

(2000) 02 AHC CK 0065

In the Allahabad High Court

Case No : C.M.W.P. No's. 44906 and 48513 of 1999

Brijendra Kumar Gupta and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 03-02-2000

Acts Referred:

Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 13, 14(1), 4
Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1, Order 19 Rule 3
Constitution of India, 1950 — Article 136, 141, 151(2), 162, 226
Criminal Procedure Code, 1973 (CrPC) — Section 11(1), 7, 9
General Clauses Act, 1897 — Section 21
Land Acquisition Act, 1894 — Section 3
Provincial Insolvency Act, 1920 — Section 59A
Provincial Small Cause Courts Act, 1887 — Section 5
Uttar Pradesh Land Revenue Act, 1901 — Section 11, 12

Citation : AIR 2000 All 319 : (2000) 1 AWC 750

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Man Mohan, Das Agrawal and A.K. Pandey, for the Appellant; H.R. Mishra, K.P. Vajpayee, R.S. Sengar, Ravindra Singh, Y.P. Chaturvedi and H.R. Mishra, for the Respondent

Final Decision : Disposed Of

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—These two writ petitions, the second one having been connected with the first one vide order dated 25.11.1999, were listed before our Bench for the first time on 17.1.2000 in which cross prayers have been made. They have been heard together and are being disposed of by this common judgment and order. It may be mentioned that on an application filed by the petitioners of the first petition, before Hon'ble the Chief Justice, His Lordship vide his administrative order dated 11.1.2000 directed to place it before a Bench presided over by one of us. (Binod Kumar Roy, J.).

2. Civil Misc. Writ Petition No. 44906 of 1999 has been filed by 5 Advocates of

the Collectorate Bar, Etawah, for commanding the respondents by issuance of a writ, order or direction in the nature of mandamus not to give effect to and to quash (i) the Notification dated September 18, 1997 (as contained in Annexure-1 to the writ petition) and (ii) the letter dated 22.7.1999 of the Registrar, High Court of Judicature at Allahabad (as contained in Annexure-1A to the writ petition). In substance, the prayer of the petitioners is to quash the creation of the new district named Auraiya as a Revenue district as well as Judicial district both.

2.1. The document appended as Annexure-1 is the English translation of Revenue Department-5, Notification No. 2869/1-5-97/322-99-Rev.-9 dated September 18, 1997, published in the U. P. Gazette, Extra., Part 4, Section (Kha), dated 18th September, 1997, p. 2 (AP 690) which reads thus :

"In exercise of the powers u/s 11 of the U. P. Land Revenue Act. 1901 (U. P. Act No. III of 1901), read with Section 21 of the Uttar Pradesh General Clauses Act. 1904 (U. P. Act No. 1 of 1904) the Governor, in partial modifications of earlier notifications issued in this behalf, is pleased to crate with effect from the date of publication of this notification fn the Gazette, a new district by the name of Auraiya comprising the areas included in existing Tehsils of Auraiya and Bidhuna of district Etawah with its headquarters at Auraiya and to alter with effect from the said date, the limits of the existing district of Etawah so as to comprise the existing areas except those included in the newly created district of Auraiya.

2. The Governor is further pleased to direct that nothing in this notification shall affect any legal proceedings already commenced or pending in any Court of law which has hitherto exercised jurisdiction in respect of said areas."

2.2. The document appended as Annexure-1A reads thus :

"From.

Sri S.S. Kulshrestha,

H.J.S..

Registrar.

High Court of Judicature at Allahabad.

To,

Sri Arun Kumar Srivastava,

Special Secretary, Government of U. P..

Judicial Section-2,

(Subordinate Courts) Section, Lucknow.

No. 10582/ID/Admin. (A-3)/Auraiya : Dated : Allahabad 27.7.1999

Subject : Issuance of the Notification in the matter of establishment of Judgeship of the newly created district Auraiya.

Sir,

I am directed to refer to G.O. No. 2166/VII Nyaya-2-98 3G/98 dated June 25, 1998, on the above subject, by which Government have created the Court/Post of District and Sessions Judge. Civil Judge (Senior Division), Chief Judicial Magistrate. Judicial Magistrate and Civil Judge (Junior Division) for the newly created Auraiya district and to send herewith a copy each of the draft notifications for the aforesaid five Courts as detailed below :

(i) Under Sections 4, 13 and sub-section (1) of Section 14 of the Bengal, Agra and Assam Civil Courts Act, 1887 (Act No. XII of 1887).

AND

Section 5 of the Provincial Small Causes Courts Act, 1887 (Act No- IX of 1887)

(ii) Under Proviso to subsection (1) of Section 11 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) read with Section 21 of the General Clauses Act, 1897 (Act No. X of 1897).

