**CENTRAL ADMINISTRATIVE TRIBUNAL**
**HYDERABAD BENCH**

**OA/021/00230/2020**

HYDERABAD, this the 9th day of November, 2020.

**Hon'ble Mr. Ashish Kalia, Judl. Member**
**Hon'ble Mr. B.V. Sudhakar, Admn. Member**

Srilakshmi Yerra, IAS W/o. M. Gopi Krishna,
Aged : 52 years, Occ : IAS, Grade
Currently Secretary Public Enterprises,
Govt. of Telangana, Hyderabad,
R/o Plot Number 161, Road Number 72,
Prashasan Nagar, Jubilee Hills,
Hyderabad – 500033. ...Applicant

(By Advocate :Mr. K. Raghavacharyulu)

Vs.

1.The Union of India, Rep by its Secretary,
Department of Personal & Training (DOPT),
North Block, NEW DELHI – 110 001.

2.The State of Telangana,
Rep. by the Chief Secretary,
BRKR Bhavan, Telangana Secretariat,
Hyderabad.Pin-500 022 Telangana.

3. The State of Andhra Pradesh,
Rep. by the Chief Secretary,
Located at Amaravathi. Secretariat,
Amaravathi. ....Respondents

(By Advocate : Mrs.K.Rajitha, Sr. CGSC,
Mr.P.Ravinder Reddy, SC for Telangana State
Mr. M.Balraj, Govt. Pleader for State of AP)

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**ORAL ORDER**
**(As per Hon'ble Mr. B.V.Sudhakar, Administrative Member)**

***Through Video Conferencing:***

2. The OA is filed aggrieved over the allocation of the applicant an All India Service Officer (for short "AIS") to the State of Telangana instead of the successor State of Andhra Pradesh.

3. Brief facts that have to be adumbrated are that the applicant belongs to the Indian Administrative Service and has been allotted to the composite State of Andhra Pradesh cadre in 1988 as a direct recruit insider for having secured 11th rank in the merit list. The State of A.P was bifurcated in 2014 into the State of Telangana and the successor State of A.P. The issue of allocation of AIS officers is mentioned in Section 76 of A.P. Reorganisation Act, 2014 (for short "Act 2014"). To allocate AIS officers between the 2 States, an Advisory Committee headed by Sri Pratyuh Sinha (hereinafter referred to as "Advisory Committee") was formed on 28.3.2014, which framed the guidelines and the same were uploaded in the websites of the 1st respondent and DOPT on 22.8.2014 & 26.12.2014 respectively. Applicant represented to the General Administration Department on 26.4.2014 to allot her to A.P. as she was born in Visakhapatnam and her parents belong to A.P. In the UPSC application, applicant preferred the composite State of A.P. as home cadre under Direct recruit (Insider quota). Pursuant to the bifurcation of the composite State of A.P. into Telangana and the residual State of A.P., 1st respondent issued allotment orders on 30.5.2014 and 31.5.2014, wherein the name of the applicant did not appear and on 26.12.2014 applicant was allotted to the

State of Telangana on a provisional basis. Consequential order was issued vide G.O. Rt. No. 24 dated 4.1.2015 under Section 76(4) of the Act, 2014 read with IAS Cadre Rules, 1954. The allocation to the State of Telangana was based on postal address and not based on her home State. Applicant was suspended in October 2012 and the associated emotional trauma has led to severe health issues which forced her to be under continuous medical care. Hence applicant could rejoin duty in October 2016 after partial recovery and on revocation of suspension. Similarly placed officer has been given relief in OA 1241/2014 on 29.3.2016. Hence, the OA seeking allotment to the successor State of A.P.

4. The contentions of the applicant are that since applicant got 11th rank in the UPSC, she had the privilege to choose home State of A.P. as a direct recruit (Insider). Allotting the applicant to the State of Telangana based on postal address by the Advisory Committee though her home state was shown as A.P. in the UPSC application is incorrect. UPSC Act and All India Services Act, 1951 confer the Fundamental Right under Article 19 (1) (g) of the Constitution of India to opt for the home state based on merit. The fundamental right cannot be superseded by an executive order issued invoking the provisions of the Act 2014. Sections 76 (3) & 76 (4) of the Act 2014 cannot override the principles contemplated under AIS Act, 1951 as well as the Rules framed under said Act. The guidelines of the Advisory Committee has to be in accordance with Sections 76 (5) & 80 (1) (b) of the Act 2014. Even the representation submitted to allot A.P. on 26.4.2014 remains unanswered. Applicant rejoined service in October 2016 and the Govt. of Telangana is not granting promotion since 2017 though she is

eligible for 2 promotions as per DOPT circular dated 28.4.2014. The discriminatory approach in not granting promotions to the level of Principal Secretary and Special Chief Secretary is because applicant is being treated as an outsider in Telangana cadre in view of the fact that she has been initially allotted to A.P cadre as direct recruit (Insider). Till date, no charges have been framed against the applicant in the false CBI cases pending against her while as Sri B.P. Acharya was promoted as Special Chief Secretary though 4 CBI cases are pending against him and thus, applicant was discriminated i.r.o. promotion. In fact, the Criminal Case vide Crl. P. No 10363/2015 filed against her was quashed by the Hon'ble High Court on 1.6.2017. Applicant claims that her Constitutional right in respect of cadre allotment and promotion has been infringed and in the process Article 14 of the Constitution of India has been violated. Limitation would not apply to her case as the relief sought is a constitutional right and also since there is a continuous cause of action. Applicant cited Hon'ble Apex Court Judgments in regard to limitation to support her contentions. DOPT notification dated 5.3.2015, in exercise of the powers conferred under Section 76(4) of the A.P. Reorganization Act, 2014 read with Rule 5 of the Administrative Services (Cadre) Rules, 1954 for allocation of IAS officers, has been declared as illegal by the Tribunal on 29.3.2016 in OA 1241/2014. Applicant would suffer prejudice and irreparable injury if relief sought were not to be considered.

5. Respondent No.1 in the reply statement states that the cadre allotment is done based on rules framed. All India Service officers are liable to serve either the Union or the State to which they are allotted. A

person who is a member of the AIS, created under Article 312 of the Constitution, has no right to claim allocation to a particular State/ Home State and the same is supported by the verdict of Hon'ble Supreme Court verdict in U.O.I. v Rajiv Yadav (1994 (6) SCC 38). Under Rule 5 of the IAS (Cadre) Rules, 1954, Central Govt. is the sole authority in regard to allocation of a cadre. Consequent to the re-organization of the State of A.P., matters relating to services are governed by Section 76 of the Act 2014 and as per Section 80 of the said Act, an Advisory Committee headed by Sri Pratyush Sinha was formed to recommend the principles/ guidelines to be adopted for allocation of Telangana Cadre to AIS officers borne on the cadre of undivided State of A.P. so that there would not be any allegations of wrong doing in the distribution. The Committee recommended 8 principles for distribution of the cadre. Officers were allowed to give their preference. Representations received were considered and the committee gave a final report to the competent authority. The allocation to the newly created cadres was done on a provisional basis on 26.12.2014 as per guidelines approved by the competent authority, wherein the applicant name figures at Sl.31. Final allocation was done on 5.3.2015 and being unsatisfied with the allocation applicant is challenging the same after 5 years on the basis that her domicile is A.P. The guidelines issued based on the recommendations of the Advisory Committee are a subject matter of the Act, 2014. As per Advisory Committee recommendations, the basis for determination of domicile would be as per the information contained in the UPSC dossier/ Training Institute where the officer joined for the first time as per para 5.1.3 of the approved guidelines. The applicant has not given details of permanent postal address at Column 6 (b) in the Detailed

Application Form (for short "DAF") submitted to UPSC while appearing for the Civil Service Exam (for short "CSE") of 1987. However, she gave the present postal address as Secunderabad at Column 6 (a) in the DAF, which falls under the successor State of Telangana. Hence applicant's domicile status was decided as Insider of Telangana as per approved principles of distribution. Therefore, allocation to the successor State of A.P. is impermissible. The same yardstick has been uniformly applied to all the AIS officers and a fair and equitable treatment has been extended in effecting the distribution. The contention of the applicant that she has indicated her home State as A.P. in the DAF submitted to UPSC and therefore, she should be allotted to the successor State of A.P is not acceptable as successor States of A.P. and Telangana were part of the undivided State of A.P. The postal address given as Secunderabad in the DAF fell in the jurisdiction of the composite State of A.P. and after bifurcation, under Telangana State and therefore, the allocation to the said State. For having got higher marks, applicant acquires the right to be considered to the Home State and does not acquire a fundamental right to opt for the home State as held by Hon'ble Supreme Court in Rajiv Yadav case. The case cited by the applicant in respect of State of A.P. v Nalla Raja Reddy relates to revenue assessment and has no relevance to the present case. Applicant claims that she had made a representation on 26.4.2014, which, in effect, was a reply to the Memo No.816/Spl A/A1/2013 of General Administration Dept. letter dated 19.4.2014 of the then Govt. of A.P. In fact, the representation is not to the competent authority, and that after publication of the notification dated 26.12.2014, no representation was submitted by the applicant. The allocation is consistent with Section 80 (1)

(b) as well as Section 76(5) of the Act 2014. The OA having been filed after 5 years of allocation and cannot be entertained under Limitation clause.

The 3rd respondent in the reply statement submitted, states that there is a difference in allocation of AIS officers upon appointment to the respective States and distribution of AIS officers of the erstwhile undivided State of A.P. Both cannot be equated. AIS officers were distributed between the 2 States as per the Advisory Committee recommendations and it is not an allotment of AIS officers as per IAS (Cadre) Rules, 1954 and AIS Act, 1971. The guidelines were framed by the Committee in view of the bifurcation of the State and hence, the case law cited by the 1st respondent is not applicable to the case of the applicant. As a corollary, the Advisory Committee cannot meddle with the right accrued to the AIS officers on allotment to the State on their entry into the service. The Committee recommendations subserve the IAS (Cadre) Rules 1954 / AIS Act 1971. The allocation of home State is on the basis of rank and willingness. The pertinent aspect of the guidelines is distribution with reference to domicile Status. The Govt. of A.P. has taken many policy initiatives in regard to domicile status and one of them is that any person who migrates to any part of A.P from the State of Telangana would be considered as a local candidate. Therefore in view of the policy referred to, there can be no objection to the domicile status claimed by the applicant and more so when she was born in the successor State of A.P and her parents belong to the said State. Applicant was allotted to the undivided State of A.P as an insider and the division of the State would not obliterate

her right to stake claim for the successor State of A.P. Postal address cannot be treated as permanent postal address. Applicant ought to have been given the State of A.P.

1st respondent taking into cognizance material papers submitted by the applicant and the reply statement of the 3rd respondent has filed an additional reply stating that the Central Govt. has been conferred with the power to recruit and allocate cadres to AIS officers as per AIS Act 1951 and IAS (Cadre) Rules ,1954. As per Section 80 of the Act -2014, based on the approved recommendations of the Advisory Committee formed, actual allocation of individual officers would be done by the Central Govt. In case there is any conflict of opinion, the Central Govt. decision would be final. The allocation has been done after following due process of law not only in respect of the applicant but in respect of all the AIS officers. Therefore the comments made by the 3rd respondent that there was distribution of officers and not allocation of officers is incorrect. 3rd respondent has no *locus standi* to declare the domicile of the applicant as the successor State of A.P. Other comments made too require no attention. The allocation of the applicant to Telangana Cadre was strictly done in accordance with the Advisory Committee approved guidelines. The additional documents submitted by the applicant claiming that there are vacancies to accommodate the applicant in the State of A.P should not be reckoned as the vacancies available are to be used for allotting officers who pass the exam annually. Once an officer is allotted to a cadre, it is fixed for the rest of the career and he/she cannot be allocated to another cadre based on availability of vacancies and if such a procedure were to be followed, then

the system of cadre allocation would collapse leading to chaos in the overall management of the Cadres. The cadre allotment done in 2015 which attained finality should not be disturbed. In regard to the applicant referring to the vacancies available due to 6 officers allocated to the successor State of A.P. but working in the State of Telangana, Writ Petitions are pending adjudication in the Hon'ble High Court of Judicature at Hyderabad not only in respect of the 6 officers but totally against 11 officers who were aggrieved by the allocation. Applicant is just stretching her contentions to get allocated to A.P. in the garb of availability of vacancies which is not supported by relevant rules. The cadre allocation of AIS officers is done based on the Cadre Allocation Policy (CAP) applicable to the concerned year of the Civil Service Exam (CSE) and accordingly applicant was allotted to the then State of A.P and later after bifurcation, to the State of Telangana, following the approved advisory committee guidelines. The allocation was done in 2015 and therefore, current vacancies cannot be reckoned retrospectively to the year 2014-15 for reallocation as sought by the applicant.

Applicant filed a rejoinder wherein she asserts that the OA filed is not an adversarial application as there are no adversely affected parties in the application and the 2nd / 3rd respondents were impleaded as *eo nominee* to bind them to the order issued. The distribution of AIS officers was not sought by the applicant and it was forced on her when she was under suspension. During the period of suspension the rights and obligations that flow from the contract of employment, shall stand suspended. The service conditions of the AIS officers is regulated under Articles 309, 310, 311, 312

and 312A of the Constitution of India, which was indicated at para 3 of the OA and was not denied. The information obtained through RTI Act from the 1st respondent vide letter dated 10.2.2020 (pages 76 to 101 of OA), makes it is evident that the IAS officers numbering 191 were distributed between the 2 States and there was no common yardstick followed in the distribution. The Advisory Committee has extended discriminatory treatment to different officers. As for instance Sri I.V. Subba Rao was allotted to the State of A.P. on the basis of taking the Home district of his father. The same treatment was not given to the applicant though both are similarly placed. Father of the applicant belongs to Krishna district, which is a part of successor State of A.P. as per column 20 (e) of the UPSC dossier. While replying to column 21 of DAF, applicant has stated that her home state is A.P. based on replies scribed in columns 15, 16, 18 & 20. Despite facts being what they are, Advisory Committee allotted applicant to Telangana taking present postal address, which is erroneous. Successor State of AP is the domicile State of the applicant since she was born in the said State and her father also belongs to the same State. Hence, there was no need for the committee to resort to the other alternatives for deciding cadre allocation. Applicant pleaded discrimination at paras vii, ix & xii of pages 10, 11 & 13 of OA which were not denied in the reply statement and the verdict of the Hon'ble Apex Court in Nalla Raja Reddy supports the discrimination aspect. Relevant factors were ignored and irrelevant factors considered in the distribution and more importantly ignoring the 11th rank secured by the applicant in 1988. Applicant was suspended in November 2011 and final cadre allocation was done on 4.1.2015 during the period of suspension. The suspension was revoked on 12.3.2015 and the posting

orders were issued in October 2016. As per relevant Fundamental rules the committee should not have forced the distribution on the applicant when she was under suspension. Insiders are allocated based on ranks to their own home States subject to their willingness and outsiders on roster basis. Applicant claims that she has acquired the right to be Insider by virtue of the rank obtained and thus has the option to claim for the Home State, which is the successor State of A.P. There can be no time limit set for wrongs done against constitutional rights. The advisory committee by not taking her place of birth as successor State of A.P, which was testified by enclosing the passport copy, is ample proof of discrimination against her.

1st respondents filed an additional reply to the rejoinder wherein it is submitted that Sri I.V. Subba Rao belongs to 1979 batch and the application form for CSE-1979 contained columns for postal address, candidates place of birth/ State and not permanent postal address, whereas in the application of the applicant for CSE -1987 filled in by the applicant, it had the column for permanent postal address which was struck off by the applicant. Therefore, in the case of Sri I.V. Subba Rao, the place of birth of his father had to be taken in a different context. Hence, no comparison can be made with the said case. In regard to the applicant the place of birth of the applicant, District and State as well as the home town, District and State of her father were given due wieghtage but these fields are placed below Permanent Postal address/Postal Address in the descending order. The allocation of the applicant to the State of Telangana was based on approved guidelines and is not a forced distribution as claimed nor is it discriminatory. Suspension of the applicant has nothing to do with

allocation and that the applicant did not represent to the Advisory Committee. The initial allotment was based on rank and later due to bifurcation of the State it was done considering the approved guidelines.

6. Heard both the counsel and perused the pleadings on record. The Administrative Tribunal Act 1985 (AT Act 1985) does not provide for filing of additional replies by the 1st respondent. However, in the interest of justice, it was permitted keeping the Rules framed under the AT Act, 1985 in view, and it was effectively utilized by filing 2 additional replies. The Ld. Counsel for the 2nd respondent submitted that they would go with the affidavits filed by the 1st respondent.

7. I. It is not in dispute that the applicant belongs to the 1988 batch of the Indian Administrative Service and that she was originally allotted to the composite State of A.P. for having obtained 11th rank in CSE -1987. In 2014 the State of A.P. was bifurcated and the two successor States of A.P. and Telangana were formed by the Act-2014. Sections 76 and 80 of the Act-2014 deal with matters relating to services. Invoking Section 80 of the act, an Advisory Committee chaired by Sri Pratyush Sinha was formed which has laid down guidelines for allocation of AIS officers to the successor States which were approved by the competent authority. Based on the approved guidelines applicant was allotted to the State of Telangana provisionally on 26.12.2014 and finally on 5.3.2015 though she gave relevant details vide her letter dated 26.4.2014 which are germane to examine her case for the residual State of A.P. Respondents assert that the cadre allocation was done in 2015 and the applicant for having filed the OA after 5 years, it has to be dismissed on grounds of Limitation. Ld. Counsel

for the respondents has anchored her arguments around the delay of 5 years in filing the OA claiming that it is no small matter and the OA qualifies to be dismissed. Applicant cannot sleep over her rights for years together and approach the Tribunal with unjustifiable long delay of 5 years. In view of the Ld. Counsel for the respondents sternly pleading that the objection relating to limitation is intrinsically pertinent to the resolution of the dispute, it would be in the fitness of things to examine it in its totality by delving into the relevant intricate legal aspects touching upon limitation. Section 21 of the AT Act 1985 which deals with Limitation in respect of the time period of filing an application with the Tribunal reads as under:

> *21. Limitation.—*
> *(1) A Tribunal shall not admit an application,—*
> *(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;*
> *(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.*
> *(2) Notwithstanding anything contained in sub-section (1), where—*
> *(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and*
> *(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.*
> *(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.*

II. Sub Clause 3 of Section 21 of the AT Act provides for accepting an application even if it is filed after one year, provided the applicant satisfies the Tribunal that there is sufficient cause for not submitting the application

within the period prescribed. Applicant submitted that she was suspended in 2012 on false CBI charges and that the suspension was revoked on 12.3.2015. Final allocation orders to the State of Telangana were issued on 4.1.2015 and she joined in October 2016 after partial recovery of her health. Applicant submitted that the emotional trauma she had undergone due to suspension has severely affected her health resulting in being confined to a wheel chair for a long period of time requiring constant medical care. In these circumstances, applicant stated that she could not file the OA in time. Medical Reports (Sl. 115 to 130 of the OA) were submitted testifying that she had medical issues related to the spinal cord. We have gone through the same and they substantiate her ill health. Ld. Counsel for the applicant has re-emphasised the fact that the applicant is still under medical care. This aspect was also touched upon while registering the OA vide docket order dated 12.3.2020. A person who has a fragile health would obviously have to prioritize health and without good health it is understandable that one cannot wage a legal battle of the nature involved in the instant case. 'A **sound mind in a sound body**' is the English translation of a famous quotation by the pre-Socratic Greek philosopher Thales (Miletus, 624 – 546 BC), demonstrating the close links between physical exercise, mental equilibrium and the ability to enjoylife. The quote is the truth of life synopsised in few words but has profound meaning. When the applicant was going through a health crisis it could not have been expected of her to have a mind and the mental energy to fight a legal case. Ill health is sufficient cause to satisfy clause 3 of the Section 21 of the AT Act of 1985. The expression 'sufficient cause' is reasonably elastic to apply the law to ensure justice. Realistically speaking the applicant would not gain by filing

the application belatedly and it is not worth the effort too. Straightway rejecting the OA for reasons of limitation may cause irreparable injury to the cause of the applicant and if the delay is ignored, the utmost that would happen is to hear the case and decide on merits. System of justice would prefer to consider the later part of the observation. A practical approach has to be adopted while examining the cause of delay which is serious ill health in the instant case. Learned counsel for the respondents was incessantly harping on limitation which is a technical aspect of justice and it for the Tribunal to examine the substantial aspect of justice as well. When there is a contest between the two, it is the latter which has to be favoured because the respondents, we are sure, being a wing of the State, would not be interested in injustice to be done at the altar of non – deliberate delay. Defacto, the applicant by delaying the filing of the OA would face the risk of dismissal and therefore would not venture to deliberately delay the filing. It is not out of place to state that the Tribunal would not be respected for legitimizing injustice on technical grounds but for being competent in removing injustice, if it exists in a case, by going through a case in its entirety, which, true to speak, is the responsibility of the Tribunal to discharge. The spirit and philosophy of the provision 'sufficient cause' has to be evidenced in its application to render justice on merits in contrast to the approach which negates a decision on merits. We take support of the Hon'ble Supreme Court observations in **University Of Delhi vs Union Of India** on 17 December, 2019 in civil appeal Nos. 9488-9489 of 2019 (Arising out of SLP (Civil) Nos.5581-5582 of 2019), as under, in stating the above:

*The learned Senior Counsel for the appellant in order to impress upon this Court the principle relating to consideration of*

*"sufficient cause" for condonation of delay and the factors that are required to be kept in view, has relied on the decision in the case of* ***Collector, Land Acquisition, Anantnag & Anr. vs. Katiji & Ors., 1987 (2) SCC 107*** *wherein it is held as hereunder:*

*"3. The legislature has conferred the power to condone delay by enacting Section 5 [ Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:*

*"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*

*2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*

*3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common-sense pragmatic manner.*

*4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

*5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

*6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

*Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking*

*condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, filepushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."*

II. Further, it has been admitted by the respondents that the applicant has a right to be considered for allocation to a cadre, within the frame work of rules. The role of the Tribunal is to examine this right to render justice in accordance with law and principles of equity, justice and good conscience. It is not only justice, equity but good conscience. Good conscience would mean doing a thing in a right way. The right way is to examine the issue on the merit and not trample it to smithereens with the tag of delay. It would thus be unfair to deprive the applicant of the right to be heard, without subjecting the claim made, to intense legal scrutiny, for a justifiable outcome. The basis to hear germinates from the fact that the applicant was allotted to the undivided State of A.P on merit and also keeping in view Section 76 (5) of the Act-2014. The claim of the applicant is that she has an

accrued right of being considered for the successor State of A.P for having been allotted to the undivided State of A.P on merit at the time of her initial appointment to the AIS. Hon'ble Supreme Court observations in **Shiba Shankar Mohapatra v. State of Orissa, (2010) 12 SCC 471** has considered the aspect of limitation, delay and laches and observed that rights accrued should not be unjustly denied, as under, which are relevant to the case on hand.

> ***" 20.*** *In R.S. Makashi v. I.M. Menon this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in State of M.P. v. Bhailal Bhai, wherein it has been observed that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured. The Court observed as under: (R.S. Makashicase, SCC pp. 398-400, paras 28 & 30)*
>
> *"We must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years. ..."*

III. Additionally there is a pure question of law relating to domicile which is enwombed in the OA requiring to be scrutinized so as to decide as to whether the decision of the 1st respondent was legally justified in regard to allocation of the Telangana cadre. Without a proper examination of the issue, rejecting the OA on the singular ground of delay would be rendering injustice and the respondent organisation being a model employer, would also not appreciate, for the reason that the issue is impersonal to it. The question of law can be raised at any time and shackling it by the features of limitation, would not be a fair

proposition. Ultimate victory shall be that of Justice and nothing else. We are backed by the observation of the Hon'ble Supreme Court in ***Greater Mohali Area Development Authority v. Manju Jain, (2010) 9 SCC 157-,*** as under, to state what we did.

> *It is settled legal proposition that pure question of law can be raised at any time of the proceedings but a question of fact which requires investigation and inquiry, and for which no factual foundation has been laid by a party before the court or tribunal below, cannot be allowed to be agitated in the writ petition.*

The ld. counsel for the respondents took the objection about limitation when the proceedings were through, for some length and time. Therefore to come clear on the issue, reference was made to the observations of the Hon'ble Apex Court cited supra. Thus, by telescoping the comprehensive legal principles enumerated above, applicant has a right to be heard about her plea to grant the relief sought and the same should not be denied on the ground of limitation alone, lest it would be unjust. We are satisfied that sufficient cause exists for reasons stated supra to adjudicate the OA, and hence we proceed to examine the other aspects of the dispute.

IV. The cardinal aspect related to the issue, is essentially implementing the approved principles of the Advisory Committee in allocation of the AIS officers among the 2 successor States of A.P and Telangana. The 8 Principles laid down, as given in the reply statement at para 3.12, are as follows:

> *"3.12 After detailed consideration of the statutory provisions and case law regarding allocation of cadres in All India Services, the Advisory Committee recommended the norms and principles to be adopted for allocation of Telangana Cadre to All India Services officers borne on the cadre of undivided Andhra Pradesh. The main features of the principles adopted for distribution are stated as under:-*

*i) The AIS officers borne on the cadre of undivided Andhra Pradesh as on 1st June, 2014 would be distributed.*

*ii) They would be distributed in the ratio of 13:10 between Andhra Pradesh and Telangana keeping main features with respect to DR/Promotee, insider/ outsider and reserved/ general intact. Any deficit or surplus from cadre strength existing in undivided AP would be distributed pro-rata.*

*iii) Promotion quota (PQ) officers would be allocated as per their domicile status as communicated by the State Government. Any surplus of officers in any State has to be shifted to the other by following a roster.*

*iv) Direct recruit insiders would be sub-divided into categories such as UR/OBC/SC and ST. They would be distributed on the basis of their domicile status. Any surplus in any of the categories would be moved to the other State as per roster.*

*v) Direct recruit outsiders would be sub-divided category wise and distributed as per a roster.*

*vi) The officer picked up within the roster block for shifting to a State would have an option for exchange with willing officers within the roster block in descending order of seniority if necessary. This would be adopted for all officers and all categories except UR category in direct recruit outsiders.*

*vii) For UR category under direct recruit outsiders, swapping of Officers on the basis of their willingness would be available within a batch rather than the roster block.*

*viii) After finalizing the exercise an mentioned in para (i) to (vii) above, a fresh window will also be opened to all officers to opt for swapping with another officer within the same category and in the same grade pay as on 01.06.2014. Married couples belonging to All India Services and officers retiring within 2 years will also be given opportunity for shift of cadre. "*

Important among the above principles, is clause iv, which speaks about distribution of AIS officers, who are direct recruit insiders belonging to the UR/OBC/SC/ and ST category, on the basis of domicile Status. Applicant was appointed in 1988 as a Direct recruit insider belonging to the UR category. Domicile being the key to the allocation process, we would like to look at the concept of domicile, in its wholesomeness, to arrive at a legally compatible solution to the dispute in question.

V. 'Domicile' by definition would mean the country/State/place that a person treats as his permanent home, or lives in and has a substantial connection with.

In law, **domicile** is the status or attribution of being a lawful permanent resident in a particular jurisdiction. A person can remain domiciled in a jurisdiction even after they have left it, if they have maintained sufficient links with that jurisdiction or have not displayed an intention to leave permanently.

Depending on a person's circumstances, domicile has historically been based upon domicile of origin, choice and dependency. In the instant case, we are concerned with the domicile of origin and choice.

a. The domicile of origin is acquired by

*i the father's domicile, where the father was alive at the child's birth,*

*ii. the mother's domicile, where the father was not alive at the child's birth, or where the child was illegitimate*

*iii. where the parents were not known, the domicile was the place in which the child was found*

b. Coming to the domicile of choice, it would be acquired,

*i. when a child reached the age of majority, and had subsequently settled in another jurisdiction with the intention of making it their permanent home*

*II. when a person moves away from a domicile of choice with the intention of settling in another jurisdiction, but has not yet done so, their domicile reverts to the domicile of origin until settlement in a new permanent home has taken place.*

The general principles of domicile are that a person can have only one domicile at any given instant of time. It is settled in law that every individual, the moment he is born, he acquires the domicile of the father, which is the domicile of origin, as explained above. The domicile of choice is acquired when on becoming major, one elects to do so and continues to hold the acquired domicile as per his will and wish. When an individual's domicile of Choice subsists the domicile of origin will recede. However,

the domicile of origin being a creature of law and not being dependent on the will of the individual it revives and exists when there is no other domicile. Domicile of origin is involuntary and the domicile of choice is voluntary. Moreover, domicile of Choice is an inference from the fact of an individual fixing his residence in a particular place with the unlimited intention of continuing to reside there. There must be a residence freely chosen which should be general as well as coupled with indefiniteness and not dictated by the duties of office. The domicile of origin is extinguished by an act of law by the delivery of a death sentence or forcing someone to exile or outlawry whereas domicile of choice can be put to an end the same way as it was gained. Ordinarily domicile operates as the basis of jurisdiction, in vital aspects of a person's private life like marriage, legitimacy and succession. Every person must have a personal law, and accordingly everyone must have a domicile. An individual also receives at birth a domicile of origin which remains his domicile, wherever he goes, unless and until he acquires a new domicile. The domicile of origin is received by operation of law at birth and for acquisition of a domicile of choice one of the necessary conditions is the intention to remain there permanently. The domicile of origin provides the legitimacy as is required in deciding the allocation of a cadre.

VI. Applying the above principles to the case of the applicant, we observe from the dossier of the UPSC for the CSE -1987 (Sl. 70 to 80 of the reply statement) that the district of the father of the applicant was shown as Krishna, which is a part of the successor State of A.P. Applicant was born in Vishakhapatnam which is again in the successor State of A.P and by the

operation of law at birth, the domicile of the applicant is the residual State of A.P. Applicant's submitted a letter on 26.4.2014 to the respondents, wherein it is clear from the details that her mother hails from Guntur which comes under the jurisdiction of the successor State of A.P. Therefore, on all counts, the domicile of origin of the applicant would necessarily be the successor State of A.P. It has not been extinguished by any act of law as no evidence to this effect has been placed on record. The principle approved condition formulated by the advisory committee for allocation of AIS officers is domicile as per clause (iv) cited supra. The involuntary domicile of origin of the applicant as per law is thus the successor State of A.P. for reasons explained. Domicile of origin extends the legitimacy to the applicant's claim for allocation of the present A.P cadre. Respondents asserted in the reply statement that the guidelines were framed after referring to relevant legal principles and consulting experts/ stakeholders. There is no disagreement with the contention but the hitch is about the application of the concept of domicile in deciding the cadre of the applicant. We find that the basic premise of law in respect of domicile of origin has not been given the required weightage, as is predetermined under law, in responding to the applicant's plea in regard to cadre allotment. It requires no reiteration that law prevails over executive instructions. Respondents chose the present postal address of the applicant given in the DAF- CSE -1987 at column 6(a), as Secunderabad which lies in the jurisdiction of the successor State of Telangana. Based on the same and following the advisory committee guidelines, respondents claim that the Telangana Cadre was allotted to the applicant. However, applicant has explained that her father was working for the Indian Railways as Chief

Engineer at Secunderabad and therefore gave the present address as Secunderabad. This is corroborated by the fact that the address given by the applicant at column 20 (c) in regard to her father's present Postal Address is 1004, Railway Officers Colony, South Lallaguda, Secunderabad. The Secunderabad address came into the picture because her father was discharging his duties as Chief Engineer, an assignment which had All India transfer liability. Therefore, the said address would be a temporary address liable for change depending on his postings and that can be no criteria to bank upon for cadre allocation, when primarily the domicile of the applicant was well established under law and is in resonance with the approved guideline of essentially considering the domicile as the preliminary condition. If sufficient material was not available to decide domicile, the other parameters would come into play. In the instant case, when domicile was the principle for allocation of cadre as per the Advisory Committee, then legalistically it has to be the successor State of A.P on the basis of well described legal principles discussed so far. There is no evidence placed on record by the respondents to establish that the applicant has changed her domicile by choice to Secunderabad nor to disprove that her domicile of origin as the successor State of A.P. We rely on the following judgments in support of our above observations:

a. ***George Udny v John Henry Udny of Udny*** [1869] UKHL 2 Paterson 1677, (1869) LR 1 HL 441 (3 June 1869), pp. 1686–1687

> *A person can have only one domicile at any given time, and the manner in which it could change was explained in 1869 in the House of Lords by Lord Westbury in Udny v Udny:*

*It is a settled principle, that no man shall be without a domicile, and to secure this result the law attributes to every individual as soon as he is born the domicile of the father if the child be legitimate, or the domicile of the mother if illegitimate. This has been called the domicile of origin, and it is involuntary. Other domiciles are domiciles of choice, for, as soon as the individual is sui juris, it is competent to him to elect and assume another domicile, the continuance of which depends upon his will and act. When another domicile is put on, the domicile of origin is for that purpose relinquished, and remains in abeyance during the continuance of the domicile. But as the domicile of origin is the creature of law, and independent of the will of the party, it would be inconsistent with the principles on which it is by law created and ascribed, to suppose, that it is capable of being, by the mere act of the party, entirely obliterated and extinguished. It revives and exists whenever there is no other domicile, and it does not require to be regained or reconstituted animo et facto in the manner which is necessary for the acquisition of a new domicile of choice.*

*Domicile of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place with the unlimited intention of continuing to reside there. This is a description of the circumstances which create or constitute a domicile, and not a definition of the term. There must be a residence freely chosen and not prescribed or dictated by any external necessity such as the duties of office, the demands of creditors, or the relief of illness. And it must be residence fixed not for any defined period or particular purpose, but general and indefinite in its future duration. It is true, that residence originally temporary, or intended only for a limited period, may afterwards become general and unlimited, and in such a case, so soon as the change of purpose or the animus manendi may be inferred, the fact of domicile of origin may be extinguished by act of law, as, for example, by sentence of death, exile, and perhaps outlawry, but it cannot be destroyed by the act of the party. Domicile of choice, if it is gained animoet facto, may be put an end to in the same manner.*

*Expressions are found in some books in one or two cases, to the effect, that the first domicile remains until another is acquired. This is true, if applied to the domicile of origin, but it cannot be true if such general words were intended (which is not probable) to convey the conclusion, that a domicile of choice, though unequivocally relinquished and abandoned, clings, in spite of his will and act. to the party until another domicile has animo et facto been acquired. The cases to which I have referred are in my opinion met and controlled by other decisions, but more especially by the reason of the thing. A natural born Englishman may, if he domiciles himself in Holland, acquire the status civilis of a Dutchman, which is of course ascribed to him in respect of his settled abode in Holland, but if he breaks up his establishment, sells his house and furniture, discharges his servants, quits Holland, declaring that he will never return to it again, and taking with him his wife and children for the purpose of travelling in France or Italy in search of another place of residence, can it be said, that he carries his Dutch domicile on his back, and that it clings to him pertinaciously until he has finally set up his tabernacle in another country? Such a conclusion would be absurd. But there is no absurdity, but, on the contrary, much reason in holding, that an acquired domicile may be effectually determined by an unequivocal intention and act, and that, when it is so determined, the domicile of origin instantly revives, and continues until a new domicile of choice is acquired.*

b. Supreme Court of India in **Union Of India And Ors vs. Dudh Nath Prasad** on 4 January, 2000 in Appeal (Civil) 1387 of 1991

referred to Udny v. Udny cited above and made the following observations:

*Lord Macnaghten in Wrnansv..A.G., (1904) A.C. 290, observed that "**Domicile** of origin, or, as it is sometimes called, perhaps less accurately, **domicile** of birth, differs from **domicile** of choice mainly in this - that its character is more enduring, its hold stronger and less easily shaken off."*

*xxxx*

*To bring home the point we may quota a few words from the "New jurisprudence (The grammar of Modern Law) by Justice P.B. Mukharji (Tagore Law Lectures), as under:*

*Certain principles relating to domicile have taken firm root in common Law countries. The principles may be stated in the form of propositions in the light of the famous case of Udny v. Udny, (1869) L.R. 1SC. App. 441. Evt.ry person must all the time be said to possess a domicile. There can be one domicile at a time and no person can have plural domicile. Secondly, the basic question whether certain facts do or do not constitute domicile is ordinarily decided by the municipal law of the court of the country deciding. Naturally, lexfori plays a significant part in this question of Renvoi where domicile is the connecting factor. Casdagli v. Casdagli, (1919) AC 145, xxxx*

*The classical division of domicile is well known. There are the domicile of origin, the domicile of choice and the domicile of dependence. There has been little change in the essential concept of these three domiciles. Domicile and residence are different and yet related concepts. Ordinarily domicile operates as the basis of jurisdiction, in such vital aspect of a person's private life like marriage, legitimacy and succession. But on the other hand residence operates as the basis of jurisdiction in cases like taxation, right to vote, in certain aspects of matrimonial question, and generally in cases where public rights are involved.*

c. Supreme Court of India in **Abdus Samad vs State Of West Bengal** on 12 September, 1972 in AIR 1973 SC 505, 1973 CriL J 1, (1973) 1 SCC 451, 1973 (5) UJ 380 SC held as under:

*6. In the present case the domicile of origin communicated by operation of law to the appellant at birth at Sylhet could not on partition of India be called Indian. The domicile of choice is that every person of full age is free to acquire in substitution for that which he possesses at the time of choice. By domicile is meant a permanent home. Domicile means the place which a person has fixed as a habitation of himself and his family not for a mere special and temporary purpose, but with a present intention of making it his permanent home. Domicile of choice is thus the result of a voluntary choice.*

*7. Every person must have a domicile. A person cannot have two simultaneous domiciles. Domicile denotes connection with the territorial system of law. The burden of proving a change in domicile is on those who allege that a change has occurred.*

d. ***Louis De Raedt v Union of India and ors*** in Writ petition (Civil) Nos.1410 and 1372 of 1987 and Writ Petition (Criminal) No. 528 of 1987 decided on July 24,1991:

*"9. There is no force in the argument of Mr.Verghese that for the sole reason that the petitioner has been staying in this country for more than a decade before the commencement of the Constitution, he must be deemed to have acquired his domicile in this country and consequently the Indian citizenship. Although it is impossible to lay down an absolute definition of domicile, as was stated in Central Bank of India v. Ram Narain, [1955] 1 SCR 697 it is fully established that an intention to reside forever in a country where one has taken up his residence is an essential constituent element for the existence of domicile in that country. Domicile has been described in Halsbury's Laws of England, 4th edition, Volume 8, Paragraph 42 1) as the legal relationship between individual and a territory with a distinctive legal system which invokes that system as his personal law. Every person must have a personal law, and accordingly every one must have a domicile. He receives at birth a domicile of origin which remains his domicile, wherever he goes, unless and until he acquires a new domicile. The new domicile, acquired subsequently, is generally called a domicile of choice. The domicile of origin is received by operation of law at birth and for acquisition of a domicile of choice one of the necessary conditions is the intention to remain there permanently. The domicile of origin is retained and cannot be divested until the acquisition of the domicile of choice. By merely leaving his country, even permanently, one will not, in the eye of law, lose his domicile until he acquires a new one. This aspect was discussed in Central Bank of India v. Ram Narain (supra) where it was pointed out that if a person leaves the country of his origin with undoubted intention of never returning to it again, nevertheless his domicile of origin adheres to him until he actually settles with the requisite intention in some other country. The position was summed in Halsbury thus:*

*"He may have his home in one country, but be deemed to be domiciled in another."*

*Thus the proposition that the domicile of origin is retained until the acquisition of a domicile of choice is well established and does not admit of any exception.*

*10. For the acquisition of a domicile of choice, it must he shown that the person concerned had a certain state of mind, the animus manendi. If he claims that he acquired a new domicile at a particular time, he must prove that he had formed the intention of making his permanent home in the country of residence and of continuing to reside there permanently. Residence alone, unaccompanied by this state of mind, is insufficient.*

*11. Coming to the facts of the present cases the question which has to be answered is whether at the commencement of the Constitution of India the petitioners had an intention of staying here permanently. The burden to prove such an intention lies on them. Far from establishing the case which is now pressed before us, the available materials on the record leave no room for doubt that the petitioners did not have such intention. At best it can be said that they were in certain about their permanent home. During the relevant period very significant and vital political and social changes were taking place in this country, and those who were able to make up their mind to adopt this country as their own, took appropriate legal steps. So far the three petitioners are concerned, they preferred to stay on, on the basis of their passports issued by other countries, and obtained from time to time permission of the Indian authorities for their further stay for specific periods. None of the applications filed by the petitioners in this connection even remotely suggests that they had formed any intention of permanently residing here.*

*12. None of the cases relied upon on behalf of the petitioners is of any help to them. The case of Mohd. Ayub Khan was one where the appellant had made an application to the Central Government under Section 9(2) of the Indian Citizenship Act, 1955 for the determination of his citizen- ship. Section 9(1) says that if any citizen of India acquired the citizenship of another country between 26.1. 1950 and the commencement of the Citizenship Act, he ceased to be a citizen of India and sub-section (2) directs that if any question arises as to whether, when or how any person has acquired the citizenship of another country, he shall be determined by the prescribed authority. Mohd. Ayub Khan was a citizen of this country at the commencement of the constitution of India and was asked to leave the country for the reason that he had obtained a Pakistani Passport. The question which thus arose in that case was entirely different. The case of Kedar Pandey v. Narain Bikram Sah, (supra), does not help the petitioners at all. On a consideration of the entire facts and circumstances this Court concluded that "the requisite animus manendi as has been proved in the finding of the High Court is correct". The Respondent Narain Bikram Sah, who claimed to have acquired Indian citizenship, had extensive properties at large number of different places in India and had produced many judgments showing that he was earlier involved in litigations relating to title, going upto the High Courts in India and some time the Privy Council stage. He was born at Banaras and his*

*marriage with a girl from Himachal Pradesh also took place at Banaras and his children were born and brought up in India. Besides his other activities supporting his case, he also produced his Indian passport. In the cases before us the learned counsel could not point out a single piece of evidence or circumstance which can support the petitioners' case, and on the other hand they have chosen to remain here on foreign passports with permission of Indian authorities to stay, on the basis of the said passports. Their claim, as pressed must, therefore, be rejected."*

e. ***Yogesh Bhardwaj v State of U.P and ors*** reported in (1990) 3 SCC, page 35

"20. We find it relevant to refer to two Judgments of the Apex Court. In the case of YogeshBhardwaj vs. State of U.P. and others, reported in (1990) 3 Supreme Court Cases, Page 355, the Apex Court in Para 17 and 21 observed thus:

"17. Residence is a physical fact. No volition is needed to establish it. Unlike in the case of a domicile of choice, animus manendi is not an essential requirement of residence. Any period of physical presence, however short, may constitute residence provided it is not transitory, fleeting or casual. Intention is not relevant to prove the physical fact of residence except to the extent of showing that it is not a mere fleeting or transitory existence. To insist on an element of volition is to confuse the features of 'residence' with those of 'domicile'.

21. While residence and intention are the two essential elements constituting the 'domicile of choice', residence in its own right is a connecting factor in a national legal system for purposes of taxation, jurisdiction, service of summons, voting etc. To read into residence volition as a necessary element is, as stated above, to mistake residence for domicile of choice, and that is the error which the High Court appears to have committed.

Where residence is prescribed within a unified legal system as a qualifying condition, it is essential that the expression is so understood as to have the widest room for the full enjoyment of the right of equality before the law. Any construction which works to the disadvantage of the citizen lawfully seeking legitimate avenues of progress within the country will be out of harmony with the guaranteed rights under the Constitution, and such a construction must necessarily be avoided."

The legal axioms enunciated above by the superior judicial fora are undeniably in favour of the applicant, which affirm that applicant's domicile is the successor State of A.P. Once domicile is taken as the principle to determine the allocation of cadre, as recommended by the Advisory Committee, then the applicant should have been allotted to the successor State of A.P. We therefore hold that as per law, the applicant is legally entitled to be allotted to the successor State of A.P. Not doing so is illegal.

VII. Having come to a view that the applicant is legally entitled for cadre allocation to the successor State of A.P., yet it would be proper to look into the contentions made by the respondents, which heavily hinge on the lateral aspects of the guidelines formulated by the Advisory Committee constituted under Section 80 of the Act 2014, in order to arrive at a final conclusion with respect to the dispute under consideration. Indeed, it would be proper to examine the recommendations of the committee and their fall out in respect of the case of the applicant. The, said committee first and foremost emphasized to consider the information contained in the UPSC dossiers/ Training institute where the officer joined for the first time. In the absence of such information, the basis of determination would be as per parameters laid to be followed in their descending order of priority. The succeeding information is to be referred to only when the preceding information is not available. The guidelines are clear and concise and there need not have been any misgivings in implementing them. The approved guidelines of the advisory committee as presented at para 4.11 of the reply statement are reproduced hereunder:

*"4.11 As per the recommendations of the Pratyush Sinha Committee, the basis of determination of domicile would be as per the information contained in the UPSC dossiers/ Training institute where the officer joined for the first time as per para 5.1.3 of the approved guidelines which is reproduced as under (annexure R-5):*

*"As far as the domicile status is concerned, it would be determined as per the information contained in the UPSC dossiers/ Training Institute where the officer joined for the first time. In the absence of such information, the basis of determination would be as per the following in their descending order of priority. The succeeding information is to be referred only when preceding information is not available:-*

*(i) The Permanent postal address of the officer/ Applicant in the absence of which the postal address as per entries available in the Detailed Application Form of UPSC/ dossier of the Training Institute where an officer goes for the training at the time of joining the service.*

*(ii) The place of birth of the Applicant, the district and State in which it is situated as given in the Matriculation examination certificate or equivalent of the officer.*

*(iii) The domicile factor as determined in accordance with the Presidential Order issued as per Article 371-D of the Constitution of India.*

*(iv) The address of the educational institutions (s) where the Applicant underwent education (matriculation level).*

*(v) The home town, district and the State to which the father of the officer originally belonged."*

VIII. The prime basis for allocation of cadre is the information contained in the UPSC dossier pertaining to domicile. The DAF (Detailed Application form) of CSE – 1987 (Civil Service Exam) of the applicant, has the following information at relevant columns.

*Column 15 – Indicates place of birth, district and state in which situated – Visakhapatnam, Visakhapatnam District, Andhra Pradesh.*

*Column 16: Indicates Mother tongue as Telugu*

*Column 18: Gives details of educational institutions studied in.*

*Column 20: Indicates that her father hails from Krishna District in present day Andhra Pradesh.*

*Column 21: Query was – "Having regard to answers given against column 15, 16, 18 and 20 which is the state that you would claim as your home state"- Reply was "ANDHRA PRADESH"*

From the above, we see that there is a specific query at Column 21 to indicate the Home State by keeping in view replies furnished at Sl. 15, 16, 18 & 20 and the applicant's response was A.P. The places indicated at Columns 15 & 20 are those which lie in the geographical region of successor State of A.P. The contention of the 1st respondent that the applicant has indicated her home State as the undivided State of A.P in the DAF submitted to UPSC and therefore, it can be no basis to allot her to successor State of A.P, as successor States of A.P and Telangana were part of the undivided State of A.P. We agree with the respondents submission, to the extent that there can be no second opinion about the two states belonging to the erstwhile undivided State of A.P. However, the question to be answered is as to which State the applicant belongs to, after bifurcation, in the context of the information available in the DAF of CSE - 1987. The places indicated against the relevant columns make it crystal clear that the applicant belongs to the successor State of A.P. The objective of the guidelines was to scrutinize the details of the DAF to decide the allocation on a fair and equitable assessment as per Section 80 (1)(b) of the Act-2014, which reads as under:

> *80. Advisory committees.—(1) The Central Government may, by order, establish one or more Advisory Committees, within a period of thirty days from the date of enactment of the Andhra Pradesh Reorganisation Act, 2014, for the purpose of assisting it in regard to—*
>
> *(a) the discharge of any of its functions under this Part; and*
>
> *(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons.*

In case if the requisite information regarding domicile is not available in the UPSC dossier then the committee has to the refer to other parameters prescribed in a descending order. In the case of the applicant there was relevant information in the UPSC dossier, as pointed out, to prove that her domicile State is the successor State of A.P. and therefore there was no necessity to refer to the subsequent parameters to determine applicant's domicile status. The reasons given by the 1st respondent in following an irrelevant parameter are neither convincing nor logical, since they gravitate against the approved guidelines.

IX. Nevertheless, Advisory Committee went ahead and allotted the State of Telangana, on the premise that the Permanent Postal address was not available in the UPSC dossier of the applicant and therefore the subsequent parameter in the descending order was the postal address of Secunderabad which was considered to decide the allotment. Well, if the respondents have followed this norm to everyone, the scenario would have been different. Facts of case, affirm that it was not to be. Pointedly referring to this yardstick of postal address, applicant has averred discrimination by claiming that in case of Sri I.V. Subba Rao who is similarly placed, has been allotted to A.P Cadre by ignoring the present postal address and considering the birth place of his father. Respondents replied by asserting that Sri I.V. Subba Rao belongs to 1979 batch and the application for CSE - 1979, enclosed with the additional reply of the respondents dated 6.11.2020, contained only postal address, candidates place of birth/ State and not permanent postal address whereas in the application of the applicant for CSE -1987 it had the permanent postal address which was not

filled in. Therefore, in the case of Sri I.V. Subba Rao, the place of birth of his father, had to be taken, in altogether a different context. We have perused both the application forms and found that there is no column provided to seek the place of the birth of the father of the candidate. There is a column to state the district/State, to which the father of the candidate belongs to. It is the district of the father, which appears to have been considered. Respondents have admitted at para 4.11 of the reply statement that basis of determination would be as per the parameters laid down to determine domicile, in their descending order of priority, if at the outset, there was insufficient information to decide domicile in the UPSC dossier. In case of Sri I.V. Subba Rao when the permanent address was not available, as was the case of the applicant, the succeeding information was the present Postal address which was very much available and given as Asst. Professor in English, Centre of Postgraduate Studies, Jawahar Lal Nehru University, Imphal-795003, which comes under the State of Manipur. The present address given is the preceding information available in respect of Sri I.V. Subba Rao and the district of his father was the succeeding information. The guidelines, as admitted by the respondents, ordain that if the preceding information was not available then one should go ahead with the succeeding information. By adopting the succeeding information of the district of the father of Sri I.V. Subba Rao, instead of the preceding information of present postal address of Manipur, which was available, it cannot be gainsaid that the guidelines prescribed were not followed in letter and spirit. Respondents have emphasized that they have followed the guidelines and if it were to be factually correct, they should have selected Present Postal address of Sri I.V.Subba Rao, which was not

the case, instead they chose the succeeding information relating to his father, which is a manifest violation of the guidelines. The only difference in case of Sri I.V. Subba Rao is that the application did not provide for permanent address and in case of the applicant, though provided she stuck it off. However, it is significant to note that in case of Sri Subba Rao the present address was ignored and strictly applied in case of the applicant, thereby discriminating the applicant. Respondents failed to explain at the first instance as to why they had to choose the subsequent parameters when the information in regard to preceding parameter was available. Guidelines are emphatic, to go with the available information in the descending order. They did not speak of an eventuality where the dossier did not provide for seeking of information of permanent address and if so they can go for the succeeding information, ignoring the preceding information which was available. Hence, we have no hesitation to hold that if the case of applicant was considered for AP Cadre as was done in respect of Sri I.V. Subba Rao, then the issue would not have erupted. Therefore, the contention of discrimination of the applicant has muscle in it. The guidelines/rules cannot be modified to accommodate Sri I.V.Subba Rao on the pretext that the relevant DAF did not contain the column for permanent address, *albeit* present address was available which precedes the information regarding his father to determine allocation. As per law an act/statutory rule cannot be modified in the name of removing difficulties in the act by the executive, as spelt out by the Hon'ble Supreme Court of India in **Mahadeva Upendra Sinai Etc. vs. Union Of India &Ors** on 7 November, 1974 in equivalent citations: 1975 AIR 797, 1975 SCR (2) 640, as under:

> *To keep pace with the rapidly increasing responsibilities of a Welfare democratic, State, the legislature has to turn out a plethora of hurried legislation, the volume of which is often matched with its complexity. Under conditions of extreme pressure, with heavy demands on the time of the legislature and the endurance and skill of the draftsman, it is well nigh impossible to foresee all the circumstances to deal with which a statute is enacted or to anticipate all the difficulties that might arise in its working due to peculiar local conditions or even a local law. This is particularly true when Parliament undertakes legislation which gives a new dimension to socio economic activities of the State or extends the existing Indian laws to new territories or areas freshly merged in the Union of India. In order to obviate the necessity of approaching the legislature for removal of every difficulty, howsoever trivial, encountered in the enforcement of a statute, by going through the time-consuming amendatory process, the legislature sometimes thinks it expedient to invest the Executive with a very limited power to make minor adaptations and peripheral adjustments in the statute, for making its implementation effective, without touching its substance. That is why the "removal, of difficulty clause", once frowned upon and nick-named us "Henry VIII Clause" in scornful commemoration of the absolutist ways in which that English King got the "difficulties" in enforcing his autocratic will removed through the instrumentality of a servile Parliament, now finds acceptance as a practical necessity, in several Indian statutes of post independence era.*
>
> *Now let us turn to Clause (7) of the Regulation. It will be seen that the power given by it is not uncontrolled or unfettered. It is strictly circumscribed, and its use is conditioned and restricted. The existence or arising of a "difficulty" is the sine qua non for the exercise of the power. If this condition precedent is not satisfied as an objective fact, the power under this Clause cannot, be invoked at all. Again, the "difficulty" contemplated by the Clause must be a difficulty arising in giving effect to the provisions of the Act and not a difficulty arising aliunde, or an extraneous difficulty. Further, the Central Government can exercise the power under the Clause only to the extent it is necessary for applying or giving effect to the Act etc., and no further. It may slightly tinker with the Act to round off angularities, and smoothen the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. In no case, can it, under the guise of removing a difficulty, change the scheme and essential provisions of the Act.*

If we were to apply the legal principle as stated above, the 1st respondent does not have the mandate to ignore the norm of present postal address of Sri I.V.Subba Rao and then choose the information about the father of the officer which is the last of the parameters in the descending order to allocate him to the successor State of A.P. The Advisory Committee was

formed under Section 80 of the Act -2014 and therefore its recommendations acquire a statutory hue and the executive orders flowing thereupon, cannot modulate them to overcome the difficulty of the cited column of permanent address, not being available in the CSE application submitted by Sri I.V. Subba Rao at that relevant point of time. In fact, it was not even called for at the first instance, as per the guidelines in vogue. However, for a moment presuming that the competent authority was right, in taking a decision to round of the angularity and smoothen the affair for Sri I.V. Subba Rao by ignoring the present address, then the question that befalls the authority concerned is as to why the same decision could not be taken for the applicant. Therefore, the competent authority, as per the above verdict had a choice either not to tinker with the guidelines or if tinkered for rounding off the angularities on the ground that they were minor obscurities and straighten the joints to soften them, it was necessary that the same measure could have been extended to the applicant as well. Hence "Henry VIII Clause" was selectively used to favour one officer over the other similarly placed and therefore, would not be in sync with the spirit of the above judgment.

X. Even in the case of Sri I.V.Subba Rao, as per guidelines, the line of argument that could have been taken is that the UPSC dossier did hold information about his domicile as the successor State of A.P and therefore allotted to the residual State of A.P. would have been more valid rather than the one taken by the 1st respondent. If this argument professed is valid, which indeed is, in respect of Sri I.V. Subba Rao then the same would be valid even for the applicant, lock stock and barrel. Thus, we have

no iota of doubt to observe that similarly placed officers have been dealt in a dissimilar way, which is impermissible under law. Hence, the repeated assertion of the 1st respondent that the guidelines were uniformly followed in respect of all the officers does not have much substance. Therefore, the assertion of the applicant that she was discriminated has merit in it.

XI. The goal of the Advisory Committee, guidelines was to ensure fair and equitable allocation of the cadre as per Section 80 (1) (b) of the Act-2014 in a manner satisfying the approved guidelines, as reproduced by the respondents at para 4.11 of the reply statement. The words used are of interest and intrinsically relevant to dispute resolution of the case on hand. Therefore, we extract the same hereunder:

> *"In the absence of such information, the basis of determination would be as per the following, in the descending order of priority. The succeeding information to be referred to only when preceding information is not available."*

The words of relevance have been marked because they have a patent bearing on the case. The words mean that in case the UPSC dossier does not have details to decide the domicile, then other parameters prescribed ought to be followed. There were determinants available in the dossier of the applicant, facilitating a lucid decision about the domicile of the applicant. By not using the available determinants available in the DAF form of CSE-1987 of the applicant as per the words used in the guidelines framed, the goal of fair allocation of cadre was certainly not achieved in respect of the applicant. In respect of Sri Subba Rao, the same words were used in a different manner, which was beneficial to him. Law ordains that similar things should be treated similarly and dissimilar things should not

be treated similarly. Otherwise, hostile discrimination would be the end result, while maintaining the facade of equality, as was attempted by the 1st respondent in justifying the case of Sri I.V. Subba Rao. Our observations are supported by the golden words of the Hon'ble Supreme Court used, as under:

> *17) The legislative project and purpose turn not on niceties of little verbalism but on the actualilities or rugged realism and so, the construction of ... must be illumined by the goal, though guided by the word.*
>
> *18) One facet of the equal protection clause upheld by the Indian Courts is that while similar things must be treated similarly, dissimilar things should not be treated similarly. There can be hostile discrimination while maintaining a facade of equality. "*

XII. The rugged realism expressed in the words used in the guidelines was to first consider the information available in the UPSC dossier in regard to taking a decision pertaining the domicile of the applicant. The goal of the guidelines flowing from Section 80 (1)( b) of the Act-2014 was to ensure a fair and equitable allocation. A combined reading of the two requirements referred to would imply that the applicant was placed in similar circumstances as that of Sri Subba Rao and therefore, should have been treated in a manner as was Sri Subba Rao treated in respect of allocation of the cadre. Respondents faltered in abiding by the same and therefore the law laid down that similar things have to be treated similarly has been infringed leading to hostile discrimination and unfair treatment of the applicant by not allocating present A.P. cadre. By a close reading of the guidelines, one cannot sensibly find fault with the allocation of Sri I.V. Subba Rao to A.P. cadre but the fault lines open up when it comes to the interpretation of the guidelines given by the first respondent in

justifying the allocation of the cadre to Sri I.V.Subba Rao. The 1st respondent has done the right thing for Sri I.V.Subba Rao by a wrong way, which has resulted in unfairness. Law expects that right thing should be done in a right way. The right way was to consider the allotment of Sri I.V. Subba Rao and the applicant herein to the successor State of Andhra Pradesh because their domicile is proved to be the successor State of Andhra Pradesh. In both the cases, information available in UPSC dossier i.r.o. domicile was adequate enough to allot them to the residual State of A.P. Guidelines stipulate that in the absence of such information, then the details provided against subsequent parameters have to be referred to. Hence, we have to perforce make an observation that in case of Sri I.V. Subba Rao, right thing was done, but by following a wrong way. When the facts were so clear, then, either in Sri I.V. Subba Rao or in the applicant's case, there was no necessity to go for the permanent address or the present address as per the UPSC dossier. The right thing was to allot the applicant to the residual State of Andhra Pradesh based on domicile rather than doing the wrong thing of choosing the present address given in the UPSC dossier, which was not called for. Allotment of both the applicant and Sri I.V. Subba Rao was done in a wrong way by resorting to a needless deviation from the guidelines. The right way, as explained above, was to take the information available in the UPSC dossier in respect of domicile and then allot as dictated by the guidelines. This would have permitted both the officers to be allotted to the successor State of A.P rather than leaving one aggrieved. We have echoed the observation of the Hon'ble Supreme Court in **Bal Devraj vs Union of India** as under, to state the above**:**

*It is trite law that even doing what is right may result in unfairness if it is done in the wrong way*

XIII. Another relevant aspect is that the applicant has claimed that she has represented on 26.4.20114, which the respondents state is a reply to the information sought by the undivided State of A.P, claiming that her home State is the successor State of A.P enclosing photo copy of the passport as the documentary evidence. We perused the letter, it was a reply to the letter dated 19.4.2014 of the GAD, Govt. of A.P. However, it did contain the vital information about the place of birth of the applicant as the successor State of A.P. and her father & mother, belonging to the same State. Applicant contended that the said information lies with the respondents R-1 to R-3 which was not denied in the reply statement. Respondents state that no representation was made after the Advisory Committee was formed. Though a formal representation was not made the respondents have not denied that they did have the key information vide letter dated 26.4.2014 of the applicant. Respondents have called for the information and accordingly, it was submitted by the applicant. The purpose of calling for the information was to use it to decide allocation. Not using the information called for in the decision making process would defeat the very objective of seeking the information. This being the ground reality, respondents cannot disown the responsibility that they were not aware of the information in the letter dated 26.4.2014 to take a decision on the allocation. Once the requisite information called for is submitted, it would be the legitimate expectation of the applicant that a fair decision would be taken as per the details furnished. In view of the submission of the information called for, the question that would then arise is as to whether

the case of the applicant for residual State of A.P, was dealt in a fair and equitable manner by the respondents, in accordance with the relevant guideline at para 3.10 (b) of the reply statement reproduced as under

> *the ensuring of fair and equitable treatment to all persons affected by the provisions of this part and the proper consideration of any representation made by such persons.*

With the appropriate information in the possession of the respondents, which facilitates a legally entitled decision of allotting the applicant to the successor State of A.P. denying the same would not qualify to be termed as fair and equitable treatment.

XIV. The advisory guidelines mention that representations made would be properly considered. The reply of the applicant on 26.4.2014 is in reference to the allocation of cadre which was available with the respondents. Once the information was lying with the respondents it was not explained as to whether such information was taken into consideration and acted upon. It is also not stated that the information was at all placed before the advisory committee. Reasons for not placing before the committee or if placed, why it was not considered by the committee are not forthcoming in the reply statement. The reply did have details which could have facilitated the resolution of the grievance as was done in case of Sri I.V.Subba Rao, in whose case it appears, initiative was taken by the respondents to overcome the hardship faced and we believe that, it was the right thing to do, since it was legal and as per rules. The same leeway shown in case of Sri I.V. Subba Rao could have been shown in the case of the applicant. However, it was not to be. Not acting on the information called for, is not appreciated under administrative law. The reason is that, if

it was done, the disposal could have been either way. Positive disposal would mean no litigation and if negative, then at least the causes for rejection would have been let known. At least to this extent, the respondents cannot oppose stating that they own no responsibility to respond despite having the fundamental details with them to decide as they should have to, with reference to the guidelines. When an action is against the employee concerned, making the employee know the same with reasons is the essence of Principles of Natural Justice. In particular, when the respondents are the model employers who are the torch bearers in implementing the concept of model employer. They need to lead the way for others and not atrophy rules to decline legally entitled benefits of its employees. The observation of the Hon'ble Apex Court in this context is reproduced here under, to drive home the point.

> *Bhupendra Nath Hazarika & Anr vs State of Assam & Ors on 30 November, 2012 in CA Nos.8514-8515 of 2012*
>
> *48. Before parting with the case, we are compelled to reiterate the oft-stated principle that the State is a **model employer** and it is required to act fairly giving due regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept.*

Respondents atrophied the guidelines and acted in an unfair manner while dealing with the allocation of cadre to her.

By not acting on the information given, in a legitimate manner as it ought to be, does lead to a grievance and would become the cause of action. The main responsibility of the Advisory Committee was to ensure fair and equitable allocation of the cadre by seeking and acting appropriately on the information provided. For not doing so in the case of the applicant, an infraction of the right of the applicant to be properly considered, has

cropped up and became the basis for the cause of action. Cause of action in the wider sense would mean necessary conditions for the maintenance of the suit including not only infraction of the right but also the infraction coupled with the right itself. We take support of the Hon'ble Apex Court observation in **Om Prakash Srivastava v. Union of India (2006) 6 SCC 207,** as under, to state the above,

> *"12. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense 'cause of action' means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in 'cause of action'. (See Rajasthan High Court Advocates' Assn. v. Union of India (2001) 2 SCC 294.)"*

In view of the above observation, the letter with the apt information not being acted upon led to the cause of action which would continue till the issue is taken to its logical end. Newton's 3rd law applies to the case of the applicant. For every action in nature, there has to be an equal and opposite reaction. The opposite reaction on behalf of the respondents was to act on the letter by accepting or rejecting the information contained therein to decide the allocation. If accepted, then, the decision would have been in favour of the applicant since it had material to consider the cadre of the applicant as the successor State of A.P. and if not, it would have spurred a challenging representation with a form and substance as dictated by the facts and circumstances prevailing at the relevant interval of time. This did not happen and therefore the grievance persists taking the avatar of the OA. The grievance accentuated with a similarly placed officer having been

granted relief in respect of cadre allocation, by the tribunal in OA 1241/2014. Therefore, in the circumstances described, the assertion of the respondents that no fresh representation was made after the committee was formed, holds no water. When the respondents had the required wherewithal with them in the form of information furnished in the letter dated 26.4.2014 of the applicant, it was farfetched to again seek a formal representation with the same contents. Admittedly, when there were facts in the letter cited which had a direct bearing on the decision to allocate the appropriate cadre. Hence in view of the apparent inaction on the material provided by the applicant in the letter referred to, it is for the respondents to contemplate and introspect as to whether there was fairness and equitable treatment in dealing with the case of the applicant.

XV. Reverting to the DAF of CSE -1987, one need to appreciate that at the time of appearing in the civil services exam, candidates would be young, dashing and daring, and they would generally not have the maturity to understand the import and implications of the information, they provide or they do not, for their future career. At that time the priority is to prepare well to crack the exam and the fear of making it, haunts them from preparation to declaration of results. Applicant can be no exception to the same. We would not like to sermonise but a reality check would always enable one to understand the pros and cons of an issue disputed. There are some facts which are overt and some covert. The covert should not be ignored and rely singularly on the overt factors to make justice a casualty. The covert factor is the inability of the applicant at a young age to foresee the adverse implication in not furnishing the permanent address and the

overt factor is striking of the permanent address column giving no serious thought to it. That apart, in any application form inter question reliability is an important factor to decide the validity of the very application form. The reason is to ensure that answers are consistent and supplement each other rather than they being contradictory. Any inter question contradiction would be a sign of furnishing wrong or deliberate suppression of information. The objective of designing the application is to obtain relevant, accurate and truthful information, as otherwise there would not have been many questions in the DAF to assess the domicile of the candidates for allocation of cadres to the AIS officers selected. In the case of the applicant, the details which, in a way, reflect on the determinacy of domicile were furnished by the responses given in Column 7 (b) wherein it was asked to provide the place of birth and the State in which it is situated to decide the allocation of the cadre for those selected for IAS/IPS. Other responses given in the columns Sl. 15, 16, 18 & 20 are corroboratory. Therefore, the minor slip in not providing the permanent address in the DAF form would not in any way materially disprove the domicile of the applicant as the successor State of A.P, given the supporting and supplementary information provided in other columns cited. It is the substantive aspect of justice which prevails over the technical aspect of justice as held by the Hon'ble Apex Court, as under. The substantive aspect is the information provided in the relevant columns which demonstrate that the domicile of the applicant is the residual State of A.P and the technical justice is the omission of information in regard to permanent address.

a. Supreme Court of India in ***State Rep By Inspector of Police, CBI vs M. Subrahmanyam*** on 7 May, 2019 in Crl. Appeal No(s). 853 of 2019 (arising out of SLP (Crl.) No(s). 2133 of 2019)

*A procedural lapse cannot be placed at par with what is or may be substantive violation of the law.*

b. In Sakshi vs. Union of India, (2004) 5 SCC 518, the Hon'ble Supreme Court observed:

> *Rules of procedure are handmaiden of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the court to expand or enlarge the meanings of such provisions in order to elicit the truth and do justice with the parties."*

Leaving the permanent address column blank cannot be the reason to obstruct justice to the cause of the applicant to get the rightful cadre. Tribunal has only clarified the essence of the guidelines and their application to the case of the applicant to purge injustice done to her in allocation of the cadre.

XVI. Delving further into the dispute, we find that the applicant did the home work of finding out the vacancies that are available in the successor State of A.P and furnished the information. Respondents state that some of the vacancies are due to Writ petitions pending before the Hon'ble High Court of Telangana and some are due to retirements etc. The retirement vacancies are meant for allocation of the new recruits to the service and that they cannot be utilized for adjusting the applicant against such vacancies. Vacancies due to court cases are of uncertain nature till a verdict is delivered, which may go either way. The argument is made by the 1st respondent from the point of view of administration, whereas law

requires that every administrative decision has to be fair and in accordance with rules framed. In the case of the applicant, guidelines pertaining to allocation based on information contained in the UPSC dossier were not followed. Hon'ble Supreme Court has observed in a cornucopia of judgments that rules are to be followed, as under:

The Hon'ble Supreme Court observation in **T.Kannan and orsvs S.K. Nayyar (1991) 1 SCC 544** held that "*Action in respect of matters covered by rules should be regulated by rules*". Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that "*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*" In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held " *the court cannot de hors rules*"

XVII. By not following the guidelines of the Advisory Committee, there is an infringement of the directions of the Hon'ble Supreme Court stated Supra. Therefore, the decision of the 1st respondent to allocate Telangana Cadre would not stand valid. It is also important to note that, no rule or order should not be interpreted in a manner that the benefit which the rule intends to extend, is denied. In the instant case, the Advisory Committee guidelines was to take the relevant information relating to domicile in CSE-1987 UPSC application to decide allocation of the cadre. If the relevant information was not available in regard to the domicile of the applicant, the reference to other parameters is permitted. In respect of the applicant despite the requisite information in regard to domicile was available, yet the parameter of present address was taken to decide the allocation. Thus the guideline was misinterpreted and such misinterpretation goes against the basic tenets of law as opined by the Hon'ble Apex Court in ***Nirmala Chandra Bhattacharjee and ors in U.O.I*** and ors in JT 1991 (5) SC 35 delivered on 19.9.1990:

*No rule or order which is meant to benefit employees should normally be construed in such a manner as to work hardship and injustice specially when its operation is automatic and if any injustice arises then the primary duty of the courts is to resolve it in such a manner that it may avoid any loss to one without giving undue advantage to other.*

The operation of the guidelines of the Advisory Committee, were to be automatically applied by using the domicile information in the UPSC dossier rather than relying on the parameter of present address pointlessly. The role of the Tribunal is to ensure that Sri I.V.Subba Rao and the applicant are rendered justice, not at the cost of each other. However, while upholding the decision in respect of Sri Subba Rao, justice demands a direction to be given to grant similar relief to the applicant, so that the benefit of the guideline equally flows to her too. Only when such a decision is taken in favour of the applicant, can it be said that the approach of the 1st respondent has been fair, just and reasonable as held by the Hon'ble Supreme Court in Supreme Court of India in

a. **Anoop Kumar vs State Of Haryana** on 15 January, 2020 in Civil Appeal No.315 of 2020 (Arising out of SLP(C) No.18321 of 2011.

   *It cannot be disputed that the administrative power exercised by the DGP is subject to the requirement of fairness, reasonableness and justness.*

b. Supreme Court of India in **Swadeshi Cotton Mills vs Union Of India on 13 January, 1981 in Equivalent citations: 1981 AIR 818, 1981 SCR (2) 533**

   *In A. K. Kraipak's case, the Court also quoted with approval the observations of Lord Parker from the Queens Bench decision in In re H. K. (An Infant) (ibid), which were to the effect, that good administration and an honest or bona fide decision require not merely impartiality or merely bringing one's mind to bear on the problem, but*

> *acting fairly. Thus irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi- judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied, because the presumption is that in a democratic polity wedded to the rule of law, the state or the Legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly.*

XVIII. Being on the subject of rules and their application, one should not lose sight of the core principle of applying the same rule at different intervals of time. When it came to allocation of cadre to the AIS officer the approved lists were released on 30.5.2014 and 31.5.2014 wherein the applicant name did not figure, but that of Sri I. V. SubbaRao did figure. The name of the applicant appeared in the provisional memo released on 26.12.2014. The same rule which was applied to Sri I.V.SubbaRao when his name figured in the memo dated 30/31.5.2014, has to be applied to the case of the applicant to allot her to the successor State of A.P rather than Telangana. Not doing so is a divergence from the legal principle enunciated by the Hon'ble Supreme Court in **State of U.P and anr v Santhosh Kumar Mishr & anr** in Special Leave Petition (C) No 20558 of 2009.

> ***...****this is not a case for applying the "doctrine of past practice" alone, in addition, this is a case which involves the deprivation of certain candidates by application of the procedure differently at two different points of time***.**

XIX. The Act – 2014 aimed at allocation of AIS officers among the 2 successor States in a fair and equitable manner. To achieve the said objective, principles and guidelines were framed which have to be scrupulously followed. The rules/guidelines can supplement the provisions of the Act-2014 but cannot supplant it by interpreting the approved guidelines of allocation, in a manner which would supplant the principles

flowing from the Act-2014. This was exactly what was done in allotting Telangana cadre to the applicant, by not supplementing the objective of the act in taking the applicable information contained in the UPSC dossier relating to domicile and instead proceeding with an inappropriate information i.r.o the applicant viz present postal address, with an inverted approach to guidelines laid, thereby supplanting the very objective of a fair and equitable allocation. An approach of the nature described would not go along with the observations made by the Apex Court in ***St. Johns Teachers Training Institute vs Regional Director, National Council for Teacher Education & Anr*** on 7 February, 2003 in Appeal (Civil) 1068 of 2003 as under, and hence suffers legal invalidity.

> *The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it.*

XX. Respondents being the instrumentalities of the State have to conform to Article 14 of the Constitution of which non-arbitrariness is an undeniably important facet. Pubic law does not recognise unencumbered discretion. Public authority uses power vested so that it is fair, transparent and justifiable. Observance of this norm would raise a legitimate expectation among those who would be affected by the authority concerned. Over the years rule of law has assimilated the concept of legitimate expectation. It has become a part and parcel of the principle of non- arbitrariness. The legitimate expectation in the instant case was a fair decision to allot the applicant to the successor State of A.P, based on the information submitted vide letter dated 26.4.2014 by the applicant, with

reference to the guidelines framed by the Advisory Committee which were unequivocal. Such a legitimate expectation was belied by deviating from the guidelines as explained in paras supra and not allotting the present A.P cadre to the applicant. Belying the legitimate expectation would raise legitimate questions on the decision to deny the allocation sought. Legitimate expectation is a part of the decision making process. Rule of law does not prohibit discretion but such discretion is subject to judicial review. The inadequacies noticed in dealing with the case of the applicant have called for judicial review. Though Legitimate expectation is not an enforceable right, yet, not considering the same in decision making would lead to arbitrariness which is the antithesis to equality. We do note that legitimate expectation should be within the confines of public interest and not based on the perception of the applicant. The larger public interest involved in taking a decision by the 1st respondent in allocation is that it has to be fair, uniform and in accordance with the rules. We do not find it to be as it should be, in so far as the applicant's case is concerned, since it is neither fair, uniform nor rule bound, as was brought out in the above paras. In legal parlance a decision which is unfair, arbitrary and violative of the rules, is construed to be colourable exercise of power not permitted under law. Legitimate expectation is a driver of non-arbitrariness in a subtle manner which one cannot afford to ignore while taking administrative decisions. Not living up to the legitimate expectation which is legitimately aspired to, in taking a decision will ascribe arbitrariness to such a decision. The above remarks made are supported by the observations of the Hon'ble Apex Court in **Food Corporation of India Vs. M/s. Kamdhenu**

**Cattle Feed Industries**, *(1993) 1 SCC 71*,in the context of arbitrariness and legitimate expectation as under:

> *7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review.*
>
> *8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a Legitimate expectation forms part of the principle of non- arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.*

XXI. Interestingly, the facts of relevance in taking a decision in respect of the issue under dispute were those which were evidently available in the UPSC dossier to determine domicile. Instead, they were ignored and a parameter viz. present address, which was irrelevant was considered. As a result, the decision had been, as to what it ought not to be. If a decision is what it should not be, then the decision will be qualified to be termed as arbitrary because its foundation would be on those facts which

are irrelevant to the issue to come to the conclusion which it should not have come to. Administrative law has enwebbed into itself the concept of consistency, uniformity and transparency as its essential components. The decision to disregard the request of the applicant suffers from lack of consistency and uniformity since Sri I.V. Subba Rao was given the cadre whereas the applicant denied in the very same circumstances of decision making. Administrative action of the respondents has to be fair and in consonance with the guidelines framed by the Advisory Committee. Even in a situation, where there was no committee to frame the guidelines due to emergent circumstances demanding urgent decisions, and a decision is taken affecting the rights of those who come under the ambit of decision maker, the decision necessarily has to be just, fair and transparent. The exercise of discretion, in tune with principles of fairness and good governance, is an implied responsibility on those who pass orders of determinative nature. The decision of an administrative authority should be fairly predictable given the rules and the contours of decision making to rate the degree of fairness in the decision making process. If not, the decisions will vary from person to person and situation to situation, as we have seen in the present case, which is an example of arbitrariness and discrimination creeping into the decision making process making it uncertain, which ought not to be. The decision of the respondents occupies the extreme positions of the spectrum with one in favour of the Sri I.V. Subba Rao and the other against the applicant, in identical circumstances, thereby qualifying it to be described as arbitrary. While making the above observation, we are reminded of the observations of the Hon'ble Supreme Court while commenting on the arbitrariness in the action of the state in

**Asha Sharma v. Chandigarh Admn., (2011) 10 SCC 86 : (2012) 1 SCC (L&S) 354** at page 95, as under:

> ***12.*** *Arbitrariness in State action can be demonstrated by existence of different circumstances. Whenever both the decision-making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as "arbitrary". Where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness. Of course, sufficiency or otherwise of the reasoning may not be a valid ground for consideration within the scope of judicial review. Rationality, reasonableness, objectivity and application of mind are some of the prerequisites of proper decision making. The concept of transparency in the decision-making process of the State has also become an essential part of our administrative law.*

*xxx*

> ***14.*** *Action by the State, whether administrative or executive, has to be fair and in consonance with the statutory provisions and rules. Even if no rules are in force to govern executive action still such action, especially if it could potentially affect the rights of the parties, should be just, fair and transparent. Arbitrariness in State action, even where the rules vest discretion in an authority, has to be impermissible. The exercise of discretion, in line with principles of fairness and good governance, is an implied obligation upon the authorities, when vested with the powers to pass orders of determinative nature. The standard of fairness is also dependent upon certainty in State action, that is, the class of persons, subject to regulation by the Allotment Rules, must be able to reasonably anticipate the order for the action that the State is likely to take in a given situation. Arbitrariness and discrimination have inbuilt elements of uncertainty as the decisions of the State would then differ from person to person and from situation to situation, even if the determinative factors of the situations in question were identical. This uncertainty must be avoided.*

XXII. To allay the arbitrariness and unreasonableness that is associated with the decision taken to deny allocation of A.P cadre, the Tribunal has to step in through the instrument of judicial review for a direction to grant relief sought, for transforming the impugned decision into a lawful one, as held by the Hon'ble Apex Court in **Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517**, as under:-

> ***22.*** *Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully*

The entire dispute is pivoted on the document namely Advisory Committee report which gave the guidelines for allocation of cadre to the AIS officers. The guidelines were approved by the competent authority.

The objective of the document was to ensure allocation of the cadre to the AIS officers in a fair and equitable manner and it has to be interpreted based on the words used there in. The referred document is a written instrument of the GOI and the AIS officers are bound by the guidelines laid there in. Therefore, there are two parties to the issue. When there are grievances about the application of the guidelines formulated in the written instrument, then the substance of the entire document taking it as a whole, has to be taken. Omitting relevant portions and applying irrelevant portions of the written document having secondary importance, particularly when words used in the document had utmost clarity, to arrive at a decision is decried by law, as was evidenced in the case on hand. The core substance of the entire document vis-a-vis the decision to be taken should have been the basis to allot the cadre in respect of the applicant. In the case on hand critical information available about the domicile of the applicant was ignored and an unrelated information of present postal address was taken into cognizance resulting in the applicant being wronged. To assert what we have said, we take support of the observations of the Hon'ble Apex Court in **Laxmibai v. Bhagwantbuva, (2013) 4 SCC 97 : (2013) 2 SCC (Civ) 480 : 2013 SCC OnLine SC 101 at page 109,** as under, which is binding on one and all.

> ***26.*** *In Delta International Ltd. v. ShyamSundarGaneriwalla [(1999) 4 SCC 545 : AIR 1999 SC 2607] this Court held that the intention of the parties is to be gathered from the document itself. Intention must primarily be gathered from the meaning of the words used in the document, except where it is alleged and proved that the document itself is a camouflage. If the terms of the document are not clear, the surrounding circumstances and the conduct of the parties have also to be borne in mind for the purpose of ascertaining the real relationship between the parties. If a dispute arises between the very parties to the written instrument, then intention of the parties must be gathered from the document by reading the same as a whole.*

XXIII. The discussions on the disputed issue would not come to an end, without referring to the submissions of the 3rd respondent. We agree with the 1st respondent that the Central Govt. is the competent authority to decide allocation of cadre and we are also in agreement with the contention made that the allocation of the cadre has arisen because of the bifurcation of the erstwhile State of A.P. Therefore, as per Sections of 76 and 80 of the Act- 2014 the need arose to set up an advisory committee to recommend guidelines and after their approval by the competent authority, applying them to allocate was the responsibility of the 1st respondent. However, the 3rd respondent has claimed that due to bifurcation of the State, the officers are being distributed and not allocated. It appears that the third respondent has been tempted to use the word "distribution" which has been freely used in the guidelines of the Advisory Committee ,as for instance, at para iv of the guidelines enlisted at para IV above, to attempt a distinction between distribution and allocation. Whether it is distribution or allocation what matters is as to whether the guidelines/ rules stipulated have been followed or not. In the case of the applicant they were not found to be adhered to the extent explained in the relevant paras supra. The assertion of the applicant that it is her fundamental right to be allotted to A.P given her rank in 1987 CSE and echoed by the 3rd respondent would not hold good in view of the Supreme Court observation cited by the 1st respondent in **U.O.I v Rajiv Yadav (1994 (6) SCC 38)** where in it was held that a selected candidate at best has a right to be considered to be appointed to IAS but he has no such right to be allocated to a cadre of his choice or to his home State and that allotment of cadre is an incidence of service and a member of an All India Service bears liability to serve in any part of the country. Besides, the

contention of the applicant that the order of respondents vide Memo dated 5.3.2015 was quashed altogether in OA 1241/2014 is not true, since it was set aside only to the extent it was applicable to the applicant therein, in order to safeguard administrative interests.

The situation changed with the bifurcation of the erstwhile State of A.P, and under the Act- 2014 the allocation of cadre was taken up, which has statutory shades and nature. The challenge of the applicant can be confined only to the extent as to whether in the new scenario the guidelines that have come into vogue, have been abided by in allotting her to a particular cadre. In this context the respondents should have borne in mind Section 76 (5) of the Act -2014, reproduced hereunder, in deciding the correct cadre in respect of the applicant.

> *76 (5) Nothing in this section shall be deemed to affect the operation, on or after the appointed day, of the All-India Services Act, 1951 (61 of 1951), or the rules made thereunder.*

Nevertheless, the submission of the 3rd respondent and that of the applicant that she and her father were born in A.P are of crucial significance which had to be looked into but not done by the 1st respondent, to decide domicile as per guidelines and law. The 3rd respondent has expressed no objection to accommodate the applicant and the applicant did submit documentary evidence about availability of vacancies in the successor State of A.P, against which she can be accommodated, if the decision of the Tribunal were to go in her favour.

XXIV. After going through the pros and cons of the case at great length, we gain an impression that what could not be done directly by taking the information germane to the issue from the UPSC dossier to allot the State of Telangana it was done indirectly by weighing upon an information which was not to be banked upon in terms of the guidelines, namely present postal address. Telangana Cadre was allotted to the applicant by giving an interpretation which cannot be held to be valid in the eyes of law for reasons of violations of guidelines and the law on domicile. The indirect approach to force the applicant on to the Telangana Cadre, is not permissible as per the legal axiom specified in a catena of judgments by the Hon'ble Apex Court as under:

> ***State of Haryana v. M.P. Mohla, (2007) 1 SCC 457, 'What cannot be done directly, cannot be done indirectly.*** *{ Also see Subhash Chandra v. Delhi Subordinate Services Selection Board,(2009) 15 SCC 458, Dadu Dayalu Mahasabha, Jaipur (Trust) v. Mahant Ram Niwas,(2008) 11 SCC 753 Babulal Badriprasad Varma v. Surat Municipal Corpn.,(2008) 12 SCC 401, Shiv Kumar Sharma v. Santosh Kumari,(2007) 8 SCC 600 Ram PreetiYadav v. MahendraPratapYadav,(2007) 12 SCC 385 State of Haryana v. M.P. Mohla,(2007) 1 SCC 457, BSNL v. Subash Chandra Kanchan,(2006) 8 SCC 279 Ram Chandra Singh v. Savitri Devi (2004) 12 SCC 713 }'*

XXVI. In the final analysis, after considering the facts of the case and the relevant legal principles cited, we find that the 1st respondent has erred in taking a decision, not to allot the applicant to the successor State of A.P. The mistake lies at the doorstep of the 1st respondent against the backdrop of rules and law. Therefore, the mistake of the 1st respondent should not recoil on to the applicant and be penalised by not granting the relief she is legally entitled for, as stated by the Hon'ble Apex Court in a series of judgments as under:

a. *it is settled law that no one should be penalized for no fault of his. (See Mohd. Ghazi vs State of M.P. 2000(4) SCC 342.*

b. *The Apex Court in a recent case decided on 14.12.2007 (**Union of India vs. SadhanaKhanna,** C.A. No. 8208/01) held that the mistake of the department cannot recoiled on employees. In yet another recent case of **M.V. Thimmaiah vs. UPSC**, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363** wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."*

XXVII. Respondents pleaded that once a cadre is allotted to an AIS officer, it is fixed for the rest of the career. Changes cannot be made to suit the requirement of any individual officer. The process of cadre allotment has been implemented in a fair and transparent manner as per the approved guidelines of the Advisory Committee not only in respect of the applicant but also in allotting the cadre to all the AIS officers. Cadre change was effected by taking factors which were prevalent at the time of cadre allotment of the applicant in Dec.2014 and seeking a change at this juncture of time by taking available vacancies etc will cause administrative chaos in the methodology of cadre allotment. By acceding to the request of the applicant, 1st respondent claims, there would be a forthright infringement of the guidelines and will lead to a collapse of the cadre allocation process. We do not agree. The action of the respondents in not allotting the cadre of the successor State of A.P, was not in sync with the Advisory Committee approved guidelines and incongruent with various facets of law, as has been deliberated in the preceding paras. Therefore, the decision of the respondents in allotting Telangana cadre instead of the successor State of A.P, even though applicant was found to be legally entitled to be given the cadre sought, is arbitrary, irregular and illegal. It would therefore not be in the fitness of things to deny the relief sought by the applicant apprehending administrative chaos as held by the Hon'ble Apex Court in the case of

**S. Ramanathan v. Union of India** reported in **2001 (2) SCC 118** as under:

> *"It would, therefore, be not appropriate for this Court to deny the relief to the appellants on the ground of apprehended administrative chaos, if the appellants are otherwise entitled to the same."*

*Para 5 of the judgment, has great referential value to the instant case and hence is extracted hereunder:*

> *"Dr. Rajeev Dhawan, the learned senior counsel, appearing for the respondents-direct recruits, learned Additional Solicitor General Mr. Mukul Rohtagi, appearing for the Union of India and Mr. A.Mariarputham, Mrs. Aruna Mathur and Mr. Anurag Mathur, appearing for the State of Tamil Nadu, on the other hand contended that there has been no definite prayer before the Tribunal seeking a mandamus for having a triennial review in accordance with the relevant provisions of the Cadre Rules and that being the position, the appellants will not be permitted to raise the matter after so many years, which would have the effect of unsettling the settled questions. It was also contended that the appellants having failed in their attempt to get the select list altered, have now come forward through a subterfuge and the discretionary jurisdiction of the Court should not be invoked for that purpose. Mr. Rohtagi, the learned Additional Solicitor General, though candidly stated before us that the appropriate authority should have done the triennial review for fixation of the cadre strength within the time stipulated in the cadre rules, but vehemently objected for any such direction being issued for re-consideration of the case of the appellants, more so when the appellants have not approached the Tribunal diligently. According to the learned Additional Solicitor General the tribunal has rightly considered the question of prejudice and has denied the relief sought for. The learned Additional Solicitor General also urged that the situation which should have been made available in 1987 on the basis of the cadre strength, cannot be brought back by a direction for re-consideration and in that view of the matter, neither the equity demands such a direction nor it would be appropriate for this Court to unsettle the settled service position. But to our query, as to how the orders of different tribunals on identical situations could be carried out without any demur, the learned Additional Solicitor General was not in a position to give any reply. It also transpires from the available records that the Union of India, no-where has even indicated as to how it would be unworkable if a direction is issued by this Court for re-consideration of the case of promotion to the IPS Cadre on the basis of the additional vacancies which have been found to be available. **It would, therefore be not appropriate for this Court to deny the relief to the appellants on the ground of apprehended***

> ***<u>administrative chaos, if the appellants are otherwise entitled to the same.</u>*** *It is no doubt true that while exercising the discretionary jurisdiction, Courts examine the question of administrative chaos or unsettling the settled position, but in the absence of any materials on record, the Court should not be justified in accepting the apprehension of any administrative chaos or unsettling the settled position, on the mere oral submission of the learned Additional Solicitor General, without any materials in support of the same. On examining the records of the case, we do not find an iota of material, indicating the so-called administrative chaos, likely to occur in the event any direction is issued for re-consideration of the case of promotion on the basis of the alteration of the cadre strength and, therefore, we have no hesitation in* rejecting the said submission of the learned Additional Solicitor General."

XXVIII. Going a step further, in the matter of **Grand Kakatiya Sheraton Hotel & Towers Employees & Workers Union vs. Srinivasa Resorts Ltd.,** reported in **2009 (5) SCC 342**, *at para 77,* it was held that "even if the law cannot be declared *ultra vires* on the ground of hardship, it can be so declared on the ground of total unreasonableness applying Wednesbury's "unreasonableness principles". We find the element of unreasonableness in the not acceding to the request of the applicant to be allotted to the successor State of A.P though she was eligible to be allotted in all respects, be it on the basis of rules or law. The Hon'ble Supreme Court observed in para 77 of the said judgment as under:

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> *" This is apart from the fact that the High Court has correctly observed that even if the law cannot be declared ultra vires on the ground of hardship, it can be so declared on the ground of total unreasonableness applying Wednesbury's "unreasonableness" principles. The Court, specifically, has also found that this reasonableness (sic unreasonableness) is apparent from the fact that the employees falling within sub-sections (1) and (3), although from different classes, had been treated equally, giving them the same benefit. For this purpose, the Court also relied on the observations made in Bennett Coleman & Co., v. Union of India. The High Court also referred to the observations made in Peerless General Finance and Investment Co. Ltd., v. RBI in this behalf and rightly concluded that the impugned provision was totally unreasonable*."

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XXIX, To top it, illegality, cannot be regularised once it is in the notice of the Tribunal. Importantly, when there is clear violation

of the guidelines of the Advisory Committee to the extent indicated, which was formed in pursuance of the Section 80 of the Act – 2014. Legally too, the domicile of the applicant was the residual State of A.P. as was brought out at paras VI. The recommendations of the advisory committee has a statutory backing. Hence violating them is legally untenable. We state so by banking on the observations of the Hon'ble Apex Court in ***Pramod Kumar v. U.P. Secondary Education Services Commission,(2008) 7 SCC 153,*** **as under*:***

> *An illegality cannot be regularised, particularly, when the statute in no unmistakable term says so.*

Lastly , the discussion would not come to an end without quoting the quotable quote of Justice Sri Krishna Iyer in Maneka Gandhi (1978), on illegality as under:

> *"Lawful illegality could become the rule, if lawless legislation be not removed"*

The lawful illegality of issuing the impugned order of 5.3.2015 by an interpretation which is legally void, has to be removed, by quashing the impugned order to the extent it is applicable to the applicant, so that it does not become the rule to apply to cases of identical nature with identical set of facts and circumstances as that of the applicant.

XXX. The Ld. Counsel for the applicant, while closing his arguments has prayed that the applicant is in her last leg of service and would like to settle down in the State of A.P which is her domicile of origin after retirement to take care of personal issues relating to taking care of elders depending on her and other personal aspects which she could not attend to, due to pressure of work and more essentially for reasons of health, where

help from those who are near and dear is easily available. It is just not hospitalisation which mostly caters to physical care but the emotional care is important which is derived in a social environment comprising of near and dear. The density of near and dear for the applicant is higher in the successor State of A.P than in Telangana. Therefore, the prayer for an early and favourable relief, with rules and law predominantly inclined towards the applicant. Particularly during the prevailing Corona Pandemic, Ld. Counsel pleaded that the applicant is going through a traumatic phase because of lack of proper assistance from those who matter for her. He further pleaded that the gross injustice has been done to the applicant over the years not only in respect of her cadre allocation but also in respect of promotions in Telangana by treating her as a Direct recruit outsider. Applicant is gravely aggrieved that her legitimate grievances in respect of matters of her career are not being attended to the way they need to be.

XXXI. Keeping in the view the contentions made by either parties and the aforesaid discussions, when it comes to grant of relief, we would like to extract the observations of the Hon'ble Supreme Court in Somesh Tiwari v U.O.I & Ors in CA No.7308 of 2008, as under, which squarely covers the case of the applicant. We would like to take a leaf out of the said judgment, in formulating the relief in the instant case.

> *"27. This Court in Commissioner, Karnataka Housing Board v. C. Muddaiah, [(2007) 7 SCC 689 ] laid down the law, thus :-*
>
> *"32. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted*

*out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged."*

To begin with, after having acquainted ourselves with the topography of the case along with its wide angled angularities and having legally analysed the details of the case to its minute detail, we have no hesitation to hold that injustice has been done to the applicant in the allocating Telangana instead of the successor State of A.P as the cadre of the Applicant. The allocation to the cadre of A.P was wrongly and unfairly denied though the advisory committee guidelines were in her favour. However, the questionable interpretation of the guidelines by the respondents has put the spanner in the works. The reply of the applicant with the vital information in her letter cited was evidently not acted upon. Not acting on such significant information is an unresolved dilemma given the emphasis by the respondents, day in day out to attend to employees grievances, in a reasonable interval of time. End result was that the applicant was forced to knock the doors of the Tribunal. Fragile health of the applicant forced her to make a belated attempt which is understandable. Justice, if it exists in an issue, has to bloom irrespective of the time span involved. The delivery of justice takes precedence over all other matters of technical nature, as in the case of the applicant, wherein, if the technical aspect of limitation was to be basis to decide the issue, then it would have

been dismissed. However, on application of law and evaluation against rules we find it to be meritorious to be given the relief sought. Thus taking into consideration the merits of the case, Tribunal has to grant relief with all the consequential benefit which were arbitrarily and illegally denied to the applicant. In the instant case the mistake was done by the 1st respondent and forcing the applicant to suffer the fallout of the mistake, for no fault of the applicant, is anathema to law. Upholding the respondents submission, in the background of rules and law in favour of the applicant, would be perpetuating injustice to the applicant who has been wronged.

XXXII. Further, to grant the relief sought we are also guided by the relief granted in OA 1241 of 2014 in March 2016 by the Coordinate bench of the Tribunal in respect of cadre allocation. Abiding by the principle laid down in Rooplal by the Hon'ble Supreme Court to abide by the precedent set by a coordinate bench, we grant relief, as prayed for, with the following directions.

XXXIII. In view of the aforesaid circumstances and discussions pertaining to the relevant rules and after applying the ratio of the judgments cited, we are of the considered view that the orders issued by the 1st respondent dated 26.12.2014/ 5.3.2015 to the extent of allocation of the applicant to the successor State of Telangana is liable to be quashed and set aside on the ground of being arbitrary, illegal, offending Article 14 of the Constitution of India and also in violation of the guidelines formulated by invoking Section 80 of the Act, 2014 by keeping in view the dictum laid down by the Apex Court in the case of ***S. Ramanathan Vs. Union of India (2001 (2) SCC 118)***. Accordingly, we quash and set aside the orders dated

26.12.2014/ 5.3.2015 to the extent of allocating the applicant to the Telangana cadre of the All India Service. We further direct the 1st respondent to treat the applicant as an All India Service officer of the Successor State of A.P with all consequential benefits. Being aware of the fact that the applicant is holding a responsible position in the State of Telangana, we direct the 2nd respondent to make necessary arrangements to relieve the applicant within a period of 10 weeks from the date of receipt of this order for reporting to the 3rd respondent.

XXXIV. With the above directions the OA is disposed of with no order as to costs.

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**(B.V.SUDHAKAR)**
**ADMINISTRATIVEMEMBER**

**(ASHISH KALIA)**
**JUDICIAL MEMBER**

***/evr/***