CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU

ORIGINAL APPLICATION NO.170/00355-00359/2016

ORIGINAL APPLICATION NO.170/00362-00364/2016

ORIGINAL APPLICATION NO.170/00365-00377/2016

AND

ORIGINAL APPLICATION NO.170/00631-00635/2017

DATED THIS THE 21ST DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH …MEMBER(J)
HON'BLE SHRI C.V. SANKAR …MEMBER(A)

1. R. Shivakumara,
S/o Rajappa,
Aged about 32 years,
Working as Deputy Superintendent
Of Police, Malavalli Sub-Division
Behind Taluk Office, Malavalli,
Mandya District – 571 430

2. Lakshmi Ganesh,
S/o V. Krishnappa,
Aged about 33 years,
Working as Deputy Superintendent
Of Police, Magadi Sub-Division,
Magadi, Bangalore District

3. T.J. Udesha,
S/o T.V. Jayadeva,
Aged about 32 years,
Working as Deputy Superintendent
Of Police, Mandya Sub-Division,
Mandya, Mandya District

4. Sachin Ghorpade
S/o Parshuram Ghorpade,
Aged about 33 years
Deputy Superintendent of Police
Presently working as Assistant
Commissioner of Police, Traffic
East Sub-Division, Bangalore City

5. V.J. Sajeeth
S/o Janardan,
Aged about 33 years,
Deputy Superintendent of Police,
Presently working as Assistant
Commissioner of Police, CCB,
Bangalore City

(By Advocate M/s P.S. Rajagopal Associates)

Vs.

1. State of Karnataka
Represented by its Chief Secretary,
Karnataka Government Secretariat,
Vidhana Soudha,
Bangalore – 560 001

2. Secretary to Government of Karnataka,
Department of Personnel and
Administrative Reforms,
Karnataka Government Secretariat,
Vidhana Soudha, Bangalore – 560 001

3. Union of India,
By its Secretary,
Department of Personnel, Public
Grievances and Pensions,
North Block, New Delhi – 110 001

4. Union Public Service Commission,
Dholpur House, New Delhi – 110 001
by its Secretary

5. Sri M.V. Ramakrishna Prasad,
S/o late M.R. Venugopal,
Aged about 50 years
Commandant,
Karnataka State Reserve Police,
Presently working as Supdt. of Police,
State Intelligence,
No. 2, Nrupathunga Road,
Bangalore

6. Sri Basavaraj Zille,
S/o Sharanappa
Aged about 48 years,
Commandant,

VI Batallion, Karnataka State Reserve Police

Kalaburagi

(Shri M.V. Rao, Counsel for Respondent No. 3,
Shri M. Rajakumar, Counsel for Respondent No.4,
Shri T.S. Mahanthesh, Counsel for Respondent No. 1 & 2
Shri Ajay Kumar Patil, Counsel for Respondent No. 5
Shri M.S. Bhagwat, Counsel for Respondent No. 6 and
Shri P.A. Kulkarni, Amicus Curie)

2) OA 170/00362-364/2016

1. Sri Kumaraswamy
S/o Anjanappa
Aged about 54 years,
Working as SP CID,
No. 1468, 5th Cross, Chandra Layout,
1st Stage, 2nd Phase,
Bangalore – 560 040

2. M. Narayana,
S/o Devaiah,
Aged about 37 years,
Addl. SP Bangalore District,
No. 36/130, Nellorpuram,
New Thippasandra Post,
Bangalore East, Bangalore – 560 075

3. Ravindra Kashinath Gadadi,
S/o Kashinath,
Aged about 38 years
Addl. SP Belagavi Post,
No. 750, Scheme – 40, 5th Stage,
Hanumanthanagar,
Belagavi – 590 001

(By Advocate Shri J. Prashanth)

Vs.

1. The Union of India
Rep by its Secretary,
Department of Personnel and Training,
North Block,
New Delhi – 110 001

2. The Union Public Service Commission,
Dholpur House,
Shajahan Road,

New Delhi – 110 001

3. The State of Karnataka
Represented by its Chief Secretary,
Karnataka Government Secretariat,
Vidhana Soudha,
Vidhana Veedhi,
Bangalore – 560 001

4. The State of Karnataka,
Rep. By its Principal Secretary,
Department of Personnel and
Administrative Reforms,
Vidhana Soudha,
Vidhana Veedhi,
Bangalore – 560 001

5. The State of Karnataka,
Represented by its Principal Secretary,
Department of Home,
Vidhana Soudha,
Vidhana Veedhi,
Bangalore – 560 001

6. The Director General and
Inspector General of Police,
State of Karnataka,
No. 2, Nrupathunga Road,
Bangalore – 560 002

7. Sri M.V. Ramakrishna Prasad,
S/o late M.R. Venugopal,
Aged about 50 years
Commandant,
Karnataka State Reserve Police,
Presently working as Supdt. of Police,
State Intelligence,
No. 2, Nrupathunga Road, Bangalore

8. Sri Basavaraj Zille,
S/o Sharanappa
Aged about 48 years,
Commandant,
VI Batallion, Karnataka State Reserve Police
Kalaburagi

(Shri M.V. Rao, Counsel for Respondent No.1,
Shri M. Rajakumar, Counsel for Respondent No.2,
Shri T.S. Mahanthesh, Counsel for the State Government R 3-6
Shri Ajay Kumar Patil, Counsel for Respondent No. 7

Shri M.S. Bhagwat, Counsel for Respondent No. 8 and
Shri P.A. Kulkarni, Amicus Curie)

3) OA 170/00365-377/2016

1. Dr. Shivakumar
S/o Mallappa Gunare,
Aged about 38 years,
Working as Superintendent of Police,
Karnataka Lokayuktha,
Bellary, Bellary District

2. Sri Mallikarjuna Baladandi,
S/o Yallappa M. Baladandi,
Aged about 34 years,
Working as Deputy Commissioner
Of Police (Crime and Traffic)
Hubli –Dharwar City,
Hubli, Dharwad District

3. Sri Amarnath Reddy Y
S/o Sharanappa,
Aged about 35 years,
Working as Deputy Commissioner
Of Police (Crime and Traffic)
Belagavi City, Belagavi District

4. Sri Pavan Nejjur,
S/o Uday Nejjur,
Aged about 35 years,
Working as Superintendent of Police,
Karnataka Lokayuktha
Hassan Division,
Hassan

5. Sri Sriharibabu B.L
S/o Linganna B.M
Aged about 31 years,
Working as Superintendent of Police,
Internal Security Division,
Mangalore, D.K. District

6. Smt. Geetha M.S
W/o Prasanna,
Aged about 33 years,
Working as Principal,
Police Training School (North),
Thanisandra, Bangalore
7. Smt. Yashodha Vantagodi,

W/o Sunil Vantagodi,
Aged about 35 years,
Working as Superintendent of Police,
Karnataka Lokayuktha,
Dharwad Division,
Dharwad

8. Sri Rajeev M
S/o Godayya
Aged about 37 years
Working as Superintendent of Police,
DCRE, Belagavi

9. Dr. Shobharani V.J.,
D/o Jagannath,
Aged about 35 years
Working as Additional Superintendent of Police,
Hassan District
Hassan

10. Dr. Sowmyalatha
W/o Dr. Shsheen Dutt,
Aged about 35 years
Working as Superintendent of Police,
Financial Intelligence Unit, C.I.D.,
Bangalore

11. Smt. Kavitha B.T.,
W/o Nagashayana R,
Aged about 36 years,
Working as Superintendent of Police &
Principal, Police Training School,
Jyothinagar, Mysore

12. Smt. Umaprashanth,
W/o Prashanth Kumar S.B.,
Aged about 33 years
Working as Deputy Superintendent
Of Police, Karnataka Lokayuktha,
Karwar, U.K. District

(By Advocate M/s Subbarao & Co)

Vs.

1. The Union of India,
Rep by its Secretary,
Department of Personnel, Public
Grievances and Pensions,
North Block,

New Delhi – 110 001

2. Union Public Service Commission,
Dholpur House,
New Delhi
Rep by its Secretary,

3. The State Government
Rep by its Chief Secretary,
Karnataka Government Secretariat,
Vidhana Soudha,
Bangalore – 560 001

4. The Secretary to Government,
Department of Personnel and
Administrative Reforms,
Karnataka Government Secretariat,
Vidhana Soudha,
Bangalore – 560 001

5. The State of Karnataka
Rep by its Secretary,
Department of Home,
Vidhana Soudha,
Bangalore – 560 001

6. Sri M.V. Ramakrishna Prasad,
S/o late M.R. Venugopal,
Aged about 50 years
Commandant,
Karnataka State Reserve Police,
Presently working as Supdt. of Police,
State Intelligence,
No. 2, Nrupathunga Road, Bangalore

7. Sri Basavaraj Zille,
S/o Sharanappa
Aged about 48 years,
Commandant,
VI Batallion, Karnataka State Reserve Police
Kalaburagi

(Shri M.V. Rao, Counsel for Respondent No.1,
Shri M. Rajakumar, Counsel for Respondent No.2,
Shri T.S. Mahanthesh, Counsel for Respondent No. 3 to 5
Shri Ajay Kumar Patil, Counsel for Respondent No. 6
Shri M.S. Bhagwat, Counsel for Respondent No. 7 and
Shri P.A. Kulkarni, Amicus Curie)

4) OA 170/00631-635/2017

1. A. Kumara Swamy,
S/o A.N. Janappa,
Aged about 55 years
Working as Superintendent of Police,
CID, Bangalore & R/a No. 1468, 5th Cross, Chandra Layout, 1st Phase, 2nd Stage, Bangalore – 560 040

2. H.T. Shekhar,
S/o Hanumanthappa,
Aged about 36 years,
Working as Superintendent of Police,
ACB, Mysore & R/a JCO-8, Police Officers Quarters, Jalpuri
Mysore.

3. Mrs. Sarah Fathima,
D/o Mustaq Ahmad,
Aged about 36 years,
Working as Deputy Commissioner of Police, Traffic, Bangalore North & R/a Flat No. 2B, GEL Apartments,
Benson Town, Bangalore – 560 046

4. Mrs. Anitha B. Handdannauar,
D/o Haddannauar Bhimanna
Aged about 37 years,
Working as Superintendent of Police,
Betegere Health Camp,
Gadag, Karnataka

5. M. Narayana
S/o Devaiah,
Aged about 37 years,
Working as Superintendent of Police,
Vigilance, & R/a No. 27, Bommaiah Buildings, Near Kathriguppe Water Tank,
Girinagar, Bangalore – 560 056

(By Advocate Shri M. Nagaprasanna)

Vs.

1. State of Karnataka
Represented by its Chief Secretary,
Karnataka Government Secretariat,
Vidhana Soudha,

Bangalore – 560 001

2. Secretary to Government of Karnataka,
Department of Personnel and
Administrative Reforms,
Karnataka Government Secretariat,
Vidhana Soudha, Bangalore – 560 001

3. The Union of India,
By its Secretary,
Department of Personnel, Public
Grievances and Pensions,
North Block, New Delhi – 110 001

4. Union Public Service Commission,
Dholpur House,
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5. Sri M.V. Ramakrishna Prasad,
S/o late M.R. Venugopal,
Aged about 50 years
Commandant,
Karnataka State Reserve Police,
Presently working as
Supdt. of Police,
State Intelligence,
No. 2, Nrupathunga Road,
Bangalore

6. Sri Basavaraj Zille,
S/o Sharanappa
Aged about 48 years,
Commandant,
VI Batallion, Karnataka State
Reserve Police
Kalaburagi

(Shri V.N. Holla, Counsel for Respondent No. 3,
Shri M. Rajakumar, Counsel for Respondent No.4,
Shri T.S. Mahanthesh, Counsel for Respondent No 1& 2 and
Shri Ajay Kumar Patil, Counsel for Respondent No. 5 and 6)

O R D E R

HON'BLE DR.K.B.SURESH …MEMBER(J)

Legislative competence is the cardinal issue in this case.

To quote Sir Arthur Conan Doyle , "a criminal investigation is nothing, but, pure, simple, thinking backwards."

2. Can a wireless operator investigate is the question posited? What are the compatibles and incompatibles in this postulations?

3. We need to look into the findings of the Hon'ble High Court of Karnataka in the KPSC case which was upheld by the Hon'ble Apex Court. The patina of merit claimed by some therefore gets diminished. May be that is exactly what the people of Karnataka meant when they amended Section 3 of the Karnataka Police Act and created a single Police force. As the inter se merit might have been in question for a long time and even before the judiciary stepped in, the legislature did. It is also pertinent to note that this was preceded by many a study and experience in precedence.

4. All these cases were heard together. When the case was heard earlier, this Tribunal had passed the following order, which we quote below. The orders we quote below reflects the factual matrix of the matter. But what is the legal format available. We need to dynamically interpret Section 3 of the Karnataka Police Act in view of great public interest involved in it.

5. Aristotle is the first significant Western theorist of Statutory interpretation. His Rhetoric, for example, introduced the various types of arguments and counterarguments that can usually be involved in interpreting the written law. The *Nicomachean Ethics* makes clear that Aristotle considered statutory interpretation more than rhetorical point-counterpoint, however, for he used it as an illustration

of practical wisdom. Aristotle's practical philosophy emphasized the situatedness of statutory issues. Although general statutes are necessary, their meaning is manifest only when applied to specific factual circumstances. “Law is defective owing to its universality. In fact this is the reason why all things are not determined by law, viz, that about some things it is impossible to lay down a law, so that a decree is needed. For when the thing is indefinite the rules also is indefinite, like the lead rule used in making the Eritrean moulding; the rule adapts itself to the shape of the stone and is not rigid, and so too the decree is adapted to the facts. Aristotle also wrote what is arguably the first work of hermeneutics, or the study of interpretation and understanding”

6. The greatest statute of the ancient world, the sixth-century Code of Justinian and its accompanying Digest, represented a compilation not only of Roman statutes but also of commentaries on their interpretation. Just as Aristotle had arrayed various principles of statutory interpretation in the Rhetoric, so the Digest collected over two hundred precepts suggested by the commentators as guides to statutory interpretation. These precepts are similar to those followed in ancient Hindu, Judaic, and Christian cultures, all of which are in turn similar to modern “canons of statutory construction”. These sources suggest that even though general statutes had to be applied flexibly, as Aristotle had taught, their application could be guided, and rendered predictable, by rules of construction. Medieval jurisprudence until the twelfth century largely took the form of further commentaries on the Justinian texts.

7. The late Middle Ages yielded two important developments in statutory jurisprudence. Saint Thomas Aquinas' *Summa Theologica* argued for a deep

relationship between natural or divine law and human or positive law. Although he did not posit a complete overlap between the two, he did indicate that efforts to legislate rules contrary to natural order are subject to nullification or to interpretation more in conformity with natural law. Aquinas' work is the classic statement of a natural law approach to legislation. Subsequent work by secular scholars owes much to the structure laid out in the *Summa*. More broadly, Aquinas' thought suggests the interconnection between what one thinks the positive law is and which moral values one brings to the interpretive process. In this requirement of the legal matrix, let us examine the factual matrix.

O R D E R in OA No. 471/2010 and others

PER: DR. K.B. SURESH, JUDICIAL MEMBER

By common consent we have adopted OA.471/2010 as the leading case which challenge the Government order dated 1.10.2010 by which Dy. S.P. level officers in the Auxiliary Police Service have been equated to the post of Deputy Superintendent of Police (Civil) which the applicants herein claim as a principal police service of the State as according to them the same is illegal and arbitrary. This application is filed by six persons and resisted by among other official respondents, respondents 5 to 8 who were impleaded as parties. The applicants herein would rely on Regulation 2 (1)(j) (IV) of the Indian Police Service Regulation (Appointment by Promotion) 1955 wherein it is stated that in all other cases Principal Police Service of State, the members of which normally holds charge of a sub division or a district for purposes of police administration and includes any other duly constituted police service functioning in a state which is declared by the State Government to be equivalent therein." Therefore, the crucial elements are the Principal Police Service of the State which hold administration in sub districts and any other police service which is declared as equivalent to the State Government. Therefore, the crux of the matter is equivalence as declared by the State Government. The applicants would say that the duties and responsibilities of a sub divisional police officer is investigation of crime, maintenance of law and order apart from detecting and preventing crime. They would say that hitherto only civil police or principal police service officers were considered for promotion to IPS but because of the Government order of

1.10.2010, the duties and responsibilities of Assistant Commandant of Karnataka State Reserve Police being that they would be in-charge of two or more companies of reserve police force they could never carry out the duties of a regular Deputy Superintendent of Police and further the duty of the Deputy Superintendent of Police and further the duty of the Deputy Superintendent of Police (Wireless) is still more inadequate and therefore they cannot be called in for shouldering the burden of a Principal Police force. They would say that the Government order dated 1.10.2010 canvassed three conditions (i) they should have completed eight years of service in the cadre of Deputy Superintendent of Police or equivalent (ii) they must have constantly outstanding or very good' grading in the last either years of annual performance report and (iii) they should be the recipient of a President or India Police Medal for meritorious service or police medal for distinguished service. The applicant would say that the said equation of both streams of the police in terms of the above three conditions are illegal and arbitrary. They would also say that His Excellency the Governor had recommended the case of 5th respondent who is his ADC to grant him conversion to Civil Police Cadre to enable to his case for promotion to IPS. Thus they would say that by an extraneous stimulate the government is propping up a method which is not in keeping with the practice hitherto. They would say that the Government had not taken into consideration whether these officers of Auxiliary Police Force performed the duties and responsibilities of Deputy Superintendent of Police (Civil) and hence they contend that this is ultra vires the provisions of Regulation 2 of IPS Regulation.

2. They would contend that Dr. P.S. Ramanujam Committee was established during the year 2000 and the Committee has considered the issue of equivalence in detail and had reported that there cannot have been any equivalence between these forces because of functional duties. On these and other cognized grounds the applicants challenges the order of the Government dated 1.10.2010.

3. Annexure A-1 is the order dated 1.10.2010 which canvasses a view that this equivalence is brought about for the selective process of 2009 only.

4. This would appear to be swimming against the stream of rule of law which would claim that policy decisions must hold good in continuity unless set aside by other significantly different and valid policy decisions within the parameters of blessing of rule of law and a sense of equality in consideration. In other words there is no prohibition in a government under its good governance norms to settle a policy but such policy cannot be either geographically or chronologically or specifically focused at individuals and thus limited unless without specific substantive cause. Such cause is not discernible anywhere in the order dated 1.10.2010. The applicants also point out to the fact that the third condition which is seemingly innocuous is tailor made to suit the

purpose of Respondent No.5 for whom a specific enactment is now being brought about. But the requisition of additional qualification by itself is not a bad thing. But these qualifications must be available in the matrix of ordinary consideration and they must apply universally and across the board to all. If all such potential selectees must be held to be a recipient of any such award, then the additional qualification, is bless by statutory formations and must be valid and worthy. But the applicants would claim that it is not so. Their case is that for extraneous reasons a person holding a high office has made a stipulation to promote a person close to him and therefore a tailor made condition was inserted to provide a justification for one individual's selection. But then, as aforesaid there is nothing wrong in a statement desiring and deciding that all promote officers must be with additional qualifications provided its place is secured by statutory formations. Therefore, the question is thus; does the IPs Regulations enable the Government to declare equivalence only in the case of certain conditions being made which are outside the purview of the Regulations even. But IPS Regulation apparently do not canvass a view that for equivalence to be declared between two streams of police force the persons belonging to one stream must possess additional qualifications. Therefore is it a question of administrative overhearing or had it been reflective of wish of administration to have more competent persons serving people of the land is the question thus arisen. The applicants placed Annexure A-2 as evidence of extraneous consideration in the framing of the rules. But then it is trite law that whatever be the inputs which force the way for policy formation the genesis of policy by itself need not be held against policies of the administration as it must be weighed and analysed on the basis of its own standing and not on the basis of its genesis alone. There is a provision, as we already seen for transfer of police officers from one wing to another wing. Therefore had the 5th respondent applied to a judicial forum if his application for conversion has been rejected, in all possibility he may have stood a good chance of being considered since statutorily it is possible. But why insist on President's medial or a distinguished service medal as it does not form part of the qualificatory process in the Regulations? Thus to that extent the order dated 1.10.2010 may need a re-look. It is not that a policy formation may not comply with an individual's or a group's manifestations. But there must a rational yardstick and methodology to prevent the allegation that Articles 14, 15 and 16 are violated.

5. The applicant would rely on Annexure A-4 which is a report placed before the Tribunal by the Director General and Inspector General of Police on 11.5.2009 which would say that Civil Dr. S.Ps on their posting get either six months or ten months of additional training thereunder in various attached offices so that they gain experience. Therefore he held that both these streams are functionally different. He also held that both these groups do not tally in actual duty. He also said that Auxiliary

Police Force are not promoted to IPS in other States which we found to be factually wrong. Without an opportunity obtainable for Narayana Gowda and Achyuth the Director General held a notion that these people were apparently inadequate because of their lack of training and they had difficulties in appointing them as S.Ps of Districts. Further clarification is not forthcoming nor any instances of immediate lacunae was pointed out but unfortunately the Government seems to have looked into it even though the functional differences are not adequately looked into particularly in view of the Karnataka Police Act which denies duties of Police Officers and their reason of inter-transferable ness under Section 145 of the Police Act.

6. More details are available in OA.298/2011 wherein it is now brought about that the Government vide Annexure A-1, referring to letter No.CBED/1/467-90-91 dated 14.6.1991 from the DGP and letter No.14/23/GS dated 8.6.65 and 28.7.65 from the Ministry of Home Affairs on 23.12.1991 passed an order of equivalence under Regulation 2 and declared the post of Dy. Supdt. Of Police of the principal policed force to be equivalent to Dy. Supdt. Of Police (Wireless) and Dy. Supdt. Of Police (Armed) and Assistant Commandant, Karnataka State Police. We will assume that this equivalence was brought about in terms of the police Act on 15.5.1975. But surprisingly vide another order dated 18.7.1996 on the basis of the Ramalingam Commission Report dated 23.3.1996 this equivalence was rescinded. If the equivalence was brought about as a result of a cumulative obtainment of such focus from 1975 amendment then the rescindment cannot be brought about without legislative change. The reasons given are also strange. The Committee was appointed to consider the points mentioned below:

(i) Difference existing in the basic educational qualification for appointment.

What is the finding of the Committee of this grand is not available but it is apparent that at least direct selection personnel are having the same basic qualification since they are selected through the same selection process. Therefore any finding on this respect could not have been against the Auxiliary Force.

(ii) Difference existing in training input:

As stated earlier the training difference is said to be either a six months or ten months training which are of difference focus. But there is no insurmountable barriers in this as some training is available to IPS recruitees and promotes alike.

(iii) Difference in job content:

This may be in a practical sense appears to be correct and even going by Section 145 of the Police Act and the requisition of duties canvassed by the Act which are almost similar, there may not be any situational difference. But the actual police station duty may be lacking for the Dy.

SPs or Assistant Commandant of Auxiliary Force.

(iv) Difference in the knowledge acquired during the service and field experience:
In view of the transfer position available and lack of data regarding knowledge acquired by a concerned person any in any wing and since even its performance are not, on the present context an ideal vehicle to carry the full load of such determinance and therefore this may not be very but at the same time it cannot be disputed that there is some functional difference.

(v) Difference in orientation:
This can only mean orientation regarding service. Sincerity in service depends on person to person. There cannot be any specific orientation for a police station based police officer and battalion based police officer, since both function under the same set of laws and the same set of functional requirements.

(vi) Demoralization among State Civil Service Officers who constitute the principal police service brought in by delay in promotions:
But this would appear to be cutting both ways as the Auxiliary Police Force will have the same complaint.

(vii) Exploring promotional opportunities for Members of Auxiliary Police Force in their respective cadres:
This is nothing but a sop offered for non selection in the IPS which again cut both ways.

(viii) Adverse effect on police administration due to lack of professional competence, experience and orientation in regular police work by persons of Auxiliary Police Service who will have to perform important executive duties on their induction into IPS.

7. For the considered situation even the direct IPS recruitee who may be a mathematical wizard with no knowledge about the humanities or culture because of his knowledge in a particular branch or branches may get selected. There is no way of measuring his functional abilities to perform as a police officer. No test for a detective as made is available. He is also given some kind of training before performing the said function. It is to be noted in this connection that once he gets appointed, similar to other Dy. SPs, in a police station, he also undergo similar training and after that assume charge of sub division and then a division. Therefore opportunities for training and understanding the force are equally available to a direct IPS recruitee as well as promote from auxiliary also. The Committee apparently has held that Wireless Officers cannot fit into regular police force and that the possibility can be discounted as there is no Wireless Officer to be eligible for IPS under the Rule in the near future in view of lack of senior people. Therefore,

the input of the Committee was based on the fact that sufficient number of senior Wireless Officers were not available for consideration and therefore this need not be considered. With regard to Assistant commandants in KSRP the Committee held that there are only four officers directly recruited and for them a promotion avenue to DIG is available in the cadre itself. Therefore these functional aspects need no be considered. The Committee also said to have conducted a comparative study and held that by training and experience a civil police officer is grouped and sealed within the police duties whereas the other cadres are not fitting in by training or experience. This therefore, will effect the function of police, as per the Committee. The Committee report is reflective of in adequate reasoning and lack of logic. The respondents would say that they cannot understand the meaning of 'sealing' within the police force. They raised a doubt as to whether it is in relation to any controlled gradation in the police force which may be sealed within a dedicated group and therefore inclusion of outsiders would definitely break the seal. This was stoutly denied by the learned counsel for the State. But at the same time he also was unable to explain the meaning of the term sealing within the force. Probably the Committee would have meant, because the community interest generated within a substantively active police force working directly in the field, the common interest and working methodology would have induced in then a feeling of oneness, which they fear may be lost if an outsider comes into their ranks. But then this cannot be right as outsiders constantly come into their ranks as direct recruit IPS officers. In fact the purpose of having IPS itself is to prevent empire building. That is the reason why the IPS Officers are scattered all over the country, so that geographically and topographically or any other constraint must not attach with them. Therefore these allegations raised by the respondents is not fair or correct. At the same time even thought the Government says that after careful consideration of all aspects of the case, they have rescinded the 1991 order. In fact they have not considered any of the eight issues at all. Annexure A-2 order dated 18.7.1996 is thus vitiated by active non-consideration and non-application of mind. In fact in OA.289/2011 Shri B.S. Lokesh Kumar, one among the parties have filed a detailed affidavit on which the crucial aspect is that without any declaration of equivalence the streams cannot be treated as equivalent and the concerned order do not create an equivalence in actual sense of the term. May be he is swayed by the second page of the said order wherein it is clearly stated that equivalence is obtained but then it is available for vacancies of 2009 only and also additionally notwithstanding the above equivalence must follow certain other merit criteria as well. He would say the KSRP is a

separate police force with a separate cadre and recruitment rules and separate avenues of promotion, separate training and nature of duties. Therefore, what is unequal cannot be made equal. But then the Police Act is a self contained Act.

8. In OA.390/2009 the State Government had filed a detailed reply in which they claim that the promotion granted to Shri Narayan Gowda and Ayachith had shown the inadequacy in training of these officers in the area of crime, law and order and had made it difficult to entertain their claim for posting in regular post like Superintendent of Police in district. But then these are parroting the DGP's views without any substantiation or opportunity to defend.

9. In fact vide MA.349/2011 in OA.289/2011 Smt. Siri Gowri one of the impleading applicants had brought to the notice of the Tribunal that in fact an order dated 21.7.2010 had been rescinded by the Government vide order dated 21.7.2011 and therefore, the effective nature of the relief is already obtained by them by the act of the Government. But the entire conspectus of all the cases are not only the quashment of the government order dated 1.10.2010 but also the quashing the order dated 21.7.2011 which is produced as Annexure A-8 in OA.289/2011 and other connected reliefs. ***The applicants rely on the order of the CAT, Ernakulam Bench in OA. 491/89 dated 31.12.1990 wherein an exactly similar case was considered by the Tribunal and the Tribunal held that when the Government had reason to think that there is equivalence and had postulated a situation wherein such equivalence could be inferred, then such people are to be beneficiaries of consideration and directed grant of promotion to IPS. We are in respectful agreement with the views expressed by the Ernakulam Bench. We have examined all the cases of competing applicants and respondents and found that the matter to be resolved similar in all these matters. Therefore, we are disposing of all the matters together at one core. Therefore, let us try to understand the legal matrix now.***

10. What is Police and Policing? To what extent can different branches of police be said to be congruent to each other so as to form the thrust portion of the function for which it is intended. What is the fine distinction between Civil Police, Armed Police, Auxiliary Police such as Wireless Operators etc. This would form the spectrum of crux of the matter in all these cases. By mutual consent OA.No.471/2010 was taken as the leading case of the matter. All matters canvass a similarity in reliefs, focus and content.

11. Section 3 of Karnataka Police Act, 1963 by an amendment made in 1975 brought together the principal Civil Police who are in actual charge of crime investigation and law and order containment mechanism and the Armed Forces of the State. This is

probably done with view to ensure interchageability but the concept of different police force seem to have diminished by then and at least one incident of Armed Police Personnel having been brought in to the Civil Police thus Section 3 had virtually amalgamated the entire police force into one entity with all legal consequences to follow it.

12. But till 1991 it would appear that even though by a statutory confirmation an integration and amalgamation was brought about even though for all practical purposes which remained as separate units based on functional requirements but in 1991 the Karnataka Government passed an order dated 23.12.1991 whereby the declaration under Rule 2 was made of equivalence of both these wings of the police which it was competent to do under the relevant rules. This equivalence having been thus established and obtained a methodology of equivalence one person was recommended by the Committee concerned for conferment of IPS and he apparently attained a career progression. This is followed by another personnel apparently from the Wireless, the earlier person having been from Armed Police, he also was appointed to IPS but in 1996 the Government has a re-look into the matter and decided to end the process of equivalence and vide order dated 18.7.1996 the earlier order issued in 1991 was rescinded.

13. It would appear that there were representations by the Auxiliary Police Forces like Armed Police and Wireless who claimed the equivalence as being selected through same selection process and since substantial portion of training was also utilizing the same methodology, they also claimed a functional equivalence on the ground that the containment of law and order, in the ultimate analysis was a matter in which they were to be recruited as experts as they handled it as the ultimate law and order specialist situations and not the Civil Police. They would say that investigational process is only 3% of all police activity and rest being 97% is law and order assignment and therefore they claimed a functional equivalence as well with the Civil Police. But in 1996 Government had voluntarily noted that there are functional factors which separate one from the another, and which are irreconcilable and therefore decided that there shall not be any more equivalence.

14. It is trite to note that a subordinate Police Officer after the selection undergoes training in the same stream for the first year and all those who opted for Civil Police get a different training thereafter and those opted for Armed Police is required to undergo another methodology of training. It is also pointed out at the bar that

more competent among the selectees opt for Civil Police and it is the less meritorious who more necessarily opt for the Reserve Police. Whether this assumption is correct in all respects cannot be ascertained but as a general rule of application probably it might be correct. The Counsel thereupon would point out that even in the case into direct recruitment of Civil Services of India, the Selection of IAS, IFS and IPS and other branches of Services are through the same selection process but the fitment into each segment is on the basis of the merit either accordingly competitively structured or obtained through reservation. The functional benefits in each stream might be different but because of the similarity in selection process it cannot be said that the functional equivalence is naturally made out. The State Government also claims that even though the Civil Police Officers as well Armed Police Officers are selected through the same process, normally it is the less meritorious who has to, necessarily choose the Armed Police Force and thereby, they would say that being declared as inferior at selective process itself this badge of inferiority stays through out their service as in the case of Civil Service of India. An aggrieved person thereby can always opt for writing the examination once again in order to secure better opportunity. Having fitted into a particular stream he cannot thereafter be allowed to complain that others who are more meritorious than him had gone on in another stream and would be receiving qualitatively better prospects.

15. The Karnataka Police Act, 1963 which commence its genesis much earlier make provisions for uniformity in the methodology of policing and several salient features of which rather important and significant to understand the legislative intend behind it. Chapter IX relating to the Village Police would appear to be thus the molecular element in the system of policing even though in actual practice this may have diminished into either obscurity or nonexistence. Section 129 constitutes the Village Police. Section 130 determines that the control of Village Police shall be exercised by the District Magistrate even though as it delegate the Superintendent of Police or an officer of Revenue Department can also hold control if he is an Executive Magistrate. One among his duties under Section 133 is to detect and bring the offenders in the village to justice; to arrest persons whom he has reason to believe to have committed congnizable offences and prevent within limits of his village commission of offences and public nuisance. Under Section 137, for dereliction of duty punishment which may even exceed that of ordinary policemen like fine approximating a portion of his emoluments may also be imposed on police patel. But then significantly enough it does not prescribe any qualification to be

appointed as a police patel even though he is performing most cardinal of policy functions. According to the Karnataka Act he ought to be a molecular functionary of policing in a geographical area. No training is apparently given to him and we will thus assume that the legislative intent is for him to act within the bounden parameters of common sense and a sense of right and wrong. As ordinary human being, we are well aware that the common-sense and sense of right and wrong in difference degrees are available to all human beings even without any specific perceptive stimulance. But the fact that it may vary from one human being to another is beyond the reach of any set of training and therefore has to be left to individual perceptions and concepts relied on in upbringing. This sort of personal merit is difficult to set at right as a measurement of a kind of specific attribute even though in the ultimate analysis the suitability of a person to a particular assignment is determinable by his mental equipment and direction of thought process. But as yet we have not evolved suitable machinery or methodology to assess correctly the situational inclination on human beings in every respect.

16. To examine this basic fundamental of Karnataka Policing further, Chapter X relating to State Reserved Police Force in Section 144 defines active duty means a duty to investigate offences involving a breach of peace, a danger to life or property and search for to be apprehended persons concerned in such offences or who are so desperate and dangerous as to render them being at large hazardous to the community. They have a duty of taking adequate measures to extinguish fires, prevent damage to persons or property interceding in occurrence of flood, riots and this like. This is therefore purely polizing. Vide Section 146 the Commandant and Assistant Commandant shall be of the rank of Superintendent and Deputy Superintendent of Police. Under Section 148 it is made possible for transfer of a number of police force to either of police forces. In Chapter VI vide Section 65 it is stipulated that the duties of police officer shall be to serve summons, obtain intelligence concerning commission of cognizable offence, prevention of breach of peace and commission of offence and etc. Vide Section 69 the police can regulate traffic, keep order in the streets, regulate usage of public spaces, arrest without warrant, deal with straying cattle etc. In the city of Bangalore a special duty of dispersal of gangs and removal of persons about to commit offences which are specific to the geographical area are also mentioned. Under Chapter IV Section 31 the District Magistrate, the Police Commissioner and the Superintendent are granted regulatory powers and licensing powers which may not be significant in the cases concerned since the person now under the sway of these exercises would be naturally persons

below this rank. Under Section 5 of the Karnataka Police Act, 1963 it is stipulated that the police force shall consist of such number in the several ranks and for such organization and such powers, functions and duties, as the government may be general or special order determine. In Chapter II Section 3 it is specifically stipulated vide an amendment brought vide Act 18 of 1975 with effect from 15.5.1975 that there shall be one police force including the State Reserve Police Force established under Section 145 for the whole of the State. It indicates that vide legislative intent expressed in 1975 the whole of the police force is now one single unit whether it be the civil police or armed police. The intention of the legislature thus established and in this light of the methodology of establishment of village police and the determination of the rankings in the Armed Forces, similarity of duties and functions as stated above would indicate that a consolidation was legislatively brought in 1975 to conclude in the enactment of Section 3 which was brought in by amendment on 15.5.1975. But then there may not be any doubt that even after this amendment differences were obtained and observed in between the different wings of police force which the applicant now claimed as the result of preponderance of civil police officers the helm of affairs and causes thus act being the controlling officers of the time so as to generate a community of interest which apparently deprive them, of their rightful claims, content they. It is in a nutshell the crux of the issue. What is the effect of Section 3 of the Karnataka Police Act, 1963?

17. But the applicants would point out that there is some difference in this assumption. They would point out the example for direct recruitee IPS Officers who by virtue of his competitiveness in the selection process comes to be appointed and then has to be trained from the very bottom level. They would also point out that all those officers who were conferred IPS, will have to undergo proper training before being inducted into service as IPS Officers. But on the other hand the State Government would point out the methodology of selection into IPS by conferment is actually an acknowledgement of certain merit which must be present in every individual by service of 8 years as Deputy Superintendent of Police in the active field duty and thus he would have gathered sufficient knowledge of prosecutorial methods, court work and other crucial inputs necessary. The applicants claiming equivalence and other police officer like them, according to the State Government, lacks this crucial aspects. ***They would say that the matter has to be looked into from the point of crucial public interest as well as the public interest would be satisfied only by the more competent among them being selected and appointed as IPS Officers. The***

required competency in this regard would be crime detection, proper investigation process and other related matters for which long experience gathered in police stations are required. They would say that the experience as an assistant in a campaign for law enforcement will not be sufficient for the purpose of society and therefore the Government had a re-look into the matter. They deny malafides attributed to them and claim that they had acted only in public interest.

