

(2010) 12 SHI CK 0452
In the High Court Of Himachal Pradesh
Case No : CWP No. 3659 of 2009

Harish Chander and Others	Vs	APPELLANT
State of Himachal Pradesh and Others		RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Land Acquisition (Companies) Rules, 1963 — Rule 4
Land Acquisition Act, 1894 — Section 4, 40, 41, 5(A), 55
Wild Life (Protection) Act, 1972 — Section 18, 26

Citation : (2010) 12 SHI CK 0452

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in all these petitions, the same were taken up together for hearing and are being disposed of by a common judgment.

CW Ps No. 3659/2009, 1564/2010, 1567/2010 and 1571/2010

2. The facts of above mentioned writ petitions are common. However, in order to maintain clarity in the facts, we have taken the facts of CWP No. 3659/2009, which has been filed prior in time.

3. According to the Petitioners, Bandli Wild Life Sanctuary and Tarambri DPF were declared as Wild Life Sanctuary under Sections 18 and 26 of the Wild Life (Protection) Act, 1972. The total area of these sanctuaries is 451 kilometers. Memorandum of understanding was executed by Harish Cement Limited on 28.7.1995. Government of India rejected the proposal for setting up of the cement plant between Chhajjwar and Lag villages on 8.6.1999. Harish Cement Limited submitted application seeking environment clearance in the month of January, 2002. The proposal was returned by the Government of India on 6.7.2004 (Annexure P-15) vide letter dated 17.6.2004 and Harish Cement Limited was directed to prepare EIA and EMP report and it was also ordered that fresh public hearing shall be conducted as per the provisions of EIA notification

1994 as amended subsequently. Thereafter the-then Chief Minister requested the Government of India to waive off the condition of public hearing vide D.O. letter dated 29.3.2005 (Annexure P-17). The Government of India on the basis of Annexure P-17 waived off the condition of fresh public hearing vide letter dated 28.7.2005 (Annexure P-18). Thereafter "no objection certificate" was issued by the Government of India on 11.11.2005 (Annexure P-19). The Government of India also granted permission for diversion of forest land measuring 173.00 hectares as per letter dated 18.11.2005. The Ministry of Environment and Forests also reduced the distance from 800 meters to 200 meters vide letter dated 20.2.2009 by imposing certain conditions, including the condition that the environment clearance was subject to the final orders of the Hon"ble Supreme Court in the matter of "Goa Foundation v. Union of India" and it was also subject to clearance under the Wild Life (Protection) Act, 1972 from the Chief Wild Life Warden, Government of Himachal Pradesh. According to the Petitioners, the distance between the boundary of Cement Plant site and Bandli Wild Life Sanctuary is only 500 meters and not 4 kilometers. Petitioners have prayed for quashing of Annexures P-18, P-19, P-22 and P-25.

4. According to the reply filed by Respondents No. 4 and 6, notification u/s 4 of the Act was issued on 29.2.2008 and 9.7.2008. Notifications under Sections 6 and 7 were issued on 31.1.2009 and 7.7.2009.

5. According to the reply filed by Respondent No. 7, public hearing was held on 19.8.2002 at Maloh and Chambi and the proceedings were sent to the State Government on 12.9.2002. The State Government referred the matter to the Ministry of Environment and Forests, Government of India on 18.12.2002 and conditional consent was granted by Respondent No. 7 on 10.1.2003.

6. Respondent No. 8 has also filed detailed reply. According to this reply a memorandum of understanding was executed between the company and the State on 28.7.1995 and thereafter the application was submitted on 23.9.1995 to the Site Appraisal Committee. The mining lease was granted in favour of the company on 16.1.1999 and the new site was selected on 6.6.2002. Public hearing was conducted on 19.8.2002. The Union of India agreed to the proposal of the Respondents to waive off the condition of public hearing and thereafter environment clearance was accorded on 11.11.2005. Case for development of forest land measuring 173 hectares was approved and supplementary memorandum of understanding was entered between the State and company on 13.3.2007. Distance was also reduced from 800 meters to 200 meters by the Government of India. Notification u/s 4 was issued on 29.2.2008 and the same was modified on 19.9.2008. Respondent No. 1 has granted permission for mining operation.

7. Respondents No. 3 and 5 have also filed separate reply. According to the contents of reply filed by Respondents No. 3 and 5, the distance between proposed site and Bandli Wild Life Sanctuary is 5-6 kilometers and 2-3 kilometers from Tarambri DPF. The total area of DPF Tarambri is 204.98 hectares and the

permission for mining was granted on 15.9.2005.

