
(2011) 03 AHC CK 0125
In the Allahabad High Court
Case No : Writ A. No. 54717 of 2000

Dr. Krishna Swaroop Anandi

APPELLANT

Vs

State Of U.P. and Others

RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 166, 166(2), 166(3), 333
Criminal Procedure Code, 1973 (CrPC) — Section 432, 433
Uttar Pradesh Rules of Business, 1975 — Rule 3, 8

Citation : (2011) 10 ADJ 667

Hon'ble Judges : Shyam Shankar Tiwari, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard the Petitioner in person and Sri Alok Kumar Singh, learned Standing Counsel for the Respondents.

2. By this writ petition, the Petitioner has prayed for a writ of certiorari quashing the order dated 10th November, 2000 issued by the Director, Technical Education, U.P., Kanpur directing for stopping payment of house rent allowance to the Petitioner with immediate effect and for taking steps for recovery of house rent allowance irregularly paid to the Petitioner. A writ of mandamus has also been sought directing the Respondents No. 2 and 3 not to recover the house rent allowance already paid to the Petitioner with further direction to pay him the house rent allowance month by month admissible under the law.

3. Counter affidavit, supplementary counter affidavit, rejoinder affidavit and the supplementary rejoinder affidavit have been exchanged between the parties. The Petitioner as well as learned Standing Counsel have also given their written submissions.

4. Brief facts of the case as emerge from the pleadings of the parties are; the Petitioner was appointed as Lecturer in Mathematics in the Institute of

Engineering and Rural Technology (I.E.R.T.), Allahabad on 6th September, 1983. The Petitioner's wife Dr. Kaumudi Srivastava joined as Lecturer in Sanskriti in the Rajashri Tandon Mahila Mahavidyalaya on 31st March, 1989. Both the institutions were receiving Government aid. Both the Petitioners were receiving house rent allowance from their respective institutions till January, 1996 when the house rent allowance of Petitioner's wife was stopped by the Principal of Rajashri Tandon Mahila Mahavidyalaya on the ground that she is not entitled to receive the same since her husband is already receiving the house rent allowance. The Petitioner gave in writing that the house rent allowance to the Petitioner be not paid and the house rent allowance to the Petitioner's wife be restored with effect from March, 1996. The house rent allowance of the Petitioner was stopped and that of his wife was restored with effect from March, 1996. The Petitioner submitted a representation on 17th February, 1997 to the Director, I.E.R.T. seeking payment of house rent allowance as well as arrears of house rent allowance on the strength of the Division Bench judgment of this Court in the case of Dr. Maya Rani Srivastava v. The Director (Higher Education), U.P., Allahabad and Ors. reported in 1996(3) E.S.C. 474 (All.). The Petitioner submitted reminders. The Director, I.E.R.T. by order dated 5th September, 1997 directed for payment of house rent allowance to the Petitioner in pursuance of which the Joint Director, Technical Education, U.P. (East Zone), Varanasi started payment of house rent allowance to the Petitioner from October, 1997. The Petitioner thereafter submitted another representation for payment of arrears of house rent allowance from March, 1996 to September, 1997. On such representation of the Petitioner, the Director, Technical Education wrote to the State Government seeking appropriate direction for stopping the house rent allowance of the Petitioner. In the reference letter dated 11th July, 2000 of the Director, Technical Education it was stated that when husband and wife both are residing in the same city and in the same house, both are not entitled for house rent allowance and the judgment of this Court in Dr. Maya Rani's case (supra) cannot be applied in all matters. The State Government wrote a letter on 21st October, 2000 to the Director, Technical Education after receiving which letter, the Director, Technical Education issued an order dated 10th November, 2000 for stopping the payment of house rent allowance to the Petitioner and for taking steps for recovery of irregularly paid house rent allowance to the Petitioner and further to submit a report of responsible official in that regard. This writ petition has been filed by the Petitioner challenging the aforesaid order.

5. In the counter affidavit filed by the State it was stated that in view of the clear policy of the State that if husband and wife both are in the Government service, the house rent allowance is not payable to both of them, hence the order issued were perfectly in accordance with law and the Petitioner was not entitled for payment of house rent allowance. The Petitioner in his rejoinder affidavit has again relied on the Division Bench judgment of this Court in Dr. Maya Rani's case (supra) and has stated that against the said judgment SLP filed by the Director (Higher Education) has also been dismissed on 7th July, 1997. Copy of the