18. But on 1.10.2010 the Government passed an order indicating thereby that a one time equivalence is being granted with lots of tailor made conditions booked into it indicating thereby that this order would suit a particular person. When it came into the notice of the concerned, they have challenged it and the Tribunal passed interim order which was modified slightly by the High Court of Karnataka. But following this, the Government rescinded this order dated 1.10.2010 and the applicants/respondents have come in challenge of the whole process.

19. Thus what is the legal matrix obtainable? What are the rights of the applicants, both in terms of functional excellence and enhancement of development opportunities as canvassed by Articles 39 to 46 of the Constitution of India? But as the State Government would focus, what is the public interest in the matter What about the expected career prospects of those officers of the Civil Police, who had borne the brunt of criminal investigation and prosecutional assistance?

20. What is exactly is the role of the judicial bodies in the context of wider public interest, constitutional process and power and responsibility of Judicial review?

21. So, therefore, what is the mandate of the constitution of India, then, for this, we have to examine the features of the preamble of the Constitution, which provided for; constituting India into a sovereign, socialistic, secular, democratic republic. The nomenclature, thus, attained would indicate, prima facie, that the sovereignty of India is based on socialistic, secularist and democratic principles of republicanism. We have further integrated this idea by delineating the importance of justice, social, economic and political as well. Assuring the dignity of the individual through fraternity, equality of opportunities by providing equitable status is one of the basic features of the Constitution of India. As their Lordships has held in **P A Inamdar & others V. State of Maharashtra and others**, reported in (2005) 6 SCC 537 that it is well accepted by the thinkers, philosophers and academicians that if justice, liberty, equality and fraternity, which will necessarily include, social, economic and political justice, are considered as the golden goals, which as set out in the Preamble of the Constitution

of India are to be achieved, the said achievement by degree-by-degree enhance the excellence of Indian polity to the nadir of expectations.

22. A constitution is not be construed as a mere law but as the machinery by which laws are made. A constitution is the living organic thing, which of all instruments, has the greatest claim to be construed broadly and liberally, as has been held by the Hon'ble Apex Court in **M/s Goodyear India Ltd. V. State of Haryana and another**, reported in (1990) 2 SCC 71. Therefore, their Lordships have permitted the golden ideals achieved by hard work of the framers of the Constitution to become the corner stone of Indian Polity.

23. Therefore, these are the some of the basic structures of the Constitution of India as explained and as held by the Hon'ble Apex Court in **His Holiness Kesavananda Bharati Sripadgalvaru and others V. State of Kerala and another**, reported in (1973) 4 SCC 225; **Indira Nehru Gandhi V. Raj Narain**, reported in AIR 1975 (Supp) SCC 1, **Minerva Mills Ltd. and others Vs Union of India and others**, reported in (1980) 3 SCC 625, **State of Bihar and another V. Bal Mukund Sah and others**, reported in (2000) 4 SCC 640. The Apex Court has held that the separation of powers between the Legislature, Executive and Judiciary, which is a canvassed matrix of the Directive Principles of State Policy to be the basic structure of the Constitution of India and, of course, the very heart of the Constitution and its schemer. The Hon'ble Apex Court in **Mrs. Valsamma Paul V. Cochin University and others**, reported in (1996) 3 SCC 545 has interpreted the Articles 14 & 16 of the Constitution, as having been intended to remove the social and economic inequality to make available equal opportunities and as a methodology of enforcement in the light of social and economic justice envisaged in the Preamble and clearly explained in the fundamental rights as well as the Directive Principles of State Policy, together in the same matrix.

24. Thus, the Constitution operates as a fundamental law, the government, the law and its organs trace their origin and existence to the constitution and derives their authority from and discharges their responsibilities within the frame work of the Constitution. It is not the Union Parliament or the State legislature, which are the sole expression of sovereignty. But the constitutional process, therefore, what is sovereignty and how is sovereignty to be expressed by the state action is to be pondered. Accordingly, we have to further examine what are the ideals of the constitutionalism espoused in the Indian constitution to be the binding factor of social engineering in India and its regulation therefore. **In Maharao Saheb Shri Bhim Singhji, Anantalakshmi Pathabi Ramasharma Yeturi and others, Jodhan Real Estate Development Co (P) Ltd. And another, Rajendra Gard Etc; and Shamshul Islam Etc. V.**

Union of India and others, reported in (1981) 1 SCC 166, **State of Kerala and another V. N.M. Thomas and others**, reported in (1976) 2 SCC 310, **Waman Rao and others Etc. v. Union of India and others** etc. reported in (1981) 2 SCC 362, the idealism behind the word 'socialist' was read into the articles 14 and 16 of the Constitution and, thus, it enables the Court to work out a fundamental right of 'equal pay for equal work' and thus, enables the Court to also strike out the legislative formations which failed to achieve the said goal to the fullest extent. The decisions of the Hon'ble Apex Court in **Excel Wear V. Union of India and others** reported in (1978) 4 SCC 224; **Atam Prakash V. State of Haryana and others**, reported in (1986) 2 SCC 249, **Nakara V. Union of India**, reported in (1983) 1 SCC 305, **Dharwad Dist. PWD Literate Daily Wages Employees Association and others etc. V. State of Karnataka and others** etc. (1990) 2 SCC 396 are of significant interest in this regard. The cumulative effect of these pronouncements can be examined as we go on. This, it would appear, is the corner stone of why and how the Constitutional matrix must be interpreted.

25. In the case of **Kesavananda Bharati Sripadgalvaru (supra)**, the effective use of Preamble and the principles was made by the Apex Court by determining the instinctive relation between the Preamble and the fundamental rights and of the Directive Principles of State Policy and in fact it has been succinctly interpreted in **Chandra Bhavan Vs. State of Mysore**, reported in (1969) 3 SCC 84. Therefore, the doctrine of parens patriae can be invoked for the expression of sovereignty and the Hon'ble Apex Court in **Charan Lal Sahu V. Union of India**, reported in (1990) 1 SCC 613 has explained in detail. Thus, the importance of Preamble and the way in which the fundamental rights shall be understood is clearly established that it shall be through the prism of Directive Principles of State Policy. Thus were we understand State action and sovereignty, it must be within the said parameters.

26. The principles of social justice enable the Courts to not only uphold but invite legislations to remove the economic inequality, to provide a decent standard to the life of the people and to protect the interest of the weaker sections of the society, as is explained by the Hon'ble Apex Court in **Lingapa Pochanna Appealwar V. State of Maharashtra and another**, reported in (1985) 1 SCC 479. ***Thus a duty is cast upon the judicial process to be a proactive participant in the nation formation.***

27. Thus a structural foundation and source of the mores and morals of the Constitution of India are the factums and factors emerged from the intermingling of the Preamble, fundamental right and Directive Principles of State Policy. In fact, the framers of the Constitution of India had strived to enhance and preserve the democratic values, which again

is a direct result of the effect of the freedom struggle. ***Therefore, the words 'Union of India' have much more significance than what is ordinary apparent. It is not concerned, not only with the unity of the nation but also it seeks a melding and welding of the Indian polity and populus.***

28. Where action has been approved by the Parliament and where the decision making is responsible to Parliament, especially in terms of concepts like national security, etc., would determine and justify enthusiasm for a more participatory model of democracy. It may also be the other values may include or exclude, based on the professional expertise to administer the limited exercise of recognition of individual rights. In other words, it is possible for people to rely on perceptions than facts and thus accede to principles whereby democracy values may be eroded but in such circumstances, what is to be the role of the judiciary and to what degree can it act as a sentinel of public welfare. Can it feel the lacunae in legislative expertise and administrative sincerity? This criticism of the role of the judiciary are values with regard to the performance by the Judges in the Indian sub-continent wherein Indian judiciary have adopted a more robust approach examining the legality, acceptability and functionality in terms of constitutional matrix of an Executive action or inaction and, therefore, ***what are the jurisdictional and constitutional principles, which would be available to us for the resolution of the present issue?***

29. In India, the Directive Principles of State Policy require the state to secure a social order of promoting the welfare of the people participation of workers, promotion of education in weaker sections, raising the standards of living, separation of judiciary and the Executive and other similar golden ideals. These are corroborated by the constitutional matrix provided by the fundamental rights and more explained by the Preamble of the Constitution. By reading these three together, justice delivery system is enabled to do the negative corrections to the Government operations not only as normal operation of judicial control but to be a catalyst in promotion of prospective policies on occasions affective vital issues concerning the affairs of the nation as a whole. Thus, the Hon'ble Supreme Court in **Sachidanand V. State of West Bengal**, AIR 1987 SC 1109 has held that the Court is competent to give directions for restoration of ecological balance and in short, implementation of Article 48-A of the Constitution. In **Grih Kalyan Kendra workers Union V. Union of India**, AIR 1991 SC 1173, the Hon'ble Apex Court ensured the implementation of Article 39-D, which provides for 'equal pay for equal work.' The Apex Court in **FCI, Union V. Food Corporation of India**, AIR 1993 SC 2178 exhorted the view that a fundamental right is implicit in the constitutional process, even though

it may not be specially mentioned as such. It held that the fundamental rights are to be interpreted having regard to the Preamble of the Constitution of India, which proclaims commitments to justice, liberty, equality and fraternity of the Directive Principles of State Policy. It held that these provisions are supplementary and complimentary to each other. In short, morality rather than expedition shall be the deciding factor. Thus there must be a stream of constitutionality in rational policies of the executive.

30. Viewed in this context, what are the parameters of power of expression of Executive Policy and how far can judiciary sit in the judgment over Executive Policy? Executive discretion is a term blessed by the constitutional process and the Administrator must have effective freedom of operation within the parameters allowed to it exclusively. The word 'discretion' in itself means possibility of choices and even subjective decision and even though objectivity in approach is functionally desirable, rationality in method and fundamental sincerity must mark the decision of any decision maker. This also must be in harmony with the constitutional ideals.

31. Therefore, any decision outweighs or outride constitutional fundamental would, thus, become unacceptable and extinct and, subject to judicial interdiction. But what if the decisions are of a different colour and pale than is sought by constitutional process? But since the containment of the social endeavor within the dynamics of the Constitutional mandate is the object of the due process method and proportionality principles, apparently, judicial interdiction in the way of negative corrections and positive exhortion is thus called for.

32. In the matter of expressing wednesbury principle of reasonableness, the Lord Green, as Master of the Rolls, specified the grounds for such a challenge. These principles were later buttressed by the proportionality principles. The American Courts has evolved the usage of "arbitrary and capricious' rule. In addition to this, we may have to examine the process evolved by this discussion in the light of the emerging human rights concerned, of which India is an active participant. Thus, even in legislative formations the process of judicial review must take the human rights dimension also in their account. When its justifiability is justified, the European Courts are thus increasingly taking a view that the decision maker was not entitled to reach a decision which would pre India basic human rights. That risk of interfering with the fundamental, human rights in the absence of coupling justification, as held by the Lord Wools, Master of the Rolls, as reported in 1994 (40 AE Reporter 801 (HL) at page 72 "when a fundamental right such as a right to life is engaged, the options available to the reasonable decision maker are curtailed. They are curtailed

because it is unreasonable to reach a decision, which contravenes or could contravene human rights unless there are significantly sufficient countervailing considerations. In other words, it is not for the decision maker to risk interfering with fundamental rights in the absence of compelling justification". It also held more specially that in the context of violation of human rights, the more the court will require by way of justification before it is satisfied that the decision is reasonable. Thus the test of wednesbury irrationality is likely to be affected by considerations of human rights that might be prejudiced by the impugned action. So, what of rational hopes of a human being kindled by a policy stream of the Executive?

33. The principles of proportionality, as developed by the European Courts of rights, evolves two tests (a) the balance interest and (b) the necessity test. Thus, it requires a balancing of the aims and objective and the latter requires that where a particular objective can be achieved by more than one available option. In addition the suitability test may also be applied. This requires the authority to employ itself methods which are appropriate to accomplish of a given legal position thus mandated. This principle intrudes the review with a higher intensity of scrutiny than the wednesbury test involving the examination of a merit of decision and not only the decision making process. So, having taken a decision and followed it through, can it be retracted on principle of choice?

34. Therefore, what is discretion and how is it amenable to judicial review. What are the extent and parameters of discretion and how to resolve conflicts? But untrammeled discretion, which is not guided by legal patterns and rules, principles of policy are all liable to be struck down as infringing the rights emanating from Article 19. But in fact, the Hon'ble Apex Court has placed reliance on considering in great detail of latitude to administrative actions that are called for in the interest of general public. Thus, in **Cooverjee B. Bharucha Vs. Excise Commissioner and the Chief Commissioner, Ajmer and others**, AIR 1954 SC 220, the Hon'ble Apex Court held that the authorities appear to issue mere license on payment of such fees for such period, subject to such restrictions on certain conditions in such form as he might direct either generally or in particular cases. The Court held this grant of discretion, as in their view the license was designed to regulate business dangerous to the community. Therefore, the crystal factor, which evolves out of this resolution is that Executive discretion for public good is acceptable and acknowledgeable even though it had on occasions intruded in the sphere of legislature as well. The proper way of understanding this decision is that it turned open the requirement of public interest. The Hon'ble Apex Court has followed this track of reasoning wherein the

question of public safety, ecological balance, rights of workmen, rights of women and even rights of under trail prisoners are to be looked into. The overriding public interest seems to be the fulcrum of the decision in all these matters. Sensible requirements and sensitive approach would thus appear to be harmonized with constitutional principles.

35. Yet another constitutional bulwark against uncontrolled or unfettered decision in India is Article 14 of the Constitution, which provides that the principle of equality before law and in addition, the equal protection of the laws. This is supported by the Articles 15 and 16 of the Constitution. Thus, it has been held that discretion exercised without any salutary principles and without the benefit of legal provisions is contrary to Article 14. Legal provisions in this context are not the subordinate legislation but the statutory formations proclaimed by legislators of the land. The Hon'ble Apex Court following in this reasoning held that in case of unchallenged arbitrary discretion, it is writ large on the face of it. Such discretion patently violates the doctrine of equality and rests solely on the arbitrary action of the Executive. Thus, discussion shows that the Court would inquire whether a statute contains any policy or principle for guiding the exercise, the discretion by the Executive and if it does not, the statue is liable to be inferred as having unfettered discretion explicit or implicit or on discrimination between the persons or things similarly situated. Therefore, any exercise of unfettered discretion without the guiding principles permitted by the constitutional mandate is likely to fail.

36. To quote justice Bhagwati in Raman Dayaram Shetty V. International Airport Authority of India AIR 1979 SC 1628, it is well settled rule of administrative law that an Executive authority must be held to the standards by which this action is to be adjudged and it must scrupulously absorb those standards. To explain this further, the Executive action must be expressed in terms of reasonable principles flowing effortless from the constitutional mandate without vitiating factors. Thus the linkage of the protection of the fundamental right to judicial control, as the consequence of enabling the Courts to act on the proportionality principles and in some cases substituting their own decisions for those of that administrative authorities is held to be proper and justified. To explain it further, where a bank employee made a false statement about his past criminal conviction and thereupon lost his job, the Hon’ble Apex Court in **Regional Manager, Bank of Baroda V. Presiding Officer, ‘GCIT** reported in AIR 1999 SC 912 held that it was not such a grave misconduct to warrant a dismissal and ordered his reinstatement. On the other hand where a teacher forged the signatures of the authorities on his service book to get his revised pay regularised, he was held to be guilty of serious misconduct and in **Nand**

Keshwar Prasad V. M/s.Indian Famers Fertilizers Cooperative Ltd. and **others,** AIR 1999 SC 578, the Apex Court declined to interfere in his dismissal. Thus, the proportionality principle was brought into fore tore by the Hon'ble Apex Court. Thus, it has become an acceptable part of jurisprudence of India and the work. Thus, proportionality is a reasonableness, as it enabled the Court to review the merits of a decision going beyond the legality of it. Thus, not only the manner of a decision making but also a matter of decision is being reviewed. Similarly, in **Smt.Shyalini Soni V. Union of India and others,** AIR 1981 SC 431 the Hon'ble Apex Court has held that "it is in written rule of law, constitutional and administrative that whenever a decision making function is entrusted to the subjective standard of a statutory functionary, there is implicit application to apply proportionality. Therefore, how are we to determine professional competency of higher Police officials? Can we not use common parallels?

37. In Barium chemicals V. A.J.Rana, AIR 1972 SC 591 the Apex Court considered it necessary to limit the scope of discretion of an Executive Authority in reference to the objective of the Statute. The court found that the orders served on the private parties concerned had specified a number of documents, some of which did not have even the remote connection appearing for matters covered by the Act, the Court construed it necessary or expedient to mean that the authorities must have considered the necessity of obtaining and examining the documents. Therefore, the whole scenario of decision making, including the decision unless harmonious to constitutional mandate, is subject to negative corrections as well as positive interpolations, as is required by the role of law and constitutional mandate. Therefore what is the effect of amendment of Police Act and the streams of continuity of operations?

38. Therefore, what are the methodologies which are to be used while exercising judicial review? The Hon'ble Apex Court while examining the scope of Article 32 of the Constitution had held that usually the rules provide for procedurals based on non-discrimination and the processes could be had to the ordinary trial, process to resolve the dispute at the question of fact. Therefore, the expressed exercise of presses and procedurals in judicial review has to be deemed and found as a test for securing the truth of a matter and this thus to be considered as a requirement of justice. Truth, therefore, must prevail over technicalities. Therefore, what is the core and quantum of truth in this issue?

39. Taken in this context, while dealing with the subjective effect of decision making, Judges should be guarded against objective notions personal to them by them as well whether it be the issues on laws or on

issues on policy. The notion of operations about the policy should not influence the Judges. While it is true that at least some common law principles may ultimately rest the judicial ideals of policy, bias and partially if they are defined to mean total absence of steps in the minds of the Judge, then no one had a fair trial and no one ever will if taken to that extent. The human right even at infancy not blank piece of pay. We are born with pre-depositions and the processes of education, formally and informally create attitudes in all men. Therefore, by definition, it can be termed as prejudice also but bias in the absence of conviction in ethical values is not only not favourable but also desirable. In short, a Judge must, in fact, possess certain conception in his social desirables or atleast things acceptable on such occasions. In this sense, the judges are and must be blased. It is simple fact that a man, who has a standard of merely values which approximated broadly to the accepted options of the day, who had only beliefs as to what is harmful to the society and what is beneficial, who had no bias in favour of honesty as against the deceit in faith of truthful as against lying in favour of corrupt. Constitutional governance more desirable than anarchy; cannot be tolerated as a Judge. It is sine qua non of good governance and good administration when it believes in rightness and the less worthiness of the wrong. Thus, the principles of right or wrong must prevail in all administrative and Executive decisions as a basic factor. Therefore, which decision will benefit the society while basic factor. Therefore, which decision will benefit the society while not transgressing violently the principle of separation of powers?

40. But what about the consequence of the distinction between propriety and governance. The discussion of the development of the law and the constitutional mandate is against various consequences and one of them is that the immunity of the State and as it is sovereignty it was left intact in the field of statutory duties. This is particularly significant in republican India, which is a social State. The state has promised to secure a social order in which justice social, economic and political shall inform all institutions of national comity. Thus, the citizens have a right of adequate means of livelihood, the operation of the economic system does not result in the deprivation to worth and means. There is equal pay for equal work i.e., the wealth and health of workers are protected against exploitation and material abandonment of the right to work, protection in disablement and undeserved want, just and human conditions of work, promotion of an economic interest of backward sections of the society, which then necessarily includes the powers to do so. Therefore, the statutory powers are immune from liability only when these salutary principles are taken into account in the

determination of the parameters of such exercises. Therefore, what is the extent of sovereignty and immunity of the State in contradiction to its responsibilities in its exercise of powers? Therefore, what is an act of the State and can sovereignty be rightfully exercised by a State untrammeled. This is especially since the act of the State acting within powers recognized through its sovereignty is the maximum extent of powers of the State, expressed or implied. Therefore, the question will be the effect of the basic structure of the Constitution on even the exercise of sovereignty power by an act of the state and methodologies, thus, lawfully available to the State to bring these theories into frictions. This is the constitutional responsibly of the State.

41. **There are several broad exceptions to the general immunity of the State. The first exception is that the transgression of statutory formulations thus where the Government in exercise of State action transgress any of the laws and the rules of the land, it is to be interdicted. The second exception is when in relation to the citizens a contractual arrangement had benefitted the government** there are several self exceptions by the declaration of the Hon'ble Apex Court in **Kesavananda Bharti V. State of Kerala**, AIR 1962 SC 933 wherein their Lordships held that we have, by our constitution, especially a republican form of the Government and one of the objects is to establish a socialistic state that is secular and in other activities, in principle, or in public interest, that the State should not be held liable for vicarious act of its servant is not found in favour. Thus, the constitutional mandate had interdicted many of the sovereignty immunity, which was available under English Laws. Therefore, processes and procedures adopted by the State must **confirm to the finer principles of non-arbitrary, non-discriminative good governances practices**.

42. In **Dr. Preeti Srivastava and another V. State of MP and others** (1999) 7 SCC 1203, the Apex Court held that in a matter of a person killed by the policeman in breach of Article 21, the doctrine of sovereign immunity did not apply. In **Nilabati Behera V. State of Orissa**, AIR 1993 SC 1960, the Court held that the doctrine of sovereign immunity have no application. Thus judicial review would permit and pervade the expression of sovereignty in the State. Thus, dehors such absolutions, power of State action is controlled by sound principles.

43. But then what about oppressive legislation? How shall we determine what are the operative values in the society and act as guardian of those values, how shall we validate any legislation or legal process which violates the statement of the fundamental rights and their expressions, which transform to the judicial level and a judicial decision making processes, which are policy issues, which may suffer from underestimation and overestimation on the rule of the Judges. But

as an instrument of social control, the justice delivery system as a whole is intended to act as guidance mechanism of values while expounding the principles of law. The mere word 'values' in this context is to be found in the basic values and structures of the Constitution. Then the question would arise as to whether the Judges must only administer negative corrections or shall only promote policies. While active judicial interpretation in the sphere of social liberty is proper, normally the Court should not impose to seek their policy on economic and social issues, as basically these are the spheres of the legislature to act upon. But can the Court actively promote a legislative process is a question. The Hon'ble court has held that it may not be proper function to initiate a legislative process. But expressed and implied processes are different. When a court strike down a legal stipulation, even though expressly it will not be exhorted but impliedly, a correctional measure is promoted by bringing into the fore the correct proposition of law, which ought to have been permitted by the legislature in the first place.

44. As P.B. Gajendragadkar, J, Law Liberty and Social Justice, Asia Publishing House (1965), has said that:-

"As soon as the democratic state embarks upon the adventure of achieving the ideals of a welfare state, it inevitably turns to law as its created ally in the crusade. The function of the democratic state and its role assume wider proportions and cover a much larger horizon and in assisting the state to achieve these over expanding objectives, the function and the role of law correspondingly enlarge and cover a wider horizon ..... We reach a stage in the progress of the democratic way of life where law ceases to be passive just as democracy ceases to be passive and the purpose of law like that of democracy becomes dynamic; and that naturally raises the eternal question about the adjustment of the claims of individual liberty and freedom on the one hand, and the claims of social good on the other. It is a duel which a dynamic democracy has to face and it is in the harmonious and rational settlement of this duel that law has to assist democracy."

45. It is the function of effective judicial control to develop tools and technique to lay bare those hidden motives that promoted the administrator to take the impugned action to see whether they are pertinent to the authorized purpose. **When the motives are not relevant to the purpose of the statute the action is said to be in bad faith, mala fide, malicious or constituting abuse of power.**

46. One come across cases where the administrator has done what is ostensibly authorized by law but the real reason why the action was taken was personal benefit, financial or otherwise, or vengeance against an opponent. However, in the broad context of administrative process these are exceptions rather than the rule. What may happen more often

is that the administrator out of his zeal, enthusiasm or political philosophy might take actions honestly believing them to be conducive to public benefit. **But the considerations on which he bases his judgment may not be pertinent to the authorized purpose or may be otherwise contrary to law.**

47. In **Pratap Singh vs. State of Punjab**, AIR 1964 SC 72, power to take penal action against a government servant (eg by way of initiating an inquiry, suspension and cancellation of leave) was found to have been used to wreck vengeance of the chief minister. For similar reasons, repeated attempts at compulsory acquisition of a piece of land was held to be mala fide.

48. Similarly, in **State of Gujarat vs. Suryakkant Chunital Shah**, 1999) 1 SCC 529, compulsory retirement of a public employee for a collateral purpose of removing him immediately was held to be colourable exercise of power. But mala fide must be conclusively established. It cannot be readily inferred.

49. However, it is by no means easy to prove that the administrator acted with an ulterior motive. The burden of proving so lies on the party seeking to challenge the validity of the action. There is presumption in favour of the validity of administrative action although such a presumption is rebuttable. This is evident from the following observations of the Supreme Court of Pakistan in **Federation of Pakistan vs. Saeed Ahmed**.

50. 'Mala fide literally means in bad faith. Action taken in bad faith is usually action taken maliciously in fact that is to say, in which the person taking the action does so out of personal motives either to hurt the person against whom the action is taken or to benefit oneself. Action taken in colourable exercise of powers, that is to say for collateral purposes not authorized by the law under which the action is taken or actions taken in fraud of the law are also mala fides. It is necessary, therefore, for a person alleging that an action has been taken mala fide to show that the person responsible for taking the action has been motivated by anyone of the consideration outlined above. A mere allegation that an action has been taken wrongly is not sufficient to establish a case of mala fides, nor can a case of mala fides be established on the basis of universal motive against a particular class or section of the people. Thus, action taken for instance, to acquire lands or take over industries or banks on the basis of a policy intended for introducing a more socialistic system cannot be characterized as action taken mala fides. But in order to make out a case of mala fides, an individual must establish that his land was taken not for the purpose authorized by the law but for the personal aggrandizement of the person empowered to make the order of acquisition or because the

person so authorized to take the action bore a personal grudge against the person in respect of whose land or properties the action has been taken.

51. However, evidence of bad faith or abuse of power is the exception rather than the rule. We have already pointed out that an effective control of the administrators' motives pre-supposes a system which brings before the court sufficient information to enable it to ascertain the administrator's true motives. Such a system would imply the following requirements: (i) a duty to state adequate reasons for decision; (ii) a duty to make findings of fact and to disclose those findings coupled with the evidentiary basis of those findings; (iii) the court's power to order discovery of documents, the extent of discovery being determined by the interest of documents, the extent of discovery being determined by the interest of justice, and; (iv) the court's power to resort to legislative history. (i) (ii) and (iii) would enable the court to ascertain the intention of the administrator while (iv) would disclose the object of the legislation. **The court would then be in a position to determine whether the intention of the administrator is consistent with the object of the statute.**

52. Therefore the points of contentions would be the applicability and efficaciousness of 1955 Regulation which by Rule 2 accorded to the State Government the power and responsibility of deciding the equivalence between the many arms of the police force if they so exist. But then there is no mention in the regulation on the methodology to be adopted for adopting these equality and or why and when such equivalence can be declared. That seems to be left to the policy formations of the State Government. This must be so as law and order is basically a state subject and each police force had its own determinable and must be different in every state. But the Police Act and the cognate legislations in that behalf are a throw back from the colonial days and thus had a close similarity atleast in all major aspects if not all. Therefore the powers of the State Government to declare this equivalence would have to be dictated by a legislative process which is compliant with the State Police Act. On further consideration the compulsion of constitutional mandate and its fundamentals as well as the requirement of good governance which is a basic feature of the constitution would also indicate the Government to follow a rational policy which is in compliance with the law of the land in view of the greater and broader public interest involved in the selection of meritorious police officers for higher posts in order that society would then benefit. Therefore policing being an integral part of government it is required for the State Government to act in accordance with the notions of good governance as well as the constitutional mandates in

this regard. But what shall be the role of the Court in ensuring such due process? Thus the statement "the test to be adopted is that the court should consider whether something has gone wrong of a nature and degree which requires its intervention" as held by the Hon'ble Apex Court in **Tata Cellular Vs. Union of India** AIR 1990 SC 11 and the decision of the Apex Court in **Pathuma V., State of Kerala**, 1978 (2) SCC1 "the Court should keep in mind the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the legislature in its wisdom through beneficial legislation seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic, and elastic rather than rigid". This is also more illuminated when a particular power is conferred on an authority and that power seems to be abused or misused for reasons extraneous to the conferment and exercise of power as held by the Hon'ble Apex Court in Shri Sitaram Sugar Company Ltd. Vs. Union of India reported in 1990 (3) SCC 223. A power has been conferred on the State Government to declare equivalence of police forces. In 1991, it is not apparent for what reason, but since there was a statutory formation we will assume that the support of such statute was the reason for the state to declare equivalence. But in 1996, with the half hearted explanation, this equivalence was rescinded. We are not aware as to whether this rescindment was challenged or what we the effect if it was challenged. Pleadings are silent on this aspect. Therefore we may assume there was no challenge. Thereafter in 2008 and 2009 the matter seems to have cropped up again which resulted in order dated 1.10.2010. By order dated 1.10.2010 the State Government seems to have devised a methodology of bringing in equivalence despite the fact that if two arms of the force are to be held equivalent, those equivalence must be on the basis of universal and across the board considerations which are extant and not specific to certain individuals alone. If among two limbs of consideration equivalence can be brought in only through an artificial modality, then there is no equivalence at all as such artificial modality is not blessed by legal formations. It is not only so but against the salient principles of Art.14 which militates against the equals being brought in as unequal by artificial methodology. Therefore, the order dated 1.10.2010 is opposed to law, nations of good governance, constitutional matrix and are to be set aside. But then by order dated 21.7.2011 the Government has withdrawn the order dated 1.10.2010. ***The matrix of consideration seems to be yet another letter written by the DG of Police that there is functional difference between the several wings of the police, basically based on training and functional dissimilarity. But***

then, is the higher echelons of police force to be dedicated to investigators of crime alone or law and order specialists, or traffic regulators or such like. There is nothing in the Police Act which would confer any such requirement in police efficiency. Had that been so, the entire focus and content of Indian Police Service, its selection and methodology and career progression would have reflected this need. Administration, whether it be in Police or Civil Service is basically man management and structuring within the resources as anyone who has a reasonable knowledge of criminal law and prosecutorial method would knew the active investigators are police constables. They are basically guided by the immediate superiors the station house officers. IPS officers doubling as good investigators rather than administrators is hardly the rule. That being so, the Director General's letter which lead to the cancellation once again of the equivalence by order dated 21.7.2011 would appear to be bereft of reason and logic and is to be set aside as a result of non-application of mind and illegal. The training inputs which are available to a fresh IPS recruitee is available to an IPS promotee as well. The basic educational qualifications are the same for every one. They are all selected to the same selective process while it may be sometimes true that for obvious reasons persons in the cream of the selection may have opted for civil police force and the person lower down would have opted for other wings of the police based on merit or reservation as the case may be.

53. But then the statutory intention brought in by amendment dated 15.5.765 bringing in Section 3 which made a unified police force for the entire state of Karnataka and which when read in conjunction with other sections of the police act would make it clear that there is only one police force in Karnataka. While it is correct that the significance of this may have escaped administrative or judicial notice till now and it may also be said that the declaration of equivalence in 1991 may be even without adverting to the amendment but the fact remains that the statutory formation have made the Karnataka Police into one single unit and no government by executive order can transgress a statutory formation. Therefore, even without the declaration of equivalence in 1991, declaration in 2010, the declaration as made by the statute would reign supreme thereby making Karnataka Police one single unit.

54. Therefore comes the question of what next. For reasons more than many it may have been considered impossible in Karnataka to be promoted as an IPS Officer if one does not fall within the active police echelons unless you have god fathers to promote your cause. That the equivalence is already declared by statue and therefore, the State

Government had no role to play further had escaped administrative and judicial notice till now. All those persons who could have benefited from such universal declaration already existing past 1975 had sat back while rights concretized for others. What has been concretized by lack of due diligence on the part of others as held by the Hon'ble Apex Court enunciating the sit back rule cannot be brought back again. But the matrix of 2009 is open.

55. Thus following the interim order issued by the Tribunal which was modified by the Hon'ble High Court there has to be progressive initiatives following this finding. Therefore, we issue the following declarations:

(a) Because of the operation of Section 3 of the Karnataka Police Act, there exists only one single police force from 15.5.1975 onwards and the equivalence required under Regulation Rule 2 now stands satisfied.

(b) All the officers of Karnataka Police, in all streams of policing of the rank of Dy. SP and above with a minimum service of eight years as on the date pertinent to the batch of 2009 and less than 54 years of age at that point of time are now eligible to be considered for promotion into Indian Police Service.

(c) Since the resolution of the dispute was time consuming the time taken for such consideration shall not be considered as defeating the cause of anyone by either UPSC or any other authority under the government. All such persons who are eligible to be so considered shall be considered for the batch of 2009 and selection must be done in accordance with Rules in force.

56. On the basis of the above declarations the following directions are issued.

(a) The Chief Secretary of Karnataka State is directed to compile list of persons to be so considered in accordance with their seniority and compile a list of 21 persons to be considered and place them before the Committee before two months next.

(b) The Committee shall meet and consider and complete the process of selection within two months thereafter.

(c) All the selectees shall be of the 2009 batch and shall be entitled to all the consequences including arrears of pay and other notional benefits of being declared as being selected in the 2009 batch.

57. All the Original Applications are disposed on the above terms. No order as to costs.

Dated this the 7th day of December, 2011."

The basis of this decision was the dictum <u>"Legislature knowns what it does."</u>

8. Finally, we share what we might call an aspirational concept of law, which we often refer to as the ideal of legality or the rule of law. For us this aspirational

concept is a contested concept: we agree that the rule of law is desirable, but we disagree about what, at least precisely, is the best statement of that ideal. Some philosophers hold that the rule of law is a purely formal ideal: that legality is fully secured when officials are required to and do act only as established standards permit. Other philosophers argue for a more substantive conception of the ideal: they think that legality holds only when the standards that officials accept respect certain basic rights of individual citizens. The debate between these two views is the theoretical substrate of the long argument among American constitutional lawyers about whether the "due process" clauses of the Fifth and Fourteenth Amendments to our Constitution impose substantive as well as procedural constraints. Like the doctrinal concept, but unlike the sociological and taxonomic concepts, a great deal turns on what we take to be the correct conception of the aspirational concept. We need not ask, however, whether political morality is relevant to deciding what the best conception is. That just is a question of political morality. Thus the amendment brought in in 1975 is the result of active study and examination of the matter and after the findings of the Hon'ble High Court of Karnataka in the KPSC case which was upheld by the Hon'ble Apex Court, the contention of exclusive merit, even for later years is rather diminished.

9. We believe that any adequate account of the aspirational concept – of the values of legality and the rule of law – must give a prominent place to the ideal of political integrity, that is, to the principle that a state should try so far as possible to govern through a coherent set of political principles whose benefit it extends to all citizens. Recognizing and striving for that dimension of equality is, I think, essential to the legitimization of state coercive power. But other theorists who at the semantic stage agree with us that the doctrinal concept of law is an interpretive concept and also agree that we must find the general value of legal practice in the aspirational concept of legality might nevertheless defend very different accounts from mine of the values captured in that aspirational concept. They might well think, for example, that the political and social value of legal order lies in the ability of that order to facilitate citizens' planning and coordinate their activities in the interests of individual and collective efficiency. As the state had found after experience that a unified police force is necessary, there is no way by which it can be challenged…… ***It is not challenged also.***

10. This anatomy of a legal theory, which divides any full theory into semantic, jurisprudential, doctrinal, and adjudicative stages, is of course artificial: legal philosophers do not articulate their theories in this stylized way. But the artificial anatomy provides a useful schema for identifying and distinguishing a variety of types of legal theories. In this we begin with a theory that is both radial in the history of legal thought and of very great importance in contemporary legal practice. This theory has taken different forms and attracted different names. I shall call it "legal pragmatism."

11. Pragmatism is most easily and generally described as a theory of adjudication: it holds that judges should always decide the cases before them in a forward-looking, consequentialist style. They should make whatever decision is best for the community's future with no

regard for past practice as such. Any more precise version of pragmatism must specify some particular conception of consequentialism: it must specify how to decide which consequences of a decision would be best. This might be an act-utilitarian conception, which holds that individual political decisions should each aim to maximize the average expected welfare of a specified population according to some specified conception of welfare: happiness, for example, or desire-satisfaction. Or it might be a non-welfare conception that defines the best consequences in terms of economic efficiency or wealth maximization, for example.

12. In any case, a pragmatist judge must nevertheless accept instrumental constraints that require him to have an eye to what legislatures have enacted or what judges have decided in the past. These constraints are not exogenous to his chosen conception of best consequences but rather emerge from it. According to pragmatism, judges must on the whole obey the legislature and keep faith with past judicial decisions because the power of legislative and judicial institutions to coordinate future behavior is of great benefit in securing efficiency or any other goal, and that power would be undermined if judges characteristically ignored past declarations in new decisions. But there can be no other, less instrumental, constraints on what judges can do, so that when efficiency or some other community goal is actually better served by ignoring or rewriting past declarations, that is what a pragmatist judge should do.