8. Material facts necessary for the adjudication of this petition are that the land of the Petitioners is proposed to be acquired for establishing the cement plant of Respondent No. 4, i.e. M/s Harish Cement Limited. Process for setting up the plant and acquiring the land was initiated in the year 1993 when M/s Harish Chandra (India) Private Limited (Harish Cement Limited) (predecessor-in-interest of Respondent No. 4) had approached the State of Himachal Pradesh to set up a cement plant in Nalini Maloh area in Tehsil Sundernagar, District Mandi. Memorandum of Understanding was entered into between Respondent No. 1 and Respondent No. 4 on 28.7.1995. According to the Petitioners, Respondent No. 4 has not supplied correct data in the application while seeking permission from the Government of India. According to the Petitioners column Nos. 3.3 and 3.8 did not reflect true facts. According to the Petitioners, Respondent No. 4 was granted permission by the Government of India on 11.11.2005 though the area of cement plant and mining is in close proximity to Bandla Wild Life Sanctuary as well as Tarambri DPF. It is further averred in the petition that acquisition of the land for setting up the plant is in contravention of the Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as "the Rules" for brevity sake). According to the Petitioners, no inquiry, as visualized under Rule 4 of the Rules was conducted. They have prayed for quashing of Annexure P-5 dated 11.11.2005 with a further prayer that their land may not be acquired for setting up of cement plant by Respondent No. 4.

9. Respondent No. 1 has filed reply to the petition. According to the contents of the reply, the State Level Site Appraisal Committee had initially rejected the Nalini Maloh area and thereafter it had approved the site of Chhajjwar and Lag. However, this site was also rejected by the Government of India vide decision dated 8.6.1999. Thereafter the permission was accorded by the Government of India and notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act" for brevity sake) was issued on 29.2.2008 for acquiring 1004-03-01 bighas of land and thereafter notifications were issued under Sections 6 and 7 of the Act on 31.1.2009 and 7.7.2009.

10. Respondent No. 3 has also filed separate reply. According to the contents of the reply of Respondent No. 3, public hearing was conducted on 19.8.2002 for mining site and plant site and the proceedings were sent to the State Government on 12.9.2002. The State Level Environment Impact and Assessment and Monitoring Committee was constituted on 9.9.2002 and it referred the matter to the Government of India vide letter dated 18.12.2002. The conditional consent was granted on 10.1.2003, which was renewed on 6.3.2010. Respondent No. 3 has also highlighted the precautions which are required to be taken into consideration by Respondent No. 4 while granting conditional consent on 10.1.2003.

11. Respondent No. 4 has also filed a detailed reply. Respondent No. 4 has submitted an application before the State Level Environment Impact and

Assessment and Monitoring Committee on 23.9.1995. It was considered and rejected on 9.11.1995. Fresh application was submitted on 2.3.1996 for areas falling between Chhajwar and Lag. The consent was granted by Respondent No. 3 on 14.3.1996. The mining lease was granted by the State on 16.1.1999. According to the contents of the reply, the distance between Bandli Wildlife Sanctuary and the present site is 5.65 K Ms. Respondent No. 4 had prayed for conversion of forest land to the extent of 467.32 hectares. However, the permission was granted for diversion of 173 hectares on 18.11.2005. The mining lease was executed on 19.12.2006 and the same was registered on 31.1.2007. Supplementary memorandum of understanding was signed with the State on 13.3.2007. Respondent No. 4 moved application seeking reduction of distance from 800 meters to 200 from Tarambri DPF. The permission was accorded on 20.2.2009. According to the reply, 61% land owners have executed the agreement and the Respondent No. 4 has undertaken to abide by notification dated 11.6.2009. Respondents have undertaken that the plant will use "Bag filter house technology" and it has already incurred expenditure of Rs. 90 crore and is supposed to invest a sum of Rs. 300 crore.

12. Respondent No. 4 has also moved application bearing CMP No. 5670/2010 to bring to the notice of the Court that Petitioner No. 1 has given consent on 18.10.2007 and Petitioner No. 3 has given consent on 13.10.2007. Petitioners have filed reply to CMP No. 5670/2010. According to the reply filed by the Petitioners, the consent was conditional as far as Petitioner No. 3 is concerned and Petitioner No. 1 has never given the consent.