Government order dated 15th December, 1981 with regard to house rent allowance has also been brought on the record as Annexure-3 to the rejoinder affidavit. In the supplementary counter affidavit filed by the State, reliance has been placed on the Government order dated 15th December, 1981, specifically paragraph 5 and 7, and the office order dated 28th February, 1984 clarifying paragraph 4(5) of the Government order dated 15th December, 1981. Copy of the circular dated 31st July, 2003 of the Director, Technical Education has also been brought on the record by which all Joint Directors and Principals were communicated that in accordance with the Government order 28th February, 1984 and 28th April, 2002 if husband and wife are residing in the same city then only one of them is entitled for house rent allowance. The Petitioner in his rejoinder affidavit replying to the supplementary counter affidavit has stated that the said Government order dated 15th December, 1981 is applicable if both husband and wife are in State Government service. It was stated that Petitioner's wife is teacher in Rajashri Tandon Mahavidyalaya which received aid from the State Government up to 13th July, 2005 and with effect from 14th July, 2005 it has become a constituent college of the University of Allahabad, which has been declared as Central University with effect from 14th July, 2005. The Petitioner is living in the accommodation owned by him, hence he is entitled for house rent allowance. With regard to Government order dated 28th February, 1984, it has been stated that the said Government order is erroneous, confusing and illogical. It was stated that house rent allowance is payable to both of them. The Government order dated 28th February, 1984 as well as the Government order dated 15th December, 1981 are stated to be violative of Articles 14 and 16 of the Constitution of India. The circular dated 31st July, 2003 of the Director, Technical Education has also been stated to be arbitrary and violative of Articles 14 and 16 of the Constitution of India. Referring to the supplementary rejoinder affidavit, the Petitioner has stated that the Government order dated 15th December, 1981 had come to an end on 30th June, 1988 after issuance of the Government order dated 19th September, 1988, hence restriction if any has now come to an end. Copy of the Government orders dated 19th September, 1988 and 11th June, 1999 have been brought on the record along with the supplementary rejoinder affidavit. Reliance has also been placed on the Government order dated 8th December, 2008.

6. The Petitioner in support of the writ petition has raised following submissions:

(i) According to the Division Bench judgment in Dr. Maya Rani's case (supra) both husband and wife residing in the house owned by one of them, are entitled for house rent allowance. It is submitted that the house rent allowance was rightly restored to the Petitioner which has been illegally stopped by the impugned order dated 10th November, 2000. The Petitioner since living in his own house is entitled for house rent allowance despite payment of house rent allowance to his wife.

(ii) The Government order dated 15th December, 1981 does not contain any such

restriction and the office order dated 28th February, 1984 is not a Government order since it has not been issued with the approval of the Governor of the State and hence the same cannot be relied.

(iii) In any view of the matter, the Government order dated 15th December, 1981 cease to operate with effect from 30th June, 1988, hence restriction, if any, on payment of house rent allowance to husband and wife both came to an end. In subsequent Government orders, which have been issued for payment of house rent allowance i.e., Government order dated 19th September, 1988 and 11th June, 1999, there is no restriction for payment of house rent allowance to husband and wife both if they are residing in the same house.

7. Sri Alok Kumar Singh, learned Standing Counsel, refuting the submissions of the Petitioner, contends that the Petitioner and his wife both were in the employment of the State Government. By virtue of the Government order dated 15th December, 1981 and the clarification issued on 28th February, 1984, they are not entitled for house rent allowance and it was wrongly paid to both of them which has been stopped by the impugned order. It is submitted that the Division Bench judgment of this Court in Dr. Maya Rani's case (supra) is on its own fact and the relevant Government orders were not under challenge or under consideration in the said case, hence the Petitioner cannot take any benefit of the said judgment. It is submitted that the State Government has adopted a uniform policy of not paying house rent allowance to both husband and wife if they are living in the same house either on rent or owned by any of them. He submits that the circular dated 31st July, 2003 issued by the Director, Technical Education is in that regard. He further submits that payment of house rent allowance is a compensatory allowance and when both husband and wife are living in the same house and one of them receives it, there is no occasion to make payment of house rent allowance to both of them. He has placed reliance on a judgment of the Apex Court in the case of Director, Central Plantation Corps Research Institute and Ors. v. M. Purushothaman and Ors. reported in AIR 1994 S.C. 2541.

8. We have considered the submissions of the Petitioner who has appeared in person and has placed his case clearly with reference to the relevant Government orders and the learned Standing Counsel.

9. The submissions raised by the Petitioner being interconnected, are being taken together. The house rent allowance is a compensatory allowance payable to an employee. Fundamental Rule 44 defines "compensatory allowance". Fundamental Rule 44 is quoted below:

F.R. 44. Compensatory allowance. -Subject to the general rule that the amount of compensatory allowance should be so regulated that the allowance is not on the whole a source of profit to the recipient, the Central Government may grant such allowances to any Government servant under its control and may make rules prescribing their amounts and the conditions under which they may be

drawn.

10. The payment of house rent allowance in the State of U.P. is regulated by Government orders issued from time to time. The first Government order which is relevant and has been relied and referred to by both the parties, is the Government order dated 15th December, 1981 filed as Annexure RA-3 to the rejoinder affidavit. Paragraph 4(5) and paragraph 7(1) of the said Government order, which are relevant for the present case, are extracted below:

4(5). edku fdjk;k HkRrk] fookfgr] rFkk vfookfgr nksuksa gh izdkj ds ljdkh Isodksa dks vuqeU; gksxkA vLFkbbZ LFkkukUrj.k] dk;Z xzg.kdky rFkk vodk"k dh vof/k esa edku fdjk;s HkRrs dk Hkqxrku foRh; fu;e laxzg] [k.M & 2] Hkkx & 2 Is 4] ds laxr lgk;d fu;eksa ds v/khu vuqeU; gksxk A fdlh deZpkjh ds vodk"k ds nkSjku v"kDr ?kksf"kr fd, tkus dh iwoZ dh vof/k ds fy, vkgfjr edku fdjk;s HkRrs dh olwyh ugha dh tk;sxh A bldk Hkqxrku mlh lzkrs ls fd;k tk;sxk ftlls fd,slh vof/k ds nkSjku osru dk Hkqxrku fd;k tk, A ;g HkRrk nkSjs ij eq[;ky; ls vuqifLFkr jgus ds nkSjku Hkh vuqeU; gksxk A ;fn vU;Fkk vuqeU; gks rks ;g HkRrk ifr rFkk iRuh nksuksa gh dks feysxk A ;fn os,d gh fdjk;s ds edku esa jg jgs gksa rks dsoy,d dk edku fdjk;k HkRrk vuqeU; gksxk A ftl fcy ds tfj;s edku fdjk;k HkRrk fudkyk tk; ml ij fu;a=d vf/kdkjh }kjk layXud & 3 esa fn;s x;s izi= esa,d izek.k i= i`"Bkafdr fd;k tkuk pkfg, A

7(1). ;fn dksbZ ljdkh Isod fdlh,sls edku esa jgrk gS ftldk Lokeh og Lo;a vFkok mldh iRuh] mlds cPps] mldk firk vFkok ekrk gS rks mls Hkh bu vkns"ksa esa mfYyf[kr "krksZa ds v/khu edku fdjk;k HkRrk ysus dk gd gksxk A,sls ekeyksa esa iwjs edku ds fy,] vkSj ;fn mlds ikl iwjk edku ugha gS rks ftruk Hkkx mlds ikl gS mlds ldy fdjk;k ewY; ?Gross rental value? tSlk fd og lEcFu/kR uxjikfydk] LFkkuh; fudk;ksa }kjk fu/kkZfjr fd;k x;k gks] fcuk ejEer vkfn ds fy, nh tkus okyh ?kV,a] vkSj tgkWa,slk fu/kkZj.k u fd;k x;k gks,slk vU; ldy fdjk;k ewY; tks Lohd`r vf/kdkjh }kjk vk;dj ds fjVuZ ;k vU; fdlh vk/kkj ij iw.kZ vkSfpR; ns[krs gq, leqfpr le>k tk;] ijUrq ftlesa Isok djksa dks NksM+dj ?tSlS tydj] tyksRlkj.k dj] izdk"k dj lQkbZ dj vkSj "kkSpky; rFkk laMklksa dh lQkbZ dj? edku ekfyd }kjk dkuwuh rkSj ij ns; uxjikfydk dj rFkk vyx ls ekfyd }kjk fof/kor~ ns; vU; dj ?mRrj izns"k uxj {ks= Hkwfe vkSj Hkou dj vf/kfu;e] 1962 ds v/khu ns; dj dks NksM+dj? "kkfey gksaxs] bu vkns"ksa ds iz;kstu ds fy, ljdkh Isod }kjk xSj&ldkj edku ds fy, vnk fd;k tkus okyk fdjk;k ekuk tk;xk A,sls deZpkfj;ksa dks layXud & 4 esa fu/kkZfjr izek.kd nsuk gksxk A

12. Paragraph 4(5) of the Government order dated 15th December, 1981 indicates that if house rent allowance is admissible, it can be paid to both husband and wife and if they are living in the same rented house, the house rent allowance shall be admissible to only one of them. Further paragraph 7(1) of the Government order provides that if Government servant lives in a house which is owned by him or his wife or his children or father or mother then he is also entitled for house rent allowance. A combined reading of paragraphs 4(5) and 7(1) of the Government order indicates that a Government servant is entitled for house rent allowance if he lives in rented house or he lives in a house owned by

him or his family members. However, the Government order provides that if husband and wife live in the same house which is rented only one of them is entitled for house rent allowance. The same principle is also applicable when the house is owned by any one of them or their family members as mentioned in paragraph 7(1) of the Government order.

13. The office order dated 28th February, 1984, which has been issued by the Deputy Secretary of the State Government, is a clarificatory order clarifying the aforesaid position that if husband and wife both are living in the same house, only one of them is entitled for house rent allowance. The Government also noticed that even if one of the spouse is in the State Government and another is in Local Bodies, Educational institution, Public Sector or Corporation still the said condition shall apply and with regard to one house the allowance shall be payable to only one of them. The circular dated 31st July, 2003 issued by the Director, Technical Education has been issued referring to the Government orders dated 28th February, 1984 and 28th April, 2002. The Petitioner although in the writ petition has not challenged either the Government order dated 15th December, 1981 or the Government order dated 28th February, 1984 or the circular issued by the Director, Technical Education but in his rejoinder affidavit he has stated that the Government orders are arbitrary and violative of Articles 14 and 16 of the Constitution of India. There being no challenge of the Government orders in the writ petition, it is not necessary for us to consider the pleadings of the Petitioner made in the rejoinder affidavit referring to the Government orders as arbitrary and violative of Articles 14 and 16 of the Constitution of India. The Hon'ble Single Judge of this Court in the case of Smt. Mukti Ray and Ors. v. State of U.P. and Ors. reported in 1998(33) A.L.R. 340 has rejected such challenge. Following was laid down in paragraphs 3 and 4 of the said judgment:

3. The said Government orders have been challenged on the ground that it is discriminatory inasmuch as while house rent allowance is payable to the husband but it has not been allowed to the wife and that such house rent allowance is payable by reason of individual right of the Petitioners and meant for the benefit of the family. Thus it appears that the grounds are inconsistent and are contradictory. If the house rent allowance is meant for the employee and his family in that event, the house rent allowance received by husband is meant for the accommodation of the wife and vice-versa. Therefore, on that account, the said Government order cannot be assailed.

4. Now so far as discrimination is concerned, house rent allowance is an allowance for accommodating the employee. When the Government order has made provision for accommodation of the employee, therefore, house rent allowance paid to her husband which is meant not only for the husband but also for the family, in that event, it cannot be said that a discrimination is being made between male and female.

14. The above mentioned Government orders provide for payment of house rent allowance to a Government servant who is not allotted a residential

accommodation. The Government orders also entitle payment of house rent allowance to both husband and wife who are not posted in the same city or living in the same house. The Fundamental Rule 44, as quoted above, clearly indicates that house rent allowance is a compensatory allowance and is not a source of profit to a Government employee. When both husband and wife live in the same house either rented or owned, the payment of house rent allowance to one of them fully satisfies the object and purpose of the Fundamental Rule. The non payment of house rent allowance to both of them when they live in the same house can neither be said to be discriminatory nor arbitrary. There is an intelligible differentia between the two classes of husband and wife, one who are living in different city and occupying different houses and those who are living in the same city occupying same house with a rational nexus to the object sought to be achieved.

15. Thus the challenge to the Government order dated 15th December, 1981, which is sought to be raised by the Petitioner, cannot be accepted. As noted above, there being neither any challenge in the writ petition to the Government order dated 28th February, 1984 nor any pleading with regard to competence to issue the said Government order having been taken in the writ petition, no reply could have come from the State on the aforesaid aspect. It is, however, necessary to clear the misapprehension under which the Petitioner is labouring that all orders issued by the Government are to be issued with the concurrence of the Governor. Article 166 of the Constitution of India provides for conduct of business of the Government of a State. Article 166 of the Constitution of India is as follows:

166. (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

16. Article 166(3) of the Constitution of India empowers the Governor to make rule for more convenient transaction of business of the State and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion. It is not the case of the Petitioner that business under consideration was a business which, under the Constitution, was required to be performed in the discretion of the Governor. The Governor in exercise of power

under Article 166(3) of the Constitution has framed rules, namely, Uttar Pradesh Rules of Business, 1975. Rules 3 and 8 of the said Rules provides as follows:

3. Disposal of Business - Subject to the provisions of these Rules in regard to consultation with other department and submission of cases to the Chief Minister, the Cabinet and the Governor, all business allotted to a department under the provisions of U.P. (Allocation) Rules, 1975, shall be disposed of by or under the general or special direction of the Minister-in-charge.

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8. Submission of cases to the Chief Minister and the Governor - All cases of the nature specified in the second Schedule to these Rules shall, before the issue of orders thereon, be submitted to the Chief Minister or to the Governor or to the Chief Minister and the Governor as indicated therein.

17. The second schedule of the rule refers to Rule 8 which provides for the cases to be submitted to the Chief Minister and for the Governor. The second schedule is also quoted below for ready reference:

THE SECOND SCHEDULE (Rule 8) Cases to be submitted to the Chief Minister and/or the Governor

Serial	Nature of cases	Authority to whom	No. To be submitted
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1. Proposal for the grant of pardons, reprieves The Chief respites or remissions of punishment or Minister and for the suspension, remission or the Governor communication of a sentence in pursuance of Article 161 of the Constitution or sections 432 and 433 of the Code of Criminal Procedure 1973 except cases of suspension or remission or sentence for a period not exceeding two months at a time and one year in the aggregate.

2. Appointment and resignation of the Chief The Governor Minister and other Ministers of the State

3. Appointment and resignation of the Advocate The Governor General.

4. Recommendations for introduction or The Governor consideration of a Bill or amendment or any motion of demand for grants.

5. Fixation of date for presentation of Annual The Governor Financial Statement before Legislative Assembly.

6. Consideration of and assent to Bills passed by The Governor Houses of Legislature and promulgation of Ordinance.

7. Cases raising questions of policy and cases of The Chief administrative importance. Minister.

8. Cases which affect or are likely to affect the The Chief peace and stability of the State. Minister.

9. Cases which affect or are likely to affect the The Chief interests of scheduled castes and scheduled tribes. Minister.

10. Cases which affect the relations of the State Government The Chief with the Government of India, any other State Government, Minister. the Supreme Court or the High Court.

11. Proposals for the appointment of Additional, Ad hoc The Chief and Permanent Judges and Chief Justice of the High Minister and Court. the Governor

12. Constitution of an Advisory Board under Article The Chief 22 (4) (a) for the detention of persons without trial. Minister.

13. Excluding the gazetted officers of class II, The Chief proposals For the dismissal, removal, Minister reduction in rank, suspension or compulsory retirement of any gazetted officer belonging to a State Service or of higher status.

14. Proposals for the appointment confirmation The Chief (wherever Applicable) and posting (whether Minister application) of the following officers:

(a) Secretaries, Special Secretaries and Joint Secretaries of Department of Government.

(b) Heads of Departments, Members of the Board of Revenue and Commissioners including those holding charge as such in stop gap arrangement.

(c) Special Offices (e.g. Food Commissioner, Planning Officer etc.)

(d) District Judges.

(e) Additional and Deputy Inspectors General of police.

(f) Deputy Commissioners or Collectors, Additional Commissioners and Deputy Development Commissioners.

(g) Superintendent of Police.

14A. Creation of posts carrying pay scales, The Chief the maximum of which exceeds Rs. 2,500 Minister per month, after clearance being given by the Finance Minister.

15. Proposals to nominate Members of the Legislative The Chief Council under Article 171 (8) (e). Minister and the Governor.

16. Proposals for the provision of representation The Chief to the Anglo-Indian Community (Article 333) Minister and the Governor

17. Any communication from the Election Commission, The Governor specifically with reference to its requirements as to staff and action proposed to be taken thereon.

18. Any proposals for the institution of a The Chief prosecution by Government

against Minister the advice tendered by the Law Department.

19. Any departure from these Rules which The Chief comes to the notice of the Minister Secretary of the Secretary of any Department.

20. Cases pertaining to the Governor's The Chief personal establishment and Government House Minister & matters The Governor

21. Cases in which it is proposed to pay out of The Chief the Consolidated Fund any damage or costs Minister incurred by public servants in connection with legal proceedings instituted against them in in respect of acts purported to have been done by them in their official capacity.

22. Proposals for the appointment of Chairman and The Chief members, of the State Public Service Commission Minister and the Governor

23. Appointment, resignation and removal of The Chief Chairman and members of any other statutory Minister Commissions and important ad hoc Commissions and members thereof.

24. Cases relating to summoning and prorogation The Chief of Houses of the Legislature, dissolution of the Minister Legislative Assembly, nomination to the and the Legislative Council, fixing of dates of elections Governor to the Legislature and other connected matters.

25. Cases relating to the appointment of Secretary, The Chief Deputy Secretary and Under Secretary to either Minister House of the Legislature or to posts common to both Houses.

26. All cases relating to development matters The Chief pertaining to Garhwal and Kumaon divisions of Minister the classes specified in the first Schedule to these Rules.

27. Any other matter which the Chief Minister may The Chief from time to time, by general or special order, Minister specify.

28. Any matter which the Governor requires to be The Chief by the Cabinet, being a matter on which a decision Minister has been taken by a Minister but which has not been considered by the Cabinet.

29. Such other cases involving questions of policy or The of administrative importance as the Chief Minister Governor might consider necessary to bring to the notice of the Governor or the Governor may call for.

18. From the Rules of Business and the Second Schedule, as quoted above, it is clear that payment of house rent allowance to all the teachers governed by the Director of Technical Education was not a subject which was to be placed before the Governor for his sanction.

19. The law in this subject has been elaborately explained by the Constitution Bench of the Apex Court in the case of Bejoy Lakshmi Cotton Mills Ltd. Vs. State

of West Bengal and Others, . In the said case notification for acquisition of land under the West Bengal Land Development and Planning Act, 1948 was under consideration. Notification u/s 4 was issued with the signature of Assistant Secretary, Land and Revenue Department of the Government of West Bengal. The challenge before the High Court was that Assistant Secretary was not authorised to issue notification and the Government had never applied its mind to issue notification, the notification was without jurisdiction. Referring to the Rules of Business framed under Article 166(3) of the Constitution, the said argument was rejected. It is useful to refer to paragraphs 10 and 16 of the said judgment:

10. On behalf of the State it was urged that, as the notification issued u/s 4 and the declaration made u/s 6. have been authenticated in the manner, specified by the Rules made by the Governor under Article 166(2) of the Constitution, it was not open to the Appellant to go behind and question the validity of either the notification or the declaration, which contained a recital that the Governor was of the opinion that the lands were needed for a public purpose. According to the State, this recital shows that the Governor's satisfaction is clearly made out. The Respondents also pointed out that the Governor had issued the Rules of Business, under Article 166(3) of the Constitution; and, under rr. 19 and 20, therefore, the Minister-in-charge, of the particular department, has been clothed with authority, by means of Standing Orders, to give such directions, as he thinks fit, for the disposal of the case in his department. By virtue of such authority, conferred on the Minister-in-charge of the Department of Land and Revenue, in this case, the Minister has made Standing Orders, on November 29, 1951. The Respondents further urged that the proceedings taken in this case, by the State Government, under the Act, do not come under any of the items referred to in Standing Order No. 2, which deals with matters which are to be brought to the notice of the Minister, before issue of orders. These matters could be validly dealt with, by the Assistant Secretary of the said Department.

16. We have already referred to the Rules of Business and, Standing Orders. We are in entire agreement with the views expressed by both the learned Single Judge as well as the Division Bench of the Calcutta High Court regarding the scope of Article 166(2) of the Constitution. The learned Judges are perfectly correct in their view that what the authentication makes conclusive, under, Art, 166(2), is that the order has been made by the Governor. But the further question as to whether, in making the order, the Governor has acted in accordance with law, remains open for adjudication. In this connection, we may refer to the decision of this Court in *R. Chitrallekha v. State of Mysore* (1). Subba Rao, J., (as he then was), explains the scope of Article 166, at p. 376, thus "Under Article 166 of the Constitution all executive action of the Government of a State shall be expressed to be taken in the name of the Governor, and that orders made in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor and the validity of an

order which is so authenticated shall not be called in question on the ground that it is not an order made by the Governor.

If the conditions laid down in this Article are complied with, the order cannot be called in question on the ground that it is not an order made by the Governor. It is contended that as the order in question was not issued in the name of the Governor the order was void and no interviews could be held pursuant to that order. The law on the subject is well settled. In *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, Das J., as he then was, observed

"Strict compliance with the requirements of Article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the -requirements of that article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself. Article 166, directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. Therefore, all that the procedure established by law requires is that the appropriate Government must take a decision as to whether the detention order should be confirmed or not u/s 11(1)."

The same view was reiterated by this Court in *The State of Bombay Vs. Purushottam Jog Naik*, , where it was pointed out that though the order in question then was defective in form it was open to the State Government to prove by other means that such an order had been validly made. This view has been reaffirmed by this Court in subsequent decisions: see *Ghaio Mall and Sons Vs. The State of Delhi and Others*, , and it is, therefore, settled law that provisions of Article 166 of the Constitution are only directory and not, mandatory in character and if they are not complied with, it can be established 1 as a question of fact that the impugned order was issued in fact by the State Government or the Governor."

We are also in agreement with the views expressed by the High Court that the Governor's personal satisfaction was not necessary in this case as this is not an item of business with respect to which, the Governor is by or under the Constitution, required to act in his discretion, Although the executive Government of a State is vested in the Governor, actually it is carried -on by Ministers; and, in this) particular case, under rr. 4 and 5 of the Rules of Business, referred to above the-business of Government is to be transacted in - the various departments specified in the First Schedule thereof. Item 5 therein is the Department of Land and Land Revenue, and the Governor has allotted the business of that Department to a Minister. We are further in agreement with the views of the High Court that the said Minister-in-charge, has got power to make Standing Orders regarding the disposal of cases, in his Department, under the Rules of Business issued by the Governor, on August 25, 1951, under Article 166(3) of the Constitution. In this case, there is no controversy that the Minister-in-charge, of the Department of Land and Land Revenue, has made Standing

Orders on November 29, 1951, by virtue of powers given to him under ff 19 and 20 of the Rules of Business.

20. Thus it cannot be said that the order dated 28th February, 1984 having not been issued with the concurrence of the Governor, the said order is not valid. As observed above, there being no pleading in the writ petition nor there being any challenge to the Government order dated 28th February, 1984, there was no occasion for any relevant pleading on the part of the State. Thus the submission of the Petitioner that the order dated 28th February, 1984 having not been issued by the Governor, the same cannot be relied, is misconceived. As observed above, paragraphs 4(5) and 7 of the Government order dated 15th December, 1981, if read together, would clearly indicate that both husband and wife, if live in the same house, only one of them is entitled for house rent allowance, which is the spirit of the Government order. A specific clarification was subsequently made by order dated 28th February, 1984. It is further to be noticed that the said policy has been uniformly applied by the State Government with regard to all the employees of the State Government.

21. The submission, which has been pressed by the Petitioner, is that Government order dated 15th December, 1981, even if applicable, cease to operate from 30th June, 1988 when the Government order dated 19th September, 1988 was issued for payment of house rent allowance. Copy of the Government order dated 19th September, 1988 has been brought on the record. It is relevant to extract the said Government order dated 19th September, 1988, which is as follows:

la;k th 1 & 1187 @ nl & 263 @ 88

foRr ?lkekU;? vuqHkkx & 1 y[ku?] fnukad 19 flrEcj] 1988

fo"k;% edku fdjk;k HkRrk dh orZeku njksa esa la"kks/ku A

egksn;]

eq>s osru lfefr] mRrj izns"k ?1987? ds izfrosnu rFkk ml ij fopkj djus ds fy, xfbR eq; lfpo lfefr dh laLrqfr;ksa ij "kkldh; ladYi la;k & os- vk- & 1 & 2246 @ nl 59 ?,e? 1988] fnukad 14 vxLr] 1988 esa fy, x; fu.kZ;kuqlkj ;g dgus dk funs"k gqv kS fd jkT;iky egksn; mi;qDr fo"k;d ik"okZafdr "kklukns"kkksa dk vkaf"kd :i ls la"kks/ku djrs gq, uhps rkfydk esa mfYyf[kr uxjksa @ {ks=ksa esa dk;Zjr,sls leLr iw.kZdkfyd ljdkjh lsodksa] tks vf/kBku vk;&O;;d ls] fnukad 1 tuojh 1986 ls ykxw u;s osru ekuksa esa osru izkIr djsaxs dks fofHkUu osru lhek esa muds lEeq[k bfUxr njksa ij edku fdjk;k HkRrk fn, tkus dh Lohd`fr iznku djrs gSa A

la;k th & 1&1795 @ nl & 209 & 81] fnukad 15&12&81

la;k th & 1&2532, @ nl & 209 @ 81] fnukad 29&12&81

la;k th & 1&645 @ nl & 83 & 209 & 81] fnukad 14&3&83

la;k th & 1&77 & nl & 85 & 209 & 81] fnukad 28&1&85

la[;k th & 1&282 @ nl & 209 @ 81] fnukad 2&3&87

la[;k th & 1&870 @ nl & 87 & 209 @ 81 fnukad 9&7&87

osru lhek

vxj[k] dkuiqj] y[ku?] okjk.klh] bykgkckn] cjsyh esjB] xksj[kiqj rFkk xkft;kckn

LrEHk 2 dks NksMdj "ks"k IHkh ftyk eq[;ky; ds "kgj ealwjh rFkk 2]5 yk[k ;k mlls
vf/kd tul[a;k okyh uxjikfydk;sa

LrEHk 2 o 3 esa vafdr vU; IHkh uxj ikfydk;sa rFkk 1000 ehVj ls vf/kd ?WapkbZ
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750&999

150

90

45

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250

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2 & mijksDr njksa ij edku fdjk;k HkRrk,sls IHkh ljdkjh lsodksa dks vuqeU; gksxk]
ftUgsa ljdkjh vkokl miyC/k ugha dj;k;k x;k gS A og HkRrk,sls nksuksa izdkj ds
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futh vkokl esa jgrs gSa A

3&,sls {ks= bl le; edku fdjk;k HkRrk] mudh fo"ks"k ifjfLFkfr;ksa ds vuqlkj fn;k tk jgk gS fdUrq LrEHk 2 ls 4 esa vc fu/kkZfjr dh x;h JsF.k;ksa esa ugha vkrs gSa] mUgs Hkh LrEHk 4 ls mfYyf[kr Js.kh ds fy, laLrqr njksa ij edku fdjk;k HkRrk vuqeU; gksxk A

4& eq>s ;g Hkh dgus dk funs"k gqv k gS fd,sls ljdkjh lsodksa] tks fdjk;s ds edku vFkok futh vkokl esa jgrs gSa] dks #- 250 izfrekl rd edku fdjk;k HkRrk fcuk jlhn izLrqr fd, vuqeU; gksxk] fdUrq bls fy, mUgsa layXud 1 @ 2 ds izk:i esa izek.ki= izLrqr djuk gksxk A :- 250 izfrekg ls vf/kd njksa ls edku fdjk;k HkRrk izkIr djus ds fy, ljdkjh lsodksa dks jlhn izLrqr djuk gksxk vkSj bls fy, ljdkjh lsodksa dks layXud 3@4 ds izk:i esa izek.k&i= izLrqr djuk gksxk A

5& edku fdjk;k HkRrk dh vuqeU;rk gsrq uxjksa dh tula[;k dk vk/kkj o"kZ 1981 dh tux.kuk gS A

6& edku fdjk;k HkRrk ds vkns"ksa ds iz;kstu gsrq osru dk rkRi;Z ml ewy osru ls gS tSlk fd foRrh; gLr iqfLrdk [kUM 2 Hkx 2 & 4 ds ewy fu;e 9 ?21? ?1? esa ifjHkkf"kr gS A

7& edku fdjk;s HkRrs dh vuqeU;rk ds fy, vU; "krsZa,oa izfrcU/k ftudk mYys[k mDr izLrj & 1 esa lanfHkZr "kklukns"kksa esa gS] ;Fkkor ykxw jgsaxs A

8& ;g vkns"k fnukad 1 tqykbZ 1988 ls izHkkoh gksaxs A

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22. In paragraph 1 of the Government order, the earlier Government order dated 15th December, 1981 has been referred to and paragraph 7 of the Government order clearly provides that other conditions for admissibility of the house rent allowance shall be such as mentioned in paragraph 1. Thus the Government order dated 19th September, 1988 specifically continues the earlier Government order dated 15th December, 1981 insofar as other conditions of admissibility are concerned. There is no condition in the Government order dated 19th September, 1988 which makes admissible the house rent allowance to both husband and wife even if they are living in the same house. Thus the submission of the Petitioner that Government order dated 15th December, 1981 cease to operate after 30th June, 1988 is incorrect. The condition of payment of house rent allowance to both husband and wife if they are living in the same house is still operate and pursued by the State.

23. The judgment in Dr. Maya Rani's case (supra) on which much reliance has been placed by the Petitioner needs to be considered. In Dr. Maya Rani's case (supra) Dr. Maya Rani Srivastava owned a house where she was living and was denied the house rent allowance. Although in the judgment it was noticed that husband of the Petitioner was in Government of India service and was receiving house rent allowance but it has not been noticed in any of the paragraphs of the judgment that both were residing in the same house. It is useful to extract

paragraphs 1, 2 and 3 of the judgment where facts of the case has been given:

1. This matter before the Court of denying house rent allowance to the Petitioner who is a lecturer at the Arya Kanya Degree College, an institution affiliated to the Allahabad University, in the duration of the writ petition being pending is seeing filing of several records on behalf of the State Respondents without any clearcut defence on the issues raised by the Petitioner.

2. If the matter were to be seen in generality, the Court cannot go on interpreting the situation as and when it arises all too frequently in the matter of payment of house rent to a State employee or a compensatory allowance in the event of an accommodation not being provided or a State employee receiving a house rent allowance in consideration of living in an accommodation of his own.

3. The Petitioner owns a house. It is recorded in her name. If the matter is just left here there, apparently would be no issue amongst the State Respondents. But for the fact that the Petitioner is married and her husband is in Government of India service, the contention of the State-Respondent is that the Petitioner is not entitled to house rent allowance in lieu of the circumstances that she resides in her own house. The suggestion is that her husband also draws a house rent allowance.

24. It is further relevant to note that in paragraph 6 of the judgment the Division Bench also noticed that when husband and wife lives in the same accommodation only one house rent allowance is payable and only one officer will receive an allowance for house rent for hiring a house. Paragraph 6 of the judgment is quoted below:

6. Better prudence would be that there should be flexibility so that neither is inconvenienced. Should there be a situation that an official accommodation may not be available for allotment to an official, an allowance which is provided by the State administration mitigates the circumstance of hiring an accommodation. If both husband and wife are in service, they can, as of right, seek an accommodation individually. But, in practice this may not be possible. The Court leaves this matter at this without any further comment. But pressure of accommodation at times sees a husband and wife in State service in the same accommodation. Logically, only one rent will be payable and only one office will receive an allowance for house rent for hiring a house.

25. Thus the judgment in Dr. Maya Rani's case was on its own facts. Further in the said judgment, the Government order dated 15th December, 1981 and 28th of February, 1984, which contain a clear prohibition, were not placed before the Court nor the Court had occasion to express any thing contrary to the aforesaid Government orders. Thus the said judgments have to be confined to its own fact and does not help the Petitioner in the present case.

26. The judgment of the Apex Court in Director, Central Plantation's case (supra), as relied by the learned Standing Counsel, had occasion to consider the

nature of house rent allowance. Following was laid down in paragraph 9 of the said judgment:

9. The HRA would be covered by the definition of Compensatory Allowance. It is compensation in lieu of accommodations. This definition itself further makes it clear that compensatory allowance is not to be used as a source of profit. It is given only to compensate for the amenities which are not available or provided to the employee. The moment, therefore, the amenities are provided or offered, the employee should cease to be in receipt of the compensation which is given for want of it. We wish the Tribunal had perused the definition of "pay" and "compensatory allowance" given in the Fundamental Rules before pronouncing that the HRA is a part of the wages or pay and, therefore, cannot be disturbed.

27. The Apex Court clearly noticed that house rent allowance is given only to compensate for the amenities which are not available or provided to the employee and the same is not a part of pay.

28. In view of the fact that the Petitioner's wife is already getting house rent allowance and the Petitioner, who had earlier opted that Petitioner's wife may be paid the allowance, cannot claim payment of house rent allowance. Both husband and wife living in the same accommodation are not entitled for house rent allowance and only one of them is entitled to receive house rent allowance as per policy and Government orders of the State Government.

29. Thus the prayer of the Petitioner for quashing the order dated 10th November, 2000 insofar as it directs for stopping the house rent allowance of the Petitioner cannot be faulted with.

30. Now remains other part of the order dated 10th November, 2000 by which direction has been issued for recovery of house rent allowance of the amount which has already been paid to the Petitioner. From the facts, which have been brought on the record, it is clear that it was the Respondents, who have paid the house rent allowance to the Petitioner after receiving a representation from the Petitioner for payment of house rent allowance and the payment of house rent allowance was directed to be stopped only by the order dated 10th November, 2000. In facts of the present case, the Petitioner cannot be said to have any role for payment of house rent allowance to him in addition to the house rent allowance paid to the Petitioner's wife, we are of the view that it is not a fit case where the house rent allowance already paid to the Petitioner be recovered. Thus the part of the order dated 10th November, 2000 by which direction has been issued for taking steps for recovery of the house rent allowance already paid is set-aside, but the rest of the order is maintained.

31. In the result, the writ petition is partly allowed only to the extent that no recovery shall be made of the house rent allowance already paid to the Petitioner, however, the order dated 10th November, 2000 stopping the payment of house rent allowance is maintained. The Petitioner is not entitled for other reliefs as claimed in the writ petition.