13. The above order was challenged in Review in WP.No.3269/2012 and was disposed off on 25.04.2013 which we quote:

ORDER in WP No. 3269/2012 and others

All these writ petitions are preferred against the common Order passed by the Central Administrative Tribunal, Bangalore Bench, on Applications No.471/2010, 443/2010, 486/2010, 41/2011, 54/2011, 289/2011 and 294/2011. Therefore, they are taken up for consideration together and disposed off by this common order. FACTS OF THE CASE

2. For the purpose of convenience, the facts set out in O.A.No.471/2010 are set out as under:

The applicants in O.A.No.471/2010 are directly recruited as Deputy Superintendent of Police through Gazetted Probationers competitive examination conducted by the Karnataka Public Service Commission. The first applicant Sri.B.S.Lokesh Kumar was appointed on 15.03.1997, whereas Applicants 2 to 6

were recruited in the year 2006. The main police service in the State of Karnataka is Civil Police, which carries out the maintenance of law and order, investigation of crimes and mainly detection and prevention of crime. Apart from the main Police, there are other auxiliary police forces in the State of Karnataka such as (1) Karnataka State Reserve Police, (2) Armed Reserve and (3) Wireless Police. In the recruitment of Police Officer through gazetted probationers competitive examination, the persons who have scored more marks are allotted to the main police force and the persons who have scored lesser are allotted to Karnataka State Reserve Police and the auxiliary police force. There is no direct recruitment to the post of Superintendent of Police in the auxiliary police force, i.e., armed, reserve and wireless. In terms of the Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as 'IPS Regulations'), the applicants are entitled to be promoted to the cadre of Indian Police Service from the said cadre. As per Regulation 2(1)(j)(ii) of the IPS Regulations, Police service of a State means a member of which normally holds charge of a sub-division of a District for the purpose of police administration. The duties and responsibilities of a Sub-divisional Police Officer, i.e., Deputy Superintendent of Police are defined and enumerated in the Karnataka State Police Manual which include investigation of crime and maintenance of law and order apart from detecting and preventing crime. The IPS Regulation provides for promotion of Deputy Superintendent of Police who holds the charge of sub-division of Police Administration to the Indian Police Service, if he satisfies the conditions specified in the IPS Regulations. The duties and responsibilities of Assistant Commandants of Karnataka State Reserve Police are mainly that they would be in-charge of two or more companies of Reserve Police Force and they would be responsible for discipline, control and welfare of the Reserve Police. The Assistant Commandant would never carry out the duties and responsibilities of the Deputy Superintendent of Police (Civil) such as investigation of crime, maintenance of law and order and other duties. The duties of the Deputy Superintendent of Police (Armed Reserve) and the Deputy Superintendent of Police (Wireless) are maintaining the functions of Armed Reserve and Wireless respectively. They also would not carry out the functions of the Principal Police Force, Deputy Superintendent of Police (Civil) and they are not in-charge of any sub-division of a district.

3. The State of Karnataka issued Government Order No.DPAR 115 SPS 2010 dated 01.10.2010 by exercising its power under Regulation 2(1)(j)(ii) of the IPS Regulations declared that the other police services constituted by the State Government viz., Police Wireless, Karnataka State Reserve Police and Karnataka Armed Police and the officers in there auxiliary units not below the grade of Dy.Sp. viz., (i) Deputy Superintendent of Police (Wireless),

(ii) Assistant Commandant(KSRP) and (iii) Deputy Superintendent of Police(Armed) in these units are equivalent to that of Deputy Superintendent of Police (Civil) i.e. Principal Police Service for the purposes of promotion to IPS for the vacancies available for the year 2009 only, subject to their satisfying the conditions mentioned in the said Government Order. The applicants preferred Application No.471/2010 challenging the said Government Order on the ground that the said equivalence is issued on the basis of a letter to the Hon'ble Governor of Karnataka dated 26.05.2010. It is ultravires the provisions of Regulation 2(1)(j)(ii) of the IPS Regulations. Then, they have referred to in the application the proceedings of various committees constituted by the Government to consider the equivalence and how such recommendations made earlier also were subsequently

withdrawn. They contend that the impugned Order is the result of total non-application of mind in examining the matter as provided under Regulation 2(1)(j)(ii) of the IPS Regulations. Without recording the reasons, it has equated the Auxiliary Police Service to the Principal Police Service by issuing the impugned order which is wholly illegal and arbitrary. Therefore, they sought for quashing of the same. In fact, the police officers belonging to the auxiliary services also preferred Application No.443/2010 and 41 and 54/2011 challenging Condition Nos.2 and 3 stipulated in the said Government Order on the ground that they are arbitrary and impossible of performance and therefore, the said two conditions are to be struck down. During the pendency of the said applications, the Government passed an order dated 21.07.2011 withdrawing the Government Order dated 01.10.2010. Aggrieved by the said order, O.A.No.294/2011 as well as O.A.No.289/2011 are preferred by the police officers belonging to the auxiliary service.

4. The State filed its counter. They contend the number of vacancies in IPS promotion quota available as on 01.01.2010 are seven. Only five eligible officers of civil services are available for promotion to IPS against vacancies available in the year 2009. The present eligible officers are less than the available vacancies. As per the rules, for seven vacancies, the Government can send names of 21 eligible officers in the ratio of 1:3. But only five eligible in civil unit Officers are available who fulfill eligibility criteria for promotion to IPS. Therefore, on re-consideration of the entire matter relating to promotion of officers of non-civil police unit to the IPS, the Government took a view that the shortage of Civil Police Officers faced by the Government can be covered by including the officers of non-civil police units for promotion to IPS as recommended by Dr.P.S.Ramanujam Committee in the year 2000. Accordingly, the Government decided to declare the Auxiliary Police units as equivalent to Principal Police Services, i.e., Civil Services for the purpose of considering them for promotion to IPS along with the officers of the Civil unit. As per Rule 2(1)(j) of the IPS Regulations, the State Police Service for the purpose of promotion to IPS also includes any other below constituted police service in a State which is declared by State Government to be equivalent to police sub-division charge, i.e., Deputy Superintendent of Police (Civil) Post. Then, they have set out the procedure prescribed in the regulations for consideration for promotion to IPS which is not relevant for the purpose of this case. Then, they contend the rules give extensive powers to the State Government to declare any police service unit as equivalent to Principal Police Service (Civil Police) for the purpose of promotion to IPS, the officers of the non-civil police units are not below the rank of Deputy Superintendent holding charge of sub-division of a district and fulfils the eligibility criteria stipulated under the rules. Generally, the selection of State Police Service to IPS under the regulations against the IPS promotion quota as made from among eligible officers of the Civil Police Service (Principal Police Service). In the year 1991, Government Order dated 23.12.1991 was issued declaring the posts of Dy.S.P (Wireless), Assistant Commandant, KSRP and Dy.S.P (Armed) as equivalent to Dy.S.P (Civil) to facilitate inclusion of eligible officers of those auxiliary police service units also in the eligibility list for promotion to the IPS. Based on the said equivalence, one officer from each KSRP and Wireless Units was considered and selected to the IPS under the regulations. Subsequently, after receiving letters from the then D.G and I.G.P of rank of the officers of the Civil Police, who confine the selection of officers to Civil Police, the Government issued a Government Order dated 18.07.1996 and thereafter,

selection to IPS have been made only from among eligible officers of Civil Police Service. There were representations from officers on auxiliary police units to improve their service conditions such as recruitment method, promotion, seniority and also to consider them for inclusion in the eligibility list for promotion to IPS as shown in the year 1991. The committee headed by Sri.P.S.Ramanujam, the then A.D.G.P, was appointed. It has submitted its report to the Government on 22.06.2000. The said committee report was examined by the Committee constituted for the said purpose headed by the Chairmanship of Additional Chief Secretary to the Government on 25.09.2009, the selected officers of the Home Department and DPAR and a decision was taken that there was no necessity for inclusion of senior officers for being considered for promotion to IPS. However, when the number of eligible officers was less than the available vacancies, on re-consideration of the entire matter relating to promotion of officers of non-civil police units of the IPS, the Government took a view that the shortage of civil police officers faced by the Government can be covered by including the officers of non-civil police unit as recommended by Dr.P.S.Ramanujam Committee in the year 2000. Accordingly, the Government decided to declare the auxiliary police units as equivalent to Principal Police Service, i.e., Civil Service for the purpose of promotion along with the officers of the units. Thus, the Government Order dated 01.10.2010 came to be issued. Therefore, they contend, the said order is legal and valid.

5. After defending the said order dated 01.10.2010. they issued the order dated 21.07.2011 withdrawing the order dated 01.10.2010. When the said order dated 21.07.2011 was challenged before the Tribunal, they defended their action, by filing a reply contending that the equivalence order dated 01.10.10 came to be issued considering the acute shortage of police personnel in the principal police service. While issuing the said order dated 01.10.10, the concurrence of the Principal Secretary, Home Department was not sought. Consequently, Principal Secretary, Home Department, Government of Karnataka on coming to know about the said equivalence order dated 01.10.10. sent U.O. note dated 10.06.11 expressing his opinion that it is not proper to declare the auxiliary police force as equivalent to that of Dy.S.P (civil), which is a principal police service. Considering the opinion of the Secretary to the Government, Home Department, and the 2nd respondent in the matter of declaring equivalence of auxiliary police officers to that of principal police officers for the purpose of promotion of IPS, the impugned order dated 21.07.11 came to be issued.

6. They have set out in detail the relevant views, the basic course comprising of several theory subjects to be studied and the training which they have to undergo and contend that a comparison of the caption of Chapter-II and Chapter-X of the Karnataka Police Act, 1963 (for short hereinafter referred as an 'Act') unmistakably demonstrated that the police force which is constituted under Chapter-II of the said Act is totally different and distinct from State Reserve Police Force constituted under Chapter-X of the Act. Therefore, they contend that the contention of the applicants that the State Police Force is exclusively State Reserve Police Force established under Section 145 of the Act as one monopoly organisation answering description of the State Police Service under Regulation 2(1)(ii) even sans declaration of equivalence by the State Government is untenable. They further contend, it is a settled position of law that the authority which is competent to issue the order, has the power to withdraw or resume the same as provided under the provisions of general clauses act. With regard to the contention that there is nothing to show the change of circumstance that

warrants resume of equivalization order dated 01.10.10. It is submitted that the preamble portion of the impugned order itself is self explanatory which contains the circumstance which led to issue of the impugned order. The applicants were appointed to the Karnataka Reserve Police Service; they are not entitled to claim equivalence on par with the official who was appointed to the Karnataka Police Service i.e., Principal Police Service as mentioned in Schedule-I of the Gazetted Probationers Rules 1966. In view of the civil services of the State specified in Schedule-I to the Gazetted Probationers Rules, 1966, the applicants are not entitled to contend that auxiliary units are equivalent in all respects and therefore, they state that there is no substance in the said application and sought for dismissal.

7. The Tribunal by elaborate judgment held that the statutory intention brought in by amendment dated 15- 5-1976 by bringing in Section 3 in the Act which made a unified police force in the entire State of Karnataka and which when read in conjunction with other sections of the Police Act would make it clear that there is only one police force in Karnataka. While it is correct that the significance of this may have escaped administrative or judicial notice till now and it may also be said that the declaration of equivalence in 1991 may be even without adverting to the amendment but the fact remains that the statutory formation has made the Karnataka Police into one single unit and no government by executive order can transgress a statutory formation. Therefore, even without the declaration of equivalence in 1991, and a fresh declaration in 2010, the declaration as made by the statute would reign supreme thereby making Karnataka Police one single unit. Being aggrieved by the said order, these writ petitions are filed.

RIVAL CONTENTIONS

8. The learned Advocate General Sri S Vijayashankar contended that the Karnataka Police Act of 1963 operates in altogether a different sphere. It is nothing to do with the promotion of the Deputy Superintendent of Police to the cadre of IPS. The same is exclusively reckoned by the provisions of Indian Police Services (Recruitment) Rules, 1954 and The Indian Police Service (Appointment by Promotion) Regulations 1958 for the purposes of promotion of Deputy Superintendent of Police belonging to the State Police Force. It is the aforesaid Rules and Regulations framed under the All India Service Act of 1951 which are attracted and the provisions of Karnataka Police Act of 1963 have no application whatsoever. He also brought out the difference between the Deputy Superintendent of Police (Civil) and Assistant Commandant KSRP, Deputy Superintendent of Police (Arms) and Deputy Superintendent of Police (Wireless) and contended each post is constituted for a definite purpose and that is the reason why the Rules of 1954 specifically provide for the Principal Police Service of the State, a member of which normally holds charge of a sub-division or district for the purposes of police administration. The members of KSRP, Deputy Superintendent of Police (Arms) and Deputy Superintendent of Police (Wireless) neither hold the charge of a sub-division of the District nor are involved in the police administration. Having regard to the nature of the training imparted to

them and the nature of duties which they are expected to perform, they cannot be made equivalent to that of the Principal Police Service of the State under any such circumstances and therefore, he submits the Committee reports which are submitted, clearly make out that these duly constituted services which form part of the Police Force of the State can never be equated to the Principal Police Services of the State and therefore, they cannot be eligible to be considered to the cadre of IPS. It is in that context when by overlooking the aforesaid report, the order of an equivalence was given once, the Government realized the mistake and retraced the step and withdrew the earlier Government Order. So, no illegality is committed. Unfortunately, the Tribunal has not properly appreciated the scope of Rules and Regulations vis-a-vis the provisions of the Karnataka Police Act and the Tribunal came to the conclusion in view of Section 5 of 1963 Act, there is no need to declare any equivalence as the statute itself declares it, the finding which is contrary to the express provisions of the Act cannot be sustained.

9. Sri K. Subbarao, the learned Senior Counsel relying on the 3rd Proviso of Sub-rule (2) of Regulation 5 contended that in order to be eligible for inclusion in the list under Regulation 5 for promotion to the IPS Cadre, the conditions mentioned therein have to be fulfilled:

10. Secondly, he contended Section 3 of the Karnataka Police Act 1963 declares, there shall be one police force including the State Reserve Force established under Section 145 for the whole of the State. It means, in every State, there is the Principal Police Service. In addition to the same, there are other duly constituted police service functioning in the State such as KSRP, Wireless, CARP and other forces. The aforesaid Section declares, all of them put together constitute a single police force. It is nothing to do with promotion to the post of IPS cadre which is done under the Rules framed under a Central enactment.

11. Thirdly, he contended the KPSC conducts a common entrance examination for the Deputy Superintendent of Police (Civil) and Assistant Commandant of KSRP. However, the practice prevailing is, all meritorious persons whose name finds a place at the top of the list are allotted to Principal Police Force of the State and thus, whose name finds a place at the bottom of the list and who are less meritorious are assigned to the State Reserve Police Force.

12. Fourthly, he contended that the training imparted to these two different branches is altogether different as is clear from Annexure - 'R7', the reply given by the Director General of Police to the query from the Chief Secretary. Therefore, he submits, the other duly constituted Police Service in the State Police Service cannot be equated to the Principal Police Service of the State. In fact, when it was so equated, earlier, in view of the objections raised, a Committee was constituted. The Committee went in to detail and submitted a report stating the duties and functions performed by these two cadres are totally different and therefore equivalence was withdrawn. When the second time, in the year 2010, when again an equivalence was given, the said report of the Committee was ignored, which categorically held that there cannot be such equivalence. However, when the same was brought to the notice of the Government, the same is rightly withdrawn. Therefore, from the material on record, it is clear, the other duly constituted Police Services cannot be declared as equivalent to the Principal Police Service of the State.

13. Sri Udaya Holla, the learned Senior Counsel submitted, Chapter X of the Police Act deals with State Reserve Police. Section 144 is 'Definitions' Section. It defines "Active Duty". Section 148 of the Act deals with "Transfers". Therefore he contends, under the Act, recruitment to both these Forces, which has been made under different Cadre and Recruitment Rules, each one of them is distinct and separate cadre, the training imparted to the personnel of each cadre is altogether different, apart from these two cadres, the Act provides for other cadres also and all of them constitute a single Police Force. But for the promotion to the post of IPS, the law which governs is the Indian Police Service Recruitment Rules, 1954 and Rule 2(g)(ii) categorically states the State Police Force means the Principal Police Service of the State, a member of which normally holds charge of a sub-division or District for the purposes of police administration. The other forces constituted under the Act are not involved in the police administration or a sub-division merely because a power is vested in the State Government to treat such duly constituted police service as equivalent to Principal Police Service which cannot be said that the State Government is under an obligation to accord equivalence. When that being the Legislative intent, the Tribunal committed a serious error in ignoring the distinction between Police Service and Police Force as contained in Section 3 and declaring that even in absence of equivalence being accorded by the State, all those duly constituted police services form Principal Police Services of the State and are eligible to be considered for promotion of the IPS. The order passed by the Tribunal runs counter to the order passed by the State Government.

14. Sri Nanjunda Reddy, the learned Senior Counsel appearing for the petitioner submitted, Section 3of the Act declares, that for the entire State there shall be one Police Force. The equivalence has to be accorded by the State Government. The Tribunal has declared that all Police Force which constitute the single Police Force would be equivalent to each other without there being any material on record and which was not the intention of the Legislature while enacting the Karnataka Police Act, 1963. Therefore, the said declaration granted by the Court and the interpretation placed on Section 3 by the Tribunal runs counter to the object with which, the Karnataka Police Act, 1963 is enacted and also runs counter to the Provisions, Rules and Regulations framed under All India Police Service and therefore cannot be sustained.

15. Sri Ashok Haranahalli, learned senior counsel appearing for the respondents in these proceedings contended, in view of Section 3 of the Act, it declares that there shall be one police force including the State Reserve Police Force established under Section 145 for the whole of the State. There cannot be any discrimination between the police officers who are working under the civil police and the police officers who are working with the State Reserve Police Force who are governed by Chapter-X of the Act. He pointed out that Section 148(2) of the Act provides for transfer of a member of the police force appointed under Chapter-II to the State Reserve Police Force established under Chapter-X or vise-versa and on such transfer, the transferee shall deemed to be a member of the police force to which he transferred which clearly demonstrate the equivalence of the said two force and therefore, the tribunal was justified in holding, in the light of the aforesaid statutory provisions declaring equivalence, the order passed by the government, equivalence is superfluous.

16. Sri Krishna S.Dixit, learned counsel appearing for the respondent submitted that Section 2(g)(ii)confers power on the State Government to declare a service as

equivalent to the Principal Police service. Section 148 of the Karnataka Police Act provides for transfer of a member of the Police Force appointed under Chapter II of the State Reserve Police established under Chapter X and vice versa. Subs- Section (2) of Section 148 of the Act declares that on such transfer he shall be deemed to be a member of the Police Force to which he is transferred. Therefore, under law unless member of one Police Force is not suitable in the other Police Force, such transfer is not permissible and in view of the aforesaid provision when on transfer he becomes a member of such Police Force, in such cases no declaration in the First Part of the aforesaid statutory provision is necessary and this benefit is confined only to KSRP Personnel and it cannot be extended to other auxiliary police service. Therefore, the legislature in its wisdom vested the power of declaring equivalence with the State. If it is to be held that all other Police Forces within the State, as they are not performing the same duties and functions as that of the Principal Police Force, they cannot be equated, then such provision becomes redundant/otiose and such interpretation is not permissible in law. He further contended that in 1991 first declaration on equivalence of posts was made. Two persons had the benefit of becoming members of the IPS. There is no material on record to show that their performance in the highest post was detrimental to the service. Though subsequently One-Man Commission report was acted upon and the earlier order of equivalence was withdrawn, subsequently Four Men Committee was constituted which gave a report pleading for equivalence. Taking note of such report, 2010 order of equivalence has been issued and without reasons it has been now withdrawn. Therefore he submits, in the light of the aforesaid statutory provisions and in particular Section 3 of the Act and Section 148 of the Act as rightly held by the Tribunal, equivalence is statutorily recognized. Even otherwise, the report submitted by the Expert body favours such equivalence. Therefore, the order passed by the Tribunal do not call for interference.

17. Sri Ajoy Kumar Patil, learned counsel appearing for the respondent submitted that the order of equivalence passed by the Government will only enable the Police Officers working in the auxiliary service to come within the zone of consideration. Otherwise, they have been denied an opportunity of promotion to the cadre of IPS. However, the scheme of entire police Act is properly construed, one can see the equivalence of other cadres of Police Force being equal to the Principal Police Force. Because the other Police Force is not equal to the Principal Police Force, the law provides for declaration of equivalence by the State Government. Not being equal is different from not being capable of discharging duties in the promoted posts. Any interpretation contrary to the same would result in denial of equal opportunity and hit by Article 14(1) and 16(1) of the Constitution of India. In 1991, after carefully examining the scheme of the Act by a Government Order, equivalence was declared. With the change of Personnel, the said order came to be rescinded and again the matter was referred to the larger Committee which gave a favourable report. The second order of equivalence is based on such report and it is valid. The declaration of equivalence cannot depend upon the whims and fancies of the persons who are holding such posts at any particular point of time. Since the said post in equivalent, it cannot be rescinded. Under these circumstances, the order withdrawing equivalence is invalid and requires to be set aside. Therefore, he submitted that the Tribunal has not committed any illegality in passing the impugned order.

POINTS FOR CONSIDERATION

18. In the light of the aforesaid facts and rival contentions, the points that arise for consideration are as under:

(1) Whether the Government order dated 01.10.2010 is valid?

(2) Whether the Government order dated 21.07.2011 rescinding the earlier order is valid?

(3) Whether by operation of Section 3 of the Karnataka Police Act, 1963, equivalence required under the Regulations is satisfied. In other words, whether the Deputy Superintendent of Police (Wireless), Assistant Commandant (Karnataka State Reserve Police) and Deputy Superintendent of Police (Armed) are equivalent to that of Deputy Superintendent of Police (Civil) i.e., Principal Police Service, for the purpose of promotion to IPS to the vacancy available from the State Police Service?.

(4) Who is competent to decide the equivalence?, whether the Court can embark upon that exercise?

19. This case has chequered history of two decades. For a proper appreciation of the aforesaid points for consideration it is necessary to have a glimpse of the background of this case.

BACKGROUND OF THE CASE

20. The Director General and Inspector General of Police, Bangalore in his letter dated 14-06-1991 has stated that the posts of Deputy Superintendent of Police (Wireless), Assistant Commandant (Karnataka State Reserve Police) and Deputy Superintendent of Police (Armed) are equivalent to the post of Deputy Superintendent of Police (Civil), Karnataka State Police Service. Therefore, he recommended to declare the services of these three different units as equivalent to the Principal Police Service of the State for the purpose of promotion to IPS as per the provisions of the Indian Police Service (Appointment by Promotion) Regulations 1955. The Ministry of Home Affairs, Government of India in their letters stated that the State Government is competent to declare any duly constituted police services of the State for the purpose of Regulation 2(1) and rule 2(g) of the Indian Police Service (Recruitment) Rules, 1954. Accordingly, the Government by its order dated 23rd December 1991 declared under Rule 2 of the Indian Police Service (Appointment by Promotion) Regulation 1955, that the services of Karnataka State Reserve Police, wireless and Armed units are equivalent to the Principal Police Services or the State. The posts of Deputy Superintendent of Police (Wireless), Deputy Superintendent of Police(Armed) and Assistant Commandant (Karnataka State Reserve Police) are also declared as equivalent to the post of Deputy Superintendent of Police of the Principal Police Service of the State for the purpose of rule 5 of Indian Police Service (Appointment by Promotion) Regulation 1955. After such equalization, the President was pleased to appoint one Sri M.C.Narayana Gowda, a member of Karnataka State Reserve Police as Indian Police Service on probation, and to allocate him to the cadre of Karnataka under sub-rule (1) of rule 5 of the Indian Police Service (Cadre) Rules, 1954.

21. Subsequently, the Director General and Inspector General of Police, Karnataka by its letter dated 8- 2-1996 requested the Government to reconsider the matter and rescind the Government Order dated 23-12-1991 for the reason that this Government order declaring equivalence of posts in the Police Department will bring about an anamolous situation and will directly and indirectly effect the morale and efficiency of the force in the process. The

Director General of Police has explained the promotional opportunities of various cadres in the Police Service and how junior officers belonging to one cadre will get faster promotion and occupy the senior posts in the IPS, whereas the senior police officer in the Civil Police who are directly recruited as police sub-Inspectors and Deputy Superintendents of Police will be denied their only source of promotion to higher posts in the IPS. The Director General and Inspector General of Police requested the Government to constitute a Committee to consider the points which he has mentioned in his letter by taking into account the factors such as:

(i) Difference existing in the basic educational qualification for appointment;

(ii) Difference existing in training input;

(iii) Difference in job content;

(iv) Difference in the knowledge required during the service and field experience;

(v) Difference in orientation;

(vi) Demoralisation among State Civil Service officers who constitute the Principal Police service, owning to delay in promotions;

(vii) Exploring promotional opportunities for members of Auxiliary Police Services in their respective cadres namely Armed Reserve, KSRP, Wireless, etc.

(viii) The adverse effects on Police administration due to lack of Professional competence, experience and orientation in regular Police work by members of the Auxiliary Police Services, who will have to perform important executive police duties on their Induction in to IPS.

22. The State Government referred the matter to Sri Ramalingam, IPS (Retd.) One-Man Committee for Police reforms. The One-Man Committee submitted its report on 23-3-1996. The Committee opined that, since wireless is a technical cadre and officers of the wireless department are technically qualified to man the communication setup of the State, it is incongruous to technical officer equivalent to the regular police officer by virtue of recruitment, training and service officers of this cadre cannot fit in to the regular police hierarchy. However, there is no possibility of any wireless officer to be eligible for IPS under this rule in the near future, the Committee has opined that this order has no relevance with respect to this cadre. With regard to the cadre of Assistant Commandant in the KSRP, the Committee opines that since there are only 4 officers directly recruited in the cadre, their promotion in their own cadre to the higher ranks does not pose a serious problem as there are posts of commandants and Deputy Inspector General of Police available in the cadre. There is no direct recruitment in the cadre of Deputy Superintendent of Police in the Armed Police. The Committee, therefore, felt that the real stagnation is in the cadre of Principal Police Service i.e. Deputy Superintendent of Police(Civil). The Committee has made a comparative study of recruitment, training and experience in various cadres at the level of sub-

Inspectors, as also Civil Deputy Superintendent of Police and Assistant Commandants, KSRP. It opines that by training and experience, a Civil Police Officer is groomed to deal with the police duties were as the other cadres are not trained or experienced in such functions. This will have an adverse effect on the efficiency of the police and also service to the public. The Committee, has therefore, recommended to rescind the order of declaration of equivalence.

23. The Government examined the matter in detail. After careful consideration of all aspects of the case, the Government by its order dated 18-7-1996 rescinded the order dated 23-12-1991 declaring the posts of Deputy Superintendent of Police (Wireless), Assistant Commandant (KSRP) and Deputy Superintendent of Police (Armed) as equivalent to that of Deputy Superintendent of Police (Civil) is 'Rescinded' with immediate effect.

24. Thereafter a Committee was constituted to review the KSRP recruitment/promotions to IPS cadre in DGP's order dated 18-3-2000. The Committee met on 17-5-2000 and discussed the following points as such:

(a) Should recruitment at the level of Asst.

Commandant KSRP be continued?

(b) If yes, How the promotional opportunities of such officers who are directly recruited as Asst. Commandant can be improved.

(c) If no, what are the suggestions for the rules for promotion to the cadre of Commandants, Whether few of the posts to be encadered for IPS, few posts to be filled up by posting SP Non-IPS officers and how many should be for KSRP Officers.

(d) Are the officers other than from civil police such as Commandant KSRP/SP Armed SP (Wireless) SP (FPB) Or any other SPs other than civil police background be considered for IPS? If to be considered, what percentage to be reserved for them?

25. The Committee after deliberations took decisions on 18-3-2000 and it was of the opinion that the recruitment at the level of Assistant Commandant, KSRP should be discontinued. The avenues available for promotion for directly recruited Assistant Commandant of KSRP are limited. This results in officers joining at a young age as an Assistant Commandant getting frustrated after reaching the level of Commandant since hardly any chances are there for promotion to the next higher grades. The post Assistant Commandant should be filled up by promotion from the rank of RPI. The Committee was of the view that insofar as those Assistant Commandants who are directly recruited and now working in the KSRP are concerned, their cases can be considered for appointment to the IPS as it was done in the case of Sri M.C.Narayana Gowda. The Committee felt that at least one post should be encadered for IPS Officers, so that they can have experience of the functioning of a Battalion and they would not be handicapped when they go to Central Police Organisations like the CRPF, BSF and other Units where the Battalion structure exists. The post of Commandant should be basically filled up by eligible KSRP Officers by promotion. If due to any reason eligible KSRP officers are not available, then a provision is made in the draft Cadre and Recruitment Rules of KSRP that Non-IPS SPs can be posted as Commandant in KSRP. There is no need to reserve any number of posts of Commandants for specially posting Non-IPS Officers in the rank of SP as Commandant. The SPs (Non-IPS) could be posted as Commandant, KSRP only when there is no KSRP Officer who is eligible is available. Except one post of

Commandant which could be encadered for IPS all other posts of Commandants in KSRP should be available to KSRP Officers by promotion. If by chance, no eligible KSRP officer is available to KSRP Officer is available to fill that post then an officer in the rank of SP (Non-IPS) may be posted as Commandant in KSRP and that too only till such time as a KSRP Officer becomes eligible to hold that post. The Committee also felt that all Police Officers irrespective of their discipline in which they are working should be considered for induction into the IPS. It is felt that there need not be any separate quota for them. The quota permitted under the rules for the posts to be filled by promotion may be retained. It can come within this permitted quota.

26. The Director General and Inspector General of Police by its letter dated 04-08-2003 requested the Additional Chief Secretary and Principal Secretary to Government to consider the said report of the Committee and issue appropriate orders. By a letter dated 3-1-2009, the Director General and Inspector General of Police addressed a letter to the Chief Secretary bringing to his notice the report submitted by Dr. P. S. Ramanujam Committee and he expressed his opinion that the post of Deputy Superintendent of Police (Wireless), Deputy Superintendent of Police (Armed), the Assistant Commandant (KSRP) may be declared as equivalent to the Deputy Superintendent of Police(Civil) as existed in 1991 and officers working in the Auxiliary Services as Deputy Superintendent of Police (Wireless), Deputy Superintendent of Police (Armed), Assistant Commandant (KSRP) may be considered for IPS promotion. The Chief Secretary wrote back on 03.05.2009 requesting the Director General and Inspector General of Police to furnish information mentioned in the said letter. The Director General and the Inspector General of Police gave a reply which reads as under:

"Vide this office letter No.CBI/130/2008-09, dt. 3.1.2009, a proposal was sent to Govt., recommending appointment on promotion, officers of auxiliary service of Police Department to the IPS. This was based on the recommendation of Dr. P. S. Ramanjunam made during the year 2000. subsequent to this report, a number of representations were received from various officers requesting to review the recommendations. The recommendations have been reviewed. It is seen that an earlier committee appointed by the Govt., on the same subject, has not recommended inclusion of Auxiliary services to IPS. The available material in the subject has also been studied. On the grounds of available materials and experience, we are not in favour of promotion of Auxiliary services to IPS....."

27. The said report submitted by the Director General and Inspector General of Police dated 11-5-2009 was placed before the Committee consisting of Additional Chief Secretary to Government, Additional Chief Secretary to Government (Home Department), Director General and Inspector General of Police and Secretary to Government, Department of Personnel and Administrative Reforms on 20- 5-2009. After examining the report, the Committee noted that the training imparted to the Civil Dy. SP officers and their functions are quiet different from the ones given to non civil police officers. In other States, the Dy. SPs from auxiliary police service are being considered for induction to IPS. After deliberation it was decided that there was no need to consider the Group 'A' officers of non-civil police units viz.,KSRP, Wireless, Armed Police and Finger Print Bureau for promotion to the IPS, along with the officers of Principal Police Service viz civil Dy.SP officers.

GENESIS OF THE PRESENT WRIT PETITION

28. One K.C.Venkatarao Mane, Deputy Superintendent of Police (Armed) who was working as SP and ADC to Governor of Karnataka addressed a letter to His Excellency Governor of Karnataka on 26th May 2010 to direct the Government to convert his promotion as Dy.SP (Civil) from the existing Dy.SP (Armed) from the date of his promotion i.e. from 05-11-1997 as a special case considering his outstanding performance and also to consider his name for promotion to the cadre of IPS before his age gets barred by limit. Thereafter, the report was sought for on such request. Thereafter the Government was of the view that as at present, there is acute shortage of Police Personnel in the main police service both in IPS and Non-IPS cadres and also there is acute shortage of eligible State Police Officers for considering promotion to IPS. During the year 2009, there are not enough officers to meet the requirement of the zone of consideration for promotion in the principal state police service against vacancies in IPS Promotion quota occurred during the year 2009. Therefore, the State Government has examined the need for considering officers of other units also viz., auxiliary police units for promotion to IPS during this year, as provided in the Regulations, 1955. After detailed consideration, it was considered necessary to declare eligible officers of such auxiliary Police Units with distinguished service to be equivalent to the principal state police service. It was considered necessary to consider only such of the officers of outstanding merit and ability and who have rendered distinguished service in the police auxiliary services for promotion to IPS, in order to maintain the standard of policing in the State. Therefore, by an order dated 01-10- 2010, the State Government in exercise of its powers conferred under Regulation 2(1)(j) of the Indian Police Service (Appointment by Promotion) Regulations, 1955 declared that the other police services constituted by the State Government viz., Police Wireless, Karnataka State Reserve Police and Karnataka Armed Police and the officers in these auxiliary units not below the grade of Deputy Superintendent of Police viz., (i) Deputy Superintendent of Police (Wireless), (ii)Assistant Commandant (KSRP) and

(iii)Deputy Superintendent of Police (Armed) in these units are equivalent to that of Deputy Superintendent of Police (Civil) i.e. Principal Police Service for the purposes of promotion to IPS for the vacancies available for the year 2009 only. However, notwithstanding the above equivalence, it is also ordered that only eligible officers of outstanding merit and ability with distinguished service in these auxiliary police units of State Police Services shall be considered for promotion to IPS. The said Government order reads as under:

GOVERNMENTORDER NO.DPAR 115 SPS 2010 BANGALORE ,DATED 01.10.2010.

In the circumstances explained in the preamble, the State Government in exercise of powers conferred under regulation 2(1)(j) of the Indian Police Service (Appointment by Promotion) Regulations, 1955, hereby declare that the order police services constituted by the State Government viz., Police Wireless, Karnataka State Reserve Police and Karnataka Armed Police and the officers in these auxiliary units not below the grade of Dy.Sp. viz., (i) Deputy Superintendent of Police (Wireless), (ii) Assistant Commandant (KSRP) and (iii) Deputy Superintendent of Police (Armed) in these units are equivalent to that of Deputy Superintendent of Police (Civil) i.e. Principal Police Service for the purposes of promotion to IPS for the vacancies available for the year 2009 only.

However, notwithstanding the above equivalence, it is also ordered that only eligible officers of outstanding merit and ability with distinguished service in these auxiliary police units of State Police Services shall be considered for promotion to IPS and for this purpose the officers proposed shall fulfill the following criteria;-

(i) They should have completed at least 08 years of service in the grade of Deputy Superintendent or equivalent grade.

(ii) They must have consistently 'outstanding' or 'very good' grading in the last 08 years Annual Performance Reports.

(iii) They should be recipients of the President of India's Medal for the meritorious service and Police Medal for the distinguished service.

The Principal Secretary to Government, Home Department shall determine the interse seniority of eligible and suitable officers of these Auxiliary units vis-à-vis interse seniority of civil police for the purpose of including them in the eligibility list and send Suitable proposals to DPAR in respect f eligible and suitable Officers of civil police and auxiliary units who meet the eligibility criteria.

BY ORDER AND IN THE NAME OF THE GOVERNOR OF KARNATAKA Sd/-

(ASHOK K. ATRE) Under Secretary to Government DP&AR (Services-4)

29. The members of the Civil Police challenged the said order of granting equivalence and the members of the auxiliary units also preferred an Application before the Central Administrative Tribunal challenging two conditions

(ii) and (iii) set out above which are imposed on them for being eligible to be considered for promotion. During the pendency of the said application, the Government of Karnataka by its order dated 21st July 2011 rescinded the order dated 01-10-2010. The said Government Order reads as under:

GOVERNMENT ORDER NO.DPAR 115 SPS 2010 BANGALORE, DATED 21ST JULY, 2011 After careful consideration of all aspects of the case explained in the preamble, the Government Order No.DPAR 115 SPS 2010, dated 1.10.2010 declaring the posts of Deputy Superintendent of Police (Wireless), Assistant Commandant (KSRP) and Deputy Superintendent of Police (Armed) as equivalent to the Deputy Superintendent of Police (Civil) i.e., Principal Police Service for the purpose of promotion to IPS under the IPS (Appointment by Promotion) Regulations, is 'Rescinded' with immediate effect.