(iii) Section 59A of the Provincial insolvency Act, 1920 (Act No. V of 1920).

(iv) Under clause (d) of Section 3 of the Land Acquisition Act, 1894 (Act No. 1 of 1894).

I am also to send herewith the draft notification pertaining to creation of Sessions Division as detailed below :

(v) Section 7 and Section 9 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), read with Section 21 of the General Clauses Act, 1897 (Act No. X of 1897).

I am, therefore, to request you kindly to move the Government for issuing notification in the matter and the copy of Government Notification so issued be sent to the Court for necessary action.

Enclosure : As above

Yours faithfully

REGISTRAR

No. 10583/1D/Auraiya/Admn. (A-3) Dated : Alld. : 27.7.1999.

Copy forwarded to Officer on Special Duty, Auraiya, with reference to his letter No. 98/1-99 Auraiya dated 23.5.1999 for information and necessary action.

By order of the Court

sd.

DEPUTY REGISTRAR"

2.3. To this writ petition originally "Sushri Mayawati, former Chief Minister, U. P., at present Member of Parliament through Speaker, Lok Sabha, Delhi" was impleaded as respondent No. 4 but the name of respondent No. 4 was deleted by the learned counsel for the petitioners on 26.10.1999.

2.4. On an application filed by the persons vide our order dated 24.1.2000 were impleaded as respondent Nos. 5 to 10.

3. The prayer of the 35 petitioners in Civil Misc. Writ Petition No. 48513 of 1999 is not command the respondents to issue required Notification for creating Subordinate-Judiciary at Auraiya in terms of the Notification as contained in Annexure-1 (which is Annexure-1 of Civil Misc. Writ Petition No. 44906 of 1999).

4. Pleadings in Civil Misc. Writ Petition No. 44906 of 1999 :

4.1. The case of the petitioners of Civil Misc. Writ Petition No, 44906 of 1999 is as follows :

(i) u/s 11 of the U. P. Land Revenue Act (Act No. 3 of 1901). hereinafter referred to as the Act. the Government is empowered to create, alter or abolish district, Tehsil and subdivisions ;

(ii) The Government has already framed a policy and norms laid own in G.O. dated 22.10.1992 (as contained in Annexure-2) so as to prevent misuse of power and to protect the general interest of the public at large ;

(iii) By the impugned Notification the State Government has created Auraiya as a new district bifurcating district Etawah in flagrant disregard and contravention of policy and procedure laid down in the G.O. which is still effective and has to be adhered to ;

(iv) Even though through Paragraph 3.17 of his report the Comptroller and Auditor General of India for the Financial Year closing 31.3.1997 (as contained in Annexure-3) had seriously criticised the Government when it exercised its powers u/s 11 of the Act earlier in creating 8 districts, observing that it has been exercised in a very arbitrary manner, without any justification or necessity and in contravention of the policy and norms laid down earlier which has been completely ignored rather instead of rectifying its error the Government in a wholly illegal and arbitrary manner had bifurcated district Etawah ;

(v) The decision to carve out new districts was taken by the then Chief Minister of U. P., Sushri Mayawati only to create vote banks by obliging certain sections of the people and with an interest of creating more constituencies with solid Bahujan Samaj Party votes and not on geographical situation, area, population, Tehsil etc., besides contrary to the G.O. in relation to Tehsil, population, police station, number of Lekhpals ;

(vi) Auraiya is not connected by railway line : the Railway Station Phaphund being more than 25 kms. away from Auraiya, the client and public in general will suffer a lot as it will take three hours to reach Auraiya by road subject to

availability of bus at appropriate time ;

(vii) No financial analysis or expenditure over creation of new district was prepared nor was considered the additional financial burden on the State and its capacity to cope with it taken before creation of the district Auraiya ;

(viii) No building is available there for housing the Courts and residence of the District Judge. Additional District Judge, Chief Judicial Magistrate. Civil Judge (Senior Division) etc. ; the Officer on Special Duty posted at Auratya has no place to hold his office : the rent of which will be exorbitant ; there is no proper accommodation for even various officers of the district headquarters at Auraiya ;

(ix) A district headquarter cannot function properly without proper infrastructure ;

(x) Creation of the new district Auraiya is not conducive to the welfare of the people of district Etawah : a large number of eminent lawyers practice at Etawah whereas the lawyers practising at Auraiya are of Tehsil levels ; no eminent or average lawyer can afford to go to Auratya for one or two cases and the clients also cannot afford to bring the lawyers at Auraiya from Etawah ; the junior members of the Bar will be losing their bread and butter as the clients cannot afford to bring them at Auraiya : the lawyers of Etawah will have to part away with their cases ;

(xi) A large section of the public living at Tahsil Bidhuna will also not have any advantage as it is near to Achhalda Railway Station who can easily reach Etawah before Court time as the passenger trains take only one hour to reach Etawah from Achhalda whereas in order to go Auraiya they have to first come to Achhalda and then to Phaphund and from there to Auraiya;

(xii) The creation of the district Courts alone involve an expenditure of 200 crores and a recurring expenditure of 4 crores ;

(xiii) No approval of the Board of Revenue either prior to or subsequent to the Notification or from the Finance Department has been obtained.