13. The case of the Petitioners, in a nut-shell, is that Respondent-State has not complied with the mandatory Rule 4 of the Land Acquisition (Companies) Rules, 1963 as well as Sections 40 and 41 of the Land Acquisition Act, 1894. According to the Petitioners they have submitted objections on 26.7.2008 and 27.7.2008. Notification u/s 5-A of the Act was issued on 27.9.2008 and 28.9.2008. Respondent No. 2 has submitted the report to the State Government on 9.2.2009. Thereafter notifications under Sections 6 and 7 were issued on 31.1.2009 and 7.7.2009. According to the Petitioners, neither any enquiry has been held nor the notices were issued to them under Rule 4 of the Land Acquisition (Companies) Rules, 1963. According to them, report Annexure P-3 dated 9.2.2009 is bad in law and no notifications could be issued under Sections 6 and 7 of the Act without complying with the mandatory provisions of Rule 4 of the Land Acquisition (Companies) Rules, 1963.

14 Respondent No. 1 has filed separate reply. According to the contents of this reply, notification u/s 4 of the Act was issued on 9.7.2008 and thereafter notifications were issued under Sections 6 and 7 of the Act and the agreement was entered into State Government and Harish Cement Limited on 30.6.2009 u/s 41 of the Act.

15. According to the reply filed by Respondent No. 3, notification u/s 4 of the Act was issued on 9.7.2008 and the agreement was entered into u/s 41 of the Act on

16.1.2009 and thereafter notifications under Sections 6 and 7 were issued on 31.1.2009 and 7.7.2008. Respondent No. 1 issued notification u/s 4 on 9.7.2008 for acquiring the land for mining purpose and the agreement was executed u/s 41 on 30.6.2009 and thereafter notifications under Sections 6 and 7 were issued on 31.1.2009 and 7.7.2009. Respondent No. 4 has accorded permission to reduce the distance from 800 meters to 200 meters. According to Respondent No. 3, land has been acquired strictly as per the provisions of law. It is further averred that joint inspection was carried before various notifications were issued under the Land Acquisition Act, 1894 on 13.04.2007 and thereafter the Deputy Commissioner has issued inescapability certificate on 01.06.2007 and the land acquisition committee was reconstituted on 7.6.2009.

16. According to Respondent No. 2, land has been acquired strictly as per the provisions of the Land Acquisition Act, 1894 and Land Acquisition (Companies) Rules, 1963.

17. What emerges from the layers and layers of the facts projected before this Court is that Harish Cement Limited had decided to set up a cement plant in Tehsil Sundernagar, initially, at village Nalini Maloh and its surrounding areas. However, this proposal was turned down by the State Government. Thereafter the State Government accorded permission to set up the cement plant between Chhajwar and Lag villages. However, the Government of India rejected this proposal on 08.06.1999. Memorandum of understanding was also entered between the State and the company on 28.7.1995. Harish Cement Limited submitted application for environment clearance to the Government of India. The Government of India informed the company that it should prepare EIA and there shall also be fresh public hearing. Case of the Respondent-company, in a nutshell, is that since public hearing had already taken place, there was no need for fresh public hearing. The condition of fresh public hearing was waived off by the Government of India on 28.7.2005 and thereafter environmental clearance was granted on 11.11.2005. Permission was also granted for mining on 15.9.2005 and the distance of 800 meters was reduced to 200 meters on 20.2.2009.

18. State Government has entered into supplementary memorandum of understanding with the company on 13.3.2007. Notifications were issued under Sections 4 and 5 of the Act for acquiring the land. According to the Petitioners, there was violation of the Land Acquisition (Companies) Rules, 1963. According to them Rule 4 is mandatory and since no inquiry has been held under Rule 4, notifications under Sections 6 and 7 of the Act could not be issued. According to the Respondents, since inquiry was held u/s 5(A) of the Act, no further inquiry was required under Rule 4 of the Land Acquisition (Companies) Rules, 1963.

19. Learned Counsel appearing on behalf of the Petitioners have strenuously argued that the environmental clearance granted to Harish Cement Limited is in violation of the notification issued on 27.1.1994 as amended from time to time. According to them, fresh public hearing was required to be held and this

condition could not be waived off by the Government of India. They have further argued that the authority concerned has abdicated its statutory duties by waiving off the condition of public hearing at the instance of the-then Chief Minister. They also argued that there is non-application of mind by the concerned authority while coming to conclusion that fresh public hearing was not required. They have also argued that the distance could not be reduced from 800 meters to 200 meters vide letter dated 20.2.2009. According to them, the distance between Bandli Wild Life Sanctuary and Tarambri DPF has not been correctly taken into consideration. It is also argued by them that the data taken into consideration at the time of public hearing was of 1991 and not 2001. According to them, the notifications under Sections 6 and 7 are bad in law since mandatory Rule 4 of the Land Acquisition (Companies) Rules, 1963 has not been followed.

20. According to the Respondents, since the public hearing had already taken place at villages Chambi and Maloh on 19.8.2002, no further hearing was required. According to them, the distance has been reduced from 800 meters to 200 meters on the basis of the recommendations made by the State Government and on the basis of the representation made by the Company. According to the Respondents, land in question has been acquired in accordance with law and since the inquiry has already been held u/s 5(A), there was no necessity to hold inquiry under Rule 4 of the Land Acquisition (Companies) Rules, 1963.

21. We have heard the learned Advocates for the parties and have gone through the pleadings carefully.

22. We had also directed the Union of India to produce the record and subsequently, the records were made available after the conclusion of the hearing by Mr. Sandeep Sharma, learned Assistant Solicitor General of India.

22. In order to appreciate the entire gamut as far as public hearing is concerned; it will be apt at this stage to refer to environment impact notification issued by the Government of India on 27.1.1994. It is stipulated in the notification that any person, who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in the Schedule-1 shall submit an application to the Secretary, Ministry of Environment and Forest, New Delhi. The application is required to be made in proforma specified in Schedule-II and is required to be accompanied by a project report, including an Environmental Impact Assessment Report, an Environment Management Plan and details of Public hearing as specified in Schedule-IV prepared in accordance with the guidelines issued by the Central Government in the Ministry of Environment and Forests from time to time. So far as site specific projects are concerned, including mining projects, authorities are required to intimate the location of the project site to the Central Government in the Ministry of Environment and Forests while initiating any investigation and surveys. The Central Government in the Ministry of Environment and Forests is required to convey the decision regarding suitability or otherwise of the proposed site within a maximum period of 30 days. The site clearance is to be granted for sanctioned

capacity and is to be valid for a period of five years for commencing construction, operation or mining. The reports submitted with the application are to be evaluated and assessed by the Impact Assessment Agency and a committee of experts having a composition as specified in Schedule-III of the notification. The Impact Assessment Agency is the Union Ministry of Environment and Forests. The Impact Assessment Agency is required to prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities, supplemented by data collected during visits to sites or factories if undertaken and details of public hearing. The assessment is to be completed within a period of 90 days from the receipt of the requisite documents and data from the project authorities and completion of public hearing and decision conveyed within 30 days thereafter. Cement Industries find mention at Sr. No. 27 of Schedule-I of the notification. Schedule-IV of the notification prescribes procedure for public hearing. It is stipulated therein that whosoever applies for environmental clearance of projects, shall submit to the concerned State Pollution Control Board 20 sets of the following documents, namely:

- (1) An executive summary containing the salient features of the project both in English as well as local language.
- (2) Form XIII prescribed under Water (Prevention and Control of Pollution) Rules, 1975 where discharge of sewage, trade effluents, treatment of water in any form, is required.
- (3) Form 1 prescribed under AIR (Prevention and Control of Pollution) Under Territory Rules, 1983 where discharge of emissions are involved in any process, operation or industry.
- (4) Any other information or document which is necessary in the opinion of the Board for their final disposal of the application.

24. Thereafter the State Pollution Control Board is to cause a notice for environmental public hearing, which is to be published in at least two newspapers widely circulated in the region around the project, one of which is to be in the vernacular language of the locality concerned. The State Pollution Control Board is required to mention the date; time and place of public hearing and suggestions, views, comments and objections of the public are to be invited within 30 days from the date of publication of the notification. The persons, including bona fide residents, environmental groups and others located at the project site/sites of displacement/sites likely to be affected can participate in the public hearing. The composition of the public hearing panel is as under:

- (1) Representative of State Pollution Control Board;
- (2) District Collector or his nominee;
- (3) Representative of State Government dealing with the subject;
- (4) Representative of Department of the State Government dealing with

Environment, (v) Not more than three representatives of the local bodies such as Municipalities or Panchayats;

(5) Not more than three senior citizens of the area nominated by the District Collector.

25. The concerned persons are also required to be provided access to the Executive Summary of the project at the specified places. The public hearing is to be completed within 60 days from the date of receipt of complete documents as required under paragraph 1. The Government of India has also issued notification on 7.7.2004 whereby certain amendments have been carried out in the notification dated 27.1.1994. Ministry of Environment and Forests has issued notification on 14.9.2006 whereby notification dated 27.1.1994 has been superseded. According to para 2 of the notification issued on 14.9.2006, the Central Government in the Ministry of Environment and Forests is the competent authority for matters falling in category "A" in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under category "B" of the Schedule. The constitution of State Level Environment Impact Assessment Authority is provided under para 3. Para 4 provides for categorization of projects and activities. Para 5 provides for screening, scoping and appraisal committees. Para 6 provides for application for prior environmental clearance. The stages in the prior environmental clearance process for new projects have been postulated in para 7. According to these rules, the public consultation shall ordinarily have two components comprising of:

a) a public hearing at the site or in its close proximity-district-wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons.

b) obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

26. The public hearing at, or in close proximity to, the site(s) in all cases is to be conducted by the State Pollution Control Board. Grant or rejection of prior environmental clearance is provided under para 8. Para 12 provides that from the date of final publication of notification, i.e. 14.9.2006, the notification dated 27.1.1994 stood superseded, except in suppression of the things done or omitted to be done before such suppression to the extent that in case of all or some types of applications made for prior environmental clearance and pending on the date of final publication of this notification, the Central Government may relax any one or all provisions of this notification except the list of the projects or activities requiring prior environmental clearance in Schedule-I, or continue operation of some or all provisions of the said notification, for a period not exceeding one year from the date of issue of the present notification.

27. In the instant case, the Himachal Pradesh State Pollution Control Board has issued notice in "The Tribune" for holding public hearing on 16.7.2002 and thereafter a corrigendum was issued on 19.7.2002. Respondents have referred to

in the reply only to the public notice issued in "The Tribune". However, there is no mention that public notice was also issued in vernacular newspaper as required in the notification dated 27.1.1994. The Public hearing was conducted at villages Maloh and Chambi on 19.2.2002. Thereafter the proceedings were sent to the State Level Environment Impact and Assessment Monitoring Committee by the Himachal Pradesh State Pollution Control Board. Thereafter the same was sent by the State Level Environment Impact and Assessment Monitoring Committee to the Ministry of Environment and Forests vide letter dated 18.12.2002. In order to ascertain the manner in which the application was considered by the Ministry of Environment and Forest, we have closely scrutinized the records furnished by the Government of India. According to the records, the Ministry has received limestone mining project of M/s Harish Cement Limited on 22.10.2001 for environmental clearance. The project was incomplete for want of public hearing details and NOC and accordingly the proponent was informed about shortcomings on 1.11.2001. As the project was for opening of new mine as per the provisions of EIA notification, the proponent was advised to submit site clearance application in the first instance. The site clearance application was received in the Ministry on 20.5.2003. Since Bandli Wild Life Sanctuary was in close proximity of mine, it was desired by the Ministry from the proponent to obtain a copy of the management plan of Bandli Wildlife Sanctuary and information on past mining sites around the sanctuary in a radius of 5 kilometers. The complete information from the Chief Wild Life Warden was received in November, 2003 envisaging no direct impact of mining on the bio diversity of the sanctuary. Thereafter the file was referred to Wild Life Wing and they desired to have an impact study report on wild life of the area through WII and BNHS. Accordingly, a letter was sent to the Chief Wild Life Warden, Himachal Pradesh requesting to undertake impact assessment study. The project was granted site clearance by the Ministry on 17.6.2004 with following specific conditions on Wild Life and public hearing:

(1) while preparing the EIA and EMP report of the project the proponent shall engage either Wildlife Institute of India, Dehradun or Bombay Natural History Society to comprehensively study the impact on the wildlife in the Bandli Wild Life Sanctuary due to the ongoing and proposed mining activities within 5 km of the sanctuary and prepare a management plan for the same. The study should also address the issues raised by the Expert Committees during this site visits.

(2) After preparation of EIA and EMP report, fresh public hearing shall be conducted as per the provisions of the EIA Notification 1994, as amended subsequently. While conducting public hearing, all the associations and citizens who have specifically presented against the project should be informed individually about the venue, date and timing for the public Hearing.

28. Thereafter environmental clearance proposal was returned on 6.7.2004. The project proponent has represented on re-conducting of public hearing and requested Ministry for accepting the public hearing report already conducted on 19.8.2002 for cement plant as well as mining project. However, in view of the

revision of EIA and EMP report and considering EIA report as an essