186-C-F]

State of Punjab vs. V.K. Khanna and others, **(2001) 2 SCC 33, distinguished.**

2.1. In the present case, imposition of penalty was found to be bad by the High Court due to non-compliance of Regulation 38(2) of Regulations on the ground that the delinquent employee was not given any chance to have his say before imposition of penalty. However, Regulation 38(2) nowhere contemplates giving an opportunity to the delinquent employee. Matter would have been different had the delinquent employee not given the copy of the enquiry report and opportunity to file reply thereto. [Para 13] [187-B-D]

2.2. The punishment inflicted on the delinquent employee is of relegating him to the status of Daily Rated Conductor from the post of Conductor. The post of Conductor carries a time scale and Regulation 36(4) provides for penalty of reduction to a lower stage in time scale of pay for a specified period. The reduction to a lower stage in the time scale would obviously mean that the employee retains the same post but the scale of pay, which every post carries, can be reduced to a lower stage. Relegation of the delinquent employee to the status of Daily Rated Conductor cannot be said to be a reduction to a lower stage in the time scale of pay or reduction to a lower grade as delinquent employee has been deprived of the post of Conductor. This reduction to a lower stage, has to be in the scale of pay of the Conductor itself. Reduction to a lower grade should be with reference to the same post. The punishment inflicted also does not come within the ambit of reduction to a lower post or grade as contemplated under Regulation 36(5) of the Regulations. [Para 15] [188-F-H; 189-A]

3. It is well settled that while an employee can be reverted to a lower post or service, he cannot be reverted to a post lower than the post in which he entered service. Further it is also well settled that reversion to a lower post or service does not permit reversion to a post outside the cadre that is from regular post to a daily wage post. Therefore in the case at hand, the punishment inflicted on the delinquent employee (respondent no.1), not being one of the punishments enumerated in Regulation 36, is not permissible in law. [Para 16] [189-B-D]

Nyadar Singh v. Union of India **AIR 1988 SC 1979, relied on.**

4. The High Court was not right in holding that the enquiry was to be set aside on the ground of bias. The punishment imposed by the disciplinary authority, however, requires to be modified. Though, normally, in such a situation the matter should be referred back to the disciplinary authority for imposition of fresh penalty, having regard to the facts and circumstances and to do complete justice, it is directed as follows:- (a) The finding of guilt recorded by the Disciplinary Authority is upheld; (b) The punishment imposed by the appellant is set aside and the direction for reinstatement is upheld; (c) However as the punishment is being set aside and reinstatement is directed on a technical ground, the respondent-employee will not be entitled to any back wages; (d) Instead of reversion to the post of daily wage conductor, the punishment is substituted as reduction to the lowest stage of the time scale applicable to the post of conductor with effect from the date of imposition of punishment. [Paras 17, 18] [189-E-H; 190-A-B]

Case Law Reference:

(2001) 2 SCC 33	**distinguished**	**Para 5**
AIR 1988 SC 1979	**relied on**	**Para 16**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4338 of 2010.

From the Judgment & Order dated 24.09.2008 of the High Court at Calcutta in MAT No. 567 of 2008 & CAN No. 7375 of 2008.

Janartanjan Das, Swetaketu Mishra, P.P. Nayak for the Appellant.

V.K. Monga for the Respondents.

The Judgment of the Court was delivered by

C.K. PRASAD, J. 1. This petition for special leave to appeal is against the judgment and order dated 24.09.2008, passed by the Calcutta High Court in MAT No.567 of 2008,

whereby it had dismissed the appeal preferred by the petitioner and affirmed the order of the learned Single Judge dated 17.04.2008 passed in W.P.No.4100(W) of 2008 quashing the order of punishment inflicted on respondent No.1.

2. Leave granted.

3. Short facts giving rise to this appeal are that the writ petitioner-respondent No.1, hereinafter referred to as the delinquent employee was at the relevant time working as Conductor with the appellant –South Bengal State Transport Corporation. On 17.02.2007 he was assigned duty in a Bus bearing Registration No.WB-39/2110, plying between Durgapur to Baharampur. The said bus was checked by the checking squad at Baharampur and they detected one ticketless passenger, who was going towards Baharampur from Kandi. The checking squad collected fine from the said passenger. Further a sum of Rs.345/- was found in excess in the Conductor's cash-bag. The Divisional Manager, Durgapur Division of the South Bengal State Transport Corporation is the disciplinary authority of the delinquent employee. A memo of charge dated 7.3.2007 was drawn by the Divisional Manager, Durgapur alleging the aforesaid misconduct against the delinquent employee; i.e. allowing the ticketless passenger to travel in the bus and possession of excess amount of Rs.345/- in the cash-bag. The memo of charge was served on the delinquent employee on 8.3.2007 and without giving any opportunity to him the Divisional Manager, Durgapur was appointed as the Enquiry Officer. The delinquent employee submitted his reply dated 17.3.2007 denying both the charges and according to him detection of the passenger travelling without ticket is not misconduct, because on the spot itself the ticketless passenger was tried and a fine was realized from him by applying Section 178A of the Motor Vehicles Act. As regards the second charge, the plea of the delinquent employee is that an amount of Rs.345/- was left by a passenger and when one of the passengers claimed the amount, he verified the

same and till then kept the amount with the intention of returning it to him. The enquiry was conducted by the disciplinary authority i.e. the Divisional Manager, Durgapur himself who did not accept his plea and held both the charges brought against him to have been proved. Accordingly the disciplinary authority inflicted the punishment and relegated the delinquent employee, a Conductor to the status of Daily Rated Conductor.

4. The delinquent employee challenged the punishment by filing the writ petition before the High Court, inter alia, contending that "the appointment of an Enquiry Officer in the chargesheet itself reflects bias on the part of the authority" and this itself vitiates the punishment. The aforesaid submission found favour with the High Court and it allowed the writ petition, quashed the order of punishment and while doing so observed as follows :

> "In the present case, there is absolutely not an iota of material to indicate that the show-cause/reply submitted by the petitioner in response to the charge-sheet was at all taken into consideration. Going a step further, it can be said in the present case that appointment of an Enquiring Officer while issuing a charge-sheet is undoubtedly an unconscious reflection of the sub-conscious mind and this, undoubtedly, reflects bias on the part of the authority. Thus, there is bias at the very initiation of the enquiry."

Ultimately, the High Court concluded as follows :

> "So far as the present case is concerned, in view of the fact as indicated earlier that initiation of the proceeding was not free from bias and in the backdrop of the fact that there had been non-compliance of Regulation 38(2), this court does not find any reason as to why the matter shall not be interfered with."

5. It is relevant here to state that while recording the finding of bias, the learned Single Judge had referred to a decision of

this Court in the case of *State of Punjab vs. V.K. Khanna and others,* (2001) 2 SCC 33, in which it has been held as follows:

> "34.The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an enquiry officer to substantiate the frame of mind of the authorities and thus depicting bias — what bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz. the inquiry shall proceed irrespective of the reply — is it an indication of a free and fair attitude towards the officer concerned? The answer cannot possibly be in the affirmative. It is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative — the inquiry follows but not otherwise and it is this part of service jurisprudence on which reliance was placed by Mr Subramanium and on that score, strongly criticised the conduct of the respondents (sic appellants) herein and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record."

6. Another plea of the delinquent employee was that the punishment relegating him to the status of Daily Rated Conductor is not provided in the South Bengal State Transport Corporation Service Regulations (hereinafter referred to as the 'Regulations') but the said plea had been negated by the High Court in the following words:

> "It cannot be denied that punishment inflicted on the petitioner comes within the scope and ambit of Regulation 36. Punishment imposed is in the nature of reduction to a lower post or to a lower stage in time scale."

7. The appellant, aggrieved by the aforesaid order preferred an appeal along with an application for stay. The stay application and the appeal were dismissed by a common order dated 24.9.2008 with the following directions:

> (a) The appellant disciplinary authority shall be at liberty to proceed afresh against the employee strictly in accordance with the provisions of Regulation 38(1) and 38(2);
>
> (b) During the pendency of the proceeding before the disciplinary authority the respondents shall continue to enjoy the status enjoyed by him prior to the passing of the order of punishment."

8. Mr. Janaranjan Das, learned counsel appearing on behalf of the appellant-Corporation submits that mere appointment of Enquiry Officer while issuing the chargesheet does not reflect bias and hence, the finding recorded by the High Court that initiation of the departmental proceedings was not free from bias is erroneous. He submits that the departmental proceeding was conducted in accordance with the Regulations and it cannot be said that there had been non-compliance of Regulation 38(2) of the Regulations. He further submits that reliance on the judgment of this Court in the case of *V.K. Khanna* (supra) is highly misplaced.

9. Despite service of notice on respondent No.1, the delinquent employee has not chosen to enter appearance.

10. Regulation 38 of the Regulations, inter alia, provides the procedure for imposing penalties. As the High Court had held that the appointment of Enquiry Officer without considering the reply submitted by the delinquent employee speaks of bias and the punishment inflicted is in violation of Regulation 38(2) of the Regulations, we deem it expedient to reproduce not only Regulation 38(2) but 38(3) which are relevant for the purpose :

38. PROCEDURE FOR IMPOSING PENALTIES :

(1) xxx xxxx xxxx

(2) The disciplinary authority shall draw up or cause to be drawn up-

(i) The substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge,

(ii) A statement of imputations of misconduct or misbehaviour in support of each article of charge which shall contain

(a) statement of relevant facts including any admission or confession made by the employee,

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained."

(3) The disciplinary authority shall deliver or cause to be delivered to the employee a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour prepared under clause (ii) of sub-regulation (2) and shall require the employee to submit to the inquiring authority within such time as may be specified a written statement of his defence and to state whether he desires to be heard in person.

(4) xxx xxxx xxxx

11. From a plain reading of Regulation 38(2) it is evident that the disciplinary authority is required to draw or cause to be drawn up, the substance of imputation of misconduct into definite and distinct articles of charges and the statement of imputation of misconduct, to contain the statement of relevant

facts including any admission or confession made by the employee. It also requires drawing up a list of documents by which and a list of witnesses by whom the articles of charges are proposed to be sustained. Regulation 38(3) of the Regulations obliges the disciplinary authority to deliver or cause to be delivered to the employee the articles of charges and the statement of imputation of misconduct requiring the employee to submit to the Enquiry Officer written statement of defence within a period specified. Neither Regulation 38(2) nor Regulation 38(3) provides that before the appointment of the Enquiry Officer the reply of the delinquent employee is to be considered. In our opinion, it may be open for a disciplinary authority to initiate the departmental proceedings on consideration of the reply of an employee but as an absolute proposition of law it cannot be said that before initiating departmental enquiry or appointing Enquiry Officer, reply of the delinquent employee is required to be obtained and considered unless it is the requirement of the rules. There may be cases where the charges are of such a nature that the disciplinary authority may not require any reply from the delinquent employee but straightway initiates the departmental enquiry and appoint an Enquiry Officer. In the present case the Bus was checked by the flying squad of the appellant-Corporation itself and in view of what has been found by it, the disciplinary authority while framing the charge had appointed the Enquiry Officer. We are of the opinion that mere appointment of Enquiry Officer while framing the charge sheet, even before considering the reply of the delinquent employee, does not reflect any bias.

12. Now, referring to the authority of this Court in the case of *V.K. Khanna* (supra), relied on by the High Court, same is clearly distinguishable. In the said case the chargesheet dated 24.4.1997 was issued to the delinquent employee who happened to be the Chief Secretary of the State and he was asked to submit his reply within 21 days but even before his reply, the Chief Minister made a statement on 27.4.1997 that

a judge of the High Court would look into the charge against him. The aforesaid act of the Chief Minister coupled with other factors led this Court to conclude that the action was actuated by bias. In the present case the facts are completely different.

13. It is relevant here to state that imposition of penalty was found to be bad by the High Court due to non-compliance of Regulation 38(2) of Regulations on the ground that the delinquent employee was not given any chance to have his say before imposition of penalty. Regulation 38(2) of the Regulations has been quoted in the preceding paragraph of the judgment and nowhere it contemplates giving an opportunity to the delinquent employee. Matter would have been different had the delinquent employee not given the copy of the enquiry report and opportunity to file reply thereto. Thus, both the reasons given by the learned Single Judge, as affirmed in the appeal by the High Court, are erroneous.

14. It may be mentioned that the High Court had held that punishment inflicted on the delinquent employee to be one provided under Regulation 36 of the Regulations. According to the High Court punishment imposed is in the nature of reduction of lower post or to a lower stage in time scale. Regulation 36 provides for the penalties which can be imposed on delinquent employee. Regulation 36 reads as follows :

> "36.PENALTIES : The following penalties may, for good or sufficient reasons and as hereinafter provided, be imposed on an employee namely :
>
> (i) Censure;
>
> (ii) with-holding of increments or promotions;
>
> (iii) recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders;
>
> (iv) reduction to a lower stage in time scale of pay for a specified period with further direction as to whether or not the employee will earn increments of pay during the period of such reduction will or will not have the effect of postponing the future increments of his pay;
>
> (v) reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the employee to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of the restoration to the grade or post of service from which the employee was reduced and his seniority and pay on such restoration to that grade, post or service;
>
> (vi) compulsory retirement;
>
> (vii) removal from service which shall not be a disqualification for future employment;
>
> (viii) dismissal from service which shall ordinarily be a disqualification for future employment."

15. The punishment inflicted on the delinquent employee is of relegating him to the status of Daily Rated Conductor from the post of Conductor. The post of Conductor carries a time scale and Regulation 36(4) provides for penalty of reduction to a lower stage in time scale of pay for a specified period. The reduction to a lower stage in the time scale would obviously mean that the employee retains the same post but the scale of pay, which every post carries, can be reduced to a lower stage. Relegation of the delinquent employee to the status of Daily Rated Conductor cannot be said to be a reduction to a lower stage in the time scale of pay or reduction to a lower grade as delinquent employee has been deprived of the post of Conductor. This reduction to a lower stage, in our opinion, has to be in the scale of pay of the Conductor itself. Reduction to a

lower grade should be with reference to the same post. In our opinion, the punishment inflicted also does not come within the ambit of reduction to a lower post or grade as contemplated under Regulation 36(5) of the Regulations.

16. We may next consider whether the punishment is permissible in service jurisprudence. It is well settled that while an employee can be reverted to a lower post or service, he cannot be reverted to a post lower than the post in which he entered service (See: *Nyadar Singh vs. Union of India* – AIR 1988 SC 1979). Further it is also well settled that reversion to a lower post or service does not permit reversion to a post outside the cadre that is from regular post to a daily wage post. We are therefore of the view that the punishment inflicted on the delinquent employee not being one of the punishments enumerated in Regulation 36, is not permissible in law.

17. However we are of the view that the reasoning of the High Court for quashing the order of punishment is not sustainable. While we do not agree with the High Court that the enquiry is to be set aside on the ground of bias, we agree that the punishment imposed by the disciplinary authority requires to be modified. Though, normally, in such a situation the matter should be referred back to the disciplinary authority for imposition of fresh penalty, having regard to the facts and circumstances and to do complete justice, we propose to impose the penalty.

18. We accordingly allow this appeal in part with the following directions:

(a) The judgment of the High Court is set aside and the finding of guilt recorded by the Disciplinary Authority is upheld.

(b) The punishment imposed by the appellant is set aside and the direction for reinstatement is upheld.

(c) However as the punishment is being set aside and

reinstatement is directed on a technical ground, the respondent-employee will not be entitled to any back wages.

(d) Instead of reversion to the post of daily wage conductor we substitute the punishment as reduction to the lowest stage of the time scale applicable to the post of conductor with effect from the date of imposition of punishment.

B.B.B. Appeal partly allowed.

MD. ASHIF AND ORS.
v.
STATE OF BIHAR AND ORS.
(Civil Appeal Nos. 4256-4257 of 2010)

MAY 6, 2010

[J.M. PANCHAL AND T.S. THAKUR, JJ.]

Service Law – Termination – On ground of illegal initial appointment – Voluntary Health Workers, working on monthly honorarium in State run dispensaries – Appointed by way of regularization/absorption as Primary Health Workers – They worked thus for 15 years, whereafter they were terminated on the ground that their initial appointments were manifestly illegal – Justification of – Held: Justified – The appointment process itself was completely violative of the constitutional scheme underlying public employment – No procedure was followed while granting such appointments – The Chief Medical Officer, who made the appointments, was not vested with the power to do so, nor were the claims of other candidates eligible for the appointments considered – Court cannot allow such an illegality to continue irrespective of the length of time for which it has continued – Constitution of India, 1950 – Articles 14 and 16.

Appellants were working in State run dispensaries as Voluntary Health Workers (VHWs) on a monthly honorarium of Rs.50/-. After some time, they were appointed by way of regularization/absorption as Primary Health Workers on a regular pay scale and they worked thus for 15 years. Later, their services were terminated on the ground that their initial appointments were manifestly illegal.

The appellants challenged their termination before the High Court. A Single Judge of the High Court set

aside the termination, on the ground that the same was based on an alleged irregularity committed 15 years earlier. However, the Division Bench, in Letters Patent Appeal filed by the respondent-State, set aside the order passed by the Single Judge holding that since the initial appointment of the appellants was illegal, the very fact that the appellants had worked for a long period did not cure that defect so as to justify their re-instatement in service. Hence the present appeals.

Dismissing the appeals, the Court

HELD:1.1. The legal position regarding the right of an employee to seek regularisation of his services stands settled by a long line of the decisions of this Court. It has been held by this Court that the question of regularisation of the services of an employee may arise in two contingencies. It may arise firstly in situations where against an available clear vacancy an appointment is made on ad hoc or daily-wage basis by an authority competent to do so and such appointment is continued from time to time without any artificial break in service. Any such appointment may be regularized giving him security of tenure. The all important condition precedent for such regularization is that the initial entry of such an employee must be made against a sanctioned vacancy and by following the rules and regulations governing such entry. [Para 6] [197-F-H; 198-A]

1.2. The second situation in which regularization could be granted was where the initial entry of the employee against an available vacancy was found suffering from some flaws in the procedure in making the appointment though the person appointing was competent to make such initial recruitment and had otherwise followed the procedure prescribed for such recruitment. A need may then arise for regularization of the initial appointment by the competent authority with a

view to curing the irregularity if any in the same and with a view to granting security of tenure to the incumbent. It is necessary in such situations that the initial entry of the employee is not totally illegal or in breach of the established rules and regulations governing such recruitment. [Para 7] [198-B-D]

1.3. There is a distinction between an irregularity and an illegality in the making of an appointment. Where the due process of appointment has been deviated from, the Court can regularize the same. In cases where the process itself is completely violative of the constitutional scheme underlying public employment and no procedure has been followed while granting such appointments the Court cannot allow such an illegality to continue irrespective of the length of time for which it has continued. [Para 8] [198-E-G]

1.4. In the case at hand, there is no gainsaying that the appointments of the appellants as Primary Health Workers were totally illegal and violative of Articles 14 and 16 of the Constitution which guarantee equality of opportunity to all those who were otherwise eligible for such appointments. The Chief Medical Officer who had made the appointments was not vested with the power to do so nor were the claims of other candidates eligible for appointments against the posts to which the appellants were appointed, considered. Surprisingly, the appointments had come by way of absorption of the appellants who were working as Voluntary Health Workers on a monthly honorarium of Rs.50/- only. [Para 11] [202-D-G]

1.5. The High Court correctly held that there was no cadre of Voluntary Health Workers who were working on an honorarium in State run dispensaries. The very nature of the appointment given to the appellants as Voluntary

Health Workers was honorary in nature which entitled them to the payment of not more than Rs.50/- per month. It is difficult to appreciate how the Chief Medical Officer could have regularized/absorbed such Voluntary Health Workers doing honorary service against the post of Primary Health Workers which carried a regular pay-scale and which could be filled only in accordance with the procedure prescribed for that purpose. The appointment of the appellants against the said posts was thus manifestly illegal and wholly undeserved to say the least. Inasmuch as these appointments came to be cancelled pursuant to the said directions no matter nearly a decade and a half later the termination could not be said to be illegal so as to warrant interference of a writ court for reinstatement of those illegally appointed. The High Court was, in that view of the matter, justified in declining interference with the order of cancellation and dismissing the writ petitions. [Para 11] [202-F-H; 203-A-C]

Secretary, State of Karnataka & Ors. v. Uma Devi (3) & Ors. **(2006) 4 SCC 1, followed.**

Ashwani Kumar & Ors. v. State of Bihar & Ors. **AIR 1997 SC 1628;** *Mohd. Abdul Kadir & Anr. v Directorate General of Police, Assam & Ors.* **(2009) 6 SCC 611;** *Pinaki Chatterjee v. Union of India & Ors.* **(2009) 5 SCC 193 and** *General Manager, Uttaranchal Jal Sansthan v. Laxmi Devi & Ors.* **(2009) 7 SCC 205, relied on.**

Roshni Devi and Ors. v. State of Haryana and Ors. **(1998) 8 SCC 59;** *Union of India & Ors. v. Kishorilal Bablani* **AIR 1999 SC 517;** *State of Madhya Pradesh & Anr. v. Dharam Bir* **(1998) 6 SCC 165;** *Subedar Singh & Ors. v. District Judge, Mirzapur & Anr.* **AIR 2001 SC 201;** *State of Karnataka and Ors. v. G.V. Chandrashekar* **(2009) 4 SCC 342 and** *U.P. State Electricity Board v. Pooran Chandra Pandey and Ors.* **(2007) 11 SCC 92, referred to.**

Case Law Reference:

(1998) 8 SCC 59	**referred to**	**Para 4**
AIR 1999 SC 517	**referred to**	**Para 4**
AIR 1997 SC 1628	**relied on**	**Para 5**
(1998) 6 SCC 165	**referred to**	**Para 5**
AIR 2001 SC 201	**referred to**	**Para 5**
(2006) 4 SCC 1	**followed**	**Para 8**
(2009) 6 SCC 611	**relied on**	**Para 9**
(2009) 4 SCC 342	**referred to**	**Para 9**
(2007) 11 SCC 92	**referred to**	**Para 9**
(2009) 5 SCC 193	**relied on**	**Para 10**
(2009) 7 SCC 205	**relied on**	**Para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4256-4257 of 2010.

From the Judgment & Order dated 16.04.2003 of the High Court of Judicature at Patna in L.P.A. No. 33 of 2002.

K.K. Rai, Ambhoj Kumar Sinha for the Appellants.

Manish Kumar, Gopal Singh for the Respondents.

The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. Leave granted.

2. These appeals by special leave arise out of an order passed by a Division Bench of the High Court of Patna whereby Letters Patent Appeal Nos.33 and 540 of 2002 have been allowed, the order passed by the learned Single Judge set aside and Writ Petitions No.11701 and 9024 of 2001 dismissed.

3. The appellants in these appeals were in June 1985 appointed as Voluntary Health Workers in State run dispensaries within the district of Darbhanga in the State of Bihar. In lieu of their services they were paid a monthly honorarium of Rs.50/- only. Less than five months after their initial appointment they were absorbed as Primary Health Workers by the Chief Medical Officer which carried a pay scale of Rs.535-765. It is not in dispute that the appellants continued to work for nearly 15 years as Primary Health Workers, till their services were terminated by an order dated 20th February, 2001 on the ground that their promotion/absorption as Primary Health Workers was illegal and contrary to the rules. The termination, it appears, came pursuant to an enquiry regarding procedure followed in the making of the appointments to class III posts. The enquiry revealed that the appointments were in breach of circular/instructions dated 3rd December, 1980 issued by the Chief Secretary of the State of Bihar pointing out that appointment to Class-3 posts had been made in violation of procedure laid down by the State Government in terms of two circulars dated 10th July, 1980 and 26th September, 1980. The Government, therefore, directed all the Heads of the Departments, Divisional Commissioners and the District Magistrates to review the system and to send their reports to ensure that action for filling up of the vacant posts is taken in accordance with the prescribed procedure. It was further directed that appointments made in violation of the prescribed procedure would not only call for action against those who make such appointments but render the appointments liable to be cancelled.

4. Aggrieved by the termination of their services as Primary Health Workers and reversion to Voluntary Health Workers the appellants filed Writ Petitions No.11701 and 9024 of 2001 in the High Court of Patna, inter alia, asserting that the appointments of the petitioners (appellants herein) had been made after a proper advertisement and that the termination of their services 15 years after the commission of the alleged

irregularity in making the appointments was unfair and legally impermissible. By an order dated 9th November, 2001 a Single bench of the High Court of Patna held the termination of the services of the appellants to be illegal inasmuch as the same was based on an alleged irregularity committed 15 years earlier. Reliance in support was placed upon the decisions of this Court in *Roshni Devi and Ors. Vs. State of Haryana and Ors.* (1998) 8 SCC 59 and *Union of India & Ors. Vs. Kishorilal Bablani* (AIR 1999 SC 517).

5. The order passed by the learned Single Judge was, assailed before a Division bench in Letters Patent Appeal Nos.33 and 540 of 2000 filed by the State of Bihar. The Division Bench opined that since the initial appointment of the appellants herein was illegal the very fact that the appellants had worked for a long period did not cure that defect so as to justify their reinstatement in service. In support of that view the Division Bench placed reliance upon the decisions of this Court in *Ashwani Kumar & Ors. Vs. State of Bihar & Ors.* (AIR 1997 SC 1628), *State of Madhya Pradesh & Anr. Vs. Dharam Bir* (1998) 6 SCC 165 and *Subedar Singh & Ors. Vs. District Judge, Mirzapur & Anr.* (AIR 2001 SC 201). The present appeals call in question the correctness of the said order as already noticed above.

6. We have heard learned counsel for the parties at considerable length. The legal position regarding the right of an employee to seek regularisation of his services stands settled by a long line of the decisions of this Court. In *Ashwani Kumar's* case (supra) this Court declared that the question of regularisation of the services of an employee may arise in two contingencies. It may arise firstly in situations where against an available clear vacancy an appointment is made on ad hoc or daily-wage basis by an authority competent to do so and such appointment is continued from time to time without any artificial break in service. Any such appointment may be regularized giving him security of tenure. The all important condition precedent for such regularization is that the initial entry of such

an employee must be made against a sanctioned vacancy and by following the rules and regulations governing such entry.

7. The second situation in which regularization could be granted was where the initial entry of the employee against an available vacancy was found suffering from some flaws in the procedure in making the appointment though the person appointing was competent to make such initial recruitment and had otherwise followed the procedure prescribed for such recruitment. A need may then arise for regularization of the initial appointment by the competent authority with a view to curing the irregularity if any in the same and with a view to granting security of tenure to the incumbent. It is necessary in such situations that the initial entry of the employee is not totally illegal or in breach of the established rules and regulations governing such recruitment.

8. The law regarding regularization of employees was on a comprehensive review authoritatively declared by a Constitution Bench of this Court in *Secretary, State of Karnataka & Ors. Vs. Uma Devi (3) & Ors.* (2006) 4 SCC 1. This Court in that case drew a distinction between an irregularity and an illegality in the making of an appointment and declared that where the due process of appointment has been deviated from, the Court can regularize the same. In cases where the process itself is completely violative of the constitutional scheme underlying public employment and no procedure has been followed while granting such appointments the Court cannot allow such an illegality to continue irrespective of the length of time for which it has continued. Relying upon the decision of this Court in *Ashwani Kumar's* case (supra) this Court in Uma Devi's case (supra) observed:

> "Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the

overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould

the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

9. The above decision has been followed by this Court in *Mohd. Abdul Kadir & Anr. Vs. Directorate General of Police, Assam & Ors.* (2009) 6 SCC 611, where this Court held that employees who were recruited in connection with a scheme could not claim continuance or regularization in service even when they may have worked on ad hoc basis for as long as two decades. The decision of this Court in *State of Karnataka and Ors. Vs. G.V. Chandrashekar* (2009) 4 SCC 342, once more reiterated the legal position and declared that the observations made by a three-Judge Bench of this Court in *U.P. State Electricity Board Vs. Pooran Chandra Pandey and Ors.* (2007) 11 SCC 92, were only in the nature of *obiter dicta*. In *Pooran Chandra Pandey's* case (supra) a two-Judge Bench of this Court had tried to distinguish the ratio of the decision of this Court in *Uma Devi's* case (supra) and held that the said decision had to be read in conformity with Article 14 of the Constitution and that the same could not be applied mechanically. The decision in *G.V. Chandrashekar's* case (supra) did not find that reasoning to be correct as is evident from the following passage appearing in the said decision:

"*90*. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and

accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

92. In the light of what has been stated above, we deem it proper to clarify that the comments and observations

made by the two-Judge Bench in *U.P. SEB* v. *Pooran Chandra Pandey (2007) 11 SCC 92* should be read as obiter and the same should neither be treated as binding by the High Courts, tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench."

10. Reference at this stage may also be made to the decisions of this Court in *Pinaki Chatterjee Vs. Union of India & Ors.* (2009) 5 SCC 193 and *General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi & Ors.* (2009) 7 SCC 205 where this Court has followed *Uma Devi's* case (supra) and declared that regularization cannot be granted if the same would have the effect of violating Articles 14 and 16 of the Constitution.

11. Applying the test laid down by this Court in *Uma Devi's* case (supra) and the cases referred to above, to the case at hand, there is no gainsaying that the appointments of the appellants as Primary Health Workers were totally illegal and violative of Articles 14 and 16 of the Constitution which guarantee equality of opportunity to all those who were otherwise eligible for such appointments. The Chief Medical Officer who had made the appointments was not vested with the power to do so nor were the claims of other candidates eligible for appointments against the posts to which the appellants were appointed, considered. Surprisingly, the appointments had come by way of absorption of the appellants who were working as Voluntary Health Workers on a monthly honorarium of Rs.50/- only. The High Court has, in our opinion, correctly held that there was no cadre of Voluntary Health Workers who were working on an honorarium in State run dispensaries. The very nature of the appointment given to the appellants as Voluntary Health Workers was honorary in nature which entitled them to the payment of not more than Rs.50/- per month. It is difficult to appreciate how the Chief Medical Officer could have regularized/absorbed such Voluntary Health Workers doing honorary service against the post of Primary

Health Workers which carried a regular pay-scale and which could be filled only in accordance with the procedure prescribed for that purpose. The appointment of the appellants against the said posts was thus manifestly illegal and wholly undeserved to say the least. Inasmuch as these appointments came to be cancelled pursuant to the said directions no matter nearly a decade and a half later the termination could not be said to be illegal so as to warrant interference of a writ court for reinstatement of those illegally appointed. The High Court was, in that view of the matter, justified in declining interference with the order of cancellation and dismissing the writ petitions.

12. We see no reason to interfere with the order of Division Bench of the High Court. These appeals accordingly fail and are hereby dismissed. No costs.

B.B.B. Appeals dismissed.

UNITED INDIA INSURANCE COMPANY LTD.
v.
KANTIKA COLOUR LAB & ORS.
(Civil Appeal No. 6337 of 2001 etc.)

MAY 6, 2010

[D.K. JAIN AND T.S. THAKUR, JJ.]

Insurance – Contract of insurance – For transit of imported goods (two machines) – Surveyors' Reports prove that on the transit one machine got extensively damaged while the other was in working condition – Authorized representative of the manufacturer-company stating that the damaged machine could not be repaired in India – Insured claiming damage of the amount i.e. the actual cost of the machines – National Commission held that the Insurance company and the carrier were jointly and severally liable – On appeal, held: Contracts of insurance are generally in the nature of contracts of indemnity – Except the cases of life insurance, personal accident, sickness and contingency insurance, all other contracts of insurance entitle the insured only to the actual loss suffered, not exceeding the amount stipulated in the contract – The happening of event against which insurance cover taken by itself does not entitle the insured to claim – On facts insured not entitled to damage in respect of the machine which was not damaged – The machine which was damaged requires complete replacement – The insured is entitled to the cost of machine and custom duty component paid on the said machine.

Respondent No. 1 imported a Printer Process and a Film Processor from Japan. The machines, after arrival in India, were entrusted to the carrier-respondent for onward road transportation. A pre-dispatch survey confirmed that the machines were in sound condition. Respondent No. 1 had obtained a transit insurance policy

from the appellant-Insurance Company.

Respondent No. 1 claimed a sum of Rs. 55 lakhs alleging that the machines got damaged in the transit. In preliminary survey, it was reported that only printing machine had suffered damage and there was no apparent damage to the Film Processor. The second survey report also stated that printing machine had suffered damages and not the Film Processor. However, it opined that the damage was repairable and assessed the repair cost at Rs. 5,76,730/-. Appellant-Insurance Company on the basis of surveyor's report, offered the amount assessed towards repairs which was refused by respondent No. 1.

Respondent No. 1 lodged a complaint before National Consumer Disputes Redressal Commission, against the appellant claiming damage of Rs. 55 lakhs i.e. the cost equivalent to the machines. The Commission allowed the claim holding that the appellant-Insurance company and the respondent-carrier were jointly or severally liable to pay Rs. 53 lakhs with interest @ 10% p.a.

Appellant filed the appeal challenging the order. Respondent No. 1 also filed the appeal challenging the order to the extent of the Commission awarding 10% interest, instead of the rate at which the insured borrowed the money from the Bank for purchase of the machines.

Partly allowing the appeal of the Insurance Company and dismissing the appeal of the insured, the Court

HELD: 1.1. Two aspects stand out from the evidence of Senior Sales and Service Engineer of the manufacturer of the machines. Firstly, it is clear that the damage has been caused only to the printer model and not to the film

processor which was found to be in working condition and about which there was only an apprehension and no more that its working may run into difficulty in future. There is no real basis for such an apprehension. In any case in the absence of proved damage affecting the performance of the machine, it is difficult to assume that the film processor was also damaged either wholly or in part so as to call any repair or replacement of the said machine. [Para 18] [214-E-G]

1.2. Contracts of Insurance are generally in the nature of contracts of indemnity. Except in the case of contracts of Life Insurance, personal accident and sickness or contracts of contingency insurance, all other contracts of insurance entitle the assured for the reimbursement of actual loss that is proved to have been suffered by him. The happening of the event against which insurance cover has been taken does not by itself entitle the assured to claim the amount stipulated in the policy. It is only upon proof of the actual loss, that the assured can claim reimbursement of the loss to the extent it is established, not exceeding the amount stipulated in the contract of Insurance which signifies the outer limit of the insurance company's liability. The amount mentioned in the policy does not signify that the insurance company guarantees payment of the said amount regardless of the actual loss suffered by the insured. [Para 19] [214-H; 215-A-C]

Halsbury's Laws of England – 4th Edition – **referred to.**

1.3. The other aspect that is established is that printer model has been extensively damaged and the manufacturing company has no arrangement in India for carrying out the repairs to the damaged machine. The Insurance Company's version that a company in India undertakes the repairs does not appear to be acceptable specially when the manufacturing company's authorized

representatives has in no uncertain terms denied the competence of that company to undertake any such repairs. Such being the position, the National Commission was justified in holding that the printer processor being extensively damaged requires complete replacement. [Para 20] [215-G-H; 216-A-B]

1.4. The Sale and Service Engineer of the manufacturer has referred to the letter addressed by the manufacturing company to the insured and stated that the price of a brand new printer processor model QSS-1923, works out to Singapore $62100. There is no reason why the said amount can not be awarded to the insured by way of compensation for the damage caused to the machine. Besides the cost of the machines, the insured would also be entitled to the customs duty component paid on the import of the said machine. The total amount payable to the insured by way of compensation for the damage caused to the machine in question would work out to rupees equivalent of Singapore $ 62100 at the exchange rate prevalent as on the date of this judgment plus a custom duty component of Rs.12,73,513.36 rounded off to Rs.12,74,000/-. The sum total of the two figures would be payable with interest @ 10% p.a. for the period mentioned in the National Commission's order. [Paras 21 and 22] [216-C-G]

2. Keeping in view the bank rate of interest prevalent during the relevant period there is no reason to award a higher rate of interest as claimed by the insured. [Para 22] [216-H; 217-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6337 of 2001.

From the Judgment & Order dated 31.05.2001 of the National Consumer Disputes Redressal Commission, New Delhi in Original Petition No. 153 of 1999.

WITH

C.A. No. 6975 of 2001

R.P. Bhatt, Vishnu Mehra, B.K. Satija, Kailash Pandey, K.V. Sreekumar, Dr. Vipin Gupta (NP), Arun K. Sinha (NP), for the appearing parties.

The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. These appeals under Section 23 of the Consumer Protection Act, 1986 arise out of an order dated 31st May, 2001 passed by National Consumer Disputes Redressal Commission, New Delhi, whereby Original Petition No.153 of 1999 filed by respondent no.1 has been allowed and the appellant-company held liable to pay to the said respondent a sum of Rs.53 lakhs with interest @ 10% p.a. jointly and severally with the Carrier M/s Super Road Lines towards compensation for the damage which machines entrusted to the later suffered in the course of transportation from Mumbai to Hardwar.

2. Respondent No.1-Kantika Colour Lab imported one set of Noritsu QSS-1923 printer process and QSF-V50 film processor from Japan. The machines arrived at Mumbai on 1st November, 1998 and were entrusted to M/s Super Road Lines for onward transportation to Hardwar under L/R No.005495 dated 20th November, 1998. A pre-dispatch survey conducted by the Surveyor confirmed that the machines were in sound condition at the time of dispatch from Mumbai.

3. To secure the machines against any possible damage respondent No.1-the owner of the machines obtained from the appellant Insurance Company a transit insurance policy for a sum of Rs.53 lakhs. The policy covered loss against all risks including damage/breakage, theft pilferage, road risk and non-delivery etc. The insurance was extended to cover SRCC as per limits and conditions of the Marine Policy.

4. The case of the owner-respondent no.1 is that the machines suffered damage on account of mishandling in the course of transportation from Mumbai to Hardwar. A damage certificate issued by respondent no.7 acknowledged that the damage to the machines had occurred during transportation. Respondent no.1 accordingly lodged a claim for a sum of Rs.55 lakhs against the appellant company and the Carrier-respondent no.7 in this appeal. A preliminary survey of the damage to the machines was ordered by the appellant company and conducted by Shri Ajay Kumar Arora, who submitted a report stating that while Printing Machine QSS 1923 had suffered damage, there was no apparent damage to the Film Processor QSF-V50 which machine outwardly appeared to be in sound condition.

5. The appellant-company then appointed Shri Vinod Sharma licensed Surveyor to survey the machine and assess the loss as required under Section 64UM of the Insurance Act 1938. Shri Sharma submitted a report dated 17th April, 1999 after the machines were inspected by Shri Amit Bose, the Technical Director and Engineer of M/s Satyam Equipment Services Ltd. In his report Shri Sharma opined that the damage/ loss to the machine was repairable and assessed the same at Rs.5,76,730/-. The report categorically stated that there was no damage to the Film processor QSF-V50 which was found to be in working condition. Accepting the said report, the appellant company offered an amount of Rs.5,76,730/- to respondent no.1 towards compensation which the said respondent refused to accept. Instead respondent no.1 filed complaint No.153 of 1999 before the National Consumer Disputes Redressal Commission, New Delhi, claming an amount equivalent to the cost of the machines which according to the respondent were a total loss on account of the damage suffered by them.

6. The appellant-company contested the claim and took several objections to the maintainability of the complaint

including the objection that the complaint raised complicated questions of law and fact which could not be tried under Consumer Protection Act. It was also alleged that damage suffered by the machine was repairable and that the loss was limited to Rs.5,76,730/- which the company had offered to make good.

7. In support of its complaint the respondent-company examined Shri Pradeep Kumar Sharma, one of its partners. The statement of Shri Taposh Dev, Senior Sales and Service Engineer was also recorded, on behalf of the manufacturing company who too was arrayed as a party respondent. Depositions of Shri Vinod Sharma, Surveyor and Shri Amit Bose, Technical Director of M/s Satyam Equipment Services Pvt. Ltd. examined on behalf of the appellant-company, were also recorded.

8. By its order dated 1st May, 2001 the National Commission allowed the claim made before it and held the appellant-company as also the Carrier to be jointly and severally liable to pay a sum of Rs.53 lakhs together with interest @ 10% p.a. for the period commencing two months after the second Surveyor's report was submitted till the actual payment of the claim is made. The Commission directed surrender of the salvage to the Insurance Company against payment of its claim within eight weeks. The complainant was also held entitled to costs of Rs.10,000/.

9. The present appeals call in question the correctness of the above order. While Civil Appeal No.6337 of 2001 filed by the Insurance Company assails the order passed by the National Commission in its entirety, Civil Appeal No.6975 of 2001 filed by the owner challenges the said order to the extent it awards interest @ 10% p.a. only instead of the rate at which the insured claims to have borrowed money from the bank for the purchase of the machines in question.

10. Appearing for the appellant-Insurance Company Mr.

Vishnu Mehra, learned counsel, strenuously argued that the National Commission had committed a palpable error in awarding Rs.53 lakhs towards compensation for the damage caused to the machine insured with the appellant for its transportation from Mumbai to Hardwar. He contended that the order passed by the National Commission proceeded on an erroneous assumption that the damage suffered by the machine had rendered the same unusable hence a total loss. The material available on record argued the learned counsel clearly established that it was only the printer process QSS-1923 that was damaged and not the film processor QSF-V50. The latter was in fact found to be in perfect condition and in use at the time of the survey. It was also argued by Mr. Mehra that the damage caused to the printer model QSS-1923 was repairable and that the report of the Surveyor had assessed the cost of the repair at Rs.5,76,730/- which amount alone was payable to the insured. It was alternatively submitted that even if this Court were to hold that the entire printer model QSS-1923 was rendered useless on account of the damage caused to it, the maximum that could be claimed by the insured was the replacement cost of the said machine and no more.

11. On behalf of respondent-claimant it was contended by Mr. R.P. Bhatt, learned senior counsel, that while there was no apparent damage to the film processor QSF-V50, the fact that the printer model QSS-1923 had suffered damage raised a reasonable apprehension in the mind of the insured that the impact which the machine had suffered in the course of transportation may have damaged even the film processor QSF-V50. It was submitted that merely because the film processor QSF-V50 was found to be in working condition did not rule out the possibility of the machine giving trouble in future.

12. As regards the damage to printer model QSS-1923 it was argued by Mr. Bhatt that the manufacturers had clearly ruled out any possibility of repairs to the machine in India. It was also submitted that the expenses on repairs which could be carried out only in Japan would be far more than the price of a brand

new machine making it unwise to insist on repairs. The manufacturer had also ruled out the possibility of any such repairs being satisfactorily carried out either by M/s Satyam Equipment Services Ltd. or by any other agency in India.

13. The Surveyor report submitted by Shri Vinod Sharma certifies damage to the printer model QSS-1923 which comprises two distinct sections, namely, (1.A) Paper Processor and Dryer Section and (1.B) Printer Section. The report records the damage in the following words:

> "1. PRINTER MODEL QSS-1923
>
> 1.A. PAPER PROCESSOR AND DRYER SECTION
>
> Chemical tank broken, Roller transportation gone out of alignment, replansher system were broken, processor came out of the base completely, all processor racks damaged. As such complete Tank Unit & Rack Unit requires replacement in addition to Resetting of complete Processor.
>
> 1.B. PRINTER SECTION
>
> Many parts were found displaced from original setting and screws also came out. It requires Resetting of Machine along with replacement of Monitor Unit which was found damaged. Since the machine i.e. paper processor & printer requires resetting, there will be requirement of imported wires & some gears & metal spares."

14. In so far as film processor QSF-V50, is concerned the report specifically states that there is no apparent damage to the said machine, no matter the insured apprehends that the same may also have been damaged from inside which fact can be verified only when the machine is tested. The report further states that at the time of the second visit to Hardwar along with the engineer of M/s Satyam Equipment Services Ltd. the film processor QSF-V50 was found to have been already tested by

the supplier's engineer and the tank of the machine was found filled with chemicals. Around 40-50 number of empty Film rolls were found lying on the spot. The report certifies that the machine was in working condition. The following passage from the report is in this regard relevant:

> "On our second visit on 24.02.99 alongwith Engineers of M/s Satyam Equipment Services Ltd. we found that Film Processor had already been testified by the Suppliers Engineers. The tanks of the machine was found filled with Chemicals and around 40-50 No. of empty Film Rolls were lying there, as the same were informed to be developed on the machine. The Insured informed that though this machine is working at present but chances are there that later on its PC Board may have to be changed. The Insured could not explain the reasons for replacement of PCB, at a later stage. Once it is found working in good condition."

15. In his deposition before the National Commission Shri Vinod Sharma, Surveyor and author of the report reiterated that the film processor QSF-V50 was not found damaged upon inspection at site. He refuted the suggestion made to him that the machines were totally damaged.

16. We may at this stage refer to the deposition of Shri Taposh Dev, Senior Sales and Service Engineer of respondent no.2 the manufacturer of the machines in question. In the affidavit filed by the said witness it is, inter alia, stated that a thorough visual inspection of the machines in question was made by the engineers of respondent no.2 company and a report based on the said inspection submitted on 21st December, 1998. The witness on the basis of the said inspection report stated that Noritsu QSS-1923 printer process was subjected to a strong impact from the sides during transit from Mumbai to Hardwar resulting in severe damage, especially to the Paper Processor & Dryer Section thereof. The mechanical alignment and the optical accessories also had been badly affected. The witness also stated that it was not

economical to undertake such repair work on account of the high cost involved in the same especially when the repair may not exclude the possibility of any future complications arising in the working of the machines. The witness also referred to manufacturer's letter dated 7th January, 1999 informing the insured about the price of Noritsu QSS-1923 Printer Process and QSF-V50 Film Processor after deducting the value of the optional accessories. According to the witness the price of Printer Process QSS-1923 works out to Singapore $ 62,100. The witness asserted that M/s Satyam Equipment Services Ltd. were appointed as authorized sales representatives during early 1996 but since their services were not found to be satisfactory the agreement between the parties was terminated. He has further stated that respondent no.2-company had not trained any engineer to repair the Printer Process QSS-1923.

17. Not much has been extracted from the witness in cross-examination who has stuck to his version that the machine is not at all repairable, and that the cost of getting the machine repaired in Japan would be much more than the cost of a new machine.

18. Two aspects stand out from the above evidence. Firstly, it is clear that the damage has been caused only to the printer model QSS-1923 and not to the film processor QSF-V50 which was found to be in working condition and about which there was only an apprehension and no more that its working may run into difficulty in future. We, however, see no real basis for such an apprehension. In any case in the absence of proved damage affecting the performance of the machine, it is difficult to assume that the film processor was also damaged either wholly or in part so as to call any repair or replacement of the said machine.

19. Contracts of Insurance are generally in the nature of contracts of indemnity. Except in the case of contracts of Life Insurance, personal accident and sickness or contracts of contingency insurance, all other contracts of insurance entitle

the assured for the reimbursement of actual loss that is proved to have been suffered by him. The happening of the event against which insurance cover has been taken does not by itself entitle the assured to claim the amount stipulated in the policy. It is only upon proof of the actual loss, that the assured can claim reimbursement of the loss to the extent it is established, not exceeding the amount stipulated in the contract of Insurance which signifies the outer limit of the insurance company's liability. The amount mentioned in the policy does not signify that the insurance company guarantees payment of the said amount regardless of the actual loss suffered by the insured. The law on the subject in this country is no different from that prevalent in England; which has been summed up in *Halsbury's Laws of England* – 4th Edition in the following words:

> "The happening of the event does not of itself entitle the assured to payment of the sum stipulated in the policy; the event must, in fact, result in a pecuniary loss to the assured, who then becomes entitled to be indemnified subject to the limitations of his contract. He cannot recover more than the sum insured for that sum is all that he has stipulated for by his premiums and it fixes the maximum liability of the insurers. Even with in that limit, however, he cannot recover more than what he establishes to be the actual amount of his loss. The contract being one of indemnity only, he can recover the actual amount of his loss and no more, whatever may have been his estimate of what his loss would be likely to be, and whatever the premiums he may have paid, calculated on the basis of that estimate."

20. The other aspect that is established is that printer model QSS-1923 has been extensively damaged and the manufacturing company has no arrangement in this country for carrying out the repairs to the damaged machine. The Insurance Company's version that M/s Satyam Equipment Services Ltd. undertakes the repairs does not appear to us to be acceptable

specially when the manufacturing company's authorized representatives has in no uncertain terms denied the competence of the M/s Satyam Equipment Services Ltd. to undertake any such repairs. Such being the position, the National Commission was, in our opinion, justified in holding that the printer processor model QSS-1923 being extensively damaged requires complete replacement.

21. The question, however, is as to what is the cost of such replacement. Shri Taposh Dev, has referred to letter dated 7th January 1999 addressed by the manufacturing company to the insured M/s Kantiak Colour Lab and stated that the price of a brand new printer processor model QSS-1923, works out to Singapore $62100. We see no reason why the said amount can not be awarded to the insured by way of compensation for the damage caused to the machine. Besides the cost of the machines the insured would also be entitled to the customs duty component paid on the import of the said machine. From the Surveyor's report submitted by Mr. P.M. Patel and Co. it is evident that the invoice value of the goods comprising the printer processor and the film processor was Singapore $ 104000 with an assessable value of Rs.27,36,292/-. A sum of Rs.21,32,776/- was on that value paid towards customs duty on the import of the said equipment. The duty payable on a machine valuing Singapore $ 62100 would, therefore, come to Rs.21,32,776X62100/104000=Rs.12,73,513.36.

22. To sum up the total amount payable to the insured by way of compensation for the damage caused to the machine in question would work out to rupees equivalent of Singapore $ 62100 at the exchange rate prevalent as on the date of this judgment plus a custom duty component of Rs.12,73,513.36 rounded off to Rs.12,74,000/-. The sum total of the two figures would be payable with interest @ 10% p.a. for the period mentioned in the National Commission's order. We make it clear that keeping in view the bank rate of interest prevalent during the relevant period we see no reason to award a higher

rate of interest as claimed by the insured appellant in Civil Appeal No.6975 of 2001.

23. In the result Civil Appeal No.6337 of 2001 succeeds in part and to the extent that the appellant-company and the carrier M/s Super Road Lines shall be liable jointly and severally to pay the rupee equivalent of Singapore $ 62100 at the exchange rate prevalent on the date of this order besides a sum of Rs.12,74,000/- towards customs duty paid by the insured on the import of the damaged machine. The amount so determined shall earn interest @ 10% p.a. as observed above.

24. The amount awarded in favour of the insured-respondent no.1 in Civil Appeal No.6337 of 2001 shall be paid upon surrender to the appellant Insurance Company of the printer process model QSS-1923 comprising the damaged Printer Process machine (1.A and 1.B) within two months from today. Civil Appeal No.6975 of 2001 filed by the insured is, however, dismissed.

25. We make it clear that if the insured has already received directly or through its bank any part of the amount awarded by the National Commission it shall refund the excess, if any received by it or paid on its behalf to the bank within a period of two months failing which the excess amount so received but not refunded shall also earn interest in favour of the insurance company @ 10% p.a. from the date the period of two months hereby granted expires.

26. Parties are left to bear their own costs.

K.K.T. Appeals disposed of.

BHIM SINGH
v.
UNION OF INDIA AND ORS.
(Writ Petition (C) No. 21 of 1999)

MAY 6, 2010

[K.G. BALAKRISHNAN, CJI., R.V. RAVEENDRAN, D.K. JAIN, P. SATHASIVAM AND J.M. PANCHAL, JJ.]

Constitution of India, 1950:

Articles 113, 114(3), 266(3), 282 – MPLAD scheme – Constitutionality of – Held: Intra vires the Constitution – Source of its power traceable to Article 114(3) r.w. Article 266(3) and 282 of the Constitution – Funds earmarked and spent from the Consolidated Funds of Union for implementation of scheme and thus was in accordance with the constitutional provisions – Rules of Procedure and Conduct of Business in Lok Sabha – rr.206 to 216.

Article 266(3) – MPLAD scheme – Whether apart from an appropriation by an Appropriation Act, an independent substantive enactment is required for the scheme – Held: "Laws" mentioned in Article 282 would also include Appropriation Acts – A specific or special law need not be enacted by the Parliament to resort to the provision – The MPLAD Scheme is valid as Appropriation Acts have been duly passed year after year – Appropriation Act.

Articles 275 and 282 – MPLAD Scheme – Held: Falls within the meaning of "public purpose" aiming for the fulfilment of the development and welfare of the State as reflected in the Directive Principles of State Policy.

Article 282 – Scope of – Held: To be given its widest amplitude and should be interpreted widely so that the public

purpose enshrined therein can effectively be achieved both by the Union and the States to advance Directive Principles of State policy.

Article 282, seventh schedule – Public purpose – Power of Union and State to make grants – Held: Indian Constitution is quasi-federal – Owing to the quasi-federal nature of the Constitution and the specific wording of Article 282, both the Union and the State have power to make grants on subjects irrespective of whether they lie in the 7th Schedule, provided they are in public interest.

Separation of powers – MPLAD Scheme – Whether violate the principle of Separation of powers under the Constitution – Held: Indian Constitution does not recognize strict separation of powers – Constitutional principle of separation of powers would be violated if an essential function of one branch is taken over by another branch, leading to a removal of checks and balances – Under MPLAD scheme though MPs have been given a seemingly executive function, their role is limited to 'recommending' works – Actual implementation is done by the local authorities – There is no removal of checks and balances since these are duly provided and have to be strictly adhered to by the guidelines of the Scheme and the Parliament – Therefore, the Scheme does not violate separation of powers – Panchayat Raj Institutions, Municipal as well as local bodies are also not denuded of their role or jurisdiction by the Scheme as due place has been accorded to them by the guidelines, in the implementation of the scheme.

Accountability under the MPLAD scheme – Role of MP in the scheme – Held: Every MP is authorised to only recommend such works which are of general public utility in his own constituency – Role of MP is very limited to the initial choice of a selection of projects subject to approval of the District Authority/Commissioner or Municipal authority – Mere allegation of misuse of funds under the scheme by some MPs

by itself may not be a ground for scrapping of the scheme as checks and safeguards are provided therein.

Funds made available to sitting MPs for developmental work under the MPLAD scheme – Claim that these works would amount to an unfair advantage or corrupt practices within the meaning of the Representation of the Peoples Act, 1951 – Held: Not maintainable – If funds are utilised by MPs for development work which result in his better performance and if that leads to people voting for the incumbent candidate, it certainly would not violate any principle of free and fair elections – It cannot be claimed that these works amount to an unfair advantage or corrupt practices – Representation of the Peoples Act, 1951 – Unfair practice .

Interpretation of Constitution Every Article of the Constitution should be given not only the widest possible interpretation, but also a flexible interpretation to meet all possible contingencies which may arise even in the future.

Administrative law: Government action – Judicial interference – Held: Permissible when the action of the government is unconstitutional and not when such action is not wise or that the extent of expenditure is not for the good of the State.

Words and phrases:

Appropriation bill, Cut motion, money bill – Meaning of.

Expression 'public purpose – Meaning of, in the context of Article 282 of the Constitution of India, 1950.

On 23.12.1993, Members of Parliament Local Area Development (MPLAD) Scheme was formulated for enabling the Members of Parliament to identify works of developmental nature with creation of durable community assets of national priorities such as drinking water, primary education, public health, sanitation and roads.

Petitioner filed writ petitions under Article 32 of the Constitution, challenging the MPLAD Scheme as *ultravires* of the Constitution and prayed for direction for scrapping of the scheme and for impartial investigation for the misuse of the funds allocated in the Scheme.

The questions which arose for consideration in the writ petitions and the transferred cases were whether the funds earmarked and spent from the Consolidated Funds of Union for implementation of MPLAD scheme was in accordance with the constitutional provisions; whether having regard to Article 266(3) of the Constitution apart from an appropriation by an Appropriation Act, an independent substantive enactment was required for the scheme; whether the power under Article 282 was restricted; whether the Scheme obliterates the demarcation between the legislature and the executive by making MPs virtual members of the executive without any accountability; whether the scheme violated the principle of Separation of powers under the Constitution; and whether the MPLAD Scheme gave an unfair advantage to the MPs in contesting elections by violating the provisions of the Constitution.

Dismissing the writ petitions and the transferred cases, the Court

HELD: 1.1. Part XII Chapter I of the Constitution relates to Finances. Article 266 of the Constitution refers to consolidated funds and public accounts of India and of the States. This Article explains what all are the components of the consolidated funds of India. Sub-clause (3) of Art. 266 makes it clear that money from the consolidated fund of India can be extended only in accordance with law and for the particular purpose as well as in the manner as provided in the Constitution. Under Article 275 Grants-in-Aid are provided from the Consolidated Fund of India to the States which are in

need of assistance. Article 113 make it clear that the Union or the State is empowered to spend money from the Consolidated Fund strictly in accordance with the relevant provisions. [Paras 11, 13, 21] [242-B-H; 243-A,D; 252-G-H]

1.2. Article 107 deals with provisions as to introduction and passing of Bills and provides that subject to the provisions of Articles 109 and 117 with regard to Money Bills and other Financial Bills, the Bill may originate in either House of the Parliament. Article 112 mandates that the President shall in respect of every financial year cause to be laid before both the Houses of the Parliament, a statement of the estimated receipts and expenditure of the Government of India for the year referred to as the "Annual Financial Statement". The expenditures which are charged upon the Consolidated Fund of India are set out in Article 112(3). Besides the expenditure charged upon the Consolidated Fund of India under Article 112(3), the demands for grants sought by the Union Executive are also met from the Consolidated Fund of India. The demands for grants are voted in Parliament as per Article 113(2). The said sub-clause contains the plenary power of the House of the People to assent or to refuse to assent to any demand subject to a reduction of the amounts specified therein. Elaborate procedure has been provided in the "Rules of Procedure and Conduct of Business in Lok Sabha". Rules 206 to 217 deal with "Demands for Grants". These Rules make it clear that the Demands for Grants are discussed and voted upon. Motions may be moved to reduce any demands. These are called "Cut Motions". By way of Cut Motions, grants may be rejected in totality or reduced by a certain amount or reduced by a token amount. The elaborate procedure found in these Articles as well as the Rules of Procedure clearly shows that Lok Sabha controls the amount to be sanctioned out of the

demands for grants placed by the Government. Thus, the final authority to decide the quantum of monies to be sanctioned is the Lok Sabha. After the grant is voted and accepted by the Parliament in terms of Article 113(2), a Bill is introduced. Under Article 114, a Bill has to be introduced to provide for appropriation of payments out of the Consolidated Fund of India. Such Bills are called Appropriation Bills. An Appropriation Bill is a Money Bill in terms of Article 110(1)(d), which has to be introduced as per Article 107 and has to be dealt with under Article 109. The procedure makes it clear that the recommendations of the Council of States are not binding on the House of People. The Appropriation Bill being a Money Bill cannot be introduced in the Council of States while the Annual Financial Statement is to be laid before both the Houses. A Money Bill can only be introduced in the House of the People in terms of Article 110. While the Council of States has no role to play in the matter of sanction of expenditure and demand for grants, in relation to a Money Bill, it can only make recommendations in terms of Article 109(2). This may or may not be accepted by the House of the People. It is true that the activity of spending monies on various projects has to be separately provided by a law. However, if Union Government intends to spend money for public purpose and for implementing various welfare schemes, the same are permitted by presenting an Appropriation Bill which is a Money Bill and by laying the same before the Houses of Parliament and after getting the approval of the Parliament, Lok Sabha, in particular, it becomes law and there cannot be any impediment in implementing the same so long as the Scheme is for the public purpose. [Paras 24-26] [254-C-H; 255-A-H; 256-A-G]

1.3. The law referred to in the Constitution for sanctifying expenditure from and out of the Consolidated Fund of India is the Appropriation Act, as prescribed in

Article 114(3) which mandates that no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law based in accordance with the provisions of this Article. It provides that after the estimates of expenditure laid before House of People in the form of 'demands of grants' has been passed, a Bill is to be introduced to provide for the appropriation out of the Consolidated Fund of India of all monies required to meet the grants made by the House of People. Upon the demand of grant having been made under Article 113, Appropriation Bills were introduced and enacted in each year to appropriate moneys for the purposes of the MPLAD Scheme. In such circumstances, it is reasonable to accept that appropriation of public revenue for the purposes of the MPLAD Scheme was sanctioned by the Parliament by Appropriation Acts. [Para 27] [256-G-H; 257-A-D]

1.4. The 'law' here is the Appropriation Act, traceable to Article 114(3) and the purpose is for the scheme and the moneys withdrawn for outlay for the scheme from out of the Consolidated Fund of India in the manner as provided in the Constitution. All the tests laid down under the provisions of Article 266(3) were also fully satisfied in the implementation of the MPLAD Scheme. Further Article 283(1) provides that 'law' made by the Parliament shall regulate withdrawal of money from Consolidated Fund of India. The Appropriation Act passed as per the provisions of Article 114 is 'law' for the purpose of the Constitution of India and the respondents are fully justified in claiming that no separate or independent law is necessary since an item of expenditure forming part of the MPLAD Scheme or the activity on which the expenditure is incurred also, forms part and parcel of such Appropriation Act. It is clear that no independent enactment is required to be passed. Neither Government of India nor any State is taking away the rights of anyone

or going to set up any business or creating any monopoly for itself nor acquiring any property. It is only implementing a Scheme for the welfare of the people with the sanction and approval of the Parliament. For the purpose of imposing restrictions on the rights conferred under Article 19 or Article 300A, there may be requirement of an independent law but not for the purposes of satisfying the requirement of Article 14. [Paras 28, 29] [257-E-H; 258-F-H]

2.1. Article 282 makes it clear that Indian Constitution is not strictly federal and is only quasi-federal. Article 282 allows the Union to make grants on subjects irrespective of whether they lie in the 7th Schedule, provided it is in public interest. Every Article of the Constitution should be given not only the widest possible interpretation, but also a flexible interpretation to meet all possible contingencies which may arise even in the future. Article 282 is not an insertion by the Parliament at a later date. The said Article was in the Constitution right from the inception and was invoked for implementation of several welfare measures by Central grants. Though welfare schemes may essentially fall within the legislative competence of the State, the said schemes are implemented through grants out of the Consolidated Fund of India by resorting to Article 282. [Paras 33, 37, 38] [262-B; 264-C-E; 265-B-C]

Rai Sahib Ram Jawaya Kapur v. The State of Punjab **(1955) 2 SCR 225;** *Kuldip Nayar & Ors. v. Union of India & Ors.* **(2006) 7 SCC 1;** *State of Karnataka v. Union of India and Anr* **(1977) 4 SCC 608;** *S. R. Bommai and Ors. v. Union of India and Ors.* **(1994) 3 SCC 1;** *State of West Bengal v. Union of India* **(1964) 1 SCR 371;** *State of Rajasthan and Ors. v. Union of India* **(1978) 1 SCR 1;** *ITC Ltd. v. Agricultural Produce Market Committee* **(2002) 1 SCR 441;** *State of West Bengal v. Kesoram Industries Ltd.* **(2004) 266 ITR 721(SC);** *M. Nagaraj v. Union of India* **(2006) 8 SCC 212, relied on.**

2.2. The expression "public purpose" under Article 282 should be widely construed and from the point of view of the scheme, it is clear that the same was designed to promote the purpose underlying the Directive Principles of State Policy as enshrined in Part IV of the Constitution of India. The implementation of the Directive Principles is a general responsibility of the Union and the States. The analysis of Article 282 coupled with other provisions of the Constitution makes it clear that no restriction can be placed on the scope and width of the Article by reference to other Articles or provisions in the Constitution as the said Article is not subject to any other Article in the Constitution. Further this Article empowers Union and the States to exercise their spending power to matters not limited to the legislative powers conferred upon them and in the matter of expenditure for a public purpose subject to fulfillment of such other provisions as may be applicable to the Constitution their powers are not restricted or circumscribed. Article 282 can be the source of power for emergent transfer of funds, like the MPLAD Scheme. Even otherwise, the MPLAD Scheme is voted upon and sanctioned by the Parliament every year as a Scheme for community development. The Scheme of the Constitution of India is that the power of the Union or State Legislature is not limited to the legislative powers to incur expenditure only in respect of powers conferred upon it under the Seventh Schedule, but it can incur expenditure on any purpose not included within its legislative powers. However, the said purpose must be 'public purpose'. Judicial interference is permissible when the action of the government is unconstitutional and not when such action is not wise or that the extent of expenditure is not for the good of the State. All such questions must be debated and decided in the legislature and not in court. [Paras 39-42] [265-C-D; 266-F-H; 267-G-H; 268-A-B]

3.1. The perusal of the guidelines of MPLAD Scheme makes it clear that there has been a close coordination between the authorities, namely, the Central Government, State Government and the District Authorities. Every Member of Parliament (Lok Sabha) is authorized to only recommend such works which would be of general public utility in his own constituency that too for a public purpose. The Member of Rajya Sabha is to select work as per the scheme in his State. The role of the Member of Parliament is very limited to the initial choice of a selection of projects subject to the choice of project being found eligible by the District Authority/ Commissioner or Municipal Authority, if found otherwise feasible. [Para 45] [273-D-E]

3.2. There are three levels of accountability which emerge from a study of the working of the Scheme, (1) the accountability within the Parliament, (2) the Guidelines, and (3) the steps taken which are recorded in the Annual Reports. The Lok Sabha has set-up an Ad-hoc Committee to analyse the actual benefits of the scheme realized, the deficiencies and pitfalls encountered in the implementation of the scheme and the corrective measures which could be taken for the smooth implementation of the scheme on the basis of past experience of over a decade. [Paras 46, 47] [273-F-H; 274-A, D-E]

3.3. In order to bring financial discipline at the district level and reduce the accumulation of unspent funds with the Districts, a new condition of unspent balance for the MP being less than rupees one crore was imposed during the financial year (2004-05). The release procedure was further streamlined and strengthened by prescribing for the original (not photo-copy) of the Monthly Progress Report, duly signed by DC/DM under his seal. This resulted in bringing down the unspent balance. To

reduce the accumulated funds further and to improve accountability, some more conditions were laid down for release of MPLADS funds in a new MPLADS funds release and management procedure which was adopted with effect from 1st June 2005. The District Authorities are required to submit Utilization Certificates and Audit Certificates also for the earlier releases in addition to fulfilling the said two conditions before second installment in any given year is considered for release to any MP. [Para 49] [274-G-H; 275-A-B]

3.4. Software was developed and launched on 30th November 2004 by the Ministry of Statistics and Programme Implementation. The same was adopted by majority of the districts and the reports of completed and ongoing projects in respect of 361 districts out of 428 Nodal districts have already come on the website of the Ministry. The Ministry nominated 78 officers of JAG and SAG level working in the Ministry, as Nodal Officers for the districts for entering the data in respect of the ongoing and completed works. This facilitated substantial improvement in the data entry in the software. So far, data in respect of 1,006 MPs has been uploaded. Result oriented reviews of the Scheme were taken up by the Secretary and Additional Secretary of the Ministry at All-India level. Beside this, the nodal District Authority has to coordinate with other districts falling in the same constituency (in case of Lok Sabha constituencies) and with all the districts in which the MP has recommended work (in case of Rajya Sabha MPs). Thus the nature of the Scheme is such that it requires considerable technical, administrative and accounting expertise, highly efficient coordination with various agencies and organizations and a high degree of logistic and managerial support for its successful implementation. Barring few irregularities, which are taken care of by the State Audit Authorities, the funds allocated under the MPLAD Scheme are being

properly monitored for better utilization to achieve the objectives of the Scheme. [Paras 50, 51] [275-C-H; 276-A-C]

3.5. The information furnished shows that the Scheme has benefited the local community by meeting their various developmental needs such as drinking water facility, education, electricity, health and family welfare, irrigation, non-conventional energy, community centres, public libraries, bus stands, roads, pathways, bridges, sports infrastructure etc. Mere allegation of misuse of the funds under the Scheme by some MPs by itself may not be a ground for scrapping of the Scheme as checks and safeguards have been provided. Parliament has the power to enquire and take appropriate action against the erring members. Both Lok Sabha and Rajya Sabha have set up Standing Committee to monitor the works under the Scheme. The second level of accountability is provided by the Guidelines themselves. These guidelines have been continuously revised, the latest being the fourth time resulting in the Guidelines of 2005. The Guidelines make it clear that the MPLAD Scheme is for the recommendation of works of developmental nature, especially for the creation of durable community assets based on local needs. According to the Guidelines, these include durable assets of national priorities like drinking water, primary education, public health, sanitation and roads. Clearly, the Scheme does not give a *carte blanche* to the MPs with respect to the kind of works they can recommend. Furthermore, under the Guidelines, once the MP recommends any work, District Authority in whose jurisdiction, the proposed works are to be executed, will maintain proper accounts, follow proper procedure for sanction and implementation for timely completion of works. [Paras 52, 53, 54] [276-D-H; 277-A-B]

3.6. The Annual Reports of the Scheme provide for

transparency and accountability in the working of the Scheme. As per the Right to Information Act, 2005 and the rules framed there under, all citizens have the right to information on any aspect of the MPLAD Scheme including works recommended/sanctioned/executed under it, costs of work sanctioned, implementing agencies, quality of works completed, user agencies etc.; it has been stipulated under the guidelines that for greater public awareness, for all works executed under MPLAD Scheme, a plaque (stone/metal) indicating the cost involved, the commencement, completion and inauguration date and the name of the MP sponsoring the project should be permanently erected. All these information which are available through their website clearly show that the Scheme provides various levels of accountability. The argument of the petitioners that MPLADS is inherently arbitrary is unfounded. No doubt there may be improvements to be made. But this court does not sit in judgment of the veracity of a scheme, but only its legality. When there is evidence that an accountability mechanism is available, there is no reason to interfere in the Scheme. Further, the Scheme only supplements the efforts of the State and other local Authorities and does not seek to interfere in the functional as well as financial domain of the local planning authorities of the State. On the other hand, it only strengthens the welfare measures taken by them. The Scheme, in its present form, does not override any powers vested in the State Government or the local authority. The implementing authorities can sanction a scheme subject to compliance with the local laws. [Paras 55-57] [278-E-H; 279-A-E]

4.1. Separation of Powers is an essential feature of the Constitution. In modern governance, a strict separation is neither possible, nor desirable. Nevertheless, till this principle of accountability is

preserved, there is no violation of separation of powers. The Constitution does not prohibit overlap of functions, but in fact provides for some overlap as a Parliamentary democracy. But what it prohibits is such exercise of function of the other branch which results in wrestling away of the regime of constitutional accountability. A law would be violative of separation of powers not if it results in some overlap of functions of different branches of the State, but if it takes over an essential function of the other branch leading to lapse in constitutional accountability. [Para 59, 68] [280-C-E; 285-D]

Rai Sahib Ram Jawaya Kapur and Ors. v. The State of Punjab, **AIR 1955 SC 549;** *Kesavananda Bharati v. State of Kerala & Another* **(1973) 4 SCC 225;** *Indira Gandhi v. Raj Narain* **AIR 1977 SC 69;** *Special Reference No.1 of* ***1964*** **(1965) 1 SCR 413;** *Indira Nehru Gandhi v. Raj Narain* **(1975) Supp SCC 1;** *State of Rajasthan v. Union of India* **(1978) 1 SCR 1;** *Minerva Mills Ltd. and Ors. v. Union of India (UOI) and Ors.* **(1980) 3 SCC 625;** *A.K. Roy v. Union of India* **AIR 1982 SC 710, relied on.**

4.2. There is no violation of concept of separation of powers. The Member of Parliament is ultimately responsible to Parliament for his action as an MP even under the Scheme. All Members of Parliament be it a Member of Lok Sabha or Rajya Sabha or a nominated Member of Parliament are only seeking to advance public interest and public purpose and it is quite logical for the Member of Parliament to carry out developmental activities to the constituencies they represent. Major role is played by Panchayats, Municipalities and Corporations under MPLAD Scheme in execution and implementation of works. The Scheme concentrates on community development and creation of assets at the grass-root level and in such circumstances, the same cannot be interfered with by the courts without reasonable grounds.

The role of an MP in MPLAD Scheme is merely recommendatory in nature and the entire execution has been entrusted to the District/Municipal Authority which belongs to the executive organ. It is their responsibility to furnish completion certificate, audit certificate and utilization certificate for each work and if this is not done further funds can not be released. The extracts of the Guidelines make it clear that even though the District Authority is given the power to identify the agency through which a particular work recommended by the MP should be executed, the Panchayati Raj Institutions (PRIs) would be the preferred Implementing Agency in the rural areas, through the Chief Executive of the respective PRI, and the Implementing Agencies in the urban areas would be urban local bodies, through the Commissioners/Chief Executive Officers of Municipal Corporations, Municipalities. [Paras 69, 70, 72] [285-E-G; 286-D-F; 287-E-G]

5. MPLADS makes funds available to sitting MPs for developmental work. If the MP utilizes the funds properly, it would result in his better performance. If that leads to people voting for the incumbent candidate, it certainly does not violate any principle of free and fair elections. MPs are permitted to recommend specific kinds of works for the welfare of the people, i.e. which relate to development and building of durable community assets. These works are to be conducted after approval of relevant authorities. In such circumstances, it cannot be claimed that these works amount to an unfair advantage or corrupt practices within the meaning of the Representation of the Peoples Act, 1951. Of course such spending is subject to the above Act and the regulations of the Election Commission. [Paras 74, 75] [288-B-E]

Case Law Reference:

(1955) 2 SCR 225	**relied on**	**Para 28**

(2006) 7 SCC 1	**relied on**	**Para 33**
(1977) 4 SCC 608	**relied on**	**Para 34**
(1994) 3 SCC 1	**relied on**	**Para 35**
(1964) 1 SCR 371	**relied on**	**Para 36**
(1978) 1 SCR 1	**relied on**	**Para 36**
(2002) 1 SCR 441	**relied on**	**Para 36**
(2004) 266 ITR 721(SC)	**relied on**	**Para 36**
AIR 1955 SC 549	**relied on**	**Para 60**
(1973) 4 SCC 225	**relied on**	**Para 61**
(1965) 1 SCR 413	**relied on**	**Para 62**
(1975) Supp SCC 1	**relied on**	**Para 63**
(1978) 1 SCR 1	**relied on**	**Para 65**
(1980) 3 SCC 625	**relied on**	**Para 66**
AIR 1982 SC 710	**relied on**	**Para 67**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 21 of 1999.

Under Article 32 of the Constitution of India.

WITH

W.P. (C) No. 404 of 1999

T.C. (C) No. 22 of 2005, 105, 23, 24, 36, 37 & 38 of 2000

W.P.(C) No. 376 of 2003 & T.P. (C) No. 450 of 2004.

G.E. Vahanvati, Sol. Genl. of India, Mohan Parasaran, ASG, k.K. Venugopal, Chinmoy Pradip Sharma, Sparsh Bhargava, Rohit Sharma, Uttara Babbar, Dinesh Kumar Garg,

Bhim Singh (Petitioner-in-Person), Pramod Dayal, Prashant Bhushan, Rohit Kr. Singh, Mayank Mishra, Sumeet Sharma, Somesh Rattan, Ms. Aparna Bhat, D.L. Chidananda, Gaurav Dhingra, T.A.Khan, Sudharshan Singh Rawat, D.S. Mahra, P. Parmeswaran, B.V. Balaram Das, Anil Katiyar, Gaurav Aggarwal, Ashok K. Srivastava, Vikas Sharma (for Sushma Suri), Meenakshi Arora (NP), Ashish Wad Satya Vkrim, Jayashree Wad, Chirag S.Dave (for J.S. Wad & Co.), for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. The petitioners have filed the above writ petitions challenging the Members of Parliament Local Area Development Scheme (hereinafter referred to as the "MPLAD Scheme") as *ultra vires* of the Constitution of India. They also prayed for direction from this Court for scrapping of the MPLAD Scheme and for impartial investigation for the misuse of the funds allocated in the Scheme.

2. Though the challenge in the writ petitions and the transferred cases is to the constitutional validity of the MPLAD Scheme, in view of substantial question of interpretation of Articles 275 and 282 of the Constitution of India are involved, particularly, transfer of funds from the Union Government to the Members of Parliament, by reference dated 12th July, 2006 a three-Judge Bench headed by Hon'ble the Chief Justice of India referred the same to a Constitution Bench. In this way, the above matters are heard by this Constitution Bench.

3. Brief facts:

On 23.12.1993, the then Prime Minister announced the MPLAD Scheme. This scheme was formulated for enabling the Members of Parliament to identify small works of capital nature based on locally felt needs in their constituencies. The objective, as seen from the guidelines of the Scheme, is to enable the Members of Parliament to recommend works of

developmental nature with emphasis on the creation of durable community assets based on the locally felt needs to be taken up in their Constituencies. The guidelines prescribe that right from inception of the Scheme, durable assets of national priorities viz., drinking water, primary education, public health, sanitation and roads etc. are being created. In 1993-94, when the Scheme was launched, an amount of Rs.5 lakh per Member of Parliament was allotted which became rupees one crore per annum from 1994-95 per MP Constituency. This was stepped up to rupees two crores from 1998-99. Initially the Scheme was under the control of the Ministry of Rural Development and Planning and thereafter in October, 1994, it was transferred to the Ministry of Statistics & Programme Implementation. The Scheme is governed by a set of guidelines which were first issued by the Ministry of Rural Development in February, 1994. After the Scheme was transferred to the Ministry of Statistics and Programme Implementation, revised guidelines were issued in December, 1994, February, 1997, September, 1999, April, 2002 and November, 2005.

4. After taking us through the various constitutional provisions, the MPLAD Scheme and its guidelines, Mr. K.K. Venugopal, learned senior counsel, appearing for the petitioner in Writ Petition (C) No. 21/1999 made the following submissions:

(i) No money should be spent from the Consolidated Fund of Union other than one provided under the Constitution of India.

(ii) Instead of decision taken by Union of India under Article 282 of the Constitution about "public purpose", it has given power to a Member of Parliament, which violates Article 282 of the Constitution of India.

(iii) MPLAD Scheme is a total abdication of powers and functions by the Union of India. Such a

wholesale transfer of funds for the benefit of works or projects cannot be executed under Article 275 as "grants-in-aid of the revenues of a State", without proper recommendation of the Finance Commission.

(iv) The executive powers of the Union under Article 73 are co-extensive with the legislative powers of the Parliament, hence even executive powers of the Union cannot be exercised contrary to the entries in the List in Schedule VII of the Constitution so as to encroach on a subject falling in List II.

(v) The MPLAD Scheme is contrary to the 73rd and 74th Amendments to the Constitution of India. After the 73rd and 74th Amendments, the entire area of local self-government has been entrusted to Panchayats under Article 243G and to the Municipalities under Articles 243W, 243ZD and 243ZE read with Schedule-XII of the Constitution. By virtue of the said Amendments, the decision making power in regard to development rests with Panchayats and Municipalities, however, due to the present Scheme, the works are being given to individual MPs.

(vi) The MPLAD Scheme is inconsistent with Part IX and Part IX-A insofar as decision making process and inconsistent with the local self-government. The choices and functions of the Panchayats and Municipalities being denuded by the MPLAD Scheme, the Scheme is rendered wholly unconstitutional and bad.

5. Mr. Prashant Bhushan, learned counsel appearing for the petitioners in Writ Petition (C) No. 376 of 2003, in addition to the above submissions, highlighted the following points:

(i) Article 280 mandates the setting up of the Finance Commission, which would be constituted every five years. This Article enumerates the financial power of the Centre and the States to collect, levy appropriate taxes and even the executive powers are clearly spelt out in Article 73. As per Articles 280 and 275, it is the Finance Commission which is an independent body has the mandate to recommend the division of taxes between the Centre and the States as well as the assignment of grants-in-aid to the revenues of States. Though language of Article 282 appears to be wide enough to cover all grants, it obviously cannot be construed to mean that the Centre can give grants to States on a regular basis. The regular grants from the Centre to the States can be given only under Article 275 and that too in accordance with the Finance Commission's recommendations.

(ii) Article 282 is not intended to be used as a second channel of transfers from Centre to States. This Article only allows money to be defrayed by the Central Government for a particular public purpose though they may fall under State subjects.

(iii) Articles 112 to 114 have conferred power on the Union Government to appropriate funds for its own expenditure; however, a part of the same cannot be used for giving discretionary grants to the State.

(iv) The Centre by enlarging the scope of Article 282 has infringed the specific scheme designed by the Constitution regarding the flow of finances from the Centre to the States. Further, most of the centrally sponsored schemes running in different States are being funded through Article 282 only, which is clear misuse of the provisions of the Constitution.

6. In reply to the above submissions, Mr. Mohan Parasaran, learned Additional Solicitor General, appearing for the Union of India made the following submissions:

(i) The MPLAD Scheme is *intra vires* of the Constitution. The source of its power is traceable to Article 114(3) read with Articles 266(3) and 282 of the Constitution of India.

(ii) Article 282 has to be given its widest amplitude and should be interpreted widely so that the public purpose enshrined therein can effectively be achieved both by the Union and the States to advance Directive Principles of State policy.

(iii) The Scheme is being implemented based on the sanction which it receives from the Parliament on the passing of the Appropriation Act during every financial year. Appropriation for the Scheme is done after resort to the special procedure as applicable to Money Bills, as prescribed under Article 109. Articles 112(2) and 113(2) mandate that the expenditure proposed to be made from the Consolidated Fund of India are bound to be laid before both the Houses of Parliament in the form of "Demand for Grants" and is subject to the assent of the House of People.

(iv) The "Law" mentioned in Article 266(3) is the Appropriation Act traceable to Article 114(3). The MPLAD Scheme as a whole is based upon a policy decision and having a Parliamentary sanction in its implementation in the form of Appropriation Acts, no further enactment is required.

(v) From the date of inception of Constitution i.e. from 1950, by virtue of Article 282, the Union of India through Planning Commission implemented

several welfare measures though most of the subjects would fall within the State subjects. (List II of the VII Schedule).

(vi) Use of expression "Grants" in Article 282 will have to be construed in a wider sense and it is not subject to any Article especially Article 275.

(vii) The Scheme is not inconsistent with the various other Schemes of Panchayats and Municipalities. On the other hand, it only supplements the welfare measures taken by them.There is no violation of concept of separation of powers.

7. Mr. G.E. Vahanvati assisted this Court as *amicus curiae* and submitted the following points:-

(i) The Parliament has plenary power to sanction expenditure. Besides the expenditure charged upon the Consolidated Fund of India under Article 112(3), Demand for Grants sought by the Union executive are also met from the Consolidated Fund of India. The Demands for Grants are voted in Parliament as per Article 113(2). The final authority to decide the quantum of monies to be sanctioned is the Lok Sabha. Lok Sabha has the final control over expenditure.

(ii) The Parliament has sanctioned monies to be paid out by the MPLAD Scheme by voting on the demand for grant forwarded by the Union Executive from the Ministry of Statistics and Programme Implementation. This has been done after appropriate voting on the Demand for Grant and passing of Appropriation Act which is a law within the meaning of Article 266(3).

(iii) Article 282 acts as an enabling provision to allow the Union or the State to make any grant by conferring the widest possible power. The only requirement to be satisfied is that the purpose for which such a grant is made is a 'public purpose'.

(iv) The role of MP in the MPLAD Scheme is purely recommendatory in nature and the entire function has been entrusted to the District Authority which belongs to the executive organ. The District Authority has to furnish completion certificate, audit certificate and utilization certificate for each work. If this is not done, further funds are not released. The Scheme makes it clear that the District Authority plays the key role whereas the Members of Parliament function is merely to recommend the work.

8. **On the contentions urged, the following questions arise for our consideration:-**

1. Whether the scheme is not valid as a grant under Article 282 of the Constitution of India? Whether Article 275 is the only source for a regular and permanent scheme and whether Article 282 is intended to apply only in regard to special, temporary or ad-hoc schemes?

2. Whether having regard to Article 266(3) of the Constitution, apart from an appropriation by an Appropriation Act, an independent substantive enactment is required for the MPLAD Scheme instead of mere executive guidelines?

3. Whether the MPLAD Scheme falls under clauses (b), (bb) and (c) of Article 280 (3) of the Constitution, and exercise of such powers of the Finance Commission by Planning Commission make the Scheme unconstitutional?

4. Whether the Scheme obliterates the demarcation

between the legislature and the executive by making MPs virtual members of the executive without any accountability?

5. Whether the MPLAD scheme is inconsistent with Part IX and Part IX-A of the Constitution by encroaching upon the powers and functions of elected bodies?

6. Whether the MPLAD Scheme, even if it is otherwise constitutional is liable to be quashed for want of adequate safeguards, checks and balances?

7. Whether the MPLAD Scheme gives an unfair advantage to the MPs in contesting elections by violating the provisions of the Constitution?

9. Thus, first we must determine the constitutional scheme regarding allocation of funds and what is the appropriate mode of such allocation, i.e. whether a special enactment is required for such allocation. Then, we must determine if the Parliament is empowered under Article 282 of the Constitution to make allocation under the MPLAD Scheme. Subsequently, we need to see whether a robust accountability mechanism is provided under the Scheme. And finally whether this Scheme violates the constitutional principle of separation of powers. Let us consider the contentions raised by both sides with reference to the constitutional provisions as well as salient features and the guidelines issued then and there for implementation of the MPLAD Scheme.

Constitutional Scheme and Whether a Special Enactment is needed in order to allocate funds under the Constitution

10. The main issue relates to whether the funds ear-marked and being spent from the Consolidated Fund of Union

for implementation of the MPLAD Scheme is in accordance with the constitutional provisions.

11. Part XII Chapter I of the Constitution relates to Finances. Article 266 of the Constitution refers to consolidated funds and public accounts of India and of the States. This Article explains what all are the components of the consolidated funds of India. Article 266 reads as under:

> "*266. Consolidated Funds and public accounts of India and of the States* - (1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".
>
> (2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.
>
> (3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."

Sub-clause (3) of Art. 266 makes it clear that money from the consolidated fund of India can be extended only in accordance

with law and for the particular purpose as well as in the manner as provided in the Constitution.

12. Mr. K.K. Venugopal, learned senior counsel, appearing for the petitioner in W.P.(C) No. 21/1999 heavily relying on sub-clause (3) of Art. 266 contended that in view of specific embargo, in the absence of separate law, the money from the consolidated fund could not be spent. He further pointed out that the Union of India has not indicated a separate legislation for implementing MPLAD Scheme. It is the claim of the learned counsel for the petitioners that the impugned scheme and the allocation of funds thereof is a clear violation of the specific arrangement devised in the Constitution regarding the transfer of funds from the Centre to the States.

13. Under Article 275 Grants-in-Aid are provided from the Consolidated Fund of India to the States which are in need of assistance. Article 275 is reproduced hereunder:

> "*275.Grants from the Union to certain States.-* (1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:
>
> Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State:
>
> Provided further that there shall be paid out of the

> Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to-
>
> (a) the average excess of expenditure over the revenues during the two years immediately proceeding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule; and
>
> (b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.
>
> (1-A) On and from the formation of the autonomous State under Article 244A,-
>
> (i) any sums payable under clause (a) of the second proviso to clause (1) shall, if the autonomous State comprises of all the tribal areas referred to therein, be paid to the autonomous State, and, if the autonomous State comprises only some of those tribal areas, be apportioned between the State of Assam and the autonomous State as the President may, by order, specify;
>
> (ii) there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the autonomous State sums, capital and recurring, equivalent to the costs of such schemes of development as may be undertaken by the autonomous State with the approval of the Government of India for the purpose of raising the level of administration of that State to that of the administration of the rest of the State of Assam.
>
> (2) Until provision is made by Parliament under clause (1),

the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament:

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission."

14. Article 280 mandates the setting up of the Finance Commission which would be reconstituted every five years or at such earlier time as the President considers necessary. The Finance Commission, which is an independent body, would be duty bound to ascertain the percentage of taxes to be devolved to the States which are collected by the Union under Article 270 as amount of grants-in-aid to be given to the States under Article 275. It was also highlighted by the learned senior counsel for the petitioners that after the 73rd and 74th Amendments, which introduced the Panchayati Raj Systems and Municipalities in the country, the Finance Commission is also mandated to take into account the resources needed by the States to augment the Consolidated Fund of a State to supplement the resources of the Panchayats and Municipalities in the State. These have to be done while taking into account the recommendations of the State Finance Commission. Article 280 of the Constitution reads as under:

"*280.Finance Commission.*- (1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of

the commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to-

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;

(bb) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;

(c) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;

(d) any other matter referred to the Commission by the President in the interests of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them."

15. It is submitted that these are the main financial provisions of the Constitution that determine how the taxes would be levied, collected, appropriated and distributed between the Centre and the States. It is also pointed out that

not only the financial powers of the Centre and the States to collect, levy, appropriate taxes clearly defined in the Constitution but even the executive powers are clearly spelt out in Article 73 which reads as under:

> "*Article 73 Extent of executive power of the Union* (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend
>
> (a) to the matters with respect to which Parliament has power to make laws; and
>
> (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:
>
> Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.
>
> (2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution."

16. It is contended that as per Article 73 the executive power of the Union shall extend to the matters with respect to which the Parliament has power to make laws. Proviso to this Article specifically bars the Central Government from exercising executive powers in any State to matters with respect to which the Legislature of the State also has power to make laws. This means that the executive powers of the Centre are restricted to the subjects spelt out in the Union List. This means that the

Centre cannot spend money on the subjects mentioned in the Concurrent and the State List unless provided for in the Constitution or any other law made by the Parliament.

17. However, it is the case of Mr. Mohan Parasaran, learned Additional Solicitor General, appearing for the Union of India that Articles 114 (3), 266(3) and 282 of the Constitution enable the Union of India to ear-mark funds by way of Grant for implementing schemes through the Member of Parliament. Mr. G.E. Vahanvati, appearing as *amicus curiae* has also reiterated that besides the expenditure charged upon the Consolidated Fund of India under Article 112(3), demand for grants sought by the Union executives are also met from the Consolidated Fund of India. He highlighted that the demands for grants are voted in the Parliament as per Article 113(2) and the final authority has to decide the quantum of monies to be sanctioned is the Lok Sabha. Lok Sabha has the final control over the expenditure. He further highlighted that after the grant has been voted and accepted by the Parliament, a Bill is introduced to provide for appropriation of payments out of the Consolidated Fund of India. Such Bills are called Appropriation Bills. An Appropriation Bill is a Money Bill in terms of Article 110(1)(d) which has to be introduced as per Article 107 to be dealt with under Article 109. Even otherwise, according to him, House of People has plenary power to sanction payments and expenditure from the Consolidated Fund of India. These can be in the form of Grants to the Union Executive by means of Appropriation Act.

18. Article 114 refers "Appropriation Bills" which reads as under:

> "*114. Appropriation Bills.*— (1) As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—

(a) the grants so made by the House of the People; and

(b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article."

Other enabling provision is Article 266 which we have already extracted. The next provision relied on by Mr. Mohan Parasaran, learned Additional Solicitor, appearing for the Union of India is Article 282 which reads as under:

"Miscellaneous Financial Provisions

282. Expenditure defrayable by the Union or a State out of its revenues - The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws."

Article 109 refers to special procedure in respect of Money Bills which reads as under:

"109. Special procedure in respect of Money Bills - (1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People."

"Money Bills" has been defined in Article 110 which reads as follows:

"110. Definition of "Money Bills"(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(*b*) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;

(*c*) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;

(*d*) the appropriation of moneys out of the Consolidated Fund of India;

(*e*) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

(*f*) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or

(*g*) any matter incidental to any of the matters specified in sub-clauses (*a*) to (*f*).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill."

19. Article 111 makes it clear that when a Bill is passed by the House of Parliament, it shall be presented to the President and the President shall give his assent to the Bill or withholds assent therefrom.

20. Article 112 speaks about Annual Financial Statement which we call as 'Budget' in common parlance. Article 113, which is also relevant, refers procedure in Parliament with respect to estimates which reads as under:

"113.Procedure in Parliament with respect to estimates - (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President."

21. The above Articles make it clear that the Union or the State is empowered to spend money from the Consolidated Fund strictly in accordance with the relevant provisions. In other words, if Union of India intends to spend money from the Consolidated Fund of India, it shall be submitted in the form of

demands for grants and only after approval by the Parliament, the same are to be spent for various Schemes.

22. Framers of our Constitution had consciously created scheme for distribution and allocation of funds for various subjects. Article 246(1) makes it clear that Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (Union List). Sub-clause (2) of the said Article gives power to Parliament to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (Concurrent List). As per sub-clause (3) of the said Article, subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (State List).

23. According to Mr. K.K. Venugopal, learned senior counsel appearing for the petitioner, even funds can be utilized by the Union only in respect of various items enumerated in List I and List III and not in any of the items in List II. According to him, even Appropriation Act cannot satisfy the embargo provided in Article 246. We have already referred to Article 266 which speaks about Consolidated Funds and Public Accounts of India and of the States. Sub-clause (1) of the said Article deals with income and sub-clause (3) refers to expenditure. We have also noted the assertion of the learned *amicus curiae* that the Parliament has plenary powers which are enshrined in the Constitution of India to sanction expenditure. He asserted that insofar as expenditure is concerned, Parliament is competent to spend money for any welfare scheme or for public purpose even if those schemes are referable to certain items in List II (State List) of the Seventh Schedule. Part XII of the Constitution deals with Finance, Property, Contracts and Suits. Chapter I of Part XII deals with "Finance". The first part of Chapter I deals with "General" provisions, the second part of Chapter I deals with "Distribution of Revenue between the Union and the States" and the third part deals with "Miscellaneous Financial Provisions". The arguments of the learned senior counsel for the petitioners have revolved around Article 282 and according to him the scope of this Article is very limited and the same cannot be invoked for the purposes of justifying the Scheme. How far Article 282 protects the impugned scheme, we will discuss in the later part of our judgment.

24. While considering legislative procedure, we have to see Articles 107 to 117. Article 107 deals with provisions as to introduction and passing of Bills and provides that subject to the provisions of Articles 109 and 117 with regard to Money Bills and other Financial Bills, the Bill may originate in either House of the Parliament. Article 112 mandates that the President shall in respect of every financial year cause to be laid before both the Houses of the Parliament a statement of the estimated receipts and expenditure of the Government of India for the year referred to as the "Annual Financial Statement". Nowhere in the Constitution any reference is made to the word "Budget" but uses the expression "Annual Financial Statement". The above-mentioned Articles show that the estimates of expenditure must separately show the sum required to meet the expenditure as charged upon the Consolidated Fund of India as per Article 112(2)(a) and the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India as per Article 112(2)(b). The said Article further requires that the estimates of expenditure have to distinguish between expenditure on revenue account and other expenditure. The expenditures which are charged upon the Consolidated Fund of India are set out in Article 112(3). Article 113 deals with the procedure in Parliament with respect to the estimates. The said Article makes it clear that there can be no voting in relation to expenditure charged upon the Consolidated Fund of India. However, such expenditure can be discussed in either House of Parliament. It is also clear that besides the expenditure charged upon the Consolidated Fund of India under Article 112(3), the demands for grants sought by the Union Executive

are also met from the Consolidated Fund of India. We have extracted Article 113 in earlier part of the judgment. The demands for grants are voted in Parliament as per Article 113(2). The said sub-clause contains the plenary power of the House of the People to assent or to refuse to assent to any demand subject to a reduction of the amounts specified therein. Elaborate procedure has been provided in the "Rules of Procedure and Conduct of Business in Lok Sabha". Rules 206 to 217 deal with "Demands for Grants". The above-mentioned Rules make it clear that the Demands for Grants are discussed and voted upon. Motions may be moved to reduce any demands. These are called "Cut Motions". By way of Cut Motions, grants may be rejected in totality or reduced by a certain amount or reduced by a token amount. The elaborate procedure found in the above mentioned Articles as well as the Rules of Procedure clearly show that Lok Sabha controls the amount to be sanctioned out of the demands for grants placed by the Government. Thus, the final authority to decide the quantum of monies to be sanctioned is the Lok Sabha.

25. Various Articles and the Rules of Procedure abundantly show that the Lok Sabha has the final control over expenditure. After the grant has been voted and accepted by the Parliament in terms of Article 113(2), a Bill is introduced. Under Article 114, a Bill has to be introduced to provide for appropriation of payments out of the Consolidated Fund of India. Such Bills are called Appropriation Bills. An Appropriation Bill is a Money Bill in terms of Article 110(1)(d), which has to be introduced as per Article 107 and has to be dealt with under Article 109. The procedure makes it clear that the recommendations of the Council of States are not binding on the House of People. The relevant Articles and the Rules of Procedure referred to above clearly show that,

(1) The Financial Statement has to be laid before both the Houses of Parliament in terms of Article 112;

(2) The estimates in relation to expenditure and demands for grants can only be discussed by the House of the People vide Article 113;

(3) After the grants are approved, as per Article 114, the same are incorporated in the Appropriation Bill;

(4) The Appropriation Bill is a Money Bill and a Money Bill cannot be introduced in the Council of States while the Annual Financial Statement is to be laid before both the Houses, a Money Bill can only be introduced in the House of the People vide Article 110;

(5) While the Council of States has no role to play in the matter of sanction of expenditure and demand for grants, in relation to a Money Bill, it can only make recommendations vide Article 109(2). This may or may not be accepted by the House of the People.

26. If we analyze the above mentioned Articles and the Rules of Procedure, the argument that the Appropriation Act by itself is not sufficient to satisfy the requirements of Article 266(3) cannot be accepted. It is true that the activity of spending monies on various projects has to be separately provided by a law. However, if Union Government intends to spend money for public purpose and for implementing various welfare schemes, the same are permitted by presenting an Appropriation Bill which is a Money Bill and by laying the same before the Houses of Parliament and after getting the approval of the Parliament, Lok Sabha, in particular, it becomes law and there cannot be any impediment in implementing the same so long as the Scheme is for the public purpose.

27. As mentioned earlier, the law referred to in the Constitution for sanctifying expenditure from and out of the Consolidated Fund of India is the Appropriation Act, as prescribed in Article 114(3) which mandates that no money shall

be withdrawn from the Consolidated Fund of India except under appropriation made by law based in accordance with the provisions of this Article. It provides that after the estimates of expenditure laid before House of People in the form of 'demands of grants' has been passed, a Bill is to be introduced to provide for the appropriation out of the Consolidated Fund of India of all monies required to meet the grants made by the House of People. In other words, withdrawal of moneys for the scheme is done only by means of an appropriation made by law in accordance with the provisions of Article 114. In pursuance of the aforesaid Constitutional provisions, it is pointed out on the side of the Government that upon demand of grant having been made under Article 113, Appropriation Bills were introduced and enacted in each year to appropriate moneys for the purposes of the MPLAD Scheme. In such circumstances, it is reasonable to accept that appropriation of public revenue for the purposes of the MPLAD Scheme has been sanctioned by the Parliament by Appropriation Acts.

28. As rightly pointed out by learned *amicus curiae* and learned Additional Solicitor General, the 'law' here is the Appropriation Act, traceable to Article 114(3) and the purpose is for the scheme and the moneys withdrawn for outlay for the scheme from out of the Consolidated Fund of India in the manner as provided in the Constitution. We are satisfied that all the tests laid down under the provisions of Article 266(3) have also been fully satisfied in the implementation of the MPLAD Scheme. Further Article 283(1) provides that 'law' made by the Parliament shall regulate withdrawal of money from Consolidated Fund of India. The Appropriation Act passed as per the provisions of Article 114 is 'law' for the purpose of the Constitution of India and the respondents are fully justified in claiming that no separate or independent law is necessary since an item of expenditure forming part of the MPLAD Scheme or the activity on which the expenditure is incurred also, forms part and parcel of such Appropriation Act. In other words, Appropriation Acts are for the purposes of the

Constitution of India and no further enactment is required on a proper interpretation of the Constitution of India. It is useful to refer the law declared by this Court in *Rai Sahib Ram Jawaya Kapur vs. The State of Punjab,* (1955) 2 SCR 225 [at page 238] which is as follows:

> "… … After the grant is sanctioned, an appropriation bill is introduced to provide for the appropriation out of the consolidated fund of the State of all moneys required to meet the grants thus made by the assembly (Article 204). As soon as the appropriation Act is passed, the expenditure made under the heads covered by it would be deemed to be properly authorised by law under Article 266(3) of the Constitution.
>
> … … The expression "law" here obviously includes the appropriation Acts. It is true that the appropriation Acts cannot be said to give a direct legislative sanction to the trade activities themselves. But so long as the trade activities are carried on in pursuance of the policy which the executive Government has formulated with the tacit support of the majority in the legislature, no objection on the score of their not being sanctioned by specific legislative provision can possibly be raised. Objections could be raised only in regard to the expenditure of public funds for carrying on of the trade or business and to these the appropriation Acts would afford a complete answer."

29. It is clear that no independent enactment is required to be passed. As rightly pointed out, neither Government of India nor any State is taking away the rights of anyone or going to set up any business or creating any monopoly for itself nor acquiring any property. It is only implementing a Scheme for the welfare of the people with the sanction and approval of the Parliament. We are satisfied that for the purpose of imposing restrictions on the rights conferred under Article 19 or Article 300A, there may be requirement of an independent law but not for the purposes of satisfying the requirement of Article 14. It

is worthwhile to reproduce the following passage from the above referred judgment:

> "Specific legislation may indeed be necessary if the Government require certain powers in addition to what they possess under ordinary law in order to carry on the particular trade or business. Thus when it is necessary to encroach upon private rights in order to enable the Government to carry on their business, a specific legislation sanctioning such course would have to be passed."

Scope of Article 282 of the Constitution

30. Let us consider Article 282 which comes under the heading of 'Miscellaneous Financial Provisions". Heavy reliance was placed on this provision by Mr. G.E. Vahanvati, learned *amicus curiae* and Mr. Mohan Parasaran, learned Additional Solicitor General. We have extracted Article 282 in the earlier part of the judgment. According to Mr. K.K. Venugopal learned senior counsel, appearing for the petitioner, Article 282 contemplates that the identification of a public purpose should precede the making of a grant because without such exercise being undertaken, no decision on the extent of the grant to be made can be taken. Under the MPLAD scheme, it was contended that the grant precedes the identification of the particular public purpose, and this is contrary to Article 282. It is also submitted that in the present case, the MPLAD scheme is a permanent Scheme for transfer of funds each year which can be done only under Article 275 of the Constitution while Article 282 is intended to meet an emergency or an unforeseen situation and it does not envisage a transfer of funds without any limit of time.

31. Mr. Prashant Bhushan, learned counsel appearing for the petitioners, submitted that a clear interpretation of the General Financial Provisions of the Constitution especially Articles 280 and 275 is that the Finance Commission, an

independent body, has the mandate to recommend the division of taxes between the Centre and the States and the assignment of Grants in Aid to the revenues of certain States. It is also argued that though the Constitution empowers the Finance Commission to distribute money between the Centre and the States, the power has been shifted to the Planning Commission, which was set up by a resolution of the Government of India in March 1950. According to him, the Planning Commission has never received any parliamentary sanction and has still become an alternative authority to make regular grants given to the States, at the discretion of the Centre. It is pointed out that there is no provision in the Constitution for a body like the Planning Commission and it may be described as a quasi-political body, when compared to the statutory body like the Finance Commission, which is quite independent of the Government. It is further contended that the money being given through the impugned scheme is in clear violation of the specific scheme devised in the Constitution regarding the transfer of funds from the Centre to the States. Article 282, a "Miscellaneous Financial Provision" was added to be used only as an emergency provision. It is their claim that although the language of Article 282 appears to be wide enough to cover all grants, so long as they are for a public purpose, it obviously cannot be construed to mean that the Centre can give grants to States on a regular basis. It was submitted that the regular grants from the Centre to the States can be given only under Article 275 and only in accordance with the Finance Commission's recommendations; that the power under Article 282 is interpreted as providing an alternative channel of regular transfers from the Centre to the States, it would disrupt the delicate fiscal equilibrium which the Finance Commission is expected to bring about through the regular channel under Article 275; that the Constitution makers could not have intended to bring about such a disruption; that if Article 282 was intended to be a second channel for regular transfers from the Centre to the States then it should have found a place along with Articles 268 to 281 under the heading "Distribution

of Revenues between the Union and States"; that the fact that Article 282 is separated from those Articles and put under a separate heading, "Miscellaneous Financial Provisions" shows that it is not intended to be used as a second channel of transfers from the Centre to the States. Moreover, a reference was also made to the marginal note on Article 282 "Expenditure defrayable by the Union or a State out of its revenues" to argue that it indicates that the expenditure to be met by the Union or a State to meet a particular situation provided that it is for a public purpose. It is pointed out that any expansion of the scope of Article 282 would necessarily result in the corresponding abridgement of the scope of Article 275, which could not have been intended by the Constitution makers; and Article 282 permits the Centre and the States to incur expenditure even on subjects which are not within the legislative competence of the Centre or the States, as the case may be.

32. Under Article 73, the executive power of the Union to give grants extends to the matters with respect to which the Parliament has the power to make laws. This is an embargo on the Centre's power to give discretionary grants to the States and this embargo is lifted by the non-obstante clause in Article 282 whereby the Centre can give discretionary grants to the States even when it has no legislative power on the subject. It was argued that the lifting of the embargo clearly suggests that the power to give grants under Article 282 is an emergency power to be used in exceptional circumstances. In any case, according to the petitioners, Article 282 only allows money to be defrayed by the Central Government for a particular public purpose though they may fall under State subjects. It, however, does not authorize the Central Government to exercise its executive power on State subjects within the States which is only allowed during an emergency under Article 353 of the Constitution. Therefore, it is contended that Article 282 can be used to transfer money/provide grants to States for use of particular public purposes which may be in the State list but cannot apply to a scheme like the MPLAD Scheme in which a

Member of Parliament exercises executive power within the States on matters in the State list.

33. We have already extracted Article 282 and reading of the same makes it clear that our Constitution is not strictly federal and is only quasi-federal. This Court in paras 71 to 73 of the judgment in *Kuldip Nayar & Ors. v. Union of India & Ors.*, (2006) 7 SCC 1 held as under:

> "71 But then, India is not a federal State in the traditional sense of the term. There can be no doubt as to the fact, and this is of utmost significance for purposes at hand, that in the context of India, the principle of federalism is not territory related. This is evident from the fact that India is not a true federation formed by agreement between various States and territorially it is open to the Central Government under Article 3 of the Constitution, not only to change the boundaries, but even to extinguish a State *(State of West Bengal v. Union of India* [1964] 1 SCR 371) . Further, when it comes to exercising powers, they are weighed heavily in favour of the center, so much so that various descriptions have been used to describe India such as a pseudo-federation or quasi- federation in an amphibian form, etc."

> "72 The Constitution provides for the bicameral legislature at the center. The House of the People is elected directly by the people. The Council of States is elected by the Members of the Legislative assemblies of the States. It is the electorate in every State who are in the best position to decide who will represent the interests of the State, whether as members of the lower house or the upper house."

> "73 It is no part of Federal principle that the representatives of the States must belong to that State. There is no such principle discernible as an essential attribute of

Federalism, even in the various examples of upper chamber in other countries."

34. In *State of Karnataka v. Union of India and Anr.* (1977) 4 SCC 608, in para 220 of the judgment, Untwalia, J. (for Singhal J., Jaswant Singh J. and himself) observed as under:

"Strictly speaking, our Constitution is not of a federal character where separate, independent and sovereign State could be said to have joined to form a nation as in the United States of America or as may be the position in some other countries of the world. It is because of that reason that sometimes it has been characterized as quasi-federal in nature…………."

35. In para 276 of the judgment in *S. R. Bommai and Ors. v. Union of India and Ors.* (1994) 3 SCC 1, B.P. Jeevan Reddy J. observed:

"The fact that under the scheme of our Constitution, greater power is conferred upon the center *vis-à-vis* the States does not mean that States are mere appendages of the center. Within the sphere allotted to them, States are supreme. The center cannot tamper with their powers. More particularly, the Courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States….must put the Court on guard against any conscious whittling down of the powers of the States. Let it be said that the federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle the outcome of our own historical process and a recognition of the ground realities. ...enough to note that our Constitution has certainly a bias towards center *vis-à-vis* the States (*Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan* [1963]1SCR491). It is equally necessary to emphasise that Courts should be careful not

to upset the delicately crafted constitutional scheme by a process of interpretation."

36. This quasi-federal nature of the Constitution is also brought out by other decisions of this court. [See *State of West Bengal v. Union of India* [1964] 1 SCR 371; *State of Rajasthan and Ors. v. Union of India* [1978] 1 SCR 1; *ITC Ltd. v. Agricultural Produce Market Committee* [2002] 1 SCR 441; *State of West Bengal v. Kesoram Industries Ltd.* [2004] 266 ITR 721(SC)

37. In this context, the scope of Article 282 requires to be considered. Article 282 allows the Union to make grants on subjects irrespective of whether they lie in the 7th Schedule, provided it is in public interest. Every Article of the Constitution should be given not only the widest possible interpretation, but also a flexible interpretation to meet all possible contingencies which may arise even in the future. No Article of the Constitution can be given a restrictive and narrow interpretation, particularly, when the said Article is not otherwise subject to any other Article in the Constitution. Article 282 is not an insertion by the Parliament at a later date, on the other hand, the said Article has been in the Constitution right from the inception and has been invoked for implementation of several welfare measures by Central grants. It is useful to refer a decision of the Constitution Bench of this Court in *M. Nagaraj vs. Union of India,* (2006) 8 SCC 212 wherein this Court held as follows:

"19. The Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an expanding future and is intended to endure for ages to come and consequently to be adapted to the various crises of human affairs. Therefore, a purposive rather than a strict literal approach to the interpretation should be adopted. A constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that

a constitutional provision does not get fossilised but remains flexible enough to meet the newly emerging problems and challenges."

38. It is not in dispute that several welfare schemes were sponsored and are being formulated by the Union of India in implementing Directive Principles of the State Policy. Though they may essentially fall within the legislative competence of the State and some of the schemes are monitored by this Court, the said schemes are implemented through grants out of the Consolidated Fund of India by resorting to Article 282.

39. The expression "public purpose" under Article 282 should be widely construed and from the point of view of the scheme, it is clear that the same has been designed to promote the purpose underlying the Directive Principles of State Policy as enshrined in Part IV of the Constitution of India. It is not in dispute that the implementation of the Directive Principles is a general responsibility of the Union and the States. The right to life as enshrined in Article 21 in the context of public health are fully within the ambit of State List Entry 6, List II of the 7th Schedule. It is also settled by this Court that in interpreting the Constitution, due regard has to be given to the Directive Principles which has been recorded as the soul of the Constitution in the context of India being the welfare State. It is the function of the State to secure to its citizens "social, economic and political justice", to preserve "liberty of thought, expression, belief, faith and worship" and to ensure "equality of status and of opportunity" and "the dignity of the individuals" and the "unity of the nation". This is what the Preamble of our Constitution says and that is what which is elaborated in the two vital chapters of the Constitution on Fundamental Rights and Directive Principles of the State Policy. The executive activity in the field of delegated or subordinate legislation has increased. In the constituent Assembly debates, Dr. B.R. Ambedkar has underscored that one of the objectives of the Directive Principles of State Policy is to achieve economic

democracy and left that in the hands of future elected representatives.

40. Even under the Government of India Act, 1935, a similar provision was contained in Section 150(2) under the heading "Miscellaneous Financial Provisions". The Constitution makers have clarified the expression 'purpose' by making it a 'public purpose' thereby clearly circumscribing the general object for which Article 282 may be resorted to, that is for a 'public purpose'. It was pointed out before us that similar provisions are also found in the Constitutions of other countries such as USA and Australia. Reference was made to the first clause of Article I(8) of the Constitution of the United States of America, which states that "the Congress shall have the power to lay and collect taxes, duties, imports and excise to pay the debts and profit for the common advance and general welfare of the United States." It was also pointed out that a similar provision exists in the Australian Constitution under Section 81, stating that all revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to charges and liabilities imposed by this Constitution. It was pointed out that Section 94 of the Australian Constitution is an amalgamation of Articles 266(3) and 282 of the Indian Constitution.

41. The analysis of Article 282 coupled with other provisions of the Constitution makes it clear that no restriction can be placed on the scope and width of the Article by reference to other Articles or provisions in the Constitution as the said Article is not subject to any other Article in the Constitution. Further this Article empowers Union and the States to exercise their spending power to matters not limited to the legislative powers conferred upon them and in the matter of expenditure for a public purpose subject to fulfillment of such other provisions as may be applicable to the Constitution their powers are not restricted or circumscribed. Ever since the inception of the Constitution several welfare schemes advancing the public

purpose/public interest by grants disbursed by the Union have been implemented. It is pointed out that MPLAD is one amongst the several schemes which have been designed and implemented under Article 282. Mr. Mohan Parasaran, learned Additional Solicitor General pointed out that apart from the MPLAD scheme several other welfare schemes are being implemented such as

(1) Integrated Child Development Scheme

(2) Targeted Public Distribution Scheme

(3) Sarva Siksha Abhiyan

(4) Mid-day Meal Scheme

(5) Antyodaya Anna Yojana

(6) National Old Age Pension Scheme – now known as Indira Gandhi Old Age Pension Scheme

(7) National Immunity Scheme – now known as Janani Suraksha Yojana

(8) Jawahar Rozgar Yojana

(9) National Rural Health Mission

As a matter of fact, he pointed out that some of the schemes are also closely being monitored by this Court by passing appropriate orders from time to time.

42. The above analysis shows that Article 282 can be the source of power for emergent transfer of funds, like the MPLAD Scheme. Even otherwise, the MPLAD Scheme is voted upon and sanctioned by the Parliament every year as a Scheme for community development. We have already held that the Scheme of the Constitution of India is that the power of the Union or State Legislature is not limited to the legislative powers to incur expenditure only in respect of powers conferred upon

it under the Seventh Schedule, but it can incur expenditure on any purpose not included within its legislative powers. However, the said purpose must be 'public purpose'. Judicial interference is permissible when the action of the government is unconstitutional and not when such action is not wise or that the extent of expenditure is not for the good of the State. We are of the view that all such questions must be debated and decided in the legislature and not in court.

Accountability under MPLADS

43. Mr. K.K. Venugopal, learned senior counsel as well as Mr. Prashant Bhushan, learned counsel submitted that the Scheme has been so devised that the grant is, in effect, made to the Members of Parliament and is not made to the beneficiary or the public purpose, which may be a Panchayat or a Municipality, a University, a Research Institute or the like.

44. In the light of the said contentions relating to the Scheme and misuse of funds and also the allocation relating to inconsistency with the local government, we have carefully gone through the guidelines of the MPLAD Scheme. As already mentioned, the Scheme was announced by the Prime Minister in the Parliament on 23.12.1993. The guidelines were issued in February, 1994 covering the concept, implementation and monitoring of the Scheme. The guidelines were periodically updated in December 1994, February 1997, September 1999, April 2002 and November 2005. It was pointed out by learned counsel for the State that with the experience gained over a decade and having considered the suggestions made by the Members of Parliament in the interactive discussions taken by the Minister of State (Independent Charge) of the Ministry of Statistics and Programme Implementation, MPLAD's Committees of Parliament, Planning Commission and Comptroller and Auditor General of India, it was felt by the government to carry out a comprehensive revision of guidelines which necessitated the government to frame new guidelines in November, 2005. Since several comments were made about

the implementation of the Scheme, let us refer only to the relevant guidelines of the Scheme, which are extracted below:

"1.3. The objective of the scheme is to enable MPs to recommend works of developmental nature with emphasis on the creation of durable community assets based on the locally felt needs to be taken up in their Constituencies Right from inception of the Scheme, durable assets of national priorities viz. drinking water, primary education, public health, sanitation and roads, etc. are being created.

2.2. Lok Sabha Members can recommend works for their respective constituencies. Elected Members of Rajya Sabha can recommend works for implementation in one or more districts as they may choose in the State of their election. Nominated Members of Lok Sabha and Rajya Sabha can recommend works for implementation in one or more districts anywhere in the country.

2.4. All works to meet the locally felt community infrastructure and development needs with emphasis on the creation of durable assets in the respective constituency are permissible under MPLADS except those prohibited in Annexure II to the Scheme. MPs may choose some works for creation of durable assets of national priorities namely drinking water, education, public health, sanitation, and roads under the Scheme.

2.6. Each MP will recommend works up to the annual entitlement during the financial year preferably within 90 days of the commencement of the financial year in the format at Annexure III to the Scheme to the concerned District Authority. The District Authority will get the eligible sanctioned works executed as per the established procedure

laid down by the State Government for implementation of such works subject to the provision in these Guidelines.

2.10. *District Authority:* District Collector/District Magistrate/Deputy Commissioner will generally be the District Authority to implement MPLADS in the district. If the District Planning Committee is empowered by the State Government, the Chief Executive Officer of the District Planning Committee can function as the District Authority. In case of Municipal Corporations, the Commissioner/Chief Executive Officer may function as the District Authority. In this regard if there is any doubt, Government of India in consultation with the State/UT Government, will decide the District Authority for the purpose of MPLADS implementation.

2.11. *Implementing Agency:* The District Authority shall identify the agency through which a particular work recommended by the MP should be executed. The executing agency so identified by the District Authority is the implementing agency. The Panchayati Raj Institutions (PRIs) will preferably be the Implementing Agency in the rural areas and works implementation should be done through Chief Executive of the respective PRI. The Implementing Agencies in the urban areas should preferably be urban local bodies and works implementation should be done through Commissioners/Chief Executive Officers of Municipal Corporations, Municipalities. Further, the District Authority may choose either Government Department unit or Government agency or reputed Non-Governmental Organization (NGO) as capable of implementing the works satisfactorily as

Implementing Agencies. For purposes of execution of works through Government Departments, District Authority can engage units for example, Public Health Engineering, Rural Housing, Housing Boards, Electricity Boards, and Urban Development Authorities etc, as Implementing Agencies.

3.1. Each MP shall recommend eligible works on MP's letter head duly signed. A letter format from the MP to the District Authority is at Annexure III to the Scheme. Recommendations by representative(s) of MPs are not admissible.

3.3. The District Authority shall identify the Implementing Agency capable of executing the eligible work qualitatively, timely and satisfactorily. The District Authority shall follow the established work scrutiny; technical, work estimation, tendering and administrative procedure of the State/UT Government concerned in the matter of work execution, and shall be responsible for timely and effective implementation of such works.

3.4. The work and the site selected for the work execution by the MP shall not be changed, except with the concurrence of the MP concerned.

3.5. Where the District Authority considers that a recommended work cannot be executed due to some reason, the District Authority shall inform the reasons to the MP concerned, under intimation to the Government of India and the State/UT Government within 45 days from the date of receipt of the proposal.

3.14. Decision making powers in regard to technical, financial and administrative sanctions to be

accorded under the Scheme, vest in the district level functionaries. To facilitate quick implementation of projects under this Scheme, vest in the district level functionaries. To facilitate quick implementation of projects under this Scheme, full powers should be delegated by the State/UT Governments to the district functionaries. The District Authorities will have full powers to get the works technically approved and financial estimates prepared by the competent district functionaries before according the final administrative sanction and approval. The District Authority should, before sanctioning the work, ensure that all clearances for such works have been taken from the competent authorities and the work conforms to the Guidelines.

4.1. The annual entitlement of rupees two crores will be released in two equal instalments of rupees one crore each by Government of India directly to the District Authority (District Collector/ District Magistrate/ Deputy Commissioner or the Chief Executive of the Municipal Corporation, or the Chief Executive of the District Planning Committee as the case may be), under intimation to the State/UT Nodal Department and to the Member of Parliament concerned.

5.4. The District Authority will submit for every year the audited accounts, reports and certificates to the State Government and the Ministry of Statistics and Programme Implementation.

5.8. The District Authorities have been implementing MPLADS since 1993-94. They are to submit periodically works Completion Report, Utilization Certificate, and Audit Certificates. These Certificates are to be furnished to the Ministry of

> Statistics and Programme Implementation right from inception."

Clause 6.2 of the Guidelines enumerates the role of the Central Government and Clause 6.3 defines the role of the State/UT Government. Clause 6.4 enumerates the role of the District Authority and Clause 6.5 refers to the role of the Implementing Agencies. Annexure-II contains List of works which are prohibited under MPLAD Scheme. Annexure-IVE enumerates type of works in which the MPLAD Scheme funds to be implemented. Annexure-IX refers about Audit Certificate and the details to be furnished by the auditor.

45. From the perusal of the above clauses contained in the guidelines of MPLAD Scheme, it is clear that there has been a close coordination between the authorities, namely, the Central Government, State Government and the District Authorities. It is also clear that every Member of Parliament (Lok Sabha) is authorized to only recommend such works which would be of general public utility in his own constituency that too for a public purpose. The Member of Rajya Sabha is to select work as per the scheme in his State. The role of the Member of Parliament is very limited to the initial choice of a selection of projects subject to the choice of project being found eligible by the District Authority/Commissioner or Municipal Authority, if found otherwise feasible.

46. The issue raised by the petitioners that under the guise of the Scheme there is arbitrary and *malafide* use of powers by MPs in allocating the work and using the funds does not hold good in the light of the following information: There are three levels of accountability which emerge from a study of the working of the Scheme, (1) the accountability within the Parliament, (2) the Guidelines, and (3) the steps taken which are recorded in the Annual Reports.

47. The Lok Sabha has set-up an Ad-hoc Committee on

the working of MPLAD Scheme. The website of the House states that:

> "The Committee on Members of Parliament Local Area Development Scheme (Lok Sabha), an ad hoc Committee was constituted for the first time on 22 February, 1999 by the Speaker as per provisions of Rule 254(1) of the Rules of Procedure and Conduct of Business in Lok Sabha. Initially the Committee consisted of 20 Members. Later, the membership was raised to 24. The Chairman is appointed by the Speaker from amongst the Members of the Committee."

Lok Sabha Ad-hoc Committee on MPLAD in furtherance of its functions *viz*; to analyse the actual benefits of the scheme realized, the deficiencies and pitfalls encountered in the implementation of this scheme and the corrective measures which could be taken for the smooth implementation of the scheme on the basis of past experience of over a decade presented its Fifteenth Report by the Ministry of Statistics and Programme Implementation on the subject 'MPLADS- A Review' in December 2008.

48. The Committee in order to answer the questions that arose in the Era Sezhiyan Report and also the views expressed against the MPLAD scheme by Shri J.M. Lyngdoh, former Chief Election Commissioner on behalf of India Rejuvenation Initiative commented on i) uncontrolled management of the bureaucracy, (ii) Lack of Monitoring System, and (iii) Irregularities in Implementation.

49. In order to bring financial discipline at the district level and reduce the accumulation of unspent funds with the Districts, a new condition of unspent balance for the MP being less than rupees one crore was imposed during the financial year (2004-05). The release procedure was further streamlined and strengthened by prescribing for the original (not photo-copy) of the Monthly Progress Report, duly signed by DC/DM under his

seal. This resulted in bringing down the unspent balance. To reduce the accumulated funds further and to improve accountability, some more conditions have been laid down for release of MPLADS funds in a new MPLADS funds release and management procedure which was adopted with effect from 1st June 2005. Now the District Authorities have to submit Utilization Certificates and Audit Certificates also for the earlier releases in addition to fulfilling the aforesaid two conditions before second installment in any given year is considered for release to any MP.

50. Software has been developed and launched on 30th November 2004 by the Ministry of Statistics and Programme Implementation. The same had been adopted by majority of the districts and the reports of completed and ongoing projects in respect of 361 districts out of 428 Nodal districts have already come on the website of the Ministry. The Ministry had nominated 78 officers of JAG and SAG level working in the Ministry, as Nodal Officers for the districts for entering the data in respect of the ongoing and completed works. This had facilitated substantial improvement in the data entry in the software. So far, data in respect of 1,006 MPs has been uploaded. Result oriented reviews of the Scheme have been taken up by the Secretary and Additional Secretary of the Ministry at All-India level.

51. As discussed earlier, under the MPLAD Scheme, the MP concerned recommends works. The District Authority verifies the eligibility and technical feasibility of each recommended work. Decision making power in regard to technical, financial, administrative sanctions accorded under the scheme, vests in the district level functionaries. The sanctioning of eligible works and their execution is done by the District Authorities and State Governments monitor the MPLAD works implementation. Beside this, the nodal District Authority has to coordinate with other districts falling in the same constituency (in case of Lok Sabha constituencies) and with all the districts

in which the MP has recommended work (in case of Rajya Sabha MPs). Thus the nature of the Scheme is such that it requires considerable technical, administrative and accounting expertise, highly efficient coordination with various agencies and organizations and a high degree of logistic and managerial support for its successful implementation. Only the District Authorities possess all the above mentioned requisite competence and can effectively implement the scheme at the District level. Barring few irregularities, which are taken care of by the State Audit Authorities, the funds allocated under the MPLAD Scheme are being properly monitored for better utilization to achieve the objectives of the Scheme.

52. The information furnished shows that the Scheme has benefited the local community by meeting their various developmental needs such as drinking water facility, education, electricity, health and family welfare, irrigation, non-conventional energy, community centres, public libraries, bus stands, roads, pathways, bridges, sports infrastructure etc. Mere allegation of misuse of the funds under the Scheme by some MPs by itself may not be a ground for scrapping of the Scheme as checks and safeguards have been provided. Parliament has the power to enquire and take appropriate action against the erring members. Both Lok Sabha & Rajya Sabha have set up Standing Committee to monitor the works under the Scheme.

53. The second level of accountability is provided by the Guidelines themselves. As noted above, these guidelines have been continuously revised, the latest being the fourth time resulting in the Guidelines of 2005. As we have already adverted to, the Guidelines make it clear that the MPLAD Scheme is for the recommendation of works of developmental nature, especially for the creation of durable community assets based on local needs. According to the Guidelines, these include durable assets of national priorities like drinking water, primary education, public health, sanitation and roads. Clearly,

the Scheme does not give a *carte blanche* to the MPs with respect to the kind of works they can recommend.

54. Furthermore, under the Guidelines, once the MP recommends any work, District Authority in whose jurisdiction, the proposed works are to be executed, will maintain proper accounts, follow proper procedure for sanction and implementation for timely completion of works. [vide Clause 3.2]

Annex II provides those works which are prohibited under the Scheme:

LIST OF WORKS PROHIBITED UNDER MPLADS

1. Office and residential buildings belonging to Central, and State Governments, their Departments, Government Agencies/ Organizations and Public Sector Undertakings.

2. Office and residential buildings, and other works belonging to private, cooperative and commercial organizations.

3. All works involving commercial establishments/units.

4. All maintenance works of any type.

5. All renovation, and repair works except heritage and archeological monuments and buildings with specific permission available from the Archeological Survey of India.

6. Grants and loans, contribution to any Central and State/ UT Relief Funds.

7. Assets to be named after any person.

8. Purchase of all movable items except vehicles, earth movers, and equipments meant for hospital, educational, sports, drinking water and sanitation purposes belonging to Central, State, UT and Local Self Governments. (This will be subject to 10% of the Capital Cost of the work for which such items are proposed)

9. Acquisition of land or any compensation for land acquired.

10. Reimbursement of any type of completed or partly completed works or items.

11. Assets for individual/family benefits.

12. All revenue and recurring expenditure.

13. Works within the places of religious worship and on land belonging to or owned by religious faith/group.

Further accounting and monitoring procedure is provided by the Guidelines themselves under Clause 5 and 6 of the Guidelines, 2005.

55. We have perused through the Annual Reports of the Scheme which provide for transparency and accountability in the working of the Scheme. Measures that have been introduced in this regard are highlighted below:

1. Software for monitoring MPLADs Works was launched in November 2004. The software enables online monitoring of details of works and the analysis of this data is used to bring out various reports, once the data entry and uploading in respect of a constituency is completed.

2. As per the Right to Information Act, 2005 and the rules framed there under, all citizens have the right to information on any aspect of the MPLAD Scheme including works recommended/ sanctioned/executed under it, costs of work sanctioned, implementing agencies, quality of works completed, user agencies etc.

3. It has been stipulated under the guidelines that for greater public awareness, for all works executed under MPLAD Scheme, a plaque (stone/metal) indicating the cost involved, the commencement, completion and inauguration date and the name of the MP sponsoring the project should be permanently erected."

56. All these information which are available through their website clearly show that the Scheme provides various levels of accountability. The argument of the petitioners that MPLADS is inherently arbitrary seems unfounded. No doubt there may be improvements to be made. But this court does not sit in judgment of the veracity of a scheme, but only its legality. When there is evidence that an accountability mechanism is available, there is no reason for us to interfere in the Scheme.

57. Further, the Scheme only supplements the efforts of the State and other local Authorities and does not seek to interfere in the functional as well as financial domain of the local planning authorities of the State. On the other hand, it only strengthens the welfare measures taken by them. The Scheme, in its present form, does not override any powers vested in the State Government or the local authority. The implementing authorities can sanction a scheme subject to compliance with the local laws. Various guidelines make it clear that the Scheme has to be implemented with the co-ordination of various authorities and subject to the supervision and control of the nodal Ministry i.e. Ministry of Statistics and Programme Implementation. The respondents have highlighted that the collective responsibility ensures in implementing the Scheme and over the years, various checks are also put in place, including the measures to make the scheme more transparent in all respects. We are satisfied that the Government of India is not delegating its power to the Members of Parliament to spend the money contrary to the mandate of the constitutional provisions.

Separation of Powers

58. Another contention raised by the petitioners is that the Scheme violates the principle of Separation of Powers under the Constitution. The concept of Separation of Powers, even though not found in any particular constitutional provision, is inherent in the polity the Constitution has adopted. The aim of Separation of Powers is to achieve the maximum extent of accountability of each branch of the Government.

59. While understanding this concept, two aspects must be borne in mind. One, that Separation of Powers is an essential feature of the Constitution. Two, that in modern governance, a strict separation is neither possible, nor desirable. Nevertheless, till this principle of accountability is preserved, there is no violation of separation of powers. We arrive at the same conclusion when we assess the position within the Constitutional text. The Constitution does not prohibit overlap of functions, but in fact provides for some overlap as a Parliamentary democracy. But what it prohibits is such exercise of function of the other branch which results in wrestling away of the regime of constitutional accountability.

60. In *Rai Sahib Ram Jawaya Kapur and Ors. v. The State of Punjab,* AIR 1955 SC 549, this Court held that:

"The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way.

The executive Government, however, can never go against the provisions of the Constitution or of any law."

61. In *Kesavananda Bharati vs. State of Kerala & Another,* (1973) 4 SCC 225 and later in *Indira Gandhi vs. Raj Narain,* AIR 1977 SC 69, this Court declared Separation of Powers to be a part of the Basic Structure of the Constitution. In *Kesavananda Bharati's* case, (supra) Shelat & Grover, JJs. in para 577 observed the precise nature of the concept as follows:

"There is ample evidence in the Constitution itself to indicate that it creates a system of checks and balances by reason of which powers are so distributed that none of the three organs it sets up can become so pre-dominant as to disable the others from exercising and discharging powers and functions entrusted to them. Though the Constitution does not lay down the principle of separation of powers in all its rigidity as is the case in the United States Constitution but it envisages such a separation to a degree as was found in Ranasinghe's case . The judicial review provided expressly in our Constitution by means of Articles 226 and 32 is one of the features upon which hinges the system of checks and balances."

62) The specific nature of this concept in our polity has also been reiterated time and again.

In *Special Reference No.1 of 1964* (1965) 1 SCR 413, this court held:

"...Whether or not there is distinct and rigid separation of powers under the Indian Constitution, there is no doubt that the constitution has entrusted to the Judicature in this country the task of construing the provisions of the Constitution and of safeguarding the fundamental rights of the citizens. When a statute is challenged on the ground that it has been passed by a Legislature without authority,

or has otherwise unconstitutionally trespassed on fundamental rights, it is for the courts to determine the dispute and decide whether the law passed by the legislature is valid or not. Just as the legislatures are conferred legislative authority and there functions are normally confined to legislative functions, and the function and authority of the executive lie within the domain of executive authority, so the jurisdiction and authority of the Judicature in this country lie within the domain of adjudication. *If the validity of any law is challenged before the courts, it is never suggested that the material question as to whether legislative authority has been exceeded or fundamental rights have been contravened, can be decided by the legislatures themselves. Adjudication of such a dispute is entrusted solely and exclusively to the Judicature of this country.* [**Emphasis supplied**]

63. In *Indira Nehru Gandhi v. Raj Narain* (1975) Supp SCC 1, Ray, J. noted that:

"The doctrine of separation of powers is carried into effect in countries like America and Australia. In our Constitution there is separation of powers in a broad sense...the doctrine of separation of powers as recognized in America is not applicable to our country."

64. The learned Chief Justice noted (in para 47) that the rigid separation of powers as under American Constitution or Australian Constitution does not apply to our country. He further noted that:

"The American Constitution provides for a rigid separation of governmental powers into three basic divisions the executive, legislative and judicial. It is an essential principle of that Constitution that powers entrusted to one department should not be exercised by any other department. The Australian Constitution follows the same pattern of distribution of powers. Unlike these

Constitutions, the Indian Constitution does not expressly vest the three kinds of power in three different organs of the State. *But the principle of separation of powers is not a magic formula for keeping the three organs of the State within the strict confines of their functions.* As observed by Cardozo, J., in his dissenting opinion in *Panama Refining Company v. Ryan* (1934) 293 US 388, 440 the principle of separation of powers "is not a doctrinaire concept to be made use of with pedantic rigour. *There must be sensible approximation, there must be elasticity of adjustment in response to the practical necessities of Govt. which cannot foresee today the developments of tomorrow in their nearly infinite variety".* Thus, even in America, despite the theory that the legislature cannot delegate its power to the executive. a host of rules and regulations are passed by non-legislative bodies, which have been judicially recognised as valid." **[Emphasis supplied]**

65. In *State of Rajasthan v. Union of India* (1978) 1 SCR 1, this Court observed:

"This Court has never abandoned its constitutional function as the final Judge of constitutionality of all acts purported to be done under the authority of the Constitution. It has not refused to determine questions either of fact or of law so long as it has found itself possessed of power to do it and the cause of justice to be capable of being vindicated by its actions. But, it cannot assume unto itself powers the Constitution lodges elsewhere or undertake tasks entrusted by the Constitution to other departments of State which may be better equipped to perform them. The scrupulously discharged duties of all guardians of the Constitution include the duty not to transgress the limitations of their own constitutionally circumscribed powers by trespassing into what is properly the domain of other constitutional organs. Questions of political wisdom

or executive policy only could not be subjected to judicial control. No doubt executive policy must also be subordinated to constitutionally sanctioned purposes. It has its sphere and limitations. But, so long as it operates within that sphere, its operations are immune from judicial interference. This is also a part of the doctrine of a rough separation of powers under the Supremacy of the Constitution repeatedly propounded by this Court and to which the Court unswervingly adheres even when its views differ or change on the correct interpretation of a particular constitutional provision."

(para. 40)

66. In *Minerva Mills Ltd. and Ors. v. Union of India (UOI) and Ors.* (1980) 3 SCC 625 it was observed:

"93. It is a fundamental principle of our constitutional scheme, and I have pointed this out in the preceding paragraph, that every organ of the State, every authority under the Constitution, derives its power from the Constitution and has to act within the limits of such power.... Under our Constitution we nave no rigid separation of powers as in the United States of America, but there is a broad demarcation, though, having regard to the complex nature of governmental functions, certain degree of overlapping is inevitable. The reason for this broad separation of powers is that "the concentration of powers in any one organ may" to quote the words of Chandrachud, J. (as he then was) in *Smt. Indira Gandhi's* case (supra) *"by upsetting that fine balance between the three organs, destroy the fundamental premises of a democratic Government to which we are pledged."*

[**Emphasis supplied**]

67. Again, in the Constitution Bench judgment in *A.K. Roy v. Union of India* AIR 1982 SC 710, Chandrachud, C.J.

speaking for the majority held at para 23 pg. 723 that "our constitution does not follow the American pattern of strict separation of powers".

68. This court has previously held that the taking away of the judicial function through legislation would be violative of separation of powers. As Chandrachud, J. noted in *Indira Nehru Gandhi* case (supra), "the exercise by the legislature of what is purely and indubitably a judicial function is impossible to sustain in the context even of our co-operative federalism which contains no rigid distribution of powers but which provides a system of salutary checks and balances." [para. 689] This is because such legislation upsets the balance between the various organs of the State thus harming the system of accountability in the Constitution. Thus, the test for the violation of separation of powers must be precisely this. A law would be violative of separation of powers not if it results in some overlap of functions of different branches of the State, but if it takes over an essential function of the other branch leading to lapse in constitutional accountability. It is through this test that we must analyze the present Scheme.

69. In the present case, we are satisfied that there is no violation of concept of separation of powers. As we have noted above, there is no rigid separation of powers under the Constitution and each one of the arms at times perform other functions as well. The Member of Parliament is ultimately responsible to Parliament for his action as an MP even under the Scheme. All Members of Parliament be it a Member of Lok Sabha or Rajya Sabha or a nominated Member of Parliament are only seeking to advance public interest and public purpose and it is quite logical for the Member of Parliament to carry out developmental activities to the constituencies they represent. There is no reason to believe that the MPLAD Scheme would not be effectively controlled and implemented by the District Authority in the case of Panchayats and Commissioners/Chief

Executive Officers, in the case of Municipalities and Corporations with adequate safeguards under the guidelines.

70. Furthermore, Chapter 3 of the Guidelines provide the procedure to be followed for the implementation of the Scheme. As per the guidelines, the MP's function is merely to "recommend a work" [vide Chapter 3.1]. The District Authority and Chief Executive Officer have been entrusted with the absolute authority to discharge upon the feasibility of works recommended, assess the funds required for execution of the work, implementation of works by engaging an implementing agency, supervision of work and ensure financial transparency by providing audit certificates and utilization certificate. As such it is clear that the District Authority and Municipal Authority play a pivotal role in implementation and execution of MPLAD Scheme. Major role is played by Panchayats, Municipalities and Corporations under MPLAD Scheme in execution and implementation of works. As rightly pointed out by the learned a*micus curiae* and Additional Solicitor General, the Scheme concentrates on community development and creation of assets at the grass-root level and in such circumstances, the same cannot be interfered with by the courts without reasonable grounds. As mentioned earlier, the role of an MP in MPLAD Scheme is merely recommendatory in nature and the entire execution has been entrusted to the District/Municipal Authority which belongs to the executive organ. It is their responsibility to furnish completion certificate, audit certificate and utilization certificate for each work and if this is not done further funds can not be released.

71. It is also the grievance of the petitioners that with the passing of 73rd and 74th Amendments to the Constitution introducing Part-IX in relation to the Panchayat and Part IX-A in relation to Municipalities, the entire area of local self-government has been entrusted to Panchayats under Article 243G read with Schedule 11 and to the Municipalities under Articles 243W, 243ZD and 243ZE read with Schedule 12 of

the Constitution. According to them the MPLAD Scheme is inconsistent with Part-IX and IX-A insofar as the entire decision making process in regard to community infrastructure of works of development nature for creation of durable community assets including drinking water, primary education, public health, sanitation and roads etc. is given to the Member of Parliament even though the decision-making process in regard to these very same matters is conferred to the Panchayats and Municipalities. The MPLAD Scheme, according to them, is in direct conflict with Part-IX and IX-A of the Constitution. It was argued that the Scheme introduces a foreign element which takes over part of the functions of the Panchayats and Municipalities. It was further contended that the implementing agency need not be the Panchayat or Municipality. Hence, the discretion, power and jurisdiction of the Panchayat and Municipality to decide on what project is to be located in which site is to be implemented through which agency is taken away. In other words, according to the learned counsel for the petitioners, this power being denuded by the Scheme, the Scheme is rendered wholly unconstitutional and bad.

72. We are not inclined to accept this contention raised by the petitioners. The extracts of the Guidelines we have produced above make it clear that even though the District Authority is given the power to identify the agency through which a particular work recommended by the MP should be executed, the Panchayati Raj Institutions (PRIs) will be the preferred Implementing Agency in the rural areas, through the Chief Executive of the respective PRI, and the Implementing Agencies in the urban areas would be urban local bodies, through the Commissioners/Chief Executive Officers of Municipal Corporations, Municipalities.

<u>Whether MPLADS leads to unfair advantage of sitting MPs as against their rivals</u>

73. Finally, an argument was made by the petitioners that the scheme violates the democratic principle of free and fair

elections. It was argued that sitting MPs had a clear edge over their opponents as they had MPLAD Scheme at their disposal which they could spend or promise to spend. It was argued that there is a possibility of misusing the money available under the Scheme and it gives unfair advantage to sitting MPs.

74. This argument is liable to be rejected as it is not based on any scientific analysis or empirical data. We also find this argument a half-hearted attempt to contest the constitutionality of the Scheme. MPLADS makes funds available to sitting MPs for developmental work. If the MP utilizes the funds properly, it would result in his better performance. If that leads to people voting for the incumbent candidate, it certainly does not violate any principle of free and fair elections.

75. As we have already noted, MPs are permitted to recommend specific kinds of works for the welfare of the people, i.e. which relate to development and building of durable community assets (as provided by Chapter 1.3 of the Guidelines). These works are to be conducted after approval of relevant authorities. In such circumstances, it cannot be claimed that these works amount to an unfair advantage or corrupt practices within the meaning of the Representation of the Peoples Act, 1951. Of course such spending is subject to the above Act and the regulations of the Election Commission.

<u>Conclusions</u>

76. In the light of the above discussion, we summarize our conclusions as follows:

(1) Owing to the quasi-federal nature of the Constitution and the specific wording of Article 282, both the Union and the State have the power to make grants for a purpose irrespective of whether the subject matter of the purpose falls in the Seventh Schedule provided that the purpose is "public purpose" within the meaning of the Constitution.

(2) The Scheme falls within the meaning of "public purpose" aiming for the fulfillment of the development and welfare of the State as reflected in the Directive Principles of State Policy.

(3) Both Articles 275 and 282 are sources of spending funds/monies under the Constitution. Article 282 is normally meant for special, temporary or ad hoc schemes. However, the matter of expenditure for a "public purpose", is subject to fulfillment of the constitutional requirements. The power under Article 282 to sanction grant is not restricted.

(4) "Laws" mentioned in Article 282 would also include Appropriation Acts. A specific or special law need not be enacted by the Parliament to resort to the provision. Thus, the MPLAD Scheme is valid as Appropriation Acts have been duly passed year after year.

(5) Indian Constitution does not recognize strict separation of powers. The constitutional principle of separation of powers will only be violated if an essential function of one branch is taken over by another branch, leading to a removal of checks and balances.

(6) Even though MPs have been given a seemingly executive function, their role is limited to 'recommending' works and actual implementation is done by the local authorities. There is no removal of checks and balances since these are duly provided and have to be strictly adhered to by the guidelines of the Scheme and the Parliament. Therefore, the Scheme does not violate separation of powers.

(7) Panchayat Raj Institutions, Municipal as well as

local bodies have also not been denuded of their role or jurisdiction by the Scheme as due place has been accorded to them by the guidelines, in the implementation of the Scheme.

(8) The court can strike down a law or scheme only on the basis of its *vires* or unconstitutionality but not on the basis of its viability. When a regime of accountability is available within the Scheme, it is not proper for the Court to strike it down, unless it violates any constitutional principle.

(9) In the present Scheme, an accountability regime has been provided. Efforts must be made to make the regime more robust, but in its current form, cannot be struck down as unconstitutional.

(10) The Scheme does not result in an unfair advantage to the sitting Members of Parliament and does not amount to a corrupt practice.

77. Accordingly, we hold that the impugned MPLAD Scheme is valid and *intra vires* of the Constitution and all the writ petitions transfer petition as well as the transferred cases are liable to be dismissed as devoid of any merit, consequently, the same are dismissed. No order as to costs.

D.G. Writ Petitions and transferred cases dismissed.