(xiv) A representation was made by the petitioners to the State Government followed up by a reminder but the representation has not been considered nor decided.

(xv) The arbitrary and ultra vires action of the State Government in creating other new districts (i) Udham Singh Nagar. (ii) Kushi Nagar, (iii) Chandauli. (iv) Kaushambi, (v) Ghaziabad and (vi) Bulandshahr have already been challenged in Writ Petition Nos. 2621 of 1999, 8346 of 1999, 3473 of 1999. 2572 of 1999. 4998 of 1999 and 5002 of 1999 respectively ;

(xvi) Under similar circumstances creation of a new district Sant Kabir Nagar was successfully challenged before this Court in Civil Misc. Writ Petition No. 39756 of 1998, Ram Milan Shukla and others v. State of U. P. and others, which was allowed vide judgment and order dated 15.1.1999 (copy appended as Annexure-4). The Notification was quashed and the State Government was

directed to reconsider the matter ; in the aforementioned judgment this Court took into account the annual income of the State Government and its expenditure and held that its financial position is already very poor and shattered and that until the State Government takes a decision through its Cabinet and a Bill in this regard is duly passed by the U. P. Assembly, the Chief Minister has no powers to create a new district ;

(xvii) The Judgment and Order aforementioned has been upheld by the Supreme Court vide its order as contained in Annexure-5 and as the question involved in this writ petition are the same, therefore, they be decided in accordance with the observations made in Civil Misc. Writ Petition No. 39756 of 1998.

4.2. In the counter-affidavit filed on behalf of respondent No. 1, sworn by the Under Secretary to the Revenue Department, shortly put. inter alia, following facts have been Stated :

(i) The judgment relied upon by the petitioners in Ram Milan Shukla is not a binding precedent for these reasons (a) that it was passed in the absence of any counter-affidavit and thereby the Court had proceeded to accept the statements made by the petitioners as correct : (b) as a matter of fact the action of creating six new districts was ratified by the Cabinet through a decision taken on 7.1.2000 ; (c) the statement that the Cabinet was not taken into confidence by the then Chief Minister was incorrect : (d) the statement that every district had no essential facilities of medical and education were also incorrect. Even prior to the creation of the district every Block and Tehsil had/have educational and medical facilities were available besides community centres were already in existence ; (e) the statements made in the affidavit were not in conformity with the provisions of Order XIX. Rules 1 and 3 of the CPC and the onus, which was very heavy on the petitioners, was not discharged but this aspect of the matter was not considered ; (f) a challenge made to the same Notification creating several new districts was considered earlier in Civil Misc. Writ Petition No. 17735 of 1997 by a Division Bench vide its judgment dated 22.5.1997 and it was held that the Government has powers to create new districts, which is based on its satisfaction but this judgment was neither placed before the Division Bench nor it considered the same which could not take a view different from the same had it placed before that Bench;

(ii) The Government has every rights to overrule the policy and procedure laid down from time to time in regard to formation of new districts ; the Government orders are only to elaborate the Government policies and the Government itself can modify its policies and priorities ; the Government is of firm view to keep these administrative units working ; the head of the State, who is a public representative elected through democratic process, has every right to protect the general interest of the public at large and formation of the new district is an example of similar action to protect the general interest of the public at large of Auraiya city and villages situated much away from the district headquarter of district Etawah ; the Government has every right to relax or overrule the norms

and standards laid down earlier for formation of the districts with a view to cope with public demands and expectations of people at large which being the primary duty of a welfare State and cannot be neglected;

(iii) The State Government under its sovereign power has every right to create one or more districts on the basis of convenience of the public in the interest of the public at large. Consequently, exercising that power it decided to create a new district Auraiya with a view to better governance and administrative control which was again ratified by the Cabinet vide its decision dated 7.1.2000 (copy appended as Annexure-CA 3);

(iv) This Court after considering the desirability of establishing 5 Courts for making easily available the administration of justice to the public at large at the nearest point of their residence communicated through its Registrar which was taken into account by the Government and thereafter necessary Notification as contained in Annexures-CA 1 and CA 2 were issued;

(v) The Board of Revenue has also allocated funds for new district Auraiya in regard to establishment of new district and regular expenditure etc;

(vi) The report of the Comptroller and Auditor General of India is only recommendatory in nature and not binding on the State Government. The Comptroller and Auditor General of India has no business to criticise the policy decision taken by the Government and his report can at best be recommendatory in nature. The petitioners have no right to show concern about the analysis of expenditure and financial burden on the State;

(vii) As many as 27 offices had already begun to function ; a new Court for Sub-Divisional Magistrate, Auraiya, has been constructed in the Tehsil campus from the budget made available from the Board of Revenue ; suitable arrangement for accommodation of officers belonging to all levels have been made and some of them have been provided with offices and suitable hired building, the rent of which is being borne by the Government budget ; proposals for site selection for district headquarters have been sent to the Board of Revenue which is holding meetings for its finalisation ; there is no formal disapproval of the Board of Revenue or Finance Department rather in fact they are providing due budget to all the Departments of the Government established at Auraiya ; the district head quarter is already functioning properly;

(viii) In fact in a developing country like India first the district headquarter is being created and after the process of development, the creation of infrastructure takes place through the efforts of Legislature, Executive and Judiciary and even the 4th State namely, the Press;

(ix) The Advocates of Auraiya have necessary qualification and experience;

(x) Regular bus service exists from Vidhuna as well as from many other places of Auraiya district for the town of Auraiya;

(xi) None of the grounds mentioned in the writ petition being tenable in the eyes of law the writ petition is liable to be dismissed with costs.

4.3. In the counter-affidavit, which has been filed on behalf of respondent Nos. 3 to 10. i.e., to say Auraiya Lawyers, apart from reiterating the facts stated in the counter-affidavit filed on behalf of the State of U. P. aforementioned, following facts have been stated :

(i) This writ petition is liable to be dismissed for want of non-impleadment of Miss Mayawati against whom personal allegations have been made ;

(ii) The writ petition is liable to be dismissed in limine since it is for making inquest about the policy decision of the Government in regard to the administration, revenue collection as well as dispensation of justice at the lower level exigencies ;

(iii) The G.O. is merely an executive instruction which is not binding on the subsequent Government which has powers to take an independent and a different view and that the policy or norms cannot be called as law and having a binding effect :

(iv) The Cabinet has already decided after taking into relevant things in account and thus the newly formed district Auraiya has to continue for better governance and administrative control and in the interest of general public ;

(v) The deponent as well as many other prominent lawyers, who are residents of Auraiya, have been practising since 20 years at Etawah, are now practising at Auraiya and providing legal aid to the people of district Auraiya. It cannot be a rightful contention that for betterment of the Advocates the general interest of the public at large would not be served ;

(vi) The order of Supreme Court is not binding under Article 141 of the Constitution ;

(vii) The writ petition is liable to be dismissed with cost.

5. The hearing and the submissions :

5.1. On 17.1.2000 Sri Agrawal contended with reference to the second Division Bench judgment referred to in the writ petition that it be allowed. Having heard Sri M.M.D. Agrawal, learned counsel for the petitioner at some length and gone through the averments made in the writ petition including the judgment in Ram Milan Shukla, on a prayer made by Sri Agrawal we adjourned this case to 18.1.2000 so that he could satisfy us as to whether this writ petition is supported by a proper affidavit in terms of Order XIX, Rule 3, C.P.C. or not.

5.2. On 18.1.2000 on a request made by Sri Agrawal the case was adjourned to 19.1.2000.

5.3. On 19.1.2000 Sri H.R. Misra, learned standing counsel. Informed us with reference to a Fax message received by him that the Cabinet had decided to

continue the newly crated districts and divisions in the year 1997, as it is and that true X-rox copies of that Fax message was kept on the record. Having proceeded to hear this matter further, we passed orders to know from the petitioners (i) as to what fate the alleged report of the Comptroller and Auditor General of India on which reliance was placed, met its fate in terms of the provisions as contained in Article 151(2) of the Constitution of India (ii) whether it is not permissible for this Court to draw an inference from the undisputed legal position, namely, that apart from the provisions of the Land Revenue Act the sovereign State has inherent powers to create an administrative district besides it has also created judicial district after recommendations/consultations with this Court, which aspect was neither put nor was considered by the Division Bench. Sri Agrawal came up with a prayer for adjournment so that pleadings in the writ petition may be amended and we adjourned the further hearing to 24.1.2000 awaiting the amendment application.

5.4. Thereafter the case was further heard by us on 24.1.2000. In our order dated 24.1.2000, we had categorically noted the following submissions made by Sri H.R. Misra, learned standing counsel : (a) the creation of new districts by the then Chief Minister Miss Mayawati had come up before this Court for consideration in Civil Misc. Writ Petition No. 17736 of 1997, Samvidhan Bahali Andolan and others v. Union of India and others 1997 (88) RD 535 , yet it was not brought to the notice of the second Division Bench and thus in view of the decision of the Apex Court in General Manager, Telecom Vs. A. Srinivasa Rao and Others, , it is per in curium and not binding on us : (b) in the second Division Bench judgment reliance was placed on some news published in a newspaper "Northern India Patrika", 14th January, 1995 whereas the law is well-settled that a newspaper report is inadmissible in evidence ; (c) according to the statement of law by D.D. Basu in his monumental book The Constitution of India, Silver Jubilee Edition, 1983. Volume H at page 57 "it is not the business of the audit report to criticise the policy followed by the Government" and that it not being the case of the petitioner that final orders have been passed by the State Legislature under Article 151(2) of the Constitution of India, this Court should not have placed reliance on it ; (d) that there being a statutory presumption of correctness of the official acts, that presumption not having been discharged by the writ petitioners and, therefore, no reliance could be placed on their ipsi dixit statements, which were also not in conformity with the provisions of Order XIX, Rule 3 of the CPC as similar is the position here. In view of the fact that Mr. Agrawal, learned counsel for the petitioners, had failed to answer any of the questions noted in our order dated 19.1.2000, we had stated that fact in our order dated 24.1.2000. Vide our order aforementioned, we had adjourned the further hearing to 27.1.2000. On 27.1.2000 Mr. Agrawal for the reasons best known to him did not appear before us, and we adjourned the further hearing to 31.1.2000 after recording the statements made by Mr. Mishra as well as Shri Bajpai at the Bar. We also proceeded to note in our order the further submission made by Mr. Mishra in regard to the very focus of the petitioners on which he

placed reliance on a Judgment of Supreme Court in J.R. Raghupathy and Others Vs. State of A.P. and Others, , which was apparently not taken into account by the subsequent Division Bench in Ram Milan Shukla's case.

5.5. Sri Vajpayee stated that he also follows the submission of Mr. Mishra.

5.6. Sri Agrawal, in reply, contended as follows : (i) The ratio laid down by the Apex Court in J.R. Raghupathy, strongly relied upon by Mr. Mishra, is not applicable in the facts and circumstances of the instant case inasmuch as that case related to location of headquarters and not in relation to creation of district itself and (ii) we cannot sit over the decision of the subsequent Division Bench since the subsequent Division Bench judgment has been affirmed by the Supreme Court and it is binding on us and the first Division Bench judgment is of no consequence.

6. Our Findings :

6.1. We take up the question of legal rights of the petitioner first to move this Court. In J.R. Raghupathy and Others Vs. State of A.P. and Others, , when the Andhra Pradesh High Court interfered with the Notification issued u/s 3 (5) of the Andhra Pradesh Districts (Formation) Act (7 of 1974) in regard to location of Mandal Headquarters on the grounds, inter alia, that the administrative instructions were breached by the State Government, those judgments were set aside by the Supreme Court after holding in paragraph 30 as follows :

"We find it rather difficult to sustain the Judgment of the High Court in some of the cases where it has interfered with the location, of Mandal Headquarters and quashed the impugned notifications on the ground that the Government acted in breach of the guidelines in that one place or the other was more centrally located or that location at the other place would promote general public convenience, or that the headquarters should be fixed at a particular place with a view to develop the area surrounded by it. The location of headquarters by the Government by the issue of the final notification under sub-section (5) of Section 3 of the Act was on a consideration by the Cabinet Sub-Committee of the proposals submitted by the Collectors concerned and the objections and suggestions received from the local authorities like the gram panchayats and the general public. Even assuming that the Government while accepting the recommendations of the Cabinet Sub-Committee directed that the Mandal Headquarters should be at place "X" rather than place "Y" as recommended by the Collector concerned in a particular case, the High Court would not have issued a writ in the nature of mandamus to enforce the guidelines which were nothing more than administrative instructions not having any statutory force, which did not give rise to any legal right in favour of the writ petitioners." (Paragraph 30)

It is also relevant that the Supreme Court while setting aside different orders passed by the Andhra Pradesh High Court had proceeded to observe as follows :

(i) In a matter like this, conferment of discretion upon the Government in the matter of formation of a Revenue Mandal or location of its Headquarters in the nature of things necessarily leaves the Government with a choice in the use of the discretion conferred upon it.

(ii) Prima facie, it seems to us that the executive powers of the Union and the States under Articles 73 and 162 are much wider than the prerogative powers in England.

(iii) Much of the above discussion is of little or academic interest as the jurisdiction of the High Court to grant an appropriate writ, direction or order under Article 226 of the Constitution is not subject to the archaic constraints on which prerogative writs were issued in England.....All that we need is to end this part of the Judgment by extracting the cautionary note administered by H.W.R. Wade in his Administrative Law, 5th Edn., at p. 352 in these words :

"On the one hand, where Parliament confers powers upon some Minister or other authority to be used in discretion, it is obvious that the discretion ought to be that of the designated authority and not that of the Court. Whether the discretion is exercised prudently or imprudently, the authority's word is to be law and the remedy is to be political only. On the other hand. Parliament cannot be supposed to have intended that the power should be open to serious abuse. It must have assumed that the designated authority would act properly and responsibly, with a view to doing what was best in the public interest and most consistent with the policy of the statute. It is from this presumption that the Courts take their warrant to impose legal bounds on even the most extensive discretion."

6.2. It is true that the provisions as contained in Andhra Pradesh Act are more exhaustive in relation to forming a new district. Revenue Division or Mandal or increase or diminish or altername as it is apparent from a bare perusal of the judgment vis-a-vis our Act but nevertheless the ratio laid down aforementioned that to enforce the guidelines issued by the Government, which were nothing more than administrative instructions not having any statutory force, which did not give rise to any legal right in favour of the writ-petitioner, is binding hand and foot on us and we hold that this G.O. is nothing more than administrative instructions and is not having statutory force. This legal position cannot be ignored as suggested to by Sri Agrawal on the ground that notwithstanding declaration of law by Supreme Court, this G.O. was binding on Miss Mayawati and even on the present Government.

7. We now take up the question of effect of deletion of respondent No. 4:

For the reasons best known to the petitioners, they had deleted respondent No. 4 from the array of respondents. The net result is that Miss Mayawati, the then Chief Minister is not a party to this proceeding. Thus, the question of mala fide alleged against her cannot be answered in her absence. In our view, this writ petition, as it exists, suffers from the vice of non-Impleadment of Miss Mayawati, who in the peculiar facts and circumstances is a necessary party and the

petitioners must thank themselves in this regard.

8. We now come to the earlier Division Bench Judgment in *Samvidhan Bahali Andolan v. Union of India and others*. 1997 (88) RD 535.

8.1. A perusal of the judgment and the record shows that the Notifications creating six new districts Kaushambi, Mahamaya Nagar, Chatrapati Sahuji Maharaj. Mahatma Budh Nagar, Jyotiba Fule Nagar and Chandauli were sought to be quashed besides Section 11 of the Act was sought to be declared void as ultra vires in the wake of Articles 254 and 372 of the Constitution of India and to command the respondent Nos. 2 to 4 not to proceed in creating new ones but the writ petition was dismissed observing/holding as follows :

"7. Section 11 of the aforesaid U. P. Land Revenue Act. 1901 provides as under :

"1. The State Government may create new or abolish existing divisions or districts.

2. The State Government may alter the limits of any division, district or tahsil, and may create new or abolish existing tahsil, and may divide any district into sub-divisions, and may alter the limits of sub-divisions.

3. Subject to the orders of the State Government under sub-section (2). all tahsils shall be deemed to be sub-division of districts."

8. It may be pointed out that the State Government is empowered to appoint the Commissioner of certain divisions and by virtue of the provisions of Section 12 of the Act appoint Collector of the District. The Commissioner and the Collector are empowered to exercise all powers and discharge all the duties conferred by the U. P. Land Revenue Act and all other Acts which they are empowered to exercise under those other enactment.

9. In view of the clear provision existing it is not known on what basis the creation of district can be stopped. The argument that the word "district" has been defined in Article 243 and in this connection reference to the said Article and other Articles such as 254, 372 and 375 appear to be wholly misconceived. The territory of a State is already fixed under the Constitutional provision. Internal arrangement of the State is obviously a matter which is to be decided by the State Government. Creation of the revenue district, therefore, lies within the exclusive power of the State Government. All other arguments advanced in this regard are, therefore, rejected.

10. It may be mentioned here that Sri Mrityunjaya emphasised that there was neither any need nor any justification for creating this new district within about two or three months of assuming the office of Chief Ministership by opposite party No. 3. He wanted to argue that there may not be any proposal for creation of the new district, there may not be any budget for new district and there may not be any method by which immediate law and order can be looked after in the newly created district."

8.2. Apparently the earliest Division Bench had proceeded to dismiss the writ petition by highlighting the following facts and holding as follows :

(i) In view of the provisions as contained in Sections 11 and 12 of the Act it is not known on what basis the creation of district can be stopped ;

(ii) Internal arrangement of the State is obviously a matter which is to be decided by the State Government and creation of a revenue district lies within the exclusive power of the State Government :

(iii) The argument that there was neither any need nor any justification for creating new districts within about two or three months of assuming the office of Chief Ministership by Miss Mayawati and that there may not be any proposal for creation of the new district, there may not be any budget in that regard and there may not be any method by which immediate law and order can be looked after in those newly created districts have been made only to be rejected noting that the action of the Government creating district is obviously based on the satisfaction of the State Government and that the Chief Minister has to advise the Governor, who passes necessary orders on behalf of the State Government and Section 11 of the Act permits such an executive action ;

(iv) Political motive or imputation, which was sought to be argued can and should not be entertained concerning creation of a district on the basis of administrative exigencies.

8.3. Apparently this judgment, though reported in 1997 itself, was not brought to the notice of the subsequent Division Bench.

8.4. According to Mr. Mishra, the first judgment in *Samvidhan Bahali Andolan v. Union of India and others*, was binding on the subsequent Division Bench as well as on us in view of the doctrine of precedent enunciated by the Apex Court and the submission of Mr. Agrawal that in view of the conflict between first and second Division Bench, the second Division Bench judgment is binding on us and that if we intend to take a view different from the second Division Bench, the only option for us is to refer this case to a larger Bench, is of no substance.

8.5. Reference was also made by Mr. Mishra to the following observations made in paragraphs 40 and 41 of the judgment of the Supreme Court in *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*,

"40. "Inertia" literally means "carelessness". In practice per incuriam appears to mean per ignoratum. English Courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered "in ignoratum of a statute or other binding authority". *Young v. Bristol Aeroplane Co. Ltd* 11. (1933) 1 KB 718 : (1944) 2 All ER 293 . Same has been accepted approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu Vs. Rajdewan Dubey and Others*, , this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench

extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English Courts and Jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd.* (1941) 1 KB 675 : (1941) 2 All ER 11, the Court did not feel bound by earlier decision as it was rendered "without any argument, without reference to the crucial words of the rule and without any citation of the authority. It was approved by this Court in *Municipal Corporation of Delhi v. Gurnam Kaur.* (1989) 1 SCO 101. The bench held that, "precedents sub-silentio and without argument are of no moment". The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao Vs. The Union Territory of Pondicherry*, it was observed, "it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein". Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

8.6. We remind ourselves of the following observations made by a 5 Judges Constitution Bench of the Supreme Court in *Sub-Committee of Judicial Accountability Vs. Union of India and others*,

".....Indeed, no coordinate bench of this Court can even comment upon, let one sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before another co-ordinate bench..... Judicial propriety and discipline as well as what flows from the circumstances that each Division Bench of this Court functions as the Court itself renders any interference by one bench with a Judicial matter before another lacking as much in propriety as in jurisdiction."

The principle enunciated aforementioned equally applies to a High Court as it exercises its judicial functions through its different Benches--Single or Division Bench or Full Bench or Special Bench and while doing so each Bench constitutes the High Court itself.

8.7. Having reminded ourselves, we merely state that in *Indian Oil Corporation Ltd. Vs. Municipal Corporation and Another*, , it was laid down to the effect that a latter co-equal Bench of this Court did not and could not overrule the earlier decision of this Court in *Ratna Parkhi*. Similar view was taken by the Apex Court in *Ram Jivan Vs. Smt. Phoola (Dead) by Lrs. and Others*, , wherein it was laid down to the effect that the ratio laid down by a Division Bench is binding on a subsequent Division Bench.

8.8. The principle laid down by the Apex Court was also held to be applicable to the High Courts as well as by the Apex Court itself in *Sri Venkateswara Rice, Ginning and Groundnut Oil Mill Contractors Co. and Others Vs. State of Andhra Pradesh and Others*, in following words :

"It is strange that a coordinate Bench of the same High Court should have tried to sit on judgment over a decision of another Bench of that Court. It is regrettable that the learned Judges who decided the latter case overlooked the fact that they were bound by the earlier decision. If they wanted that the earlier decision should be reconsidered, they should have referred to the question in issue to a larger Bench and not to ignore the earlier decision."

8.9. The Apex Court in *Common Cause, A Registered Society Vs. Union of India and Others*, has stated as follows :

"What are traditional sovereign functions of the State was considered by this Court in *State of Bombay v. Hospital Mazdoor Sabha* and *Corpn. of the City of Nagpur v. Employees*, and in both these decisions, observations of Lord Watson in *Richard Coomber v. Justices of the County Berks*, that tradition "sovereign Junctions were the making of laws, the administration of "Justice, the maintenance of order, the repression of crime, carrying on of war, the making of treaties of peace and other consequential functions, were approved."

8.10. The ratio laid down by the Supreme Court in *J.R. Raghupathy* and the earlier Division Bench judgment in *Samvidhan Bahali Andolan* is binding on us, and we are required to follow it. In the subsequent Division Bench judgment (i) the question of legal right of the petitioner in the light of the pronouncement of the Supreme Court in *J.R. Raghupathy*, (ii) the fact that the present Government through its Cabinet decision had already decided the matter continuing to proceed with the earlier created new districts ; (iii) the objection raised in the report of the Comptroller and Auditor General of India as contained in Annexure-3 has apparently not been accepted by the State Legislature under Article 151(2) of the Constitution of India by resolving to that effect, and (iv) that it was also not pointed out that apart from Section 11 of the Act which authorises/empowers the State Government to create a revenue district the State Government, which in our federal polity, is the sovereign though with certain exceptions as provided under the Constitution itself has powers to create an Administrative/Police district for better administration and control of law and order and Judicial districts read with the provisions mentioned in the letter of the

Registrar of this Court, were not gone into as they were not pointed out. Despite our repeated query. Mr. Agrawal even till today has failed to bring to our notice that the report of the Comptroller and Auditor General of India has been accepted by the State Legislature. We hasten to and further that it was not within the domain of the Comptroller and Auditor General of India to criticise the policy decision of the State Government as rightly stated by D.D. Basu in his celebrated book "The Constitution of India, Silver Jubilee Edition 1983. Volume H page 57". It is also well known that it is the party in power who controls the functioning of the State Legislature. One of the recognised mode is issuance of whip in that regard. Apparently the concurrence of the Board of Revenue and the Finance Department of the Government was not available before the subsequent Division Bench. Apparently in this judgment the creation of the Administrative/ Police Districts or the Judicial Districts were not set aside nor was there any prayer too in that regard. Thus, in our view this judgment does not constitute a binding precedent so as to refer this case to a larger Bench.

8.11, Thus, we accept the submission of Mr. Mishra and reject that of Mr. Agrawal.

9. Now we proceed to consider the argument of Mr. Agrawal that since the question has already been set at rest by the Hon"ble Supreme Court by dismissal of the SLP of the State against the subsequent Division Bench decision, therefore, this writ petition must be allowed following the subsequent Division Bench judgment.

9-1. The order dated March 26, 1999 passed in Special Leave to Appeal (C) with S.L.R. (C) Nos. 4875-4880 of 1999 arising out of the subsequent Division Bench Judgment and Order dated 15.1.1999 (as contained in Annexure-5 to this writ petition) reads thus :

"S.V. Manohar and R.C. Lahoti. JJ. Permission to file SLP is granted in SLP(CC 1364/99).

Looking to the facts and Circumstances as set out by the High Court in the impugned Judgment, no intervention is called for under Article 136. Hence the Special Leave Petitions are dismissed."

9.2. The order aforementioned clearly shows that the SLP filed by the State of U. P. was dismissed holding that no intervention is called under Article 136 of the Constitution of India looking to the facts and circumstances set out by the High Court.

9.3. In State of Manipur Vs. Thingujam Brojen Meetei, , the Apex Court laid own that such a dismissal of SLP only means that the Supreme Court has decided only that it is not a fit case where Special Leave should be granted and that such an order does not constitute law for the purposes of Article 141 of the Constitution of India. Similar was the view in Om Prakash Gargi Vs. State of Punjab and Others, , adding that the effect of dismissing SLP in limine does not furnish any ratio decideni for following the same.

9.4. We, thus, do not see anything beyond what has already been stated by the Hon''ble Supreme Court while dismissing the SLP filed by the State and refuse to follow the law laid down by the Apex Court itself in J.R. Raghupathy (supra).

9.5. The contention of Mr. Agrawal made in this regard is hereby overruled.

10. The High Court through its Registrar has also not been impleaded as a party-respondent by the petitioners which, to us, in the peculiar facts and circumstances appears to be a necessary party.

11. We were informed by the learned Members of the Bar themselves that the Judicial District of Auralya was inaugurated by Hon''ble The Chief Justice by making 5 Judicial Courts functioning on 30.1.2000. Thus, the Courts at Auraiya have started functioning fulfilling the avowed object of administering justice at door steps.

11.1. In view of the fact that Judicial district of Auralya has come into existence, no further direction is required to be made on the judicial side in Civil Misc. Writ Petition No. 48513 of 1999. This writ petition is disposed of accordingly.

11.2. In creation of a Revenue district, Administrative/Police district and the Judicial district, the State Government has already spent a lot of money.

12. For the reasons aforementioned Civil Misc. Writ Petition No. 44906 of 1999 is dismissed but without cost.

13. The office is directed to hand over a copy of this order to Sri H.R. Mishra, learned standing counsel, within one week for its intimation to the Government.