BY ORDER AND IN THE NAME OF THE GOVERNOR OF KARNATAKA Sd/-

(ASHOK K. ATRE) Under Secretary to Government DP&AR (Services-4)"

30. Aggrieved by the said order, the members of the auxiliary units preferred one more Application challenging the said order. All these applications were clubbed, heard together and the Tribunal has passed the common order, impugned herein.

31. The Tribunal held that by order dated 01.10.10, the State Government seems to have devised the methodology of bringing in equivalence despite the fact that if two arms of force are to be held equivalent, those equivalence must be on the basis of universal and across the board considerations which are extant and not specific to certain individuals alone. If among two limbs of consideration equivalence can be brought in only through an artificial modality, then there is no equivalence at all, as such artificial modality is not blessed by legal formations. It

is not only so but against the salient principles of Article 14 which militates against the equals being brought in as unequals by artificial methodology. Therefore, the order dated 01.10.10 is opposed to law. Notions of good governance, constitutional matrix and are to be set aside. But then by order dated 21.07.2011 the Government has withdrawn the order dated 01.10.2010. The matrix of consideration seems to be yet another letter written by the DG of Police that there is functional difference between the several wings of the police, basically based on training and functional dissimilarity. But then, is the higher echelons of police force to be dedicated to investigators of crime alone or law and order specialists, or traffic regulators or such like. There is nothing in the Police Act which would confer any such requirement in police efficiency. Had that been so, the entire focus and content of Indian Police Service, its selection and methodology and career progression would have reflected this need. Administration, whether it be in Police or Civil Service is basically man management and structuring within the resources as any one who has a reasonable knowledge of criminal law and prosecutorial method would knew the active investigators are police constables. They are basically guided by the immediate superiors the station house officers, IPS officers doubling as good investigators rather than administrators is hardly the rule. That being so, the Director General's letter which lead to the cancellation once again of the equivalence by order dated 21.07.2011 would appear to be bereft of reason and logic and is to be set aside as a result of non-application of mind and illegal.

32. However the Tribunal held that the equivalence is already declared by statute and therefore, the State Government had no role to play further had escaped administrative and judicial notice till now. Therefore, it proceeded to issue declaration to the effect that:-

(a) Because of the operation of Section 3 of the Karnataka Police Act, there exists only one single police force from 15-5-1975 onwards and the equivalence required under Regulation Rule 2 now stands satisfied.

(b) All the officers of the Karnataka Police in all streams of policing of the rank of Dy.SP and above with a minimum service of eight years as on the date pertinent to the batch of 2009 and less than 54 years of age at that point of time are now eligible to be considered for promotion into Indian Police Service.

(c) Since the resolution of the dispute was time consuming the time taken for such consideration shall not be considered as defeating the cause of anyone by either UPSC or any other authority under the government. All such persons who are eligible to be so considered shall be considered for that batch of 2009 and selection must be done in accordance with Rules in force.

33. Therefore, the Chief Secretary of Karnataka was directed to compile a list of persons to be so considered in accordance with their seniority and compile a list of 21 to be considered and place them before the Committee before two months next. A direction was given to the Committee to consider the process of selection within two months thereafter. All the selectees shall be of the 2009 batch and shall be entitled to all the consequences including arrears of pay and other notional benefits of being declared as being selected in the 2009 batch. All the original applications are disposed of. Aggrieved by the said order, the members of Civil Police as well as the State Government have preferred these writ petitions.

STATUTORY PROVISIONS

34. The Parliament has enacted All India Services Act, 1951 for regulation of

recruitment and the conditions of services of persons appointed, to the All India Services common to the Union and the States. Section 3 deals with the Regulation of recruitment and conditions of service. It provides that the Central Government may, after consultation with the Governments of the States Concerned, by notification in the official Gazette make rules for the regulation of recruitment, and the condition service of persons appointed, to All India Service. The expression "an All India Service" has been defined to mean that the service known as the Indian Administrative Service or the service known as the Indian Police Service and other service specified in Section 2A.

35. In exercise of power conferred by sub-Section (1) of Section 3 of the All India Services Act, 1953, the Central Government after consultation with the Governments of States concerned has made the Indian Police Service (Recruitment) Rules 1954. Rule 2 is the definition Rule. The word "service" in the said Rules means the Indian Police Service, whereas the "State Police Service" has been defined as under:

(i) for the purpose of filling vacancies in the Indian Police Service Cadre for the Arunachal Pradesh, Goa, Mizoram, Union territories under Rule 9, any of the following service, namely:-

(a) the Delhi, Andaman and Nicobar Islands Police Service;

(b) The Goa Police Service;

(c) The Police Service;

(d) The Pondicherry Police Service;

(e) The Arunachal Pradesh Police Service;

(ii) in all other cases, the Principal Police Service of a State, a member of which normally holds charge of a sub-division of a district for purposes of Police Administration and includes any other duly constituted police services functioning in a State which is declared by the State Government to be equivalent thereto.

36. Rule 6 provides for appointment to the service whereas Rule 9 provides for recruitment by promotion. Rule 9 reads as under:

"9.Recruitment by promotion.- (1) Central Government may, on the recommendation of the State Government concerned and in consultation with the Commission, recruit to the Service persons by promotion, from amongst the substantive members of a State Police in accordance with such regulations as the Central Government may, after consultation with the State-Governments and the Commission, from time to time, make.

(2) The number of persons recruited under sub-rule (1) in any State or group of States shall not, at any time, exceed 33-1/3 per cent of the number of senior posts under the State Government, Central deputation reserve, State deputation reserve and the training reserve in relation to that State or to the group of States in the

schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955.

Explanation.- For the purpose of calculation of the posts under the sub-rule fraction if any are to ignored.

(3) Notwithstanding anything contained in this rule, in relation to the State of Jammu and Kashmir, the number of persons recruited under sub-rule (1) shall not, upto the 30th April, 2002 exceed at any time fifty percent of the number of senior posts under the State Government, Central deputation reserve, state depuration reserve and the training reserve in relation to that State in the Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955.

(xxxx)

37. In pursuance of sub-Rule (1) of Rule 9 of the Indian Police Service (Recruitment) Rules 1954, the Central Government in consultation with the State Governments and the Union Public Service Commission has made Indian Police Service (Appointment by Promotion) Regulations 1955. In this regulation also definition of the "Service" as well as the "State Police Service" as contained in the aforesaid Rules is retained.

38. Regulation 5 deals with the preparation of list of suitable officers, which reads as under:

"5. Preparation of list of suitable officers –

(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service, as held by them to the suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under Rule 9 of the Recruitment Rules. The date and venue of the meeting of the Committee to make the Selection shall be determined by the Commission:

Provided that no meeting of the Committee shall be held, and no list for the year in question shall be prepared when-

(a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under Rule 9 of the Recruitment Rules; or

(b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under Rule 9 of the Recruitment Rules; or

(c) the Commission, on its own or on a proposal made by either the Central Government or the State Government, after considering the facts and circumstances of each case, decides that it is not practicable to hold a meeting of the Committee to make the selection to prepare a Selection List.

Explanation.- In the case of joint cadres, a separate Select List shall be prepared in respect of each State Police Service.

(2) The Committee shall consider for inclusion in the said list, the cases of members of the State Police Service in the order of seniority in that service of a number which is equal to three times the number referred to in sub-regulation (1):

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers:

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in the sub- regulation (3) shall be excluded:

Provided also that the Committee shall not consider the case of a member of the State Police Service unless on the first day of January of the year in which it meets he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government :

Explanation.- The powers of the State Government under the third proviso to this Sub- regulation shall be exercised in relation to the members of the State Civil Service of a constituent State, by the Government of the State.

(2-A) (xxxxx) (3) The Committees shall not consider the cases of the Members of the State Police Service who have attained the age of (54 years) on the (first day of January) of the year in which it meets:

Provided that a member of the State Police Service whose name appears in the Select List in force immediately before the date of the meeting of the Committee and who has not been appointed to the Service only because he was included provisionally in Select List shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile attained the age of fifty-four years.

Provided further that a member of the State Police Service who has attained the age of fifty- four years on the first day of January of the year in which the Committee meets shall be considered by the Committee if he was eligible for consideration on the first day of January of the year or of any of the years immediately proceeding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years."

39. Thus Regulation 9 provides for recruitment/promotion. A conjoint reading of Rule 9 with Regulation 5 makes it clear that in order to be eligible for promotion firstly a member of the State Police Service must be in a substantive post in the State Police Service. Secondly, he should not have completed 54 years on the 1st day of January of the year in which the Committee meets. He should have completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police. Thirdly, if a person does not belong to the Principal Police Service of the State, then he should have completed eight years of continuous service after the post held by him is declared as equivalent thereto by the State Government. Once a person who possesses these qualification, a list of such members of the State Police Service as held by them to be suitable for promotion to the service could be prepared. The number of members of the State Police Service to be included in

the list shall be determined by the Central Government in consultation with the State Government concerned. However, it shall not exceed the number of substantive vacancies as on the 1st day of January of the year in which the meeting is held. The number of persons to be recruited under Sub-Rule (1) of Rule 9 of the Rules shall not at any time exceed 33 1/3rd of the number of those posts as shown against items 1 and 2 of the cadre in relation to the State in the Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955.

40. The definition of "State Police Service" makes it clear that in cases not falling under sub clause (1) of clause (j) of Section 2, the State Police Service means, the Principal Police Service of the State, a member of which normally holds charge of a sub-division of a district for purposes of police administration. Normally it is the Deputy Superintendent of Police (Civil) who is the Police Officer who holds charge of a sub-division of a district for the purpose of police administration. Therefore, they are automatically entitled to be considered under the Regulation for being considered for selection to IPS cadre in the Indian Police Service. Further the said provision makes it clear who are the persons who do not belong to Principal Police Service who are also eligible for being included in the list for consideration for such promotion. It provides, a police officer working in any other duly constituted police service functioning in a State is also eligible for such consideration. However, before such person is considered for promotion, the requirement is, the State Government has to declare the said post held by the police officer as equivalent to the principal police service of the State. Without such declaration, the police officer who does not belong to the principal police service of the State is ineligible for being considered to be listed for consideration of promotion to the IPS.

CASE LAW

41. The learned Counsel appearing for the parties have relied on several judgments with reference to declaration of equivalence of posts:

The Apex court in the case of T.VENKATESWARULU v/s EXECUTIVE OFFICER, TIRUMALA TIRUPATHI DEVASTHANAMS AND OTHERS reported in (2009) 1 SCC 546 has held as under:

"25. It is well settled that equation of posts and determination of pay scales is the primary function of the execution and not the judiciary and, therefore, ordinarily courts do not enter upon the task of job evaluation which is generally left to expert bodies as several factors have to be kept in view while evolving a pay structure. Being a complex matter, the court will interfere only if there is cogent material on record to come to a firm conclusion that a grave error has crept in such an exercise and court's interference is absolutely necessary to undo the injustice being caused. The crucial factor to be established is not only the functional parity of the two cadres, but also the mode of recruitment, qualification and the responsibilities attached to the two offices. All this information is necessary to analyse the rationale behind the State action in giving different treatment to two classes of its employees and then determine whether or not an invidious discrimination has been practiced."

42. In the case of STATE OF JAMMU AND KASHMIR v/s SHRI TRILOKI NATH KHOSA AND OTHERS reported in (1974) 1 SCC 19, the Apex court has

held as under:

"29. This argument, as presented, is attractive but it assumes in the Court a right of scrutiny somewhat wider than is generally recognized. Article 16 of the Constitution which ensures to all citizens equality of opportunity in matters relating to employment is but an instance or incident of the guarantee of equality contained in Art.14. The concept of equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment from appointment through promotion and termination to the payment of gratuity and pension. But the concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment.

30. Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of another.

31. Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

32. Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object.

33. Judged from this point of view, it seems to us impossible to accept the respondent's submission that the classification of Assistant Engineers into degree-holders and diploma- holders rests on any unreal or unreasonable basis. The classification, according to the appellants, was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly co-related to it, for higher educational qualifications are at least presumptive evidence of a higher mental equipment. This is not to suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively higher educational qualifications but that is beside the point. What is relevant is that the object to be achieved here in not a mere pretence for an indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend."

43. In the case of DILIP KUMAR AND ANOTHER v/s STATE OF UTTAR PRADESH AND OTHERS reported in (2009)4 SCC 753, the Apex Court has held as follows:

"8. In State of J & K V. Triloki Nath Khosa the rule which provided that only degree-holders in the cadre of Assistant Engineers shall be entitled to be

considered for promotion to the next higher cadre of Executive Engineers while the diploma- holder Assistant Engineers were not eligible for such promotion was challenged as violative of Article 14.However, the Constitution Bench of this Court repelled this challenge and observed that though the persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for the purpose of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications.

9. However, in Mohd.Shujat Ali V. Union of India another Constitution Bench of this Court struck a different note and observe3d that for promotion to a higher post, discrimination based on educational qualifications not obligated by the nature of duties or responsibilities of the higher post would be violative of Article 14 of the Constitution.

10. In Roop Chand Adlakha v. DDA this Court while taking a note of T.N.Khosa case and Mohd. Shujat Ali case observed in AIR para 7 as under: (Roop Chand Adlakha case, SCC p.123 para 18).

"18. ... If the differences in the qualification have a reasonable relation to the nature of duties and responsibilities, that go with and are attendant upon the promotional post, the more advantageous treatment of those who possess higher technical qualifications can be legitimized and the doctrine of classification. There may, conceivably, be cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of candidates as against another. Whether the classification is reasonable or not must, therefore, necessarily depend upon facts of each case and the circumstances obtaining at the relevant time. When the State makes a classification between two sources, unless the vice of the classification must shown that it is unreasonable and violative of Article 14. A wooden equality as between all classes of employees irrespective of all distinctions or qualifications, or job requirements is neither constitutionally compelled nor practically meaningful. This Court in South Central Railway v. A.V.R.Siddhantti SCR at p.214: AIR at p.1760 observed (SCC p.343, para 20)

"20..... A wooden equality as between all classes of employees regardless of qualifications, kind of jobs, nature of responsibility and performance of the employees is not intended, nor is it practicable if the administration is to run. Indeed, the maintenance of such a "classes" and undiscerning "equality" where, in reality, glaring inequalities and intelligible differentia exist, will deprive the guarantee of its practical content. Broad classification based on reason, executive pragmatism and experience having a direct relation with the achievement of efficiency in administration, is permissible' ."

44. In P.Murugesan v. State of T.N. this Court held up the validity of the rule prescribing the ratio of 3:1 between graduates and diploma-holders in promotion as also the longer qualifying period for service for diploma-holders. While noting the earlier decisions a three-Judge Bench of this Court observed: (SCC p.350, para 14) "14. This decision clearly supports the appellants' contention and goes to sustain the validity of the impugned amendment. If the diploma-holders can be barred altogether from promotion, it is difficult to appreciate how and why is the rule-making authority precluded from restricting the promotion. The rule-making authority may be of the opinion, having regard to the efficiency of the administration and other diploma-holders from promotion altogether, their chances of promotion should be restricted. On principle, there is no basis for the

contention that only two options are open to a rule-making authority - either bar the diploma-holder altogether or allow them unrestricted promotion on par with the graduates."

15. In our opinion Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a court of appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions. (See Union of India v. Pushpa Rani and Official Liquidator v. Dayanand)

16. The decision to treat all Junior Engineers, whether degree-holders or diploma- holders, as equals for the purpose of promotion is a policy decision, and it is well settled that this Court should not ordinarily interfere in policy decisions unless there is clear violation of some constitutional provision or the statute. We find no such violation in this case.

45. The Constitution Bench of the Apex Court in the case of E.P.ROYAPPA v/s STATE OF TAMIL NADU AND ANOTHER reported in AIR 1974 SC 555 at paragraph 82 has held as under:

"82. The Government must apply its mind to the nature and responsibilities of the functions and duties attached to the non-cadre post and determine the equivalence. There the pay attached to the non-cadre post is not material. As pointed out by the Government of India in a decision given by its in MHA letter No.32/52/56-AIS(II) dated 10th July 1956 the basic criterion for the determination of equivalence is "the nature and responsibilities of duties attached to the post and not the pay attached to the post". Once the declaration of equivalence is made on a proper application of mind to the nature and responsibilities of the functions and duties attached to the non-cadre post, sub-r. (2) says that the pay of the member of the India Administrative Service appointed to such non-cadre post shall be the same as he would have been entitled to, had he been appointed in the cadre post to which such non-cadre post is declared equivalent. He is thus assured the pay of the equivalent cadre post and his pay is protected. Now this declaration of equivalence, though imperative is not conclusive in the sense that it can never be questioned. It would be open to a member of the Indian Administrative Service to contend, notwithstanding the declaration of equivalence, that the non-cadre post to which he is appointed is in truth and reality inferior in status and responsibility to that occupied by him and his appointment to such non-cadre post is in violation of Art.311 or Arts.14 and 16. The burden of establishing this would undoubtedly be very heavy and the court would be slow to interfere with the declaration of equivalence made by the Government. The Government would ordinarily be the best judge to evaluate and compare the nature and responsibilities of the functions and duties attached to different posts with a view to determining whether or not they are equivalent in status and responsibility and when the Government has declared equivalence after proper application of mind to the relevant factors, that court would be most reluctant to venture into the uncharted and unfamiliar field of administration and

examine the correctness of the declaration of equivalence made by the Government. But where it appears to the court that the declaration of equivalence is made without application of mind to the nature and responsibilities of the functions and duties attached to the non-cadre post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and responsibilities of the functions and duties of the two posts are so dissimilar that no reasonable man can possibly say that they are equivalent in status and responsibility or the declaration of equivalence is mala fide or in colourable exercise of power or it is cloak for displacing a member of the Indian Administrative Service from a cadre post which he is occupying, the court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant. The declaration of equivalence must, however, always be there if a member of the Indian Administrative Service is to be appointed to a non-cadre post. The only exception to this rule is to be found in sub-r.(4) and that applies where the non-cadre post is such that it is not possible to equate it with any cadre post. Where the Government finds that the equation is not possible, it can appoint a member of the Indian Administrative Service to a non-cadre post but only for sufficient reasons to be recorded in writing. This again shows that the Government is required to apply its mind and make an objective assessment on the basis of relevant factors for determining whether the non-cadre post to which a member of the Indian Administrative Service is sought to be appointed can be equated to a cadre post, and if so, to what cadre post it can be so equated. This is the plain requirement of R.9, sub-r.(1) and the question is whether the appointment of the petitioner to the non-cadre posts of Deputy Chairman, State Planning Commission and Officer on Special Duty was in compliance with this requirement."

46. The Apex Court in the case of S.B.MATHUR AND OTHERS Vs. HON'BLE THE CHIEF JUSTICE OF DELHI HIGH COURT AND OTHERS reported in AIR 1988 SC 2073, dealing with the question under what circumstances certain posts could be treated as equated posts or equal status posts held as under :-

11. The first submission of Mr. Thakur, learned Counsel for the petitioners is that there is a violation of Article 14 of the Constitution in treating the posts of Superintendents, Court Masters or Readers and Private Secretaries to the Judges as equal status posts. It was urged by him that the sources of recruitment to these posts were not identical and so also the qualifications required for appointments to these posts. He also pointed out that the duties of the incumbents of these posts were different. It was submitted by him that in treating these posts as equal status posts unequals were treated equally and hence the rule of equality was violated. In appreciating this submission, it must be borne in mind that it is an accepted principle that where there is an employer who has a large number of employees in his service performing diverse duties, he must enjoy a certain measure of discretion in treating different categories of his employees as holding equal status posts or equated posts, as questions, of promotion or transfer of employees inter se will necessarily arise for the purpose of maintaining the efficiency of the organisation. There is, therefore, nothing inherently wrong in an employer treating certain posts as equated posts or equal status posts provided that, in doing so, he exercises his discretion reasonably and does not violate the principles of equality enshrined in Articles 14 and 16 of the Constitution. It is also clear that for treating certain posts as equated posts or equal status posts, it is not necessary that the holders of these posts must perform completely the same functions or that the sources of recruitment to the posts must be the same nor is it essential that

qualifications for appointments to the posts must be identical. All that is reasonably required is that there must not be such difference in the pay-scales or qualifications of the incumbents of the posts concerned or in their duties or responsibilities or regarding any other relevant factor that it would be unjust to treat the posts alike or, in other words, that posts having substantially higher pay-scales or status in service or carrying substantially higher responsibilities and duties or otherwise distinctly superior are not equated with posts carrying much lower pay--scales or substantially lower responsibilities and duties or enjoying much lower status in service"

47. The Apex Court in the case of S.I.ROOPLAL AND ANOTHER Vs. LT. GOVERNOR THROUGH CHIEF SECRETARY, DELHI AND OTHERS reported in JT 1999 (9) SC 597, dealing with the question of equivalency of posts has held as under : -

"17. ..... Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than 'Pay' will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc. It is so held by this Court as far back as in the year 1968 in the case of Union of India and another v. P.K. Roy and ors (1986 2 SCR 186). In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors are : (i) the nature and duties of a post, (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criterion. If the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different, would not in any way make the post 'not equivalent'. In the instant case, it is not the case of the respondents that the first three criteria mentioned hereinabove are in any manner different between the two posts concerned. Therefore, it should be held that the view taken by the tribunal in the impugned order that the two posts of Sub-Inspector in the BSF and the Sub-Inspector (Executive) in Delhi Police are not equivalent merely on the ground that the two posts did not carry the same pay-scale, is necessarily to be rejected....."

24. Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State should only play the role of an impartial employer in the inter-se dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly. Still if the matter is dragged to a judicial forum, the State should confine its role to that of an amicus curiae by assisting the judicial forum to a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The matter thereafter should be left to the parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgment, files review petition, appeal etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, we feel the respondent has taken more than necessary interest which is uncalled for.

This act of the State has only resulted in waste of time and money of all concerned."

48. The Apex Court in the Case of VICE-CHANCELLOR, L.N. MITHILA UNIVERSITY Vs. DAYANANDA JHA reported in AIR 1986 SC 1200 dealing with the equivalence of posts, held as under:-

"8. The pre-requisite of the power of the Vice-Chancellor under Section 10(14) of the Act to transfer any teacher occupying a post in any department or college maintained by the University to any equivalent post in another department or college maintained by it is that they must, broadly, bear the same characteristics. The mere circumstance that the two posts are carried on the same scale of pay is not enough. That is because in the original text of the Amendment Act the words used in Section 10(14) as well as in the expression 'other equivalent post' as defined in Section 2(ka, chh) are 'Samakaksh Pad'. Learned counsel for the respondent is therefore right in contending that equivalence of the pay-scale is not the only factor in judging whether the post of Principal and that of Reader are equivalent posts. We arc inclined to agree with him that the real criterion to adopt is whether they could be regarded of equal status and responsibility, The term 'teacher' is defined in Section 2 (ka chh) (S.2(ba)) to include Principal, University Professor, College Professor, Reader, Lecturer etc. Professors of the University like head of the department, College Professors, Readers, Lecturers belong to different grades and discharge different duties and responsibilities. The power of the Vice-Chancellor to transfer any teacher under Section 10(14) is controlled by the use of the word 'Samakaksh' and he can not transfer any teacher from one post to another in a department of the university or a college unless they belong to the same class. In that view, there can be no doubt that the two posts of Principal and Reader cannot be regarded as of equal status and responsibility. The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts. Although the two posts of Principal and Reader are carried on the same scale of pay, the post of Principal undoubtedly has higher duties and responsibilities. Apart from the fact that there are certain privileges and allowances attached to it, the Principal being the head of the college has many statutory rights, such as: (i) He is the ex- officio member of the Senate, (ii) He has the right to be nominated as the member of the Syndicate,

(iii) As head of the institution, he has administrative control over the College Professors, Readers, Lecturers and other teaching and non- teaching staff, (iv) The Principal of a constituent college is also the ex-officio member of the Academic Council of the University. And (v) He has the right to act as center Superintendent in the University examinations. It is thus evident that the High Court was right in holding that the post of Reader could not be regarded as an equivalent post as that of Principal in the legal sense. Maybe, when the affairs of a college maintained by the University are mismanaged, the Vice-Chancellor may, for administrative reasons, transfer a Professor or Reader of any department or college maintained by it to the post of the Principal of such college, but the converse may not be true. While the Professors and Readers by reason of their learning and erudition may enjoy much greater respect in society than the Dean or Principal of a college, it does not follow that the post of Principal must be treated as equivalent to that of a Reader for purposes of Section 10(14) of the Bihar State Universities Act, 1976, as amended."

49. What emerges from the aforesaid judgments is, it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary. Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than pay will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc. Treating certain posts as equated posts or equal status posts, it is not necessary that the holders of these posts must perform completely the same functions or that the sources of recruitment to the posts must be the same nor is it essential that qualifications for appointments to the posts must be identical. All that is reasonably required is that there must not be such difference in the pay-scales or qualifications of the incumbents of the posts concerned or in their duties or responsibilities or regarding any other relevant factor that it would be unjust to treat the posts alike. In other words, that posts having substantially higher pay-scales or status in service or carrying substantially higher responsibilities and duties or otherwise distinctly superior are not equated with posts carrying much lower pay-scales or substantially lower responsibilities and duties or enjoying much lower status in service. Broadly stated, four factors have to be taken into consideration while determining the equation of two posts. They are:

(i) the nature and duties of a post,

(ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged;

(iii) the minimum qualifications, if any, prescribed for recruitment to the post; and

(iv) the salary of the post.

50. The salary of a post for the purpose of finding out the equivalency of posts should be the last criterion. If the first three criterion mentioned above are fulfilled then the fact that the salaries of the two posts are different, would not in any way make the post not equivalent. Therefore equivalence of the pay-scale is not the only factor in judging whether the two posts are equivalent posts. The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts. The crucial factor to be established is not only the functional parity of the two cadres, but also the mode of recruitment, qualification and the responsibilities attached to the two offices. All this information is necessary to analyse the rationale behind the State action in giving different treatment to two classes of its employees and then determine whether or not an invidious discrimination has been practiced. The administrative authorities are in the best position to decide the requisite qualifications for promotion.

51. Once the declaration of equivalence is made on a proper application of mind to the nature and responsibilities of the functions and duties attached to the post, then scope of interference in such a declaration is very much limited. The court would be slow to interfere with the declaration of equivalence made by the Government. The Government would ordinarily be the best judge to evaluate and compare the nature and responsibilities of the functions and duties attached to different posts with a view to determining whether or not they are equivalent in status and responsibility. Therefore, ordinarily courts do not enter upon the task of job evaluation which is generally left to expert bodies as several factors have to

be kept in view while evolving a pay structure. Being a complex matter, the court will interfere only if there is cogent material on record to come to a firm conclusion that a grave error has crept in such an exercise and court's interference is absolutely necessary to undo the injustice being caused. It is not for this Court to sit over their decision like a court of appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions. When the Government has declared equivalence after proper application of mind to the relevant factors, then court would be most reluctant to venture into the uncharted and unfamiliar field of administration and examine the correctness of the declaration of equivalence made by the Government. where it appears to the court that the declaration of equivalence is made without application of mind to the nature and responsibilities of the functions and duties attached to the non-cadre post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and responsibilities of the functions and duties of the two posts are so dissimilar that no reasonable man can possibly say that they are equivalent in status and responsibility or the declaration of equivalence is mala fide or is colourable exercise of power, the court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant.

52. The Tribunal proceeded to declare the equivalence on the ground that the statute itself provide for the same from 1975 onwards when Section 3 was amended and therefore in utter ignorance of these statutory provisions, the Government had issued these two orders which has no legs to stand. Therefore, it is necessary to find out that, in the absence of a declaration by the Government declaring equivalence as contemplated under Section 2(j) (ii) of the Regulations under the Act, the statute declares them as equivalence. In this context the learned member of the Tribunal proceeds on the assumption that, when Section 3 declares there shall be one police service including the State Reserve Police established under Section 145 for the whole of the State, it amounts to declaring the Principal Police Service and the State Reserve Police constituted under Section 145 of the Act are equivalent. In other words, where a police officer working in any other duly constituted police service would become equivalent to the Principal Police Service of the State in view of the amendment to Section 3 of the Karnataka Police Act, 1963 by Act No.17/1975 which came into force from 15.05.1975. Therefore, it is necessary to see the scheme of Karnataka Police Act, 1963.

53. The Karnataka State Legislature enacted the Karnataka Police Act, 1963 to provide for a uniform law for the Regulation of the Police Force in the State of Karnataka for exercise of powers and performance of functions by the State Government and by the members of the said force, for the maintenance of the public order, for prevention of gaming, and for certain other purposes.

54. Section 2(16) defines the words 'police officer'. It means any member of the Police Force appointed or deemed to be appointed under this Act and includes a special or an additional police officer appointed under Section 19 or 20.

55. Subordinate Police is defined to mean members of the Police Force above the rank of Inspector, whereas, Superior Police means members of the Police Force above the rank of Inspector.

56. Chapter II deals with Superintendence, Control and Organisation of the Police Force. Section 3declares that there shall be one Police Force (including the State Reserve Police Force established under Section 145) for the whole of the State. Section 4 deals with the superintendence of the Police Force through out

the State vests in and is exercisable by the Government and any control, direction or supervision exercisable by any officer over any members of the Police Force shall be exercisable subject to such superintendence. Section 5 deals with the constitution of Police Force. It provides that subject to provisions of the Act, the Police Force shall consist of such number in the several ranks and have such organization and such powers, functions and duties as the Government may be general or special order determine. Section 8 deals with appointment of Superintendent, Additional, Assistant and Deputy Superintendents. The Government may appoint for each district or for a part of a district or for any or more districts and one or more Additional Superintendence and such Assistant and Deputy Superintendents of Police, as it may think expedient. Section 9 of the Act provides for provides for appointment of Superintendents for wireless system and motor transport system or for special duty.

57. Chapter V deals with Special Measures for Maintenance of Public Order and Safety of State.

58. Chapter X deals with State Reserve Police Force. Section 144 is the definition Section. It defines 'Active Duty' to mean the duty to investigate offences involving a breach of peace or danger to life or property and to search for and apprehend persons concerned in such offences or who are so desperate and dangerous as to render their being at large hazardous to the community. It also means duty to take all adequate measures for the extinguishing of fires or to prevent damage to person or property on the occasion of such occurrences as fires, floods, earthquakes, enemy action or riots and to restore peace and preserve order on such occasions. Such other duty as may be specified to be active duty by the Government or the Inspector-General in a direction issued under Section 151. Section 145 deals with constitution of the State Reserve Police Force. It provides for the Government establishing and maintaining an armed Reserve Police Force known as the State Reserve Police Force. Section 146deals with superintendence, control and administration of Force. It provides that Government may appoint for each battalion a Commandant who shall be a person of the rank of a Superintendent and Assistant Commandants in the rank of Deputy Superintendents. Section 148 deals with transfers, which starts with a non-obstante clause. It provides that notwithstanding anything contained in this Act, it shall be competent for the Government to transfer members of the Police Force appointed under Chapter II, to the State Reserve Police Force established under this Chapter and vide versa. Sub-section (2) of Section 148 speaks about the consequences of such transfer. On the transfer of a member of the Police Force appointed under Chapter II to the State Reserve Police Force established under this Chapter, or vice versa, he shall be deemed to be a member of the Police Force to which he is transferred and in the performance of his functions, he shall, subject to such orders as the Government may make, be deemed to be vested with the powers and privileges and be subject to the liabilities of a member of such grade in the Police Force to which he has been transferred, as may be specified in the orders.

59. Therefore, under the Act, the Police Force appointed under Chapter II and the Police Force appointed under Chapter X are treated as distinguished Police Force. They are not one and the same. However, on transfer, the member of the Police Force under Chapter II can be transferred to the Police Force under Chapter X and vice versa.

60. Section 151 of the Act deals with General duties of members of the State

Reserve Police Force. It provides that every Reserve Police Officer shall, for the purposes of this Act, be deemed to be always on duty in the State of Karnataka and any Reserve Police Officer and any member or body of Reserve Police Officers may, if the Government or the Inspector-General of Police so directs, be employed on active duty for so long as and wherever the service of the same may be required. Section 152 deals with Reserve Police Officer to be deemed to be in charge of Police Station. It provides that when employed on active duty at any place under sub-section (1) of Section 151, the Senior Reserve Police Officer of the highest rank not being lower than that of a Naik present shall be deemed to be an officer in charge of the Police Station for the purposes of Chapter IX of the code of Criminal Procedure, 1898. Section 161 declares that Reserve Police Officer to be a Police Officer. It provides that except as a specifically provided in this Chapter, every Reserve Police Office shall for all purposes be deemed to be a Police Officer as defined in Section2, and the provisions of this Act shall except insofar as they are inconsistent with the provisions of this Chapter apply to every such Reserve Police Officer.

61. Section 3 of the Act, as initially enacted declared that there shall be one Police force for the whole of the State. By Act 18/1975, the words "including the State Reserve Police Force established under Section 145" was inserted. Section 145 of the Act deals with Constitution of the State Reserve Police Force. Initially, the said section had the words "In addition to the Police Force constituted under Section 3, the Government may establish...." The same was amended and the words "the Government may establish" was substituted by Act 18/1975.

62. Therefore, prior to the amendment of Sections 3 and 145, the Act provided for constitution of the State Reserve Police and one Police Force for the whole State. What is sought to be done by way of amendment is instead of "in addition to", now the word used is `including'. Therefore, the aforesaid amendment does not really make any difference insofar as the Constitution of one Police Force for the whole State is concerned. Section 5 of the Act deals with constitution of police force. It categorically declares that the Police Force shall consist of such number in the several ranks and have such organization and such powers, functions and duties as the Government may by general or special order determine. Therefore, though there shall be one police force for the whole of the State, that police force shall consist of several ranks discharging several functions and duties and exercising such powers which are distinct and separate from each other. The words "including the State Reserve Police Force established under Section 145" came to be inserted by Act No. 18/1975 with effect from 15.5.1975. By such amendment all that has been done is to include the State Reserve Police also within the police force of the State. Similarly, Section 148 on which reliance is placed also speaks about transfer of members of the Police Force appointed under Chapter II to the State Reserve Police established under Chapter VIII and vice versa. Therefore, these two are separate and distinct legal entities which form part of the single Police Force for the whole State. Therefore, merely because there is one police force for the whole of the State, when admittedly the said police force consists of number of ranks i.e., number of cadres, all of them cannot be treated as equal. Even under Section 163 of the Act which confers power on the Government to make Rules providing for framing rules for carrying out the purposes of the Act, rules have been framed by virtue of the said power in respect of the different posts which constitute a single police force.

63. In this regard it is necessary to notice the difference between 'cadre' and

'service'.

The apex court in the case of Dr.CHAKRADHAR PASWAN V/S STATE OF BIHAR AND OTHERS reported in (1988) 2 SCC 214 while dealing with the difference between the cadre and service held as under:

"8. The argument of learned counsel for the appellant suffers from the infirmity that it overlooks that though the Directorate of Indigenous Medicines comprises of four posts, namely, that of the Director and three Deputy Directors, which are Class I posts, the posts of Director and Deputy Directors do not constitute one 'Cadre'. They are members of the same Service but do not belong to the same cadre. According to the 50 point roster, if in a particular grade a single post falls vacant, it should, in the case of first vacancy, be considered as unreserved i.e. general and on the second occasion when a single post against falls vacant, the same must be treated as reserved. Admittedly, the post of the Director is the highest post in the Directorate of Indigenous Medicines and is carried in the higher pay scale or grade of Rs.2225-75-2675 while the posts of the Deputy Directors are carried in the pay scale or grade of Rs.1900-75-2500. In service Jurisprudence, the term 'cadre' has a definite legal connotation. In the legal sense, the word 'cadre' is not synonymous with 'service'. Fundamental Rule 9(4) defines the word 'cadre' to mean the strength of a service or part of a service sanctioned as a separate unit. The post of the Director which is the highest post in the Directorate, is carried on a higher grade or scale, while the posts of Deputy Directors are borne in a lower grade or scale and therefore constitute two distinct cadres or grades. It is open to the government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency and it cannot be said that the establishment of the Directorate constituted the formation of a joint cadre of the Director and the Deputy Directors because the posts are not interchangeable and the incumbents do not perform the same duties, carry the same responsibilities or draw the same pay. The conclusion is irresistible that the posts of the Director and those of the Deputy Directors constitute different cadres of the Service. It is manifest that the post of the Director of Indigenous Medicines, which is the highest post in the Directorate carried on a higher grade or scale, could not possibly be equated with those of the Deputy Directors on a lower grade or scale. In view of this, according to the 50 point roster, if in a particular cadre a single post falls vacant, it should, in the case of first vacancy, be considered as general. That being so, the State Government could not have directed reservation of the post of Deputy Director (Homeopathic) which was the first vacancy in a particular cadre i.e. that of the Deputy Directors, for candidates belonging to the Scheduled Castes. Such reservation was not in conformity with the principles laid down in the 50 point roster and was impermissible under Article 16(4) of the Constitution and clearly violative of the guarantee enshrined in Article 16(1) of equal opportunity to all citizens relating to public employment. Clause (4) of Article 16 is by way of an exception of the proviso to Article 16(1). The High Court rightly held that the reservation of the post of Deputy Director (Homeopathic) amounted to 100 per cent reservation which was impermissible underArticle 16(4) as otherwise it would render the guarantee of equal opportunity in the matter of public employment under Article 16(1) wholly elusive and meaningless."

"10. There is another aspect. The three posts of Deputy Directors of Homeopathic, Unani and Ayurvedic are distinct and separate as they pertain to different disciplines and each one is isolated post by itself carried in the same

cadre. There can be no grouping of isolated posts even if they are carried on the same scale. The instructions issued by the Government of India from time to time relating to reservations of posts and appointments for the Scheduled Castes and Scheduled Tribes are contained in the Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Services. Chapter 2 Part I gives the percentage of reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. These instructions have been issued to carry out the mandate of Article 16(4) consistent with the equality clause under Articles 16(1) and 16(2) and the requirements of Article 335, namely, the maintenance of efficiency of administration. Para 2.4 provides that the reservations will be applied to each grade or post separately but isolated posts will be grouped as provided in Chapter 6. Paragraph 6.1 of Chapter 6 which is relevant for our purposes, states that in the case where the posts are filled by direct recruitment, 'isolated individual posts and small cadres may be grouped with posts in the same class for purpose of reservation, taking into account the status, salary and qualifications prescribed for the posts in question'. For this purpose, it provides that a cadre or a grade or a division of a service consisting of less than 20 posts may be treated as a small cadre. A group so formed shall not ordinarily consist of 25 posts. It then adds:

It is not intended that isolated posts should be grouped together only with other isolated posts. That precisely is the situation here. The Government of India instructions clearly show that there can be no grouping of one or more isolated posts for purposes of reservation. To illustrate, Professors in medical colleges are carried on the same grade or scale of pay but the posts of Professor of Cardiology, Professor of Surgery, Professor of Gynaecology pertain to disciplines and therefore each is an isolated post."

64. In service Jurisprudence, the term 'cadre' has a definite legal connotation. In the legal sense, the word 'cadre' is not synonymous with 'service'. Fundamental Rule 9(4) defines the word 'cadre' to mean the strength of a service or part of a service sanctioned as a separate unit. It is open to the government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency. The persons who do not belong to the same cadre are still members of the same service. Persons belonging to different cadres are members of the same service but they do not belong to the same cadre. Where there is an employer who has a large number of employees in his service performing diverse duties, he must enjoy a certain measure of discretion in treating different categories of his employees as holding equal status posts or equated posts, as questions, of promotion or transfer of employees inter se will necessarily arise for the purpose of maintaining the efficiency of the organisation. Therefore, nothing inherently wrong in an employer treating certain posts as equated posts or equal status posts provided that, in doing so, he exercises his discretion reasonably and does not violate the principles of equality enshrined in Articles 14 and 16 of the Constitution. It is because of this legal position Regulation 2(j)(ii) confers power on the Government to declare any other duly constituted police service functioning in the State to be equivalent to the Principal Police Service of a State, a member of which normally holds charge of a Sub-division of a District for the purposes of police administration. In the absence of such a declaration, the police officer in a cadre different from the police service is not equivalent to the police officer working under the Principal Police Service. It is only on such declaration they become equivalent. Therefore, the understanding of the Tribunal that once all of them belong to one police force,

statutorily equivalence is conferred on them is contrary to the express provisions contained in the Act. The interpretation placed in this regard runs counter to the statutory provisions under the Act, as such, it cannot be sustained. Accordingly, the said finding is hereby set aside.

ON FACTS

65. The Deputy Superintendent of Police (Civil) i.e., the Principal Police Service was the only source for the purpose of promotion to Indian Police Service. For the first time by an order dated 23.12.1991 the posts of Deputy Superintendent of Police (Wireless), Deputy Superintendent of Police (Armed) and Assistant Commandant (Karnataka State Reserve Police) were declared as equivalent to the post of Deputy Superintendent of Police of the Principal Police Service. However, on a letter written by the Director General and Inspector General of Police of Karnataka dated 8.2.1996 the said equivalence was withdrawn. By that time two persons belonging to auxiliary services had been promoted to Indian Police Service. Subsequently, one man committee of Sri Ramalingam, IPS (Retired) was constituted to go into the question of equivalence. The committee submitted its report on 23.3.1996 and recommended to rescind the order of declaration of equivalence. That is how the earlier order dated 23.12.1991 came to be rescinded, by an order dated 18.7.1996. Subsequently, one more committee was constituted for the same purpose under the chairmanship of Dr.P.S.Ramanujam. The said committee submitted its report on 11.5.2000 recommending for grant of equivalence. The said report was placed before the committee consisting of the Additional Chief Secretary to the Government, Additional Chief Secretary to the Karnataka, (Home Department), Director General of Police and Inspector General of Police and Secretary to Government, Department of Personnel and Administrative Reforms on 20.5.2009. After examining the report, the committee was of the view that the training imparted and the functions which are performed by these two set of officers are quite different and therefore they recommended to reject the said report. Without considering this report of the committee, the impugned order dated 1.10.2010 came to be issued. A reading of the aforesaid order shows the reasons given for declaration of equivalence. In the preamble to the said order it is stated that, there is acute shortage of police personnel in the main police service, both in the IPS and Non-IPS cadres. Also there is acute shortage of eligible State Police Officers for considering promotion to IPS. During this year, there are not enough officers to meet the requirement of the zone of consideration for promotion in the principal state police service against vacancies in IPS Promotion quota occurred during the year 2009. Therefore, the State Government having examined the need for considering officers of other units also viz., auxiliary police units for promotion to IPS during the year 2009 as provided in the regulation, after detailed consideration it is necessary to declare eligible officers of such auxiliary police units with distinguished service to be equivalent to the principal state police service. Therefore, it is considered necessary to consider only such of the officers of outstanding merit and ability and who have rendered distinguished service in the police auxiliary services for promotion to IPS, in order to maintain the standard of policing in the State. Therefore, by virtue of the power conferred under regulation 2 (1) (j) of the Regulations the Government declared that the other police services constituted by the State Government viz., Police Wireless, Karnataka State Reserve Police and Karnataka Armed Police and the officers in these auxiliary units not below the grade of Dy. SP viz., (i) Deputy Superintendent of Police (Wireless), (ii) Assistant Commandant (KSRP) and (iii) Deputy Superintendent of

Police (Armed) in these units are equivalent to that of Deputy Superintendent of Police (Civil) i.e., Principal Police Service for the purposes of promotion to IPS for the vacancies available for the year 2009 only. The same was made subject to the three conditions stipulated in the said order.

66. Therefore, as is clear from the order, firstly the equivalence is declared only for the year 2009. Secondly, the reason for declaration of equivalence is there are not available sufficient number of qualified officers for being considered for IPS promotion quota. Therefore, before declaring, the Government did not take into consideration the nature of duties of a post, the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged; the minimum qualifications, if any, prescribed for recruitment to the post; and the salary of the post. The non- availability of sufficient number of officers in the Principal Police Service for the purpose of promotion to IPS cannot be a ground to declare the equivalence. There is total non- application of mind to the nature and responsibilities of the functions and duties attached to the said post. They have taken into consideration totally extraneous and irrelevant factors in determining the equivalence. In fact the recommendation made by Dr. P.S. Ramanujam committee had been rejected by the committee constituted by the Government on the ground that the training and the nature of duties performed are not the same. Strangely, the equivalence is given to a particular year which is totally impermissible in law. If the nature of functions, responsibilities discharged, the experience gained or the nature of training undergone are one and the same in respect of these two cadres and if the equivalence is to be given, it is to be given for ever. It cannot be for one year. In that view of the matter, the order dated 1.10.2010 as rightly held by the Tribunal is contrary to law, illegal and requires to be set aside. Realising this, the Government wanted to retrace its steps. Therefore, they issued the Government Order dated 21.7.2011 and the preamble to the order clearly states the reasons for such a step. The same is in accordance with law. However, if the first order is to be set aside, the necessity for the second order would not arise and therefore the question of going into the legality of the second order in the facts of this case would not arise. If the first order goes, the second order becomes superfluous and it has no legs to stand. In fact, the Tribunal did declare in the body of its order that both these orders cannot be sustained and liable to be set aside.

67. It was contended that as the parties have placed all the material before the Court, this Court could decide the equivalence, in the light of the principles enunciated by the Apex Court in the decisions referred to supra.

68. The Apex Court in various judgments has held that the administrative authorities are in a best position to decide the equivalence of two posts in the services because they have the requisite experience in administration. They are aware of the nature of responsibilities, duties attached to the post and the functions to be discharged by them. They are the best Judge to evaluate and compare the nature and responsibilities of the functions and duties attached to different posts with a view to determine whether or not they are equivalent in status and responsibility and whether a declaration of equivalence is to be granted or not. The Courts cannot embark upon the exercise. It is left to the expert bodies and therefore when the parties have produced abundant material to substantiate their contentions and show the qualification prescribed, qualification possessed by them, the subjects they have studied in the competitive examination, the training which they have undergone, the nature of duties which they are

discharging, still Courts do not enter upon the task of job evaluation which is the function of the experts in the field. Therefore, it is to be left to the Government. If the declaration of equivalence is made or not made without application of mind to the nature of responsibilities, functions and duties attached to the posts or extraneous or irrelevant factors are taken into account in determining or granting or not granting the equivalence then it would be open to this Court to set at naught the declaration of equivalence and afford protection to the civil service. In that view of the matter, we decline to embark upon the said exercise and leave it to the authorities to undertake that exercise.

69. However, we make it clear, twice equivalence is granted, twice it is withdrawn. Already they have the report of two expert bodies. Still the dispute is not resolved even after more than two decades. Under these circumstances it would be appropriate for this Court to direct the authorities either to constitute a expert body and give an opportunity to the varying fractions to put forth their point of view and then look into the material which is collected over a period of two decades and decide it one way or the other. On such report being submitted, the Government after independently applying its mind should decide whether an equivalence is to be granted or not. In either event they should assign reasons in their order for granting equivalence or not granting equivalence so that the aggrieved person can approach this Court and then the Court would be in a better position to go into the disputed issues. It is made clear an equivalence cannot be given for a particular year. Equivalence is between two posts and not the persons who are in the post. Therefore, keeping in mind all these aspects, in order to set at rest the dispute which is unresolved for more than two decades, we are sure that the Government would take immediate steps to resolve the dispute as suggested above.

70. From the material on record it is clear that, unless an equivalence is declared by the Government, the police officers who form the part of the auxiliary services cannot be considered for being included in the list. However, the police officers who belong to the principal police force are the persons whose name is to be included in the list for being considered for being promoted to IPS cadre. As is clear from the Government Order of 2010 the reason for equivalence is there are no sufficient number of persons in the principal police force who could be promoted to IPS. If that is so persons who are eligible in the Principal Police Force their case should be considered automatically without waiting for equivalence being granted by the Government. Because of the litigation it appears their case though considered no final decision is taken. It is unjust. Therefore, the declaration of equivalence by the Government should not come in the way of the claims of persons in the Principal State Police Service for being considered for promoted as IPS officers. If already the names are sent they shall be considered and appropriate orders be issued without any further loss of time.

71. In that view of the matter, we pass the following order:-

(i) Writ Petitions are allowed.

(ii) The impugned order passed by the Government dated 1.10.2010 is hereby set aside.

(iii) Consequently, the Government Order dated 21.7.2011 becomes infructuous.

(iv) We hereby direct the authorities to constitute a broad based expert committee to resolve these disputes at the earliest.

(v) After constitution of such committee, the committee shall give sufficient opportunity to the varying fractions and resolve the dispute and submit their report to the Government within a period of 6 months from the date of receipt of a copy of this order.

(vi) On submission of the said report, the Government shall take decision regarding equivalence within 2 months there from.

(vii) It is made clear the Government decision should contain the reasons either for granting equivalence or refusing to grant equivalence so that the aggrieved person could agitate his rights before this Court.

(viii) It is made clear the authorities shall proceed to consider the case of police officers of the Principal State Police Force whose name already finds a place in the list of persons to be considered for promotion and it shall not be postponed on the pretext of the constitution of the committee or submission of the report or the decision of the equivalence to be taken by the Government.

Parties to bear their own costs.

14. Following this, some parties claim that the Section 3 of the Karnataka Police Act which created a single police force was implicitly struck down. But then, neither in the body or the conclusions, is there any implicit striking down of law. ***In any case, no law can be struck down by implication. It has to be by specific intent. Only 3 reasons exist for striking down a law enacted by Parliament/Legislature. (1) Being un-Constitutional, (2) Being ulatravires, (3) Being illegal. No such claims have been made or adjudicated. But since we will be quoting from several Apex Court Judgments upholding power of legislatures to enact, this is an irrelevant point.***

15. As a result A.R. Infant Committee was appointed. Thereupon the committee apparently heard all concerned persons and issued the following report, which apparently Government of Karnataka has accepted which we quote:

Off: 080-2294 3502
O/o Addl. Director Genl. Of Police
Communication Logistics &

Modernisation, No. 1, M.G. Road
BANGALORE – 560 001

To Dated. 25.07.2015

The Chief Secretary,
Government of Karnataka,
Vidhana Soudha, Bangalore.

Sir,

Sub: Constitution of Committee to assess the request of Auxiliary Police Officers for promotion to IPS as per the directions of the Hon'ble High Court of Karnataka – REPORT

Ref: 1) Judgment of Hon'ble High Court of Karnataka in W.P. No. 3269/2012 c/w other W.Ps dated 25.04.2013
2) Government order No. DPAR 155 SPS 2013 Bangalore dated: 22/11/2013.

Government of Karnataka constituted a committee (vide G.O. cited at Sl. No. (2) above to assess the request of Auxiliary Police Officers for promotion to the IPS as per the direction of the Hon'ble High Court of Karnataka in its judgment dated 25/4/2013 in WP No. 3269/2012 c/w other WPs.

Although the Government order stated that the Committee should submit its report within two months, a subsequent letter from the Government dated 07.01.2014 stated that the Committee should complete its work and submit its report as early as possible. In the meantime writ petitions were filed by Smt. Madhura Veena and some other directly recruited civil DSPs in the CAT challenging the appointment of the committee. The Hon'ble CAT in its order dated 30-1-2014 directed that the Committee should not submit its report without the leave of the court. Subsequently on a writ filed on our behalf, the Hon'ble CAT in its order dated May 13, this year (received by us on June 4) vacated the stay on submission of report.

Brief Background:

Traditionally the selection of State Police Service Officers to IPS against the IPS promotion quota was being made from among eligible officers of the Civil Police Service (Principal Police Service). However in 1991 Government order No. DPAR 67 SPS 91, dated 23/12/1991 was issued, declaring the posts of Dy.S.P (Wireless), Assistant Commandant (KSRP) and Dy. S.P (Armed) as equivalent to Dy.S.P (Civil) to facilitate inclusion of eligible officers of these auxiliary Police Service units also in the eligibility list for promotion to the IPS. Based on this Criterion one officer each from KSRP and Wireless units was considered and selected to the IPS under the regulations. Subsequently on the recommendation of the then DG & IGP that selection of officers to the IPS be confined to Civil Police Officers, Government issued G.O. No. DPAR 30 SPS 96 dated: 18-07-1996 withdrawing equivalence granted to Deputy Superintendent of Police (Wireless), Assistant Commandant (KSRP) and Deputy Superintendent of Police (Armed). Thereafter selection to the IPS has been made only from among eligible officers of the Civil Police Service.

Again there have been representations from officers of auxiliary Police units to improve their Service conditions such as recruitment method, promotion, Seniority and also to consider them for inclusion in the eligibility list for promotion to IPS as was done in the year 1991. Subsequently on the recommendation of the committee headed by ADGP Dr. P.S. Ramanujam, Government took the view that the shortage of Civil Police Officers could be made up by including the officers of auxiliary Police units as equivalent to Principal Police Service for the purpose of promotion to IPS. Thus Government Order No. DPAR 115 SPS 2010, dated 01-10-2010 was issued. But this order was subsequently withdrawn by G.O. No. DPAR 115 SPS 2010, dated 21-07-2011, on the recommendation of the Home Department. Following this, a number of (As were filed in

the Central Administrative Tribunal (Nos 471/2010, 443/2010, 486/2010, 41/2011, 54/2011, 289/2011 and 294/2011) by Sri BS Lokesh Kumar SP CID and a number of others.

The Hon'ble CAT in its order dated December 11, 2011, has made the following observations:

a) Because of the application of Sec 3 of the Karnataka Police Act there exists only one single police force from 15.5.1975 onwards and the equivalence required under regulation rule-2 now stands satisfied.
b) All the officers of Karnataka Police in all streams of policing of the rank of Dy. Superintendent of Police and above with a minimum service of 8 years as on the date pertaining to the batch of 2009 and less than 54 years of age at the point of time are now eligible to be considered for promotion to Indian Police Service.
c) Since the resolution of the dispute was time consuming and the time taken for such constitution shall not be considered as defeating the cause of any one by either UPSC or any other authority under the Government, all such persons who are eligible to be considered shall be considered for the batch of 2009 and selection must be done in accordance with rules in force.

Aggrieved by this order however, writ petitions (WP No. 3269/2012 C/W WP NOS. 3506-3507/2012 & WP NOS. 6639-42/2012, WP No. 3609/2012 WP No. 5542/2012 WP No. 6393/2012 & WP NOS. 7148-53/12) were filed by Sri Ramesh Rangashamaiah, Superintendent of Police, State Intelligence and others before the High Court of Karnataka. The Hon'ble High Court in its judgment dated 25.04.2013 observed that for the first time by an order dated 23/12/1991 the posts of Deputy Superintendent of Police (Wireless), Deputy Superintendent of Police (Armed) and Assistant Commandant (Karnataka State Reserve Police) were declared as equivalent to the post of Deputy Superintendent of Police of the Principal Police Service. However in response to the letter addressed by the Director General & Inspector General of Police, dated 08.02.1996 the said equivalence was withdrawn by Government order dated 18/7/1996. By this time two officers belonging to Auxiliary Service had been promoted to Indian Police Service. The Hon'ble High Court also referred to the constitution of two committees by the Government. The one man committee comprising Sri Ramalingam; Director General & Inspector General of Police (Retd) in its report dated 23.03.1996 recommended to rescind the order of declaration of equivalence. Accordingly the Government Order dated 23.12.1991 came to be nullified by the Government Order dated 18.07.1996.

Subsequently, another committee constituted under the chairmanship of Dr. P.S. Ramanujam, in its report dated 11.05.2000 recommended grant of equivalence to directly recruited Assistant Commandants of KSRP.

The Government Committee consisting of the Additional Chief Secretary (Home Department), Director General & Inspector General of Police and Secretary DPAR, which examined the report recommended to reject the report of Dr. Ramanujam committee on the ground that the training imparted and the functions which are performed by the two sets of officers (Civil & Auxiliary) are quite different. However Government in its order dated 1.10.2010 declared equivalence of Deputy Superintendent of Police (Wireless), Asst. Commandant, KSRP and Deputy Superintendent of Police (Armed) with that of Deputy Superintendent of Police (Civil). The reason cited by the Government at that time was that there was acute shortage of Police Officers both in the IPS and the non-IPS cadres and also there was acute shortage of eligible of State Police Officers for considering for promotion to IPS. Realising that the order dated 01.10.2010 was contrary to law and illegal, the Government in its order dated 21.07.2011 withdrew the earlier order dated 01.10.2010.

In view of the various contradictory orders declaring equivalence and then

withdrawing it more than once, the Hon'ble High Court ordered the following among other things:

iv) We hereby direct the authorities to constitute a broad based expert committee to resolve these disputes at the earliest.

v) After constitution of such committee, the committee shall give sufficient opportunity to the various factions and resolve the dispute and submit their report to the Government within a period of six months from the date of receipt of a copy of this order.

vii) On submission of the said report, the Government shall take decision regarding equivalence within two months there from.

viii) It is made clear the Government decision should contain the reasons either for graining equivalence or refusing to grant equivalence so that the aggrieved person could agitate his rights before this court.

Composition and work of the Committee

Government Order No. DPAR 155 SPS 2013, Bangalore dated 22.11.2013 constituted the expert committee comprising the following officers:

1. Sri A.R. Infant, IPS (RR 77) Chairman
   DGP (Retd)
2. Sri M. Lakshman, IPS (SPS 76) Member
   IGP (Retd)
3. Sri Ashit Mohan Prasad, IPS Convenor
   (RR-85, ADGP, Intelligence)

The Committee assumed office on 16.12.2013 and started functioning from the Office of the Addl. DGP, Railways, (subsequently shifted to the Office of the ADGP, CL&M, No. 1, M.G. Road, Bangalore -1). Thereafter, an official memorandum dated 27.12.2013 was circulated among all stake holders as well as IPS officers in Karnataka calling for their representations/responses. The Committee also gave several opportunities to various groups of Officers to explain their grievances and points of view. Wide publicity was also given through the Police Website as well as the State Gazette. Apart from this, the committee addressed letters to DGPs/IGPs of all the States and Union territories for obtaining their responses regarding the practice prevailing in other States/UTs vis-à-vis equivalence among Dy. SPs (Civil) Asst. Commandants (State Armed Reserve), and Dy. SPs (Wireless) for promotion to the IPS.

Accordingly a number of representations have been received from Officers of the Civil Police, including directly recruited civil Dy. SPs, as well as Officers from KSRP, Wireless, District Armed Reserve, Finger Print Bureau and Dy. SPs (Detectives) who are working in the CID. Their arguments are summarized as follows:

Representations received from various groups of officers:

Directly recruited Civil DSPs:

1. The Directly recruited Civil Dy. SPs have generally argued that the primary police duties such as maintenance of law and order, prevention and investigation of crime and traffic management are allotted to civil police officers. Civil Dy. SPs perform multiple tasks including court attendance, handling of unforeseen situations and deputation to organizations such as Lok Ayuktha, KSRTC/BMTC, BDA etc. On the other hand, work has been allotted to Auxiliary Police Officers in such a way as to provide necessary support to the civil police officers in maintaining peace and law and order. The Civil Dy. SPs have referred to two letters sent by two former DG&IGs namely Sri SNS Murthy (letter No. CB 1/467/90-91 dated 02.02.1993) and Sri AS Malurkar [letter dated 08-02-1996] wherein they called for withdrawal of GO No. 67 SPS 91 dated 23-12-1991.
2. Auxiliary Police Officers are not trained as civil police officers in preventing

crime, crime investigation and detection, as well as maintenance of law and order.

3. Section 145 of the KP Act envisages various wings within the force like Police Wireless Wing, State Reserve Police, District/City Armed Reserve etc. According to the directly recruited civil Dy. SPs all these wings are supposed to aid in the functioning of the main Police Force.
4. Although Dy.SPs (Civil) and Asst. Commandant (KSRP) are directly recruited through a competitive examination conducted by the KPSC, the candidates with higher rankings are selected as Dy. SPs (Civil) whereas the candidates with lower rankings are selected as Asst. Commandants in KSRP.
5. After the basic training at Karnataka Police Academy, Civil Dy. SPs have to undergo field training which includes various duties starting from Police Station sentry and extending upto the duties of Circle Inspectors of Police. According to the directly recruited civil Dy.SPs, Asst. Commandants in KSRP will be sent to various battalions to get training in drill, handling of arms and ammunition, management of platoons, companies and battalions.
6. There is a separate set of cadre and recruitment rules for the KSRP.
7. Since Armed Police Officers get their promotions much faster than Civil Police Officers, making two separate units of the force equal at a higher rank will result in gross injustice to some officers.

Directly recruited Asst. Commandants of KSRP:

Directly recruited Asst. commandants have put for the following arguments:

1. The Educational qualification prescribed by the KPSC for group “A” & “B” posts is same viz., a bachelor degree. The post of Asst. Commandant and Dy.S.P (Civil) are group “A” services and educational qualification prescribed for both these posts is one and the same.
2. They have both been selected through a common combined competitive written examination and personality test.
3. Asst. Commandants of KSRP and directly recruited Dy.S.Ps have under gone basic training at Karnataka Police Academy together and the training imparted is one and the same. Asst. Commandants have also undergone practical training at various units like CID, Bangalore City Commissionerate etc.
4. The pay and allowances for both these groups of officers are one and same.
5. Section 161 of the K.P. Act states that every reserve Police Officer is deemed to be a Police Officer as defined in Sec. 2. Sec. 3 of the K.P. Act states that there shall be one police force (including the State Reserve Police Force established under Section 145) for the whole of the State. They have argued that in view of the above mentioned provisions in the K.P. Act, Commandants and Asst. Commandants are Police Officers for all practical purposes. Therefore these provisions satisfy Rule 2 (j) (ii) of the IPS (Appointment by Promotion) Regulations 1955.
6. Section 148 of the K.P. Act states that Government is competent to transfer members of the Police Force appointed under chapter II to the State Reserve Police Force established under this chapter and vice-versa. Therefore directly recruited Asst. Commandants are eligible to be posted to the Principal Police Service and to be promoted to the IPS.
7. They have cited the instance of Sri. K. Guruswamy, who was recruited as an Asst. Commandant in Tamil Nadu Special Police in 1968 and was promoted to IPS vide Order No. I-15011/4/80-IPS dated 22.09.1987. They have also referred to the cases of Sri. Gopinath and Sri Jayaraj who joined as Reserve Police sub inspectors in the Kerala State Armed Police and another officer

namely Sri Jose George who joined as Reserve Police Inspector in Kerala State Armed Battalion. All the three officers were promoted to IPS.

Deputy Superintendent of Police, DAR/CAR:

These are officers who joined as directly recruited Reserve Sub-Inspectors who, on account of quicker promotions have reached the rank of Deputy Superintendent of Police much earlier than their counter parts in the Civil Police. They have argued in the following manner:

1. The Government Order issued on 23.12.1991 granting equivalence to Auxiliary Police Officers was withdrawn without proper justifications. The fact that educational qualifications required for Armed Officers was raised to degree in 1992 strengthens their case.
2. Armed Officers' duties are substantially the same as those performed by Civil Police Officers. Armed Police Officers are increasingly being drawn to perform duties on the roads alongside civil police officers, for interacting with the public and maintaining law and order.
3. The only deficiency they have is that they do not deal with investigation of crimes. But they hasten to add that there are many Civil Dy. Superintendents of Police who may not have done much investigation, but who may also get promoted to IPS.
4. While considering promotion to IPS from the State quota, the Government is fully within its authority (under regulation 2 (ii) of IPS Regulations, 1955 to consider officers from Auxiliary Services.
5. In States like Andhra Pradesh, Tamil Nadu etc., Reserve Police Officers are allowed to migrate to civil police after a service of 5 years.

Officers who joined KSRP in the rank of RSIs:

Officers who join the KSRP as directly recruited RSIs get their promotions faster than their counterparts in the civil Police and many of them become Asst. Commandants in less than twenty years. Their main arguments are:

1) They share the same service conditions and pay scales as their counterparts in the Civil Police.
2) They go through the same recruitment process as Civil PSIs and the minimum qualification is the same – graduation.
3) They were trained at the Karnataka Police Academy along with their Civil PSIs and they have passed the same departmental examinations.
4) They have been assisting the Civil Police in the maintenance of Law and Order.

Dy.S.Ps (Detective) who are working in the C.I.D:

These are officers who were recruited as Sub Inspectors (Detective) in 2001. Their arguments are as follows:

1. They have been involved in the prevention and detection of crime. Often they are called upon to perform law and order duties as well.
2. After undergoing basic training at the Karnataka Police Academy, they have undergone practical training at various police stations in the State as well as in different wings of the CID.
3. In view of the fact that they have been performing various duties such as prevention and detection of crime as well as law and order duties, they may also be considered for promotion to IPS.

Officers of Wireless Wing

They have argued in the following manner:

1. Wireless Officers at various levels have been instrumental in providing uninterrupted communication during major law and order situations including communal incidents.
2. Barring the investigation of crimes, wireless officers have the same duties and responsibilities as civil police officers.

3. If wireless officers are also given the same training, they can perform all the duties of the civil police officers.

Officers of Finger Print Bureau

Their arguments are as follows:

1. Cadre and Recruitment rules for appointment of PSIs in Finger Print Bureau are the same as those of other units with degree as minimum qualification. Promotional prospects from PSIs (FPB) upto S.P (FPB) are the same as those of other auxiliary units.
2. Finger Print Bureau Officers also act as investigation officers in Police Department by assisting the I.Os to detect cases by means of Finger Print identification and also furnishing opinion on documents received from courts, Lokayukta, Police Officers, and different wings of the Government.
3. Wireless officers also undergo the same basic training at the Karnataka Police Academy along with Civil Police Officers.

Views of Senior Police Officers:

As mentioned earlier, the first official memorandum issued by the Committee was circulated among all serving IPS Officers of the State. Out of the ten Senior IPS Officers who have responded to the memorandum, all except one have recommended that Auxiliary Police Officers may also be considered on par with Civil Police Officers for promotion to IPS.

Findings and recommendations of Sri. Ramalingam Committee:

The committee was of the opinion that Government Order No. DPAR 67 SPS 91, dated 23.12.91 which declared the post of Dy. Superintendent of Police (Wireless), Dy. Superintendent of Police (Armed) and Asst. Commandant (KSRP) as equivalent to Dy. Superintendent of the Principal Police Service would create an anomalous situation wherein junior officers belonging to one Cadre will get faster promotion and become eligible to be selected to the IPS. On the other hand senior police officers who are directly recruited as Police Sub Inspectors and Dy. Superintendent of Police in civil police will be denied their opportunities for promotion to the IPS. Similarly in pursuance of the above mentioned Government order one directly recruited Dy. Superintendent of Police (Wireless) was selected to the IPS. Wireless is a technical cadre and they are trained and groomed to man the police communication of the State. It will be incongruous to declare a technical officer to be equivalent to a regular police officer of the civil cadre.

The present committee is in full agreement with this observation.

Sri. Ramalingam has also examined the promotional opportunities available to directly recruited Sub Inspectors in different cadres of the Police Department. He has very rightly observed that in the three decades preceding his report only 5 or 6 officers of the civil police who joined department as Sub Inspector were promoted with the IPS. In view of this fact a large number of directly recruited deputy superintendents of Police join the department do not reach the higher echelons of the department. It is almost impossible for any directly recruited civil PSI to be promoted to the IPS.

In the past, the qualifications for recruitment of RSIs and special RSIs were only matriculation or PUC. In the present situation, with much faster promotions, RSIs and Special RSIs will have opportunities for promotion over riding the claims of their counterparts in civil police whose basic minimum qualification was a degree. As regards directly recruited Asst. Commandants in KSRP promotional opportunities are easily available as the posts of Commandants and DIGs are available in the cadre. He has argued that since the cadre of directly recruited Asst. Commandants of KSRP has not respondent well to the challenges of running the Reserve Police Battalions, he has recommended that in order to provide promotional opportunities to the existing directly recruited Asst. Commandants the procedure followed in Andhra Pradesh could be adopted. In Andhra Pradesh, they were given option to opt for principal service – Dy. Supdt. Of Police (Civil) provided their age was less than 40 years and they had

completed 8 years of continuous service as Asst. Commandants. If they have so opted, performance was assessed and if found satisfactory they were allowed in the common seniority list of Dy. Supdts. of Police (civil).

He made the following four recommendations.

1. The order of declaration of equivalence may be rescinded.
2. Appropriate amendments may be made for the promotional opportunities of the 4 directly recruited Asst. Commandants working at present in the Karnataka State Reserve Police.
3. Direct Recruitment of Astt. Commandants (KSRP) may be abolished.
4. In due course posts of DIG Armed Police and DIG (KSRP) may be decadred from IPS Cadre/

Recommendations of Dr. Ramanujam Committee:

(The Committee also comprised Sriyuths: T. Madiyal, ADGP and Commissioner of Police, Bangalore city, Y.S. Rao, ADGP, KSRP and M.D. Singh, ADGP, DCRE)

Dr. Ramanujam committee argued that the avenues available for promotion for directly recruited Asst. Commandants of KSRP are limited. As a result officers joining at a young age as directly recruited Asst. Commandants get frustrated after reaching the level of Commandants since there are very few chances for further promotion to higher grades. Therefore the committee was of the view that the post of Asst. Commandants in KSRP should be filled up by promotion from the rank of Spl. RPI and that the direct recruitment of Asst. Commandant should be discontinued.

The Committee was categorical in stating that all directly recruited Asst. Commandants who are already working in KSRP can be considered for appointment to the IPS as was done in the case of Sri MC Narayana Gowda. The Committee went on to add that all police officers irrespective of the discipline in which they are working including SP (Armed) SP (Wireless), SP (Finger Print) or any other SP including Civil SP should also be considered for induction into the IPS. All of them could come under the quota permitted under the rules for the posts to be filled by promotion.

DETERMINATION OF EQUIVALENCE

Meaning of the Phrase 'one police force for the whole State' Section 3 of the Karnataka Police Act states as follows:

One police Force for the whole State:

There shall be one Police Force (including the State Reserve Police Force established under section 145) for the whole of the State.

Provided that the members of the Police Force constituted under any of the Acts mentioned in Schedule I, immediately before the coming into force of this Act, shall be deemed to be the members of the said Police Force.

The present committee is of the view that this section was incorporated in the KP Act with a view to ensuring unity of command in the force as it was envisaged at that time that the force would grow in numbers as well as in the number of wings and branches of the Police Force, Unity of Command and Chain of Command are very sacrosanct principles in any uniformed organization. If such a unity of command is not ensured, the force will become hydra headed, resulting in multiple power centers. This is extremely detrimental to discipline and chain of command in the force. This committee feels that sec 3 does not ipso facto state that all wings and branches in the police force are same and therefore interchangeable. Certain branches of the police such as the Armed Reserve, Wireless, FPB, Computer Wing etc., are specialized branches which are meant for certain specified duties or duties of a technical nature.

However a reading of Section 148 would suggest the possibility of transfers or interchangeability of police officers from one wing to another.

Section 148 Transfers:

Notwithstanding anything contained in this Act, it shall be competent for the Government to transfer members of the Police Force appointed under Chapter II, to the State Reserve Police Force established under this Chapter and

vice versa.

Provided that the Government may delegate its power under sub-section (1) in so far as it relates to the members of the subordinate ranks of the respective Police Force to the Inspector General. 2) On the transfer of a member of the Police Force appointed under Chapter II to the State Reserve Police Force established under this Chapter or vice versa, he shall be deemed to be a member of the Police Force to which he is transferred and in the performance of his functions, he shall, subject to such orders as the Government may make, be deemed to be vested with the powers and privileges and be subject to the liabilities of a member of such grade in the Police Force to which he has been transferred, as may be specified in the orders. Rules on interchangeability can be framed by the Government whenever it desires based on sec 148.

In a major disagreement with Sri. Ramalingam committee, Dr. Ramanujam committee recommended that the directly recruited Asst. Commandants of KSRP should be considered for appointment to the IPS as was done in the case of Sri. M.C. Narayan Gowda, Dr Ramanujam committee was of the opinion that all police officers, irrespective of the discipline in which they are working (SP Armed, SP Wireless/SP FPB or any other SP including the civil police) should be considered for induction into the IPS.

Regulations Governing appointment of State Service Officers to the IPS:

The relevant Sections of the Indian Police Service Regulation (Appointment by Promotion) 1955 are reproduced below.

Rule 2.Definitions

2(1)(j) 'State Police Service'

(i) For the purpose of filling up the vacancies in the Indian Police Service Cadre of the Arunachal Pradesh-Goa-Mizoram-Union territories under rule 9 of the Recruitment Rules, any of the following services, namely:-
   a) The Delhi and Andaman and Nicobar Islands Police Service;
   b) The Goa Police Service;
   c) The Pondicherry Police Service;
   d) The Mizoram Police Service;
   e) The Arunachal Pradesh Police Service;

(ii) In all other cases, the principal Police Service of a State, a member of which normally holds charge of a Sub-division of a district for purposes of police administration and includes any other duly constituted police service functioning in the State which is declared by the State Government to be equivalent thereto.

Rule 2 empowers the State Government to declare equivalence of various branches of the Police Force with those of the civil police. But this equivalence must be on the basis of 'universal and across the board' considerations, based on rationality and merit. The State Government has been vested with this power in order to identity State Police officers with true merit who, by dint of their commitment to the job, professionalism and integrity, have excelled themselves. Such police officers will be assets to the Indian Police Service.

The Merriam Webster Dictionary defines equivalence as a quality or a State of being alike or as the quality or State of having the same value function meaning etc. The Oxford Advanced Learners Dictionary defines equivalence as the condition of being equal or equivalent in value, worth, function etc.

Against this standard we may examine the claims of police officers of various wings:

Officers of the Finger Print Bureau perform a specific function of assisting investigating officers for identifying finger prints. They are neither involved in main stream investigation nor are they well versed in the nuances of law. They are hardly ever called upon to perform any law and order duties. In a similar manner officers of

the Wireless Wing are entrusted with the task of providing uninterrupted police communication throughout the state. No doubt they assist executive police officers during times of law and order situations by communicating messages down the line and from the field all the way upto the senior most police officers. But this cannot be termed as performance of law and order duties. They are in no way connected with the investigation of crime, except in the matter of communicating messages related to the same.

The RSIs of DAR/CAR perform various functions within the DAR/CAR such as deployment, drill, motor transport, arms and ammunition, stores etc. They are not even remotely connected with the prevention and detection of crime. Although these officers are being deployed for bandobust during law and order situations, they do not get to see the entire gamut of maintenance of law and order. Maintenance of law and order is a complex task which involves various stages starting from anticipation of law and order situations, collection of intelligence/information etc., making various preparations for meeting the contingency, interaction with various sections of the people, summoning of additional forces as well as equipment and necessary wherewithal. Handling of a law and order situation or mob control is only one facet of the entire gamut of law and order maintenance. Therefore it can be safely stated that the RSIs of DAR/CAR are clearly deficient in this area. It is in this context that former DG&IGP Dr. Ajay Kumar Singh and former President of IPS Association, Sri MK Srivastava addressed letters to Government specifically stating the pitfalls in inducting a promote Armed officer such as Sri Mane into the IPS.

The training, orientation, ethos, as well as their experience in policing of promote officers in KSRP are very similar to those of the RSIs of DAR/CAR. Therefore, their arguments are not being discussed separately.

The same situation applies to Dy. SPs (Detectives) who are working in the CID. Considering the very nature of their job Dy. SPs (Detective) are quiet well versed in the investigation and detection of crime. But they are clearly lacking when it comes to maintenance of law and order. Even on occasional deployment during major bandobust will not enable them to learn the various complexities of law and order maintenance. In addition, the common combined competitive examination conducted by the KPSC for recruiting Class 1 officers including Civil Dy. SPs and direct Asst Commandants of KSRP is of a higher standard than the ones held for the selection of PSIs and RSIs. Therefore, qualitatively, the two sets of officers differ greatly not to speak of the differences in orientation, perspective, and sub culture.

Another common deficiency that all these Auxiliary service officers share is that they are not conversant with the functioning of the Police Station, circle or sub division. These officers have not been attached to any of these formations in the police department. Only through a hands on experience by holding independent charge of a police station, circle, or sub division can a superior police officer learn the basics of policing and various police documents. A thorough knowledge of police functions at the police station, circle and a sub division will be an essential ingredient for a superior police officer (Deputy Superintendent of Police or equivalent and above). Only such superior officers can effectively supervise the functioning of a police station, or a circle or a sub division. Any superior officer who is not equipped in this manner can be easily ‘nose led’ by certain subordinates. This can only happen to the great detriment of the society which looks upto the police for a solution for many of their problems. It is in keeping with this concept that the doyens of the Police Department of yester years made it mandatory for IPS Officers to go through this kind of practical training.

Despite all this, one category of police officers namely the directly recruited Asst. Commandants of KSRP can be considered an exception. By virtue of the fact that they have been selected through a common combined competitive examination including written and personality test, as in the case of directly recruited Civil Dy.

SPs, they may be considered equivalent in merit and status. As it happens in a competitive examination, officers with higher rankings get selected as Civil Dy. SPs while those who are slightly below get selected as Asst. Commandants. It may be true that they may not have held independent charge of a police station, circle or sub division. Over year of service these directly recruited Asst Commandants develop expertise in crowd control, law & order duties VIP Security, Security of Vital Installations and personnel management. It is also on record that a former Director of Karnataka Police Academy addressed letters to different officers in the hierarchy recommending field training of the Asst. Commandants of KSRP. The fact that such a proposal was not implemented cannot be held out against the directly recruited Asst. Commandants. The present committee is in agreement with Dr. Ramanujam Committee that the cadre of directly recruited Asst. Commandants has led to considerable frustration and disgruntlement among these officers for want of sufficient promotional opportunities as compared to directly recruited civil Dy.S.Ps. Taking all these factors into account the present committee is of the view that directly recruited Asst. Commandants should be considered as an exception and they should be recommended for selection to the IPS in keeping with rule 2(j) of IPS (Appointment by promotion) Regulations 1955.

But the present committee would like to stipulate that considering the lack of experience in basic police functions and duties, these directly recruited Asst. Commandants should be compulsorily put through a training programme during which they would hold independent charge of a police station and a circle for three months each, and a sub division for about six months. This training will equip the Asst. Commandants in terms of basic police functions and duties. Such training can in fact begin forthwith and it need not wait until their induction into the IPS. While fixing inter se seniority the existing UPSC rules in this regard may be followed.

Promotional avenues may be found within the respective wings of the Police department for promoting officers working in KSRP, DAR/CAR, Wireless, FPB, etc. We are also given to understand that there is a need for Security/Vigilance officers in various PSUs of the State as well as Centre. Auxiliary police officers can be considered for deputation to such organizations. This will help in reducing monotony and enhance the overall perspective of these officers. In line with this, such officers should also be deputed for various courses and training programmes which will help improve their skills and professional knowledge.

It is necessary to reiterate a very important observation made by Sri R. Ramalingam Committee. Directly recruited civil Police Sub Inspectors, who constitute a large chunk of our officer cadre hardly ever get opportunities to be promoted to the IPS. Just three years ago a small batch of three officers (who rose from the rank of directly recruited civil PSIs) were selected to the IPS after a gap of nearly 3 decades. These officers now have to put in at least 30 years of service or more before they can be considered eligible for promotion to IPS. To a great extent this is on account of direct recruitment of a large number of Dy. S.Ps (Civil). In States like Kerala these promotee officers constitute a sizeable chunk of the State quota of 33.33% in the IPS. By providing them this opportunity the morale of these officers will go high and many of them may aspire to get into the IPS. This will be a very positive development. We would like to add in point of fact that the top ranked police officer in the London Metropolitan Police viz: Chief Constable rises from the rank of Constable. In the process of the Chief Constable brings with him a wide variety of experience at various levels. Therefore there is a strong case for the directly recruited sub inspectors (civil). The Committee strongly recommends that the State may devise rules and regulations in such a way that atleast a small number of these officers get into the IPS so that the department can draw upon their vast experience in policing.

All this is not to suggest that the officers of Finger Print Bureau, Wireless, DAR/CAR, Dy. SPs (Detectives of CID etc) should not get an opportunity at all to get into the higher echelons of Police department. A window of opportunity can be provided in line with the pattern existing in Andhra Pradesh and Tamil Nadu. In these 2 States, Police officers of Auxiliary services who put in 5 years of experiences and who are below 40 years of age are allowed lateral migration to the civil police. If these officers are young enough, there is a distinct possibility of at least some of them getting into the common combined seniority list of Dy. S.Ps. A few of them may even aspire to be selected to the IPS. This may satisfy their genuine aspirations. But at the time of lateral migration they can claim only pay protection and pecuniary benefits. However, these officers, who migrate, cannot be allowed to claim their original seniority in the respective auxiliary service. Inclusion of auxiliary police officers into the common combined seniority list of civil Dy. SPs would be unfair considering the fact that they get much faster promotions.

Recommendations:

1. Equivalence may be established between civil Dy. S.Ps and directly recruited Asst. Commandants. Necessary orders may be issued by the Government accordingly. They may be considered for promotion to the IPS against the promotion quota based on merit and APR ratings in line with rule 2 [1] (j) (ii) of IPS Regulation (Appointment by Promotion) 1955.

2. The direct recruitment of Asst. Commandants in KSRP may be discontinued forthwith. The direct recruitment vacancies of Asst. Commandants in KSRP (25% as per the current cadre and Recruitment Rules) may be merged with the vacancies of directly recruited Dy. S.Ps (Civil).

3. Officers at Class 1 level [such as those from auxiliary services like Wireless, Finger Print Bureau, KSRP, CAR/DAR, Detectives in CID etc] other than Civil DSPs should not be considered for direct recruitment by KPSC through a common combined competitive examination.

4. Promotee officers of the Auxiliary services should not be considered for induction into the IPS, since they have not gone through the common combined competitive examination conducted by the KPSC for recruiting Class 1 officers.

5. Promotional avenues may be found for the promotee officers of KSRP, DAR/CAR, Wireless, Finger Print Bureau, within the respective wings of the police.

6. Directly recruited Asst Commandants of KSRP should be compulsorily put through a training programme during which they would hold independent charge of a police station and a circle for three months each and a sub division for six months before they are inducted into the IPS.

7. Deputation of Reserve officers as security cum vigilance officers in State Public Sector undertakings may be seriously considered.

8. Officers of Auxiliary services including KSRP, CAR/DAR, Wireless, Finger Print Bureau etc may be deputed for courses and training programmes both within and outside the state as frequently as possible.

9. The present Dy. S.Ps (Detectives) may be considered for absorption in the civil police. Inter se seniority should be fixed in such a manner that the detective

officers in CID will be placed just below the civil PSIs recruited in that particular year.

10. Since the time taken by directly recruited sub inspectors to attain the rank of DSP, is very long, it is suggested that provisions may be made for quicker promotion for directly recruited PSIs.

11. Half of the posts of Commandants in KSRP/India Reserve Battalions may be encadred. In other words they may be manned by IPS officers. The remaining posts may be filled up by officers from the Civil police or by posting eligible officers from KSRP on a fifty: fifty ratio.

Sd/-
(M. LAKSHMAN, IPS)
Inspector General of Police (Retd)
Member

Sd/-
(A.M. PRASAD, IPS)
Addl. Director General of Police
Intelligence,
Convenor

Sd/-
(A.R. INFANT)
DG & IGP (Retd)

16. But in the meanwhile on consent of all the parties a suggestion made by the Law Secretary to the Karnataka State was accepted after hearing on several instances that all the concerned parties can be promoted, as vacancies were available, but their inter-se seniority can be decided at a later stage, for which the State of Karnataka wanted time, provided the person concerned were eligible to be promoted. This condition was made, as apparently some of the applicants were not eligible has they had not completed the mandate of 8 years of service. But on the concerned date even though available on other dates, one particular party was absent and on the bonafide belief it suited everyone and interim order was passed directing the State Government

to take up the matter of promotion of everyone who is eligible, as all the parties agreed in open Court. But then apparently some of the parties later withdrew their consent and filed W.P. No. 42721-42733/2016 and other Writ Petition followed it and was disposed of on 29.8.2016, which we quote below:

THESE WRIT PETITIONS COMING ON FOR ORDERS
THIS DAY, JAYANT PATEL J., PASSED THE FOLLOWING:

In the first group of writ petition Nos.42721- 42733/2016, the challenge is to the order dated 22.07.2016 passed by the Central Administrative Tribunal in the main O.A. Nos.365-377/2016, which are pending before the Tribunal.

2. In the second group of writ petition Nos.43933-43935/2016, the challenge is to the orders dated 29.06.2016, 21.07.2016 and 22.07.2016 passed by the Tribunal in O.A. No.170/00355-00359/2016, whereby the Tribunal has issued certain directions.

3. In the third group of writ petition Nos.44549- 44550/2016, challenge is to the orders dated 24.03.2016 and 22.07.2016 passed by the Tribunal in O.A. Nos.362-364/2016. Petitioners are also challenging the order dated 23.01.2016 passed by respondent No.4-State.

4. Mr. K. Subba Rao, learned senior counsel appearing for petitioners in Nos.42721-42733/2016 submitted that for challenging the aforesaid order dated 24.03.2016 passed by the Tribunal, one more writ petition i.e., W.P. No.33826/2016 is filed by applicants in O.A. Nos.365-377/2016. As the issue involved in W.P.No.33826/2016 is connected with the present group of matters, we have called for the papers of the said writ petition with the consent of the learned Advocates appearing for the respective parties. Hence, the said W.P.No.33826/2016 is also simultaneously considered along with the aforesaid three groups of writ petitions.

5. We have heard Mr. K. Subba Rao, learned senior counsel appearing on behalf of learned counsel for respective petitioners in WP Nos.42721-42733/2016 and W.P. No.33826/2016. Sri P.S. Rajagopal, learned senior counsel for Sri Naga Prasanna M, learned counsel for petitioners in WP Nos.43933-43935/2016, Sri J. Prashanth, learned counsel appearing for petitioners in WP Nos.44549-44550/2016. Sri Krishna S. Dixit, learned Assistant Solicitor General appearing for the Union of India, Sri S.G. Pandit, learned counsel appearing for Union Public Service Commission (UPSC), Sri H.T. Narendra Prasad, learned Additional Government Advocate appearing for the respondent – State and its authorities, Sri Ajoy Kumar Patil, learned counsel appearing for private respondents, the main contesting party in all the petitions except W.P No.33826/2016.

6. We may at the outset record that in the group of writ petition Nos.42721-42733/2016, on 25.08.2016, after hearing the learned Advocates appearing for the respective parties, the following order was passed:

"We have heard Mr. A Vishwanath Bhat, the learned counsel appearing for petitioner, Mr.H.T.Narendra Prasad, learned AGA appearing for the State. Mr.Ajoy Kumar Patil, learned counsel appearing for respondents-6 and 7.

It prima-facie appears that once the matter was treated as part heard by the Division Bench of the Tribunal vide order dated 24.03.2016, one of the member of the Bench could not take up the matter singly and pass orders dated 29.06.2016, 21.07.2016 and 22.07.2016.

It is hardly required to be stated that in order to maintain the sanctity of the judicial order and to observe the principles of propriety that too of the judicial comity, once the matter is treated as part heard by a Division Bench, no member of the Bench singly could take up the matter nor could pass any order. We do not find it appropriate to make any further observation in this regard since learned counsel appearing for the State and its authorities as well learned counsel appearing for private respondents have stated that as the matter is pending before the Tribunal, this Court may not make any further observation.

But it prima-facie appears to us that the orders passed by one of the member of the Division Bench singly namely, dated 29.06.2016, 21.07.2016 and 22.07.2016 which are impugned cannot be allowed to operate since such can be said as prima-facie without jurisdiction or authority since the matter was already treated as part-heard by the Division Bench of the Tribunal. Hence, notice returnable on 29.08.2016.

It would be open to the learned counsel appearing for the petitioners to serve advance copy to the learned counsel appearing for respective parties in the Tribunal and to the Assistant Solicitor General's Office and the counsel who normally appears for UPSC.

By ad-interim order, the operation and implementation of the orders dated 29.06.2016, 21.07.2016 and 22.07.2016 shall remain stayed and suspended.

Similarly, on the very day i.e., 25.08.2016 in the other two groups, the following orders were passed:

WP NOs.43933-43935/2016

"As notice has been ordered and impugned orders are already stayed and suspended as per the order passed by us today in W.P.Nos.42721-733/2016, let this matter be placed with the said W.P.Nos.42721-733/2016 and 44549-550/2016 on 29.08.2016.

It would be open to the learned counsel appearing for the petitioners to serve advance copy to the learned counsel appearing for respective parties in the Tribunal and to the Assistant Solicitor General's Office and counsel who normally appears for the UPSC."

WP NOs.44549-44550/2016

"As the connected matters are already listed today and ordered to be heard, we have permitted the learned counsel to circulate the present matter. Accordingly, same is taken up.

In view of the order passed this Court today in W.P.Nos.42721-723/2016, impugned

order is already suspended.

It would be open to the learned counsel appearing for the petitioners to serve advance copy to the learned counsel appearing for respective parties in the Tribunal and to the Assistant Solicitor General's Office and the counsel, who normally appears for the UPSC.

Let this matter be listed for hearing on 29.08.2016 with W.P.Nos.42721-723/2016."

7. Today, when we have further taken up the matter, learned senior counsel / counsel appearing for respective petitioners have reiterated the same submission that once the matter was treated as part heard by the Division Bench of the Tribunal, one member of the Bench could not have taken up the matter singly and pass the subsequent orders dated 29.06.2016, 21.07.2016 and 22.07.2016.

8. Learned counsel appearing for the private respondents, Mr. Ajoy Kumar Patil, however, attempted to defend the orders passed by the single Member Bench of Tribunal by contending inter alia that one member of the Bench has power to decide interim application or issue a direction, if the Division Bench or the regular Bench of the
Tribunal is not available. Learned counsel also attempted to rely upon Appendix III of the Central Administrative Tribunal Rules of Practice, 1993, wherein instructions issued by the Chairman of the Tribunal dated 20.01.1992 inter alia provides that in situations when the Division Bench is not available for dealing with urgent cases for admission and grant of interim orders, and the urgency is such that the matter cannot be deferred until the Division Bench becomes available, the Single Member Bench is authorized to take up such urgent cases for admission and grant of interim relief subject to the condition that if the Single Member is not inclined to admit the matter, he shall refer the matter for being placed before the appropriate Division Bench as soon as the same becomes available. He, therefore, submitted that in the present group of matters, at earlier point of time, Division Bench was available, whereas on the date when the impugned orders were passed by the Tribunal on 29.06.2016, 21.07.2016 and 22.07.2016, the Division Bench of the Tribunal was not available. Therefore, a Single Member Bench took up the matter and passed the orders.

9. In our view, had it been in normal circumstances, where the matter was not treated as part heard earlier by the Division Bench of the Tribunal, it might stand on a different footing and different consideration, but in a matter where the Division Bench had already ordered to treat the matter as part heard, it would stand on a different footing and different consideration for the purpose of the business or taking over of the matter by the Single Member Bench. We may record that the Division Bench of the Tribunal in its order dated 24.03.2016 at the end had recorded as under:

"Post the matter for further hearing as part heard on 02.06.2016"

Under these circumstances, we need to further examine as to whether the Single Member Bench, may be out of the very Division Bench, which treated the matter as part
heard, could take up the matter for passing any interim order or otherwise, unless the matter was released by the very Division Bench as from part heard or any order was passed not to treat the matter as part heard.

10. It is undisputed position that after the order dated 24.03.2016 was passed by the Division Bench, at the time when subsequent orders dated 29.06.2016, 21.07.2016

and 22.07.2016 were passed by Single Member Bench, the Division Bench had not released the matter from part heard and the matter remained as part heard before the Division Bench, but the Single Member Bench has entertained the matter and has issued certain directions.

11. It is hardly required to be stated that the basic principles of judicial propriety and judicial comity, which are required to be followed for giving sanctity to the judicial orders passed by the competent Forum, are the inbuilt essence in any system of administration of justice. Such sometimes may be expressly provided under the respective statute, but sometimes may not be provided under the respective statute. However, the fact would remain that observance of such principles are a must for giving any sanctity to the judicial orders passed by any Forum. We would have made further observations, however, the learned counsel appearing for private respondents, the main contesting party, has not invited any further reason. On the contrary, learned Advocates appearing for both the sides have conceded that since the matters are at large pending before the Tribunal, this Court may not make further observations and may quash the orders passed by Single Member Bench, if it is so inclined and let the Tribunal consider the matters in accordance with law for final disposal or otherwise. Hence, we leave it at that without making any further observation, but suffice it to observe that if any matter is treated as part heard may be by Division Bench or may be by the Single Member Bench, unless it is released from part heard, or unless there is absolute non-availability of the member of Division Bench on account of retirement, death, transfer or otherwise, the matter should be considered by the very Bench, which has treated it as part heard.

12. In view of the aforesaid observations and discussion, we find that the order/s passed by Single Member Bench of the Tribunal: dated 22.07.2016 in O.A. Nos.365-377/2016; dated 29.06.2016, 21.07.2016 and 22.07.2016 in O.A. No.170/00355-00359/2016 and dated 22.07.2016 in O.A. Nos.362-364/2016 cannot be sustained in the eye of law and the same deserve to be quashed and set aside. Hence, they are quashed and set aside. Accordingly, W.P. Nos.42721-42733/2016, W.P. Nos.43933-43935/2016 and W.P. Nos.44549-44550/2016 are allowed to the aforesaid extent.

13. So far as separate orders passed by the Division Bench of the Tribunal of even date i.e., 24.03.2016 in O.A. Nos.362-364/2016 and O.A. Nos.365- 377/2016, which are subject matters of challenge in W.P. Nos.44549-44550/2016 and W.P. No.33826/2016
respectively, are concerned, we find that no interference is called for at this stage since the matters are at large pending before the Tribunal.

14. So far as challenge made by petitioners in W.P. Nos.44549-44550/2016 to the order dated 23.01.2016 passed by the State Government is concerned, the same is subject matter of challenge in O.A. Nos.362-364/2016 pending before the Tribunal. Therefore, when the Tribunal is seized with the proceedings, we do not find that any challenge to the said order dated 23.01.2016 passed by the State Government can be entertained at this stage in the said petitions.

15. It is further observed that the rights and contentions of the parties in the original applications including of petitioners in W.P. Nos.43933-43935/2016 would remain open to be considered in accordance with law by the Tribunal, which is yet to decide the main
applications finally after hearing both the sides. The parties shall also be at the liberty to move the Tribunal for early disposal of the main applications, which are pending before the Tribunal.

16. The petitions are disposed of accordingly."

17. Therefore, the matter was taken up once again. At this time an MA was filed for the recusal of a Judge on the ground that having passed an order earlier, he may have a bias.

18. Therefore, what can this bias be.

1) No personal allegation seems to be made.

2) The content seems to be that the intellectual aspirations and convictions of the Judge had pointed to a stream of actions.

19. But then, on this principle, no Judge can ever pass an order. Moreover, it is covered by a specific judgment of the Hon'ble Apex Court, the pertinent points of which we quote below:

> Per Chelameswar, J
> It is one of the settled principles of a civilised legal system that a Judge is required to be impartial. It is said that the hallmark of a democracy is the existence of an impartial Judge. The principles that are applicable to determine whether the impartial Judge is sufficiently in doubt so as to arrant recusal can be summarised as follows:
> If a Judge has a financial interest in the outcome of a case, he is automatically disqualified from hearing the case.
> In cases where the interest of the Judge in the case is other than financial, then the disqualification is not automatic but an enquiry is required whether the existence of such an interest disqualifies the Judge tested in the light of either on the principle of "real danger" or "reasonable apprehension" of bias. Pinochet Ugarte (No.2), (2000) 1 AC 119 added a new category i.e. that the Judge is automatically disqualified from hearing a case where the Judge is interested in a cause which is being promoted by one of the parties to the case.
> It is nobody's case that, in the case at hand, Justice Khehar had any pecuniary interest or any other interest falling under the second of the above-mentioned categories. By the very nature of the case, no such interest can arise at all.
> The question is whether the principle of law laid down in Pinochet case is attracted. In other words, whether Justice Khehar can be said to be sharing

any interest which one of the parties is promoting. All the parties to these proceedings claim to be promoting the cause of ensuring the existence of an impartial and independent judiciary. The only difference of opinion between the parties is regarding the process by which such a result is to be achieved. Therefore, it cannot be said that Justice Khehar shares any interest which any one of the parties to the proceeding is seeking to promote.

The objection that was raised to Khehar, J, being a member of this Bench was that as he was a member of the 4+1 Collegium, he has vested in him "significant constitutional power" under the existing Collegium System of appointment of Judges in the matter of selection of Judges of the Supreme Court as well as High Courts of this Country and by virtue of the impugned legislation which replaces Collegium System, until he attains the position of being the third seniormost Judge of the Supreme Court. Khehar,J. would cease to enjoy such power; and therefor, there is a possibility of him being impartial. That is to say the petitioners who are seeking to have the Collegium System retained (and not the respondents) objected to the participation of Khehar, J. in these proceedings on the ground of him having conflicting interests – one in his capacity as a member of the Collegium and the other in his capacity as a Judge to examine the constitutional validity of the provisions which seek to displace the Collegium system.

The implication of the petitioners' submission is that Justice Khehar would be pre-determined to hold the impugned legislation to be invalid. We fail to understand the stand of the petitioners. If such apprehension of the petitioners comes true, the beneficiaries would be the petitioners only. The grievance, if any, on this ground should be on the part of the respondents. The respondents made an emphatic statement that they have no objection for Khehar,J. hearing the matter as a Presiding Judge of the Bench.

No precedent has been brought to our notice, where courts ruled at the instance of the beneficiary of bias on the part of the adjudicator, that a judgment or an administrative decision is either voidable or void on the ground of bias. On the other hand, it is a well established principle of law that an objection based on bias of the adjudicator can be waived. Courts generally did not entertain such objection raised belatedly by the aggrieved party. The right to object to a disqualified adjudicator may be waived, and this may be so even where the disqualification is statutory. The court normally insists that the objection shall be taken as soon as the party prejudiced knows the facts which entitle him to object. If, after he or his advisers know of the disqualification, they let the proceedings continue without protest, they are held to have waived their objection and the determination cannot be challenged. The implication of the above principle is that only a party who has suffered or likely to suffer an adverse adjudication because of the possibility of bias on the part of the adjudicator can, raise the objection.

The "significant constitutional power" in the matter of selection of Judges of the Supreme Court as well as High Courts of this country under the Collegium System does not inhere only to the members of the Collegium,

but inheres in every Judge of this Court who might be called upon to express his opinion regarding the proposals of various appointments of the High Court Judges, Chief Justices or Judges of this Court, while the members of the Collegium are required to exercise such "significant power" with respect to each and every appointment of the above-mentioned categories, the other Judges of this Court are required to exercise such "significant power", at least with respect to the appointments to or from the High Court with which they were earlier associated with either as judges or Chief Justices. Thus, this argument if accepted would render all the Judges of the Supreme Court disqualified from hearing the present controversy. A result not legally permitted by the "doctrine of necessity". Hence, the submission that Khehar, J. should recuse himself from the proceedings, is rejected.

Per Khehar, J.

In the Supreme Court one gets used to writing common orders, for orders are written either on behalf of the Bench, or on behalf of the Court. Mostly, dissents are written in the first person. Even though, this is not an order in the nature of a dissent, yet it needs to be written in the first person. While endorsing the opinion expressed by J. Chelameswar, J., adjudicating upon the prayer for my recusal, from hearing the matters in hand, reasons for my continuation on the Bench, also need to be expressed by me. Not for advocating any principle of law, but for laying down certain principles of conduct. (Para 33)

A three-Judge Bench was originally constituted for hearing these matters. The Bench comprised of Anil R. Dave, J. Chelameswar and Madan B. Lokur, JJ. At that juncture, Anil R. Dave, J. was a part of the 1+2 collegium, as also, the 1+4 collegium. During the hearing of the cases, Anil R. Dave, J. did not participate in any collegium proceedings. Based on the order passed by the three-Judge Bench on 7.4.2015, Hon'ble the Chief Justice of India, constituted a five-Judge Bench, comprising of Anil R. Dave, Chelameswar, Madan B. Lokur, Kurian Joseph and Adarsh Kumar Goel, JJ. (Paras 35, 41 and 42)

On 13.4.2015 the Constitution (Ninety-ninth Amendment) Act, 2014, and the National Judicial Appointments Commission Act, 2014, were notified in the Gazette of India (Extraordinary). Both the above enactments, were brought into force with effect from 13.4.2015. Accordingly, on 13.4.2015 Anil R. Dave, J. became an ex officio Member of the National Judicial Appointments Commission, on account of being the second senior most Judge after the Chief Justice of India, under the mandate of Article 124A (1) (b) as inserted by the said amendment. When the matter came up for hearing for the first time, before the five-Judge Bench on 15.4.2015, it passed the following order: "List the matters before a Bench of which one of us (Anil R. Dave, J.) is not a member." It is, therefore, that Hon'ble the Chief Justice of India, reconstituted the Bench with myself, J. Chelameswar, Madan B. Lokur, Kurian Joseph and Adarsh Kumar Goel, JJ., to hear this group of cases. (Paras 43 and 44)

The sequence of facts reveals, that the recusal by Anil R. Dave, J. was not at his own, but in deference to a similar prayer made to him. Logically, if he had heard these cases when he was the presiding Judge of the three-Judge Bench, he would have heard it, when the Bench strength was increased, wherein, he was still the presiding Judge. (Para 45)

It was, and still is, my personal view, which I do not wish to thrust either on Mr. Fali S. Nariman, or on Mr. Mathews J. Nedumpara, that Anil R. Dave, J. was amongst the most suited, to preside over the reconstituted Bench. As noticed above, he was a part of the 1+2 collegium, as also, the 1+4 collegium, under the 'collegium system'; he would continue to discharge the same responsibilities, as an ex officio Member of the National Judicial Appointments Commission, in the 'Commission system', under the constitutional amendment enforced with effect from 13.4.2015. Therefore, irrespective of the system which would survive the adjudicatory process, Anil R. Dave, J. would participate in the selection, appointment and transfer of Judges of the higher judiciary. He would, therefore, not be affected by the determination of the present controversy, one way or the other. (Paras 48 and 49)

As a Judge presiding over the reconstituted Bench, I found myself in an awkward predicament. I had no personal desire to participate in the hearing of these matters. I was a part of the Bench, because of my nomination to it, by Hon'ble the Chief Justice of India. My recusal from the Bench at the asking of the esteemed members of the Bar did not need a second thought. But then, this was the second occasion when proceedings in a matter would have been deferred, just because, Hon'ble the Chief Justice of India, in the first instance, had nominated Anil R. Dave, J. on the Bench, and thereafter, had substituted him by nominating me to the Bench. It was therefore felt, that reasons ought to be recorded, after hearing learned counsel, at least for the guidance of Hon'ble the Chief Justice of India, so that His Lordship may not make another nomination to the Bench, which may be similarly objected to. This, coupled with the submissions advanced by Mr. Mukul Rohatgi, Mr. Harish N. Salve and Mr. K.K. Venugopal, that parameters should be laid down, led to a hearing, on the issue of recusal. (Paras 52 and 53)

Thus, the Bench examined the prayer, whether I should remain on the reconstituted Bench, despite my being a member of the 1+4 collegium. The Bench, unanimously concluded, that there was no conflict of interest, and no other justifiable reason in law, for me to recuse from the hearing of these matters. The Bench passed a short order to this effect. After the order was pronounced, I disclosed to my colleagues on the Bench, that I was still undecided whether I should remain on the Bench, for I was toying with the idea of recusal, because a prayer to that effect, had been made in the face of the Court. My colleagues on the Bench, would have nothing of it. They were unequivocal in their protestation. Despite the factual position noticed above, I wish to record, that it is not their persuasion or exhortation, which made me take a final call on the matter. The decision to remain a member of the reconstituted Bench was mine, and mine alone. The choice that I made, was

not of the heart, but that of the head. The choice was made by posing two questions to myself. Firstly, whether a Judge hearing a matter should recuse, even though the prayer for recusal is found to be unjustified and unwarranted? Secondly, whether I would stand true to the oath of my office, if I recused from hearing the matters?

(Paras 54 to 56)

The reason that was pointed out against me, for seeking my recusal was, that I was a part of the 1+4 collegium. But that, should have been a disqualification for Anil R. Dave, J. as well. When he commenced hearing of the matters, and till 7.4.2015, he suffered the same alleged disqualification. Yet, the objection raised against me, was not raised against him. When confronted, Mr. Fali S. Nariman vociferously contested, that he had not sought the recusal of Anil R. Dave, J.. He supported his assertion with proof. One wonders, why did he not seek the recusal of Anil R. Dave, J.? There is no doubt about the fact, that I have been a member of the 1+4 collegium, and it is likely that I would also shortly become a Member of the NJAC, if the present challenge raised by the petitioners was not to succeed. I would therefore remain a part of the selection procedure, irrespective of the process which prevails. That however is the position with reference to four of us (on the instant five-Judge Bench). Besides me, my colleagues on the Bench – J. Chelameswar, Madan B. Lokur and Kurian Joseph, JJ. would in due course be a part of the collegium (if the writ- petitioners before this Court were to succeed), or alternatively, would be a part of the NJAC (if the writ-petitioners were to fail). In such eventuality, the averment of conflict of interest, ought to have been raised not only against me, but also against my three colleagues. But, that was not the manner in which the issue has been canvassed. In my considered view, the prayer for my recusal is not well founded. If I were to accede to the prayer for my recusal, I would be initiating a wrong practice, and laying down a wrong precedent. A Judge may recuse at his own, from a case entrusted to him by the Chief Justice. That would be a matter of his own choosing. But recusal at the asking of a litigating party, unless justified, must never to be acceded to. For that would give the impression, of the Judge had been scared out of the case, just by the force of the objection. A Judge before he assumes his office, takes an oath to discharge his duties without fear or favour. He would breach his oath of office, if he accepts a prayer for recusal, unless justified. It is my duty to discharge my responsibility with absolute earnestness and sincerity. It is my duty to abide by my oath of office, to uphold the Constitution and the laws. My decision to continue to be a part of the Bench, flows from the oath which I took, at the time of my elevation to the Supreme Court.

Per Lokur, J.

when an application is made for the recusal of a judge from hearing a case, the application is made to the concerned judge and not to the Bench as a whole. Therefore, my learned brother Justice Khehar is absolutely correct in stating that the decision is entirely his, and I respect his decision. (Para 60)

The issue of recusal may be looked at slightly differently apart from the legal nuance. What would happen if, in a Bench of five judges, an application is moved for the recusal of Judge A and after hearing the application Judge A decides to recuse from the case but the other four judges disagree and express the opinion that there is no justifiable reason for Judge A to recuse from the hearing? Can Judge A be compelled to hear the case even though he/she is desirous of recusing from the hearing? It is to get over such a difficult situation that the application for recusal is actually to an individual judge and not the Bench as a whole. (Para 63)

As far as the view expressed by Justice Kurian Joseph that reasons should be given while deciding an application for recusal, I would prefer not to join that decision. In the first place, giving or not giving reasons was not an issue before us. That reasons are presently being given is a different matter altogether. Secondly, the giving of reasons is fraught with some difficulties. For example, it is possible that in a given case, a learned judge of the High Court accepts an application for his/her recusal from a case and one of the parties challenges that order in this Court. Upon hearing the parties, this Court comes to the conclusion that the reasons given by the learned judge were frivolous and therefore the order is incorrect and is then set aside. In such an event, can this Court pass a consequential order requiring the learned judge to hear the case even though he/she genuinely believes that he/she should not hear the case? (Para 64)

The issue of recusal from hearing a case is not as simple as it appears. The questions thrown up are quite significant and since it appears that such applications are gaining frequency, it is time that some procedural and substantive rules are framed in this regard. If appropriate rules are framed, then, in a given case, it would avoid embarrassment to other judges on the Bench. (Para 65)

Per Kurian, J.

One of the reasons for recusal of a Judge is that litigants/the public might entertain a reasonable apprehension about his impartiality. “It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.”[705] And therefore, in order to uphold the credibility of the integrity institution, the Judge recuses from hearing the case. (para 67)

Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.” “It needs to be said loudly and clearly that the ground of disqualification is a reasonable apprehension that the judicial officer will not decide the case impartially or without prejudice, rather than that he will decide the case adversely to one party.” (Para 74)

The nature of the judicial function involves the performance of difficult and at times unpleasant tasks. Judicial officers are nonetheless required to "administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law". To this end they must resist all manner of pressure, regardless of where it comes from. This is the constitutional duty common to all judicial officers. If they deviate, the independence of the judiciary would be undermined, and in turn, the Constitution itself." (Para 76)

A Judge of the Supreme Court or the High Court, while assuming Office, takes an oath as prescribed under Schedule III to the Constitution of India, that:

"… I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

Called upon to discharge the duties of the Office without fear or favour, affection or ill-will, it is only desirable, if not proper, that a Judge, for any unavoidable reason like some pecuniary interest, affinity or adversity with the parties in the case, direct or indirect interest in the outcome of the litigation, family directly involved in litigation on the same issue elsewhere, the Judge being aware that he or someone in his immediate family has an interest, financial or otherwise that could have a substantial bearing as a consequence of the decision in the litigation, etc., to recuse himself from the adjudication of a particular matter. No doubt, these examples are not exhaustive. (Paras 68 and 69)

Guidelines on the ethical conduct of the Judges were formulated in the Chief Justices' Conference held in 1999 known as "Restatement of Judicial Values of Judicial Life". Those principles, as a matter of fact, formed the basis of "The Bangalore Principles of Judicial Conduct, 2002" formulated at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague. (Para 70)

The simple question which is always to be asked is, , whether the adjudication by the Judge concerned, would cause a reasonable doubt in the mind of a reasonably informed litigant and fair-minded public, as to his impartiality or raise the likelihood of bias. Mere possibility of such a feeling is not enough. There must exist circumstances where a reasonable and fair-minded man would think it probably or likely that the Judge would be prejudiced against a litigant. There may be situations where the mischievous litigants wanting to avoid a Judge may be because he is known to them to be very strong and thus making an attempt for forum shopping by raising baseless submissions on conflict of interest. The reasonableness of the apprehension must be assessed in the light of the oath of Office he has taken as a Judge to administer justice without fear or favour, affection or ill-will and his ability to carry out the oath by reason of his training and experience whereby he is in a position to disabuse his mind of any irrelevant personal

belief or pre-disposition or unwarranted apprehensions of his image in public or difficulty in deciding a controversial issue particularly when the same is highly sensitive.

Being an institution whose hallmark is transparency, it is only proper that the Judge discharging high and noble duties, at least broadly indicate the reasons for recusing from the case so that the litigants or the well- meaning public may not entertain any misunderstanding that the recusal was for altogether irrelevant reasons like the cases being very old, involving detailed consideration, decision on several questions of law, a situation where the Judge is not happy with the roster, a Judge getting unduly sensitive about the public perception of his image, Judge wanting not to cause displeasure to anybody, Judge always wanting not to decide any sensitive or controversial issues, etc. Once reasons for recusal are indicated, there will not be any room for attributing any motive for the recusal. To put it differently, it is part of his duty to be accountable to the Constitution by upholding it without fear or favour, affection or ill- will. Therefore, I am of the view that it is the constitutional duty, as reflected in one's oath, to be transparent and accountable, and hence, a Judge is required to indicate reasons for his recusal from a particular case. This would help to curb the tendency for forum shopping.

The above principles are universal in application. Impartiality of a Judge is the sine qua non for the integrity institution. Transparency in procedure is one of the major factors constituting the integrity of the office of a Judge in conducting his duties and the functioning of the court. The litigants would always like to know though they may not have a prescribed right to know, as to why a Judge has recused from hearing the case or despite request, has not recused to hear his case. Reasons are required to be indicated broadly. Of course, in case the disclosure of the reasons is likely to affect prejudicially any case or cause or interest of someone else, the Judge is free to state that on account of personal reasons which the Judge does not want to disclose, he has decided to recuse himself from hearing the case.

20. Therefore, this MA will not stand in the eye of law and is hereby rejected.

21. Relating to legislative competence in their respective fields, the Hon'ble Apex Court seems to have laid down specific dictum, which we quote:

1996 7 SCC 637

Indian Aluminium CO & ors vs. State & ors.

In order to recoup the loss resulting to the under Section 3 of the from the imposition of excise duty on electricity under Item -E (added in the year 1978) of the Central Excises and Salt, 1944, the Government of

Kerala, exercising its power under Section e of the Kerala Essential Articles Control (Temporary powers) Act, 1961 issued an order imposing surcharge on supply of electrical energy. On 1.10.1984 the Government of India withdrew the excise duty but the Government of Kerala in supersession of its earlier order notified the State Electricity supply [Kerala State Electricity Board and Licensees Area] Surcharge Order, 1984, effective from 1.10.1984 to continue the levy of surcharge. The 1984 order was impugned by writ petitions during the pendency whereof on 1.8.1988 the Government of Kerala discontinued the levy of surcharge with effect from that date by issuing an ordinance called the Kerala Electricity Duty (Amendment) ordinance, 1988 which later on became the Kerala Electricity Surcharge (Levy and Collection) Act 1989 (22 of 1989). The Kerala High Court declared the 1984 order to be ultra vires the Keral Essential Articles Control Act, 1986, and directed refund othe the amount collected thereunder. The judgement was confirmed by the Supreme Court. The provision in Section 11 of the 1989 Act validating the levy and collection of the surcharge under the 1984 order and the further provision therein permitting non-refund of the collected amount were unsuccessfully challenged before the Kerala High Court as unconstitutional, being allegely and encroachment on the courts' power of judicial review. Dismissing the appeal, the Supreme Court

Held:

The validity of the validating Act is to be judged by the following tests: [i] whether the legislation enacting the validating Act has competence over the subject matter; [ii] whether by validation, the legislature has removed the-defect which the court had found in the previous law [iii] whether the validating law is inconsistent with the provisions of Chapter III of the Constitution. If tests are satisfied, the Act can confer jurisdiction upon the Court with retrospective effect and validate the past transactions which were declared to be unconstitutional. The legislature cannot assume power of adjudicating a case by virtue of its enactment of the law without leaving it to the judiciary to decide it with reference to the law in force. The legislature also is incompetent to overrule the decision of a Court without properly removing the base on which the judgment is founded. [Para 36 and 56(6)]

The Court does not have the power to validate an invalid law or to legalise impost of tax illegally made enact the law with retrospective effect and authorise its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the Court or the direction given for recovery thereof. [Para 56(7)]

The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transaction and require the court to give

effect to them; The Constitution delineated delicate balance in the exercise of the sovereign power by the Legislature, Executive and Judiciary, In a democracy governed by rule of law, the Legislature exercises the power under Articles 245 and 246 and other companion Articles read with the entries in the respective Lists in the Seventh Schedule to make the law which includes power to amend the law. Courts in their concern and endeavor to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order that rule of law permeates to fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free-play in their joints so that the march of social progress and order remain unimpeded. The smooth balance built with delicacy must always maintained; In its anxiety to safeguard judicial power, it is unnecessary to be overjealous and conjure up incursion into the judicial preserve invalidating the valid law competently made; [Para 56(1) to (5)]

In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial the decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative filed fundamentally altering or changing its character retrospectively. The changed or altered conditions should be such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with the deeming date or with effect from a particular date. The legislature can change the character of the tax or duty from impermissible to permissible tax but the taz or levy should answer such character and the legislature is competent to recover the invalid tax validating such a tax on removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorise its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, not withstanding the declaration by the court or the direction given for recovery thereof.

The vice pointed out in Chakolas case has been removed under the Kerala Electricity Surcharge (Levy and Collection) Act 1989. Consequently, Section 11 of this Act validated the invalidity pointed out in Chakolas case removing the base. In the altered situation, the High Court would not have s rendered Chakolas case under the Act. It has made the writ issued in Chakolas case ineffective. Instead of refunding the duty illegally collected under invalid law, Section 11 validated the illegal collections and directed the liability of the past transactions as valid under the Act and also fastened liability on the consumers. In other words, the effect of Section 11

is that the illegal collection made under invalid law is to be retained and the same shall now stand validated under the Act. Thus considered, Section 11 is not an incursion on judicial power of the Court and is 8 valid piece of legislation as part of the Act. [Para 57]

The provision for levy and collection of surcharge on supply of energy under Section 3 of the Kerala Electricity Surcharge (Levy and Collection) Act 1989 was challenged on the ground that although it used the language of Entry 27 of the State list, it did not conform to the connotation of supply and the words employed therein could not be covered by Entry 53 etither. Rejecting this contention, the Supreme Court

Held:

Indisputably, the title of the Act as well as the charging Section 3 employ the words 'duty on supply of electricity. Under Article 246 [3] of the Constitution, every State legislature has explicit power to make law for that State with respect to the matters enumerated in List II [State List of the Seventh Schedule to the Constitution. The State's power to impose tax is derived from the Constitution. The Entries in the three Lists of the Seventh Schedule are not power of legislation but merely http://JUDIS.NIC.IN SUPREME COURT OF INDIA Page 5 of 21 fields of legislation. The power is derived under Article 246 and other related Articles of the Constitution. The legislative fields are of enabling character designed to define and delimit the respective areas of legislative competence of the respective legislatures. There is neither implied restriction imposed on the legislature nor is any duty prescribed to exercise that legislative power in a particular manner. But the legislation must be subject to the limitations prescribed under the Constitution. (para 12)

The words 'sale or consumption' used in Entry 53 of the State List and the Act made in exercise of the power under Article 246 [3] of the Constitution, would receive wide interpretation so as to sustain the constitutionality of the Act unless it is affirmatively established that the Act is unconstitutional. (para 19)

When the vires of an enactment is challenged, it is very difficult to ascertain the limits of the legislative power. Therefore, the controversy must be resolved as far as possible, in favour of the legislative body putting the most liberal construction upon the relevant legislative entry so that it may have the widest amplitude. The Court is required to look at the substance of the legislation. It is equally settled law that in order to determine whether a tax statute is within the competence of the legislature, it is necessary to determine the nature of the tax and whether the legislature had power to enact such a law. The primary guidance for this purpose is to be gathered from the charging section. It is the substance of the impost and not the form that determines the nature of the tax. (para 20)

The doctrine of pith and substance, though applied in determining the true character of the statutes under List III [Concurrent List] of the

respective legislative topics of the State legislature and the Parliament, it was extended for consideration of the true character of the legislation even under the same legislative list. In all cases, therefore, the name given by the legislature in the impugned enactment is not conclusive on the question of its competence to make it. It is the pith and substance of the legislation which decides the matter which needs to be decided with reference to the provisions of the statute itself. (para 22)

In order to answer the question is whether the word 'supply' used in Section 3 of the Act would be construed to mean 'consumption' or 'sale' of electricity. From the sub-station, electricity is connected to the industrial units through the meter put up in the factory. Continuity of supply and consumption starts from the moment the electrical energy passes through the meters and sale simultaneously takes place as soon as meter reading is recorded. All the three steps or phases take place without any hiatus. It is true that from the place of generating electricity, the electricity is supplied to the sub-station installed at the units of the consumers through electrical high-tension transformers and from there electricity is supplied to the meter. But the moment electricity is supplied through the meter, consumption and sale simultaneously take place. It is true that in the definitions given in the New Encyclopaedia Britanica, Vol. 4, p.842 cited before us, distinction between supply and consumption is stated but adopting a pragmatic and realistic approach, we are of the considered view that as soon as the electrical energy is supplied to the consumers and is transmitted through the meter, consumption takes place simultaneously With the supply. There is no hiatus in its operation. Simultaneously sale also takes place. Charge will be quantified at a later date as per the recorded meter reading or escaped metering, as the case may be. The word 'supply' used in the charging Section 3 should, therefore, receive liberal interpretation to include sale or consumption of electricity as envisaged in Entry 53 of the State List. (para 25)

Levy of duty goes into the public revenue. It is an impost, a compulsory exaction for the benefit to the coffers of the public exchequer and, therefore, it is a tax. The Act in pith and substance is a tax on sale or consumption of electrical energy. Therefore, the Act falls in Entry 53 and does not fall in Entry 27 of the State List of the Seventh Schedule to the Constitution. The State legislature, therefore, validly enacted the Act under Article 246 [3] of the Constitution. (para 30)

The duty under the Kerala Electricity Surcharge (Levy and Collection) Act 1989 is an additional impost in the nature of compulsory exaction for the benefit of public exchequer. The Act does not discontinue the additional duty. The Act is a complete code in itself and operates retrospectively. Both, this Act and the Kerala Electricity Duty Act, 1963 operate harmoniously and do not collide since 1963 Act is the principal Act and is in addition to, but not in substitution of the principal Act. Therefore, the 1963 Act does not get eclipsed with the passing of the 1989 Act.
(Para 27,28, 34 and 58)

22. This issue is covered by yet another judgment of the Hon'ble Supreme Court, which we quote:

(2016) 5 Supreme Court Cases 808

Welfare Association A.R.P., Maharashtra & anr vs. Ranjit Gohil & ors.

The Judgment of the Court was delivered by

R.C. LOHATI, J. - Leave granted in all SLPs.

2. The Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 (Act No. XVI of 1997) having been struck down as ultra vires of the Constitution and as being beyond legislative competence of the State Legislature, the State of Maharashtra, the Welfare Association of Allottees of Requisitioned Premises, Maharashtra and several others have come up in appeal. The decision by the Division Bench of the High Court of Judicature at Bombay was delivered on 27th July 1998. The judgment posed the threat of eviction against several allottees in occupation of premises requisitioned by the State Government. Several Writ Petitions were filed which were all disposed of by the impugned judgment of the Division Bench. The principal question which arises for decision in the batch of appeals is the constitutional validity of Amendment Act No. XVI of 1997 abovesaid. (hereinafter referred to as the Amendment Act, for short).

Historical background : Two decisions of this Court

3. A brief statement of historical background leading to the present controversy is apposite.

4. In the year 1948, Bombay Land Requisition Act, 1948 (Act No. XXXIII of 1948) was enacted to make provision for the requisition of land and for the continuance of requisition of land and for certain other purposes. 'Land' was widely defined so as to include therein building also and 'premises' were defined to mean building or part of building intended to be let separately and other things appurtenant (as defined). Land and vacant premises could be requisitioned by the State Government for any public purpose. Provision was also made for continuance of requisitions made under the Requisitioned Land (Continuance of Powers) Act, 1947 and the Defence of India Act, 1962 and the rules made thereunder. Section 8 of the Act made provision for payment of compensation to persons whose property was requisitioned or continued to be subjected to requisition to be determined by an officer authorized in this behalf by the State Government. The basis of compensation can be spelt out from the following part of sub-Section (1) of Section 8 :-

> "The officer shall determine such amount of compensation as he deems just having regard to all the circumstances of the case; and in particular he shall be guided by the provisions of sub-Section (1) of Section 23 and Section 24 of the Land Acquisition Act, 1894 (as in force in the Bombay area of the State of Maharashtra) in so far as

they can be made applicable."

5. It appears that the shortage of accommodation in Bombay and the difficulties likely to be faced by the occupants to whom the requisitioned land and premises were allotted by the State Government resulted in the requisitioned properties continuing under requisition for endless periods of time. The constitutional validity of such requisition was put in issue before the High Court in the following factual background. On 2nd April, 1951 a flat was requisitioned by the State Government and allotted to a person. The owner made a request in 1964 to the Competent Authority for derequisitioning the flat, which was rejected. A purchaser of the property in 1973 once again made a request to derequisition the flat, which too was turned down. The owner filed a Writ Petition in the year 1980 under Article 226 of the Constitution, laying challenge to the validity of the requisition. One of the grounds of challenge was that the requisition order could not survive for such a long period of time and the Government was bound to derequisition the flat. The Writ Petition was allowed. The occupant came in appeal by special leave to this Court. Vide its judgment dated February 22, 1984 (H.D. Vora Vs. The State of Maharashtra and Ors. (1984) 2 SCC 337) this Court held that the power of requisitioning is exercisable by the Government only for a public purpose which is of a transitory character. If the public purpose of requisition is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and in such a case the order of requisition, if passed, would be a fraud upon the statute; further Government would be requisitioning the premises when really speaking they want the premises for acquisition as the objective of taking the premises was not transitory but permanent in character. This Court upheld the decision of the High Court allowing the Writ Petition and directing the State Government to derequisition the flat and to take steps to evict the appellant and to handover possession of the flat to the owner.

6. Following the decision of the Bombay High Court in H.D. Vora's case (supra) the Bombay High Court in numerous cases struck down the continuance of requisition orders made in the late 1940s and early 1950s particularly of residential premises. Two Writ Petitions, relating to premises requisitioned under Bombay Land Requisition Act, 1948 __ one of which was requisitioned for purposes of residential use and the other was requisitioned for commercial use of running fair price ration shop by a co-operative society, came to be filed in this Court which were heard and decided on April 27, 1994 by the decision reported as Grahak Sanstha Manch and Ors. Vs. The State of Maharashtra, (1994) 4 SCC 192. The Writ Petitions in effect had sought reconsideration of decision in H.D. Vora's case (supra), which was a two Judges Bench decision, and therefore, were placed for consideration and hearing by a Constitution Bench. The findings of the Constitution Bench may briefly be summed up as under:-

i) That the purpose of a requisition order may be permanent yet an order of requisitioning cannot be continued indefinitely or for a period of time longer than that which, in the facts and circumstances of the

particular case, is reasonable. The concept of requisitioning is temporary. The concepts of acquisition and requisition are altogether different as are the consequences that flow therefrom. A requisitioning which in effect and substance results in acquisition and thereby depriving an owner of property of his rights and title to property without being paid due compensation is bad;

ii) That the decision in H.D. Vora's case does not require reconsideration.

7. However, the Constitution Bench did not approve the two Judges Bench observation in H.D. Vora's case that requisition orders under the said Act cannot be made for a permanent purpose. The Constitution Bench also held that the period of 30 years has not been laid down in H.D. Vora's case as the outer limit for which a requisition order may continue. An order of requisition can continue for a reasonable period of time; what period is reasonable would depend on the facts and circumstances of each case; and in H.D. Vora's case the continuance of an order of requisition for as long as 30 years was rightly held to be unreasonable.

8. What is of significant relevance is the operative part of the order of the Constitution Bench. The same (paras 20 and 21 of SCC, at p.205) is extracted and reproduced verbatim as under:-

"20.The continuance of requisition orders made in the late 1940s and early 1950s and thereabouts, particularly of residential premises, have been struck down by the Bombay High Court in numerous cases following the judgments in H.D. Vora case. There are no appeals there against (except one which was, by a separate order of this Bench, dismissed). The allottees of these requisitioned premises (except retired government servants allotted premises requisitioned for the purpose of housing government servants) and their legal representatives have continued in occupation thereof by reason of the interim orders of this Court passed from time to time in Writ Petition No. 404 of 1986. Having regard to the known difficulty of finding alternate accommodation in Bombay and other large cities in Maharashtra, the protection of these interim orders is hereby continued until 30-11-1994, on which date all occupants of premises the continued requisition of which has been quashed as aforesaid shall be bound to vacate and hand over vacant possession to the State Government so that the State Government may, on or before 31-12-1994, derequisition such premises and hand back vacant possession thereof to the landlords.

21. The writ petitions are, accordingly, dismissed. There shall be no order as to costs."

[N.B. : The portion which we have underlined to emphasise will be of significance in constructing the operative part of our judgment.]

9. The majority opinion endorsed by four out of five Judges constituting the Constitution Bench was delivered by S.P. Bharucha, J. (as his Lordship then was) which we have noticed and reproduced hereinabove. P.B. Sawant, J. in his separate opinion agreed with the findings on the

questions of law recorded in the majority opinion but expressed dissent with the operative part of the order. His Lordship observed:-

> "I am of the view that notwithstanding the legal position, the following directions can be given to mitigate the hardship of the allottees of the requisitioned premises. These directions will in no way prejudice the interests of the landlords of the premises. At present they are receiving the same rent from the allottees as from the other tenants. On account of the Rent Act, they will not receive more rent from the new tenants whom they may induct after the premises are released from requisition. It is in rare cases that the premises would be required by the landlords for bona fide personal requirement. All that, therefore, they will be deprived of for some time more, on account of these directions, is the right to induct new tenants of their choice. It is a notorious fact that such choice is, more often than not, exercised in favour of those who can offer competing illegal consideration, commonly known as "pugree" which is escalating with passage of time."

10. His Lordship noticed that there were two sets of allottees before the Court:

> (i) Consumer Cooperative Societies running fair price ration shops in the allotted premises,
>
> and
>
> (ii) Individuals who are allotted residential premises.

11. As to category (i) his Lordship opined that the Consumer Cooperative Societies were running ration shops and shall have to be wound up. The employees of such societies should be allowed sufficient time to find out alternative employment and the State Government should also make alternative arrangements for housing ration shops and for that purpose the derequisition and eviction should not take place before 31-5-1996. As to category (ii), his Lordship opined that they should be given preference in allotment of plots and flats by making suitable arrangement with City and Industrial Development Corporation of Maharashtra Limited and Maharashtra State Housing Board. Alternative accommodation to such occupants should be made available by the State Government latest by 31-5- 1996 and till then there should be no derequisition and eviction. The premises other than those covered by the said two categories may be derequisitioned as directed in the order proposed by the majority.

12. It is pertinent to note that the two writ petitions were directed to be dismissed by the Constitution Bench. To mitigate the hardship likely to be caused to the occupants - the allottees in requisitioned premises continuing in occupation by virtue of interim orders of the Court which stood vacated by dismissal of the writ petitions, this Court allowed time until 30-11-1994 for vacating the premises by the occupants and for restoring of possession of the premises by the State Government to the owners.

Rent Control Legislations leading upto the impugned amendment

13. Now the relevant Rent Control Legislations in their chronological order leading upto the enactment of the impugned Amendment Actheld ultra vires by the impugned judgment of the High Court, may be noticed.

1. The Bombay Land Requisition Act, 1948 as originally enacted was to remain in force upto 31-3-1950. The Act was amended from time to time extending its life. Section 9 of the Act empowered the State Government to release from requisition at any time the land requisitioned or continued to be subject to requisition under the Act. By Section 2 of Maharashtra Act 51 of 1973, sub-Section (1A) was inserted below sub-Section (1) of Section 9 which made it obligatory for the State Government to release land from requisition on the expiry of the stated period. The said period was extended from time to time by successive amendments. The period of requisition was to expire on 31-12-1994 when the matter came up for consideration and disposed of by the Constitution Bench in Grahak Sanstha Manch case (supra).

15. The paucity of accommodation and the impact of war on the population and habitation conditions in Bombay led to the enactment of the Bombay Rent Restriction Act, 1939 followed by the Bombay Rents, Hotel Rates and Lodging Houses Rates (Control) Act, 1944 to curb the sky rocketing greed of the landlords pitted against the miseries of roofless. Both these Acts were repealed by a more comprehensive legislation namely, the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 which was enacted to amend and consolidate the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging houses and of evictions and also to control the charges for licenses of premises etc. The Act protected tenants and licensees in occupation of the premises. Section 13 made provision for the events and contingencies on proof whereof the landlord could recover possession. Maharashtra Act 17 of 1973 conferred the status of tenant on certain licensees in occupation of any premises or any part thereof, which is not less than a room since 1st February 1973 or before. Several other amendments and enactments were also passed by the State Legislature beneficial in nature to the tenants, licensees and occupants of the premises, the details whereof are being omitted as not necessary for our purpose. What is relevant for our purpose is to note that the life of requisition or continued requisition of any land which was coming to an end by virtue of sub-section (1-A) as inserted in Section 9 of the Bombay Land Requisition Act, 1948 by Maharashtra Act 5 of 1973, further amended by Maharashtra Act 29 of 1990 was given an extension by issuing an ordinance, namely, the Bombay Land Acquisition (Amendment) Ordinance, 1994 (Maharashtra Ordinance No. XX of 1994) which extended the life of such requisitions for a period of 24 years from 27-12-1973 that is upto 27th December, 1997. The statement of objects and reasons accompanying the said Ordinance referred to the two decisions of this Court in H.D. Vora (supra) and the subsequent decision of this Court dated 27-4-1994 in Grahak Sanstha Manch and Ors. case (supra). The preamble noticed the difficulty which was likely to be faced by several persons in occupation of the accommodation requisitioned and allotted by the State Government and the difficulties which the Government was facing on account of paucity

of funds and ever rising prices in constructing alternative accommodation to accommodate Government employees in-service and others. The statement noticed the factum of both Houses of the State Legislature being not in session and the Governor of Maharashtra having felt satisfied of the existence of requisite circumstances for issuing the Ordinance and concluded by stating :-

> "In the facts and circumstances as aforesaid, it is considered expedient to extend the period of requisition under the Act for a further period of three years beyond the 26th December, 1994, so as to enable the State Government to complete the process of derequisitioning during the extended period of three years. It is, therefore, proposed to suitably amend sub-Section (1A) of Section 9 of the principal Act extending the total period of requisition from twenty-one years to twenty-four years."

16. The Ordinance was replaced by Maharashtra Act No. VII of 1995. The assent of the President of India under Article 254(2) of the Constitution of India was received.

17. Now the crucial amendment. On 7-12-1996, the Governor of Maharashtra promulgated the Bombay Rents, Hotel and Lodging Houses Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Ordinance, 1996 (Maharashtra Ordinance XXIII of 1996) whereby certain amendments were incorporated in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Principal Act, 1947") by Section 2 of the Ordinance. It is not necessary to burden the judgment by extracting and reproducing the entire text of the Ordinance (which is published in Maharashtra Government Gazette Extraordinary - Part VIII - dated December 7, 1996). It would suffice for our purpose to note the following effect of the Ordinance and consequences flowing therefrom (as crystalised and agreed to by the learned counsel for all the parties, at the hearing):-

> 1) Section 5 of the Principal Act, 1947 was amended so as to confer the status of the tenant of the landlord on such person or his legal heir as was allotted by the State Government for residential purpose any premises requisitioned or continued under requisition. The status conferred on them by amending Section 5 of the Principal Act and by inserting Section 15B in the Principal Act was that the allottee or his legal heir in occupation or possession of the allotted premises for own residence
>
> > "shall, notwithstanding anything contained in this Act, or in the Bombay Land Requisition Act, 1948, or in any other law for the time being in force, or in any contract, or in any judgment, decree or order of any court passed on or after the 11th June, 1996, be deemed to have become, for the purposes of this Act, the tenant of the landlord; and such premises shall be deemed to have been let by the landlord to the State Government or, as the case may be, to such Government allottee, on payment of rent and permitted increases equal to

the amount of compensation payable in respect of the premises immediately before the said date."

2. All the premises requisitioned or continued under requisition under the Bombay Land Requisition Act, 1948 and allotted to Government allottees and allowed by the State Government to continue or to remain in occupation or possession of such premises were deemed to have been released from requisition.

3. The premises requisitioned and continued under requisition and allotted by the State Government for any non-residential purpose to any department or office of the State Government or Central Government or any public sector undertaking or Corporation owned or controlled fully or partly by the State Government or any registered co-operative society or any foreign consulate and allowed by the State Government to remain in their occupation or possession were included in the definition of 'Government Premises' within the meaning of Section 2 clause (b) of the Bombay Government Premises Eviction Act, 1955.

(4) In spite of such status of tenant having been conferred on the person in occupation or possession and the owner of the property having been declared to be landlord, the Ordinance took care to clarify (by sub-section (2) of Section 3) :-

"15-B. (2) Save as otherwise provided in this section or any other provisions of this Act, nothing in this Section shall affect:-

(a) the rights of the landlord including his right to recover possession of the premises from such tenant on any of the grounds mentioned in Section 13 or in any other Section;

(b) the right of the landlord or such tenant to apply to the court for the fixation of standard rent and permitted increases under this Act, by reason only of the fact that the amount of the rent and permitted increases, if any, to be paid by such tenant to the landlord is determined under sub-Section (1);

(c) the operation and the application of the other relevant provisions of this Act in respect of such tenancy."

18. Certain consequential amendments were also effected in the Bombay Land Requisition Act, 1948 and the Bombay Government Premises (Eviction) Act, 1955, which it is not necessary to notice and reproduce.

19. The statement of objects and reasons accompanying the Ordinance is very relevant and shall have to be referred to while dealing with the contentions raised by the contending parties before this Court and therefore the same is reproduced hereunder :-

"STATEMENT

The Bombay Land Requisition Act, 1948 is enacted to provide for requisition of land for relieving the pressure of accommodation, especially in urban areas, by regulating distribution of vacant premises for public purposes, and for certain other purposes incidental thereto. Certain

premises which have been requisitioned or continued under requisition under the said Act have been allotted for non-residential purpose to many departments or offices of the State Government or Central Government or public sector undertakings, corporations owned or controlled fully or partly by the State Government or co-operative societies or foreign consulates and for residential purpose to different categories of persons such as employees of the State or Central Government, public sector undertakings, corporations, or homeless persons, etc. Many of these premises have since been derequisitioned by the Government, as per Court orders or having regard to certain other circumstances. But still there are quite a large number of allottees in occupation of such premises, for a number of years, on payment of compensation as determined under the said Act. The allottees of such premises include Government servants who are still in Government service and others.

2. Under the existing provisions of Section 9 of the Bombay Land Requisition Act, 1948, as last amended by Mah. Act No. VII of 1995, the premises which have been requisitioned on or before 27th December, 1973 will have to be released from the requisition on or before 26th December, 1997 and those which have been requisitioned after 27th December, 1973, within twenty-four years from the date on which possession of such land was surrendered or delivered to, or taken by, the State Government. Further the Supreme Court in Writ Petition No. 404 of1986 filed by the Association of Allottees of the Requisitioned Premises and Writ Petitions No. 53 of 1993 and 27 of 1994 filed by the Grahak Sanstha Versus State of Maharashtra, has given a final decision on the 27th April, 1994 in the matter of requisitioned premises (AIR 1994, S.C., 2319), upholding the decision in the H.D. Vora's case [(1984) 2 S.C.C. 337] and has directed that the occupants of the requisitioned premises, the continued requisition of which was quashed, were bound to vacate and hand over vacant possession of such premises to the State Government on or before 30th November, 1994 so that the Government could derequisition such premises and hand over the vacant possession thereof to the landlords. Accordingly, derequisitioning process, in respect of all such premises and applying the ratio of the said Supreme Court Judgment, in several other premises, has already been completed by the State Government. There are however as aforesaid, nearly 604 residential premises and about 90 non-residential premises which are still under requisition in Brihan Mumbai and 138 in other districts which include requisitioned premises allotted to Government servants who are still in Government service and others.

3. As a matter of policy, the State Government has stopped requisitioning of new premises except in some special cases. As a result of this policy and also due to continued acute shortage of accommodation with Government and astronomical rise in the cost of properties in Mumbai, it would not be possible for Government to give suitable alternative accommodation to all such allottees if, applying the ratio of the said Supreme Court Judgment the Government has to vacate all the requisitioned premises. The situation is, therefore, likely to result in the Government allottees presently in occupation of the requisitioned premises

being rendered without any office accommodation or homeless. It is imperative to find a solution to this grave situation and to give some kind of statutory protection to these allottees of the requisitioned premises.

4. As the landlords are generally unwilling to accept such Government allottee, as contractual tenants, on payment of the standard rent and permitted increases, Government considers it expedient, in greater public interest, to make suitable provisions for providing the protection of statutory tenancy under the Rent Act to the State Government and to such Government allottees; and consequently to provide for the release of such premises from requisition.

5. As many landlords have already approached the High Court seeking eviction orders of the allottees of the requisitioned premises and the possibility of others also approaching the Court for such eviction orders cannot be ruled out, thereby frustrating the very object of this legislation, it is also considered expedient to provide in the proposed section 3 of this Ordinance that, such conferral of statutory tenancy rights on the allottees shall not be affected by any eviction orders passed by the Court on or after 11th June, 1996 (being the date of the Government decision to undertake such legislation).

6. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Land Requisition Act, 1948 and the Bombay Government Premises (Eviction) Act, 1955, suitably for the purposes aforesaid, this Ordinance is promulgated.

Mumbai: P.C. ALEXANDER
Dated Governor of Maharashtra
07.12.1996.

By order and in the name of the Governor of Maharashtra,

JAYANT DESHPANDE,
Secretary to Government."

20. In due course of time, the Ordinance was replaced by the Bombay Rents, Hotel, Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 (Maharashtra Act XVI of 1997).

21. The vires of this Amendment Act XVI of 1997 is under challenge and arises for consideration by this Court in these appeals, in view of the High Court having upheld the challenge. The vires of the Ordinance need not be gone into as the same has lapsed with the passage of time and its provisions merged into the provisions of the Amendment Act above-said.

22. Though the challenge before the High Court was laid on very many grounds, in view of the findings arrived at by the High Court all the learned

counsel for the parties agreed that only the following three issues survive and are relevant for decision in these appeals, namely,

i) whether the State Government has requisite legislative competence to enact the impugned amendments?

ii) whether the impugned legislation is a colourable one and is an interference with the judicial mandate of Supreme Court contained in H.D. Vora's case and Grahak Sanstha Mancha and Ors. case or has the effect of overruling the decisions of this Court and hence violative of doctrine of separation of powers? and

iii) whether the impugned enactment is violative of Article 14 of the Constitution as being arbitrary and unreasonable?

We proceed to deal with each of the three issues seriatem.

(i) Legislative competence

23. While the writ petitioners challenged the legislative competence of the State Legislature to enact the impugned Amendment Act, the State of Maharasthra and the beneficiaries of legislation have defended the impugned legislation by attributing legislative competence to State Legislature by reference to entries 6, 7 and 13 of List-III and entry 18 of List-II of Seventh Schedule which are reproduced hereunder for ready reference:-

"List - III - Concurrent List

6. Transfer of property other than agricultural land; registration of deeds and documents.

7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.

List - II - State List

18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

24. So far as entry 18 of List-II is concerned, we may repel the defence summarily by referring to three decisions of this Court, namely, Accountant & Secretarial Services (P) Ltd. & Another Vs. Union of India & Others, (1988) 4 SCC 324, Dhanapal Chettiar Vs. Yesodai Ammal, (1979) 4 SCC 214 and Indu Bhusan Bose Vs. Rama Sundari Debi & Another, 1970 (1) SCR 443, wherein it has been categorically held that tenancy of buildings or of house accommodation or leases in respect of non-agricultural property are not included in Entry 18 of List-II and that they more appropriately fall within the field of entries 6, 7 and 13 of List-III.

25. What should be the approach of the Court dealing with a challenge to the constitutionality of a legislation has been succinctly set out in

Principles of Statutory Interpretation by Justice G.P. Singh (Eighth Edition, 2001 at pp 453-454 and 36). A statute is construed so as to make it effective and operative on the principle expressed in the maxim "ut res megis valeat quam pereat". (It is better to validate a thing than to invalidate it). There is a presumption that the Legislature does not exceed its jurisdiction. The burden of establishing that the Act is not within the competence of the Legislature, or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its vires. If a case of violation of a constitutional provision is made out then the State must justify that the law can still be protected under a saving provision. The courts strongly lean against reducing a statute to a futility. As far as possible, the courts shall act to make a legislation effective and operative.

26. In Charanjit Lal Chowdhary Vs. Union of India & Ors., 1950 SCR 869, the Constitution Bench held that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.

27. It must be mentioned in all fairness to the writ petitioners and their learned counsel that the challenge to the constitutional validity of impugned Amendment Act was pursued and pressed by resting submissions not on the ground of violation of any property rights of the owner-landlords but mainly on the ground of the lack of legislative competence in State Legislature by reference to the relevant entries in Seventh Schedule. The submission of the learned counsel for the writ petitioners - respondents has been that within the meaning of entries 6 & 7 of List-III what can be enacted is a law dealing with any existing transfer of property or an existing contract; the legislation cannot by itself create a transfer of property or bring a contractual relationship in existence which if done would fall outside the scope of entries 6 & 7 abovesaid. It was submitted that the owners have not transferred any property in the premises to the occupants nor does any contractual relationship exist between the owners and the occupants on the date of coming into force of the Amending Act and, therefore, the Amending Actcannot be said to be a law governing transfer of property or contract and hence does not fall within the purview of these entries 6 & 7. To test the validity of such submission forcefully advanced it will be useful to have a recap of certain well-established principles.

28. The fountain source of legislative power exercised by the Parliament or the State Legislatures is not Schedule __ 7; the fountain source is Article 246 and other provisions of the Constitution. The function of the three Lists in Seventh Schedule is merely to demarcate legislative fields between Parliament and States and not to confer any legislative power. The several entries mentioned in the three Lists are fields of legislation. The Constitution makers purposely used general and comprehensive words having a wide import without trying to particularize. Such construction should be placed on the

entries in the Lists as makes them effective; any construction which will result in any of the entries being rendered futile or otiose must be avoided. That interpretation has invariably been countenanced by the constitutional jurists, which gives the words used in every entry the widest possible amplitude. Each general word employed in the entries has been held to carry an extended meaning so as to comprehend all ancillary and subsidiary matters within the meaning of the entry so long as it can be fairly accommodated subject to an overall limitation that the courts cannot extend the field of an entry to such an extent as to result in inclusion of such matters as the framers of the Constitution never intended to be included within the scope of the entry or so as to transgress into the field of another entry placed in another List.

29. In every case where the legislative competence of a Legislature in regard to a particular enactment is challenged with reference to the entries in the various Lists, it is necessary to examine the pith and substance of the Act and to find out if the matter comes substantially within an item in the List. The express words employed in an entry would necessarily include incidental and ancillary matters so as to make the legislation effective. The scheme of the Act under scrutiny, its object and purpose, its true nature and character and the pith and substance of the legislation are to be focused at. It is a fundamental principle of Constitutional Law that everything necessary to the exercise of a power is included in the grant of the power (See the Constitution Bench decision in Chaturbhai M. Patel Vs. Union of India & Ors., 1960 (2) SCR 362).

30. In Diamond Sugar Mills Ltd. & Another Vs. State of Uttar Pradesh & Another, 1961 (3) SCR 242, the Constitution Bench defined the two bounds between which the stream of interpretative process dealing with entries in Seventh Schedule must confine itself and flow. One bank is the salutary rule that the words conferring the right of the legislation should be interpreted liberally and the powers conferred should be given the widest amplitude; the other bank is guarding against extending the meaning of the words beyond their reasonable connotation in an anxiety to preserve the power to legislate. The working rule of the game is to resolve, as far as possible, in favour of the legislative body any difficulty or doubt in ascertaining the limits.

31. A note of caution was sounded by Constitution Bench in Synthetics & Chemicals Ltd. etc. Vs. State of U.P. & Others, (1990) 1 SCC 109. The Constitution must not be construed in any narrow or pedantic sense and that construction which is

most beneficial to the widest possible amplitude of its power must be adopted. An exclusionary clause in any of the entries should be strictly and, therefore, narrowly construed. No entry should be so read as to rob it of its entire content. A broad and liberal spirit should inspire those whose duty it is to interpret the Constitution. The Constitution is a living and organic thing and must adapt itself to the changing situations and pattern in which it has to be interpreted. To bring any particular enactment within the purview of any legislative power, it is the pith and substance of the legislation in question that has to be looked into by giving widest amplitude to the language of the entries. The Constitution must be interpreted in the light of the experience gathered. It has to be flexible and dynamic so that it adapts itself to the changing conditions in a pragmatic way. The undisputed constitutional goals should be permitted to be achieved by placing an appropriate interpretation on the entries. The Constitution has the greatest claim to live. The claim ought not to be throttled. Directive Principles of State Policy can serve as potent and useful guide for resolving the doubts and upholding constitutional validity of any legislation if doubted.

32. In United Provinces Vs. Mt. Atiqa Begum and Others, AIR 1941 FC 16, their Lordships upheld the principle that the question whether any impugned Act is within any of the three Lists, or in none at all, is to be answered by considering the Act as a whole and deciding whether in pith and substance the Act is with respect to particular categories or not and held that in doing so the relevant factors are: (i) the design and the purport of the act, both as disclosed by its language, and (iii) the effect which it would have in its actual operation.

33. Article 37 provides that the Directive Principles of State Policy though not enforceable by any court, yet the principles laid down therein are fundamental in the governance of the country and the State is obliged to apply these principles in making laws. Article 38 inspires the State to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political prevails and citizens, men and women are treated equally and so share the material resources of community as to result in equitable judicious and balanced distribution of means of livelihood - food, cloth and shelter- the bare essentials for living as human being. Inequalities in status, facilities, opportunities and income are to be eliminated and minimized. The systems in a democratic society ought not to operate to the detriment of individuals or groups of people.

34. The Constitution Bench decision of this Court in Indu

Bhushan Bose Vs. Rama Sundari Debi & Another, (1969) 2 SCC 289 needs a special mention. A Rent Control Legislation enacted by State Legislature was sought to be extended to cantonment area. The High Court held that the same was not permissible inasmuch as so far as the cantonment area is concerned, legislation touching regulation of house accommodation is governed by Entry 3 of List-I which reads, inter alia, "the regulation of house accommodation (including the control of rents) in such areas" i.e. cantonment areas. During the course of its judgment, the Constitution Bench held that the entry has to be liberally and widely interpreted. Regulation of houses in private occupation would fall within the entry. The word 'regulation' includes power to direct or control all housing accommodation in cantonment areas, which in its turn, will include within it all aspects as to who is to make the construction, under what conditions the constructions can be altered, who is to occupy the accommodation and for how long, on what terms it is to be occupied, when and under what circumstances the occupant is to cease to occupy it, and the manner in which the accommodation is to be utilized. All these are ingredients of regulation of house accommodation in its wide sense. The Parliament could legislate in respect of house accommodations in cantonment areas in all its aspects, including regulation of grant of leases, ejectment of lessees and ensuring that the accommodation is available on proper terms as to rents. The power of the State Legislature to legislate in respect of landlord and tenant of buildings is to be found in entries 6, 7 & 13 of List-III of the Seventh Schedule to the Constitution and not in entry 18 of List-II, and that power was circumscribed by the exclusive power of Parliament to legislate on the same subject under entry 3 of List-I.

35. Before the Constitution Bench in Indu Bhushan Bose's case (supra) the English decisions in Prout Vs. Hunter, (1924) 2 KB 736, Property Holding Co. Ltd. Vs. Clark, (1948) 1 KB 630 and Curl Vs. Angale & Anr., (1948) 2 All England Reports 189 were cited with approval. In Prout Vs. Hunter (supra), Rent Restrictions Act was held to have been passed by the Parliament with the twofold object -

(i) of preventing the rent from being raised above the pre-war standard, and (ii) of preventing tenants from being turned out of their houses even if the term for which they had originally taken them had expired. In Property Holding Co. Ltd. Vs. Clark (supra), the objects of policy underlying rent restriction legislations were stated to be (i) to protect the tenant from eviction from the house where he is living, except for defined reasons and on

defined conditions; (ii) to protect him from having to pay more than a fair rent. The latter object is achieved by the provisions for standard rent with (a) only permitted increases, (b) the provisions about furniture and attendance, and (c) the provisions about transfers of burdens and liabilities from the landlord to the tenant which would undermine or nullify the standard rent provisions. Such acts operate in rem upon the house and confer on the house itself the quality of ensuring to the tenant a status of irremovability. Tenants security of tenure is one of the distinguishing characteristics conferred by statute upon the house. In Curl Vs. Angelo and Another (supra), Lord Greene, M.R., dealing with Rent Restrictions Act, held that the overriding purpose and intention of such acts are to protect the person residing in a dwelling house from being turned out of his home. In the opinion of Constitution Bench these cases are a pointer to the principle that Rent Control Legislations can be effective and purposeful only if they also regulate eviction of tenants. Regulation of house accommodation, therefore, includes within its sweep the power to regulate eviction of tenants.

36. The expression 'transfer of property' in entry 6 and the term 'contracts' in entry 7 of List-III are to be widely interpreted. Such wide meaning has to be assigned to the said expression and term as would make the entries meaningful and effective. The entries must certainly take colour from the Directive Principles of State Policy specially those contained in Articles 38 and 39 of the Constitution. True that there was no voluntary transfer of property by the owners of property in favour of the occupant allottees of the premises. The State Government in exercise of its power of eminent domain, recognized statutorily, had requisitioned the properties in public interest and allotted it to the occupants. The Government paid compensation for requisitioning to the owners. Out of the requisitioned premises some were occupied by State itself. As to the premises which were allotted, the allottees in occupation were liable to pay compensation in lieu of their occupation of the premises. There was no privity of contract between the owners and the occupants, yet a privity of estate was brought into being by acts of State supported by law. Possession is nine points in law and to that extent a transfer of property had resulted and brought into being. Such privity of estate was compulsorily converted into privity of contract by operation of law as a consequence of the impugned Amending Act. The Act also provided civil procedure by which the landlords were entitled to snap the relationship of landlord and tenant deemingly created by the statute and seek eviction subject to making out a ground therefor under the pre-

existing Rent Control Legislation. Such legislation would clearly fall within the purview of entries 6, 7 & 13 of List-III.

37. There is yet another angle of looking at the issue. In Lingappa Pochanna Appealwar Vs. State of Maharashtra & Anr., (1985) 1 SCC 479, the provisions of Maharashtra Restoration of Lands toScheduled Tribes Act, 1975 came up for consideration which Act related to transfers and alienation of agricultural lands by members of Scheduled Tribes in the State to persons not belonging to Scheduled Tribes. The legislation fell in entry 18 in List-II. Certain provisions of the Act trenched upon the existing law, namely, the Transfer of Property Act and the Specific Relief Act, both made by Parliament. It was held that the power of the State Legislature to make a law with respect to transfer and alienation of agricultural land carries with it not only a power to make a law placing restrictions on transfers and alienations of such lands including a prohibition thereof, but also the power to make a law to reopen such transfers and alienations. The legislative competence was spelt out from entry 18 in List-II of Schedule 7. The Court observed :-

> ***"16. The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudents know it. Legislators, Judges and administrators are now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed "distributive justice". The concept of distributive justice in the sphere of law-making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle : "From each according to his capacity, to each according to his needs". Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief of distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargaining should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative***

control of unfair agreements."

(emphasis supplied)

38. In Maneklal Chhotalal & Ors. Vs. M.G. Makwana & Ors., 1967 (3) SCR 65, the constitutional validity of Bombay Town Planning Act, 1954 as amended by Gujarat Act 52 of 1963 was put in issue. The legislation fell within entry No. 18 of List-II. The Court also held after elaborately referring to the various provisions contained in the Act that it was passed with a view to regulate the development of certain areas with the general object of framing proper schemes for the healthy orderly development of the area in question and it is with a view to achieve this purpose that a very elaborate procedure and machinery have been prescribed under the Act. For this reason it was held that the competency of the State Legislation aimed at equitable distribution of landed property resulting in partial deprivation of proprietary rights can also be rested under entry No. 20 of List-III which is "economic and social planning".

39. A grim and emergent situation was created on account of threat posed before the likely evictees who were in occupation of requisitioned premises. The impugned Amending Act also seeks to bring into effect a scheme of equitable redistribution of wealth and shelter so as to protect the licensee __ occupants by giving them the status of tenant and regulating the right to eviction exercisable by the landlords by making it conditional upon availability of grounds under a pre-existing rent control law already governing similar properties in the State of Bombay. The salutary goal of 'from each according to his capacity, to each according to his needs' was sought to be achieved. The essential need of shelter for other segments of society such as the State Administration, Semi-Government bodies, PSUs and the likes was also protected in public interest as otherwise their activities would have been jeopardized, which in turn would have had an adverse effect on the society. Thus, if any grey area of impugned Amending Act is left out uncovered by entries 6, 7 & 13 of List-III, it is covered by entry 18 of List-II, i.e. 'economic and social planning'.

40. For all the foregoing reasons, we are of the opinion that the impugned Amending Act is intra vires and within the legislative competence of the State Legislature.

(ii) whether the impugned legislation is in conflict with the judicial mandate of Supreme Court or a colourable exercise of power?

41. It was submitted on behalf of the writ petitioner-respondents that the impugned judgment has the effect of

nullifying or overriding the mandate of this Court issued in H.D. Vora and Grahak Sanstha Mancha and Ors. cases (supra). It was submitted that the Legislature could not have directly overruled the decisions or mandate of this Court but the same thing is sought to be achieved indirectly by resorting to device of an amendment in the legislation which is nothing but colourable exercise of legislative power which ought not to be countenanced by this Court.

42. The doctrine of Colourable Legislation came to be examined by a Constitution Bench of this Court in K.C. Gajapati Narayan Deo & Ors. Vs. State of Orissa, 1954 SCR 1. It was held that the doctrine of colourable legislation does not involve any question of 'bona fides' or 'mala fides' on the part of the Legislature. The whole doctrine resolves itself into the question of competency of a particular Legislature to enact a particular law. If the Legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the Legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power (Vide Cooley's Constitutional Limitations, Vol. 1, p. 379). The crucial question to be asked is whether there has been a transgression of legislative authority as conferred by the Constitution which is the source of all powers as also the separation of powers. A legislative transgression may be patent, manifest or direct or may also be disguised, covert and indirect. It is to this latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements. The expression means that although apparently a Legislature in passing a statute which purports to act within the limits of its powers, yet in substance and in reality it transgresses those powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. The discerning test is to find out the substance of the Act and not merely the form or outward appearance. If the subject matter in substance is something which is beyond the legislative power, the form in which the law is clothed would not save it from condemnation. The constitutional prohibitions cannot be allowed to be violated by employing indirect methods. To test the true nature and character of the challenged legislation, the investigation by the Court should be directed towards examining (i) the effect of the legislation and (ii) its object, purpose or design. While doing so, the Court cannot enter into investigating the motives, which induced the Legislature to exercise its power.

43. The abovesaid view was reiterated by Larger Bench (Seven Judges) in R.S. Joshi, S.T.O. Vs. Ajit Mills Ltd., (1977) 4 SCC 98, 108 and by Constitution Bench in Naga People's Movement of Human Rights Vs. Union of India, (1998) 2 SCC 109, 137.

44. In K.C. Gajapati Narayan Deo & Others case (supra), the Constitution Bench quoted with approval the statement by Lefroy in his work on Canadian Constitution that even if the Legislature avowed on the face of an Act that it intends thereby to legislate in reference to a subject over which it has no jurisdiction, yet if the enacting clauses of the Act bring the legislation within its powers, the Act cannot be considered ultra vires.

45. In Shri Prithvi Cotton Mills Ltd. & Anr. Vs. Broach Borough Municipality & Ors., (1969) 2 SCC 283, a legislation by way of Validation Act was passed because of a decision of the Court declaring a certain imposition of tax as invalid. The question arising before the Court was, when a Legislature sets out to validate a tax declared by a Court to be illegally collected under an ineffective or an invalid law, then how is the validity of such Validation Act to be tested? It was held that the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. The Constitution Bench held :-

> ***"Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the***

law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the Legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating Law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the Validating Law for a valid imposition of the tax."

(emphasis supplied)

46. Thus, it is permissible for the Legislature, subject to its legislative competence otherwise, to enact a law which will withdraw or fundamentally alter the very basis on which a judicial pronouncement has proceeded and create a situation which if it had existed earlier, the Court would not have made the pronouncement.

47. In Indian Aluminium Co. and Others Vs. State of Kerala and Others, (1996) 7 SCC 637, the Government of Kerala issued a statutory order levying surcharge on electricity. The order was declared by the court to be ultra vires followed by a direction to refund the amount collected thereunder. The State Legislature introduced a Validating Act, which was impugned unsuccessfully before the High Court as also this Court. This Court laid down the following tests for judging the validity of the Validating Act: (i) whether the Legislature enacting the Validating Act has competence over the subject-matter; (ii) whether by validation, the Legislature has removed the defect which the court had found in the previous law;

(iii) whether the validating law is inconsistent (sic consistent) with the provisions of Part III of the Constitution. If these tests are satisfied, the Act can with retrospective effect validate the past transactions which were declared to be unconstitutional. The Legislature cannot assume power of adjudicating a case by virtue of its enactment of the law without leaving it to the judiciary to decide it with reference to the law in force. The Legislature also is incompetent to overrule the decision of a

court without properly removing the base on which the judgment is founded. The court on a review of judicial opinion, proceeded to lay down the following principles among others so as to maintain the delicate balance in the exercise of the sovereign powers by the Legislature, Executive and Judiciary :-

> ***"(i) in order that rule of law permeates to fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free play in their joints so that the march of social progress and order remains unimpeded;***
>
> ***(ii) in its anxiety to safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made;***
>
> ***(iii) the court, therefore, needs to carefully scan the law to find out: (a) whether the vice pointed out by the court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements; (b) whether the Legislature has competence to validate the law; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution;***
>
> ***(iv) the court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the Legislature.***
>
> ***Therefore, they are not encroachment on judicial power;***
>
> ***(v) in exercising legislative power, the Legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid..... It is competent for the Legislature to enact the law with retrospective effect;***
>
> ***(vi) the consistent thread that runs through all the decisions of this Court is that the Legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution***

and the Legislature must have competence to do the same."

(emphasis supplied)

48. In State of Tamil Nadu Vs. Arroran Sugars Ltd., (1997) 1 SCC 326, the Constitution Bench made an exhaustive review of all the available decisions on the point and summed up the law by holding:- "It is open to the Legislature to remove the defect pointed out by the court or to amend the definition or any other provision of the Act in question retrospectively. In this process it cannot be said that there has been an encroachment by the Legislature over the power of the judiciary. A court's directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect."

49. Recently a Constitution Bench in Naga People's Movement of Human Rights Vs. Union of India, (1998) 2 SCC 109, held that 'colourable legislation' is enacting by the Legislature of a legislation seeking to do indirectly what it cannot do directly. But ultimately, the crucial question would be - Whether the Legislature had the competence to enact the legislation ? If the impugned legislation falls within the competence of the Legislature, the question of doing something indirectly which cannot be done directly becomes irrelevant.

50. Here we may, with advantage, quote certain observations of the larger Bench (7 Judges) of this Court in Dhanapal Chettiar Vs. Yesodai Ammal (supra). In all social legislations meant for the protection of the needy, not necessarily the so-called weaker section of the society as is commonly and popularly called, there is appreciable inroad on the freedom of contract and a person becomes a tenant of a landlord even against his wishes on the allotment of a particular premises to him by the Authority concerned. When the State Rent Act provides under what circumstances and on what grounds a tenant can be evicted, it does provide that a tenant forfeits his rights to continue in occupation of the property and makes himself liable to be evicted on fulfillment of those conditions. Once the liability to be evicted is incurred by the tenant under the State Rent Legislation, he cannot turn around and say that the contractual lease has not been determined under the provisions of the Transfer of Property Act and, therefore, he is not liable to be evicted. Various State Rent Control Acts make a serious

encroachment in the field of freedom of contract. The landlord is not permitted to snap his relationship with the tenant merely by his act of serving a notice to quit on the tenant. In spite of the notice, the Rent Control Law says that the tenant continues to be tenant enjoying all the rights of a lessee but at the same time deemed to be under all the liabilities such as payment of rent etc. in accordance with the law. Various Rent Acts confer immunity on tenants from eviction whether in execution of a decree or otherwise except in accordance with the provisions of the Act and/or liability for eviction being incurred on one of the grounds provided for by the Act. Some Rent Control Acts provide that no landlord can treat the building to have become vacant by merely terminating the contractual tenancy as the tenant still lawfully continues in possession of the premises. The tenancy actually terminates on the passing of the order or decree for eviction and the building falls vacant by his actual eviction. All such provisions have been held to be constitutionally valid.

51. The Constitution Bench in Dhanapal Chettiar's Case (supra) continues to observe that Rent Acts do encroach upon to a very large extent on the field of freedom of contract but the encroachment is not entirely and wholly one-sided. Some encroachments are envisaged in the interest of the landlord also and equity and justice demand a fair play on the part of the Legislature not to completely ignore the helpless situation of many landlords who are also compared to some big tenants, sometimes weaker section of the society. Finding fault with the Rent Acts and doubting their constitutional validity is at times founded on stretching too far the theory of double protection or additional protection and without a proper and due consideration of all its ramifications.

52. We have already seen that the impugned Amending Act is within the legislative competence of the State Legislature. The impugned Amending Act does not either directly or indirectly overrule the judgments of this Court. The law enunciated by this Court in the two decisions was that the Executive was exercising power of requisitioning the premises in such a manner that the premises were in fact acquired under the guise or pretext of requisitioning. It was a colourable and hence a mala fide exercise of its executive power by the State. Such tainted requisition was struck down by this Court as ultra vires of the Constitution. The consequence of invalidating and striking down the requisitioning continuing for unreasonable length of time was that such invalid requisitioning came to an end. It followed as a natural corollary that the premises in

occupation of the allottees became liable to be restored to the possession of the owners. By virtue of interim orders passed by the Court, the possession of the occupants was protected and that protection was continuously enjoyed by the occupants upto the date of decision. To relieve the occupants from the hardship of sudden eviction caused by its judicial pronouncement, the Court allowed some more time to the occupants by directing the protection under the interim orders of the Court to remain in operation for some more period of time in spite of the cases having been disposed of. Allowing time to vacate the premises under the protection of the interim orders is not the same thing as issuing mandamus to vacate the premises by certain date. What the impugned Amending Act has done is to fundamentally alter the very basis of occupation of the premises by the occupants. Instead of their remaining in occupation by virtue of orders of allotment of requisitioned premises, the Amending Act declared that the requisitioning shall come to an end and the occupants shall become tenants under the owners who would become the landlords and the amount of compensation shall become rent.

53. The privity of estate was converted into privity of contract. The foundation for pre-existing transfer of property underwent a fundamental change. The separate concurring opinion recorded by P.B. Sawant, J. in Grahak Sanstha Manch and Ors. case (supra) records that the landlords were receiving the same rent from the allottees as from the other tenants (i.e. non-allottees). The effect of allowing more time to vacate the premises in spite of the requisitioning having been struck down was, as stated by P.B. Sawant, J., that what the landlords will be deprived of for some time more on account of the directions made by the Court, is the right to induct new tenants of their choice and consequentially also deprived of the illegal consideration commonly known as 'pugri'. Such time to vacate the premises as was allowed by the Court stood extended on account of the Amending Act. The compensation which the landlords were receiving earlier stood converted into rent payable by the occupants, whosoever they might be, to the landlords. The right of landlords to seek revision of rent was not taken away but became subject to the provisions governing the standard rent or controlled rent determinable by the competent authority under the Rent Control Legislation by which the relationship of the owners and the occupants was to be governed henceforth as one of landlord and tenant. The right of the owners to seek eviction of occupants and have the premises restored to their possession was also not taken away but was made subject to the pre-existing law governing eviction of tenants. The larger

Bench in Dhanapal Chettiar's case (supra) has opined, as already stated, that there is nothing objectionable, much less unconstitutional, in the right to recover possession which accrued under the general law from being made dormant and made subject to a special law so as to become conditional and dependant on availability of certain statutory grounds to eviction as provided for by the State Rent Act. The object, purpose and design of the Amending Act is to extend protection of existing Rent Act to such occupants who, on account of declaration of law made by this court, ran the risk of being rendered suddenly shelterless. We have already pointed out while dealing question No. 1 that the impugned legislation is squarely covered by entries 6, 7 & 13 of List- lll and hence within the legislative competence of the State Legislature. So long as the legislative competence is available, the motive behind enactment cannot be enquired into. Though the Statement of Objects and Reasons makes a reference to the two decisions delivered by this Court but that is only by way of narration of facts. The judgments of this Court are nowhere referred to in the body of the provisions introduced by the Amendment Act so as to spell out any motive of overruling the judgment. The writ petitioners cannot make any capital out of the fact that two decisions have been referred to in the Statement of Objects and Reasons. On the contrary, what is relevant in the State of Objects and Reasons is the factual statement to the following effect (i) that the State Government has honoured the decisions of this Court and commenced derequisitioning process and taken a policy decision not to continue with such requisitionings for future, except in some special cases; (ii) that in spite of the said process having been commenced there were 604 residential premises, above 90 non-residential premises still under requisition in Greater Bombay and 138 in other districts of the State of Bombay, most of them occupied by Government servants and departments, the eviction whereof would have imperatively resulted into creation of a grave situation much to the detriment of public interest; (iii) that the landlords were rushing to the High Court seeking mass evictions from the premises under requisition; (iv) that the likely evictees need to be protected from imminent eviction solely on ground of requisitioning coming to an end, unless and until liability for eviction was incurred under a pre-existing Rent Control Act; (v) that there existed a continuing acute shortage of accommodation and astronomical rise in the cost of properties in Mumbai, and unless the State intervened through an Ordinance followed by an Act, a grim and emergent situation was likely to emerge; and (vi) that such premises as were

specifically covered by any specific order of eviction of the Court of a date prior to 11th June 1996 (being the date of Government decision to undertake such legislation) were left untouched and unaffected by the impugned Amendment.

54. We are definitely of the opinion that the impugned Amending Act is neither in conflict with the judgments of this Court nor can it be said to be a piece of colourable legislation.

55. The Amending Act has altered the basis of occupation of the occupants over the premises. So long as the legislation is within the legislative competence of the State Legislature, which it is, as we have already held, merely because the indirect effect of the amendment would be to place additional restrictions on the right of the owners to seek eviction of the premises consequent upon the judgment of the Supreme Court, it cannot be held that the Legislature has overruled the judgment of this Court or made an inroad on the doctrine of separation of powers. If the Amendment Act had been enacted on the dates of decision in H.D. Vora's case or Grahak Sanstha Mancha and Ors. case, the Court would not have been called upon to adjudicate upon and invalidate the unreasonably stretched requisitioning providing cloak for acquisition without adequate compensation and the occupants would have been held protected as tenants under the Rent Act. The situation is squarely covered by the law laid down by three Constitution Benches of this Court and other decisions of this Court referred to hereinabove. We do not think that the impugned Amendment Act is "colourable legislation" or is in conflict with the decisions of this Court.

(iii) The impugned legislation if arbitrary and unreasonable ?

56. Tenancy laws and rent restriction legislations in the country, whenever enacted, have almost invariably been challenged either as violative of the fundamental right guaranteed by Article 19(1)(f) of the Constitution (so long as the Clause existed in the body of Article19) or as arbitrary and unreasonable on the touchstone of Article 14 of the Constitution. However, the history of precedents shows that, by and large, such challenges have failed as often as laid. It is the angle with which the issue is approached that makes the difference. The Legislatures showing pro-activeness in the field have been motivated not with the idea of destroying or jeopardizing the property rights of the landlords but rather with the benevolent desire of extending the protective umbrella of legislation to the tenants so as to save them from unscrupulous evictions and rack-renting mentality of greed which clings to the owning of the property, and, for achieving the avowed object of striking a

judicious balance of equity between two sections of the society, i.e. the landlords, generally called haves, and tenants, generally called have nots, so far as the urban property is concerned. The courts while upholding the constitutionality of such legislations have referred to the statements of objects and reasons and the preambles for the purpose of finding out the conditions prevailing at the time when the bills were sponsored and the evils which were prevailing and which were sought to be remedied. Whenever the courts have felt doubt about the constitutionality of certain provisions in Rent Control Legislations, they have been read down so as to save them from the vice of unconstitutionality.

57. In Charanjit Lal Chowdhary Vs. Union of India & Ors (supra), Fazl Ali, J. opined that Article 14 lays down an important fundamental right, which should be closely and vigilantly guarded but in construing it, the Court should not adopt a doctrinaire approach which might choke all beneficial legislation.

58. In Kishan Singh & Ors. Vs. State of Rajasthan & Ors., 1955 (2) SCR 531, the Constitution Bench held that a legislation whose object is to fix fair and equitable rent and which regulates the relation of landlord with his tenant cannot be said to be a legislation interfering with the fundamental right of a citizen to hold and enjoy property even though the legislation has the effect of reducing or diminishing the rights hitherto exercised by the landlord.

59. In Maneklal Chhotalal & Ors.'s case (supra), the Constitution Bench thus summed up the principles to be borne in mind when applying Articles 14 and 19 of the Constitution –

> ***"A fundamental right to acquire, hold and dispose of property, can be controlled by the State only by making a law imposing, in the interest of the general public, reasonable restrictions on the exercise of the said right. Such restrictions on the exercise of a fundamental right shall not be arbitrary, or excessive, or beyond what is required in the interest of the general public. The reasonableness of a restriction shall be tested both from substantive shall be tested both from substantive and procedural aspects. If any uncontrolled or unguided power is conferred, without any reasonable and proper standards or limits being laid down in the enactment, the statute may be challenged as discriminatory".***

60. Article 14 of the Constitution permits reasonable classification for the purpose of legislation and prohibits class

legislation. A legislation intended to apply or benefit a "well defined class" is not open to challenge by reference to Article 14 of the Constitution on the ground that the same does not extend a similar benefit or protection to other persons. Permissible classification must satisfy the twin tests, namely, (i) the classification must be founded on an intelligible differential, which distinguishes persons or things grouped together from others left out of the class, and (ii) such differential must have a rational relation with the object sought to be achieved by the legislation. It is difficult to expect the Legislature carving out a classification which may be scientifically perfect or logically complete or which may satisfy the expectations of all concerned, still the court would respect the classification dictated by the wisdom of Legislature and shall interfere only on being convinced that the classification would result in pronounced inequality or palpable arbitrariness on the touchstone of Article 14.

61. Bombay as a State and also as a cosmopolitan city__ unofficially crowned as commercial capital of the country, has its own peculiar problems. People from all over the country rush to Bombay in search of employment and opportunities. Not all are blessed enough to find shelter much less of their own. A huge administrative set up in the governance is needed involving a large number of personnel to manage the huge population accompanied by evergrowing influx of people. Accommodation is needed to house the people and activities including official ones catering to the needs of people. The premises were liberally requisitioned to satisfy the needs of the needy. The requisitioning did not solve the problem which continued to persist resulting in endless renewals of requisitioning which was held by this Court to be vitiated on account of virtual acquisitioning without payment of compensation resulting from recurring and non- intermittent cycles of requisitioning. It was struck down. Consequent upon constitutional interpretation and adjudication by this Court thousands, if not lakhs of persons and substantial activity of government, semi-government bodies and PSU's ran the risk of being rendered roofless and out of gear. They all needed to be protected by State intervention and constituted a class by themselves. All such premises whose occupants were under the threat of eviction also constituted property capable of identification by a well defined classification. The Legislature chose to step in and enact a legislation, which would protect the threatened evictees from likely eviction. The persons and premises - both constitute a well defined class by themselves and the classification cannot be said to be arbitrary; it is

capable of being distinguished from others not included in that class. Such classification has an apparent and clear nexus with the object sought to be achieved. The impugned legislation does not, therefore, suffer from either arbitrariness or invidious discrimination. The challenge that the impugned Amendment Act falls foul of Article 14 of the Constitution must therefore fail.

62. The contention that the impugned Amending Act cannot withstand the test of Article 14 of the Constitution was raised in the High Court but was not dealt with for the reason that even otherwise, in the opinion of the High Court, the impugned legislation was unconstitutional. However, in view of the submissions made, we have dealt with the issue and disposed of the same.

Conclusion

63. Thus the challenge to the constitutional validity of the impugned Amending Act fails on all the counts. The decision of the High Court wherein view to the contrary has been taken is held unsustainable and liable to be reversed. However, this is subject to a clarification.

64. We have in the earlier part of this judgment extracted and reproduced para 20 of the Constitution Bench decision in Grahak Sanstha Manch's case containing some categorical and definite directions given by the Supreme Court to the occupants of requisitioned premises and the State Government, which protected the occupants in Bombay and other large cities in Maharashtra until 30.11.1994, and with effect from that date directed that "all occupants of premises the continued requisition of which has been quashed" shall be bound to vacate and hand over vacant possession to the State Government so that the State Government may on or before 31.12.1994 derequisition such premises and hand back vacant possession thereof to the landlords. The reversal of the impugned judgment of the High Court and upholding the validity of the impugned legislation shall not have the effect of undoing or overruling the abovesaid mandate of the Supreme Court contained in the decision of Grahak Sanstha Manch's case.

65. Accordingly, all the appeals are allowed and the impugned judgment of the High Court is set aside subject to the clarification made hereinabove.

66. It was stated at the Bar, during the course of hearing that the impugned judgment decided only the question of vires of the impugned Amending Act. Some of the writ petitions filed in the High Court raised the question of vires of the impugned Act as the sole issue for decision which writ petitions shall stand

dismissed in view of this judgment. Some of the writ petitions filed in the High Court raised other issues as well which in the event of the impugned judgment being set aside shall have to be remanded to the High Court for hearing on issues other than the issue as to vires of the impugned Amendment Act. All the appeals shall therefore now be listed for appropriate consequential directions before the Court."

23. Since the Hon'ble Apex Court has laid down the law on the subject, we hereby declare:

a) The Karnataka Legislature has the jurisdiction and competence to enact and amend Section 3 of the Karnataka Police Act as it stands today.

b) In consequence thereof there is only one police force in the State of Karnataka including the State Reserve Police Force established under Section 145.

c) All the officers of Karnataka Police, in all streams of policing of the rank of Dy.SP and above with a minimum service of eight years and qualified as per the rules are eligible to be considered for promotion into the Indian Police Service.

d) As ordered in WP.No.3269/2012 dtd.25.4.2013 by the Hon'ble High Court of Karnataka vide sub-para-vii of para-71 'the Government decision should contain the reasons either for granting equivalence or refusing to grant equivalence so that the aggrieved person could agitate his rights before this Court'. The order of the Govt. of Karnataka at Annexure-A27, GO No.DPAR 155 SPS 2013 dtd.23.01.2016 while ordering the inclusion of the Assistant Commandants of KSRP as equivalent to Civil Police Services for the purpose of promotion to Indian Police Service, does not contain any reason as ordered by the Hon'ble High Court of Karnataka for not ordering the equivalence of the other police service officers of the police force of the State of Karnataka.

e) As already noted, as per Section 3 of the Karnataka Police Act, there is only one police force in the State of Karnataka and as such leaving out certain other categories without any valid reason by the Government vide impugned order is not correct. Therefore, there shall be a mandate to the Govt. of Karnataka to specify the reasons for not including the other police service officers for being eligible to be promoted to the Indian Police

Service. The validity of order at Annexure-A27 is otherwise upheld.

24. We, however, make it clear that this equivalence as established by the statute shall only be extendable to the officers recruited into the various branches of the State Police Service based on their minimum qualifications and recruitment through a common standardised process.

25. In view of the various proceedings before this Tribunal as well as the Hon'ble High Court of Karnataka and the decision taken by the Govt. of Karnataka vide order at Annexure-A27, it is clarified that the orders shall take effect only from the date of the impugned order. The OAs.No.355-359/2016, 362-364/2016, 365-377/2016 are disposed off as above. No costs.

26. Regarding OAs.No.631-635/2017, as stated by the respondents, the application is filed against the internal communications between the Government and the DG & IG of Police. The respondents have no other option except to follow the various orders and guidelines relating to the crucial date for inclusion in the select list etc., which are all well established. This they shall do accordingly and therefore these OAs stand dismissed. No costs.

(C.V. SANKAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

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Annexures referred in OA 355-359/2016

Annexure-A1: Copy of the notification dated 28.04.2012
Annexure-A2: Copy of the notification dated 05.02.2015

Annexure-A3: Copy of the Indian Police Service (Recruitment) Rules, 1954
Annexure-A4: Copy of the IPS (Appointment by Promotion) Regulations 1955
Annexure-A5: Copy of the order of equivalence dated 23.12.1991 declared by the Government of Karnataka
Annexure-A6: Copy of the order rescinding equivalence dated 18.07.1996 by the Government of Karnataka
Annexure-A7: Copy of the representation dated 04.01.2008
Annexure-A8: Copy of the order of equivalence for the year 2009 dated 01.10.2010
Annexure-A9: Copy of the orders of rescinding dated 01.10.2010 and 21.07.2011 by the Government of Karnataka
Annexure-A10: Copy of the order dated 25.04.2013 passed by the Hon'ble High Court of Karnataka in Writ Petition No. 3269/2012
Annexure-A11: Copy of the order dated 22.11.2013 of the Government of Karnataka constituting a committee
Annexure-A12: Copy of the OM dated 27.12.2013
Annexure-A13: Copy of the representation dated 04.01.2014
Annexure-A14: Copy of the representation of Mr. C.B. Vedamurthy dated 01.01.2014
Annexure-A15: Copy of the representation of the 1st applicant dated nil
Annexure-A16: Copy of the representation of the 2nd applicant dated 28.01.2014
Annexure-A17: Copy of the representation of the 3rd applicant dated nil
Annexure-A18: Copy of the representation of the 4th applicant dated nil
Annexure-A19: Copy of the representation of the 5th applicant dated 23.01.2014
Annexure-A20: Copy of the representation of the 5th applicant dated nil
Annexure-A21: Copy of the open house notice dated 07.06.2014 issued by the committee
Annexure-A22: Copy of the Appendix-XXXVIII to the Karnataka Police Manual
Annexure-A23: Copy of the Appendix-V to the Karnataka Police Manual
Annexure-A24: Copy of the tabulated statement of difference training between two forces
Annexure-A25: Copy of the orders/paras 160 to 197 of the Karnataka Police Manual
Annexure-A26: Copy of the letter of Infant Committee dated 25.07.2015
Annexure-A27: Copy of the order of equivalence dated 23.01.2016 by the Government of Karnataka

Annexures with MA 157/2016

Annexure-A28: Copy of the letter from the office of the DG&IG dated 11.05.2009

Annexures with MA 846/2016

Annexure-A29: Copy of the order dated 07.12.2011 passed by the Central Administrative Tribunal in O.A. No. 471/2010
Annexure-A30: Copy of the order sheet in O.A. No. 240 – 257 of 2014
Annexure-A31: Copy of the order dated 13.05.2015 passed by the Central Administrative Tribunal in O.A. No. 240 to 257/2014

Annexure-A32: Copy of the order dated 29.08.2016 passed by the Hon'ble High Court in Writ Petition No. 42721-42733/2016

Annexures referred in OA 362-364/2016

Annexure-A1: Copy of the Government order dated 23.01.2016
Annexure-A2: Copy of the committee report dated 25.07.2015
Annexure-A3: Copy of the 1954 Rules
Annexure-A4: Copy of the 1955 Regulation
Annexure-A5: Copy of the order dated 23.12.1991
Annexure-A6: Copy of the order dated 18.07.1996
Annexure-A7: Copy of the order dated 01.10.2010
Annexure-A8: Copy of the withdrawal communication dated 21.07.2011
Annexure-A9: Copy of the order dated 24.04.2013 of the Hon'ble High Court of Karnataka
Annexure-A10: Copy of the objection filed by the applicants

Annexures referred in OA 365-377/2016

Annexure-A1: Copy of the notification dated 01.10.2010
Annexure-A2: Copy of the order dated 07.12.2011 in O.A. No. 471/2010
Annexure-A3: Copy of the order dated 25.04.2013 in Writ Petition No. 3269/2012
Annexure-A4: Copy of the GO dated 21.07.2011
Annexure-A5: Copy of the OM dated 27.12.2013
Annexure-A6: Copy of the objections/representation
Annexure-A7: Copy of the committee report dated 25.07.2015
Annexure-A8: Copy of the order dated 23.01.2016 passed by the fourth respondent

Annexures referred in OA 631-635/2017

Annexure-A1: Copy of the Indian Police Service (Recruitment) Rules, 1954
Annexure-A2: Copy of the IPS (Appointment by Promotion) Regulations 1955
Annexure-A3: Copy of the order of equivalence dated 23.12.1991 declared by the Government of Karnataka
Annexure-A4: Copy of the order rescinding equivalence dated 18.07.1996 by the Government of Karnataka
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Annexure-A6: Copy of the order of equivalence for the year 2009 dated 01.10.2010
Annexure-A7: Copy of the orders of rescinding dated 01.10.2010 and 21.07.2011 by the Government of Karnataka
Annexure-A8: Copy of the order dated 25.04.2013 passed by the Hon'ble High Court of Karnataka in Writ Petition No. 3269/2012 and connected cases
Annexure-A9: Copy of the order dated 22.11.2013 of the Government of Karnataka constituting a committee
Annexure-A10: Copy of the OM dated 27.12.2013

Annexure-A11: Copy of the representation dated 04.01.2014
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Annexure-A19: Copy of the order of equivalence dated 23.01.2016 by the Government of Karnataka
Annexure-A20: Copy of the communication dated 01.09.2017 of the 1st respondent
Annexure-A21: Copy of the communication dated 17.10.2017 of the 1st respondent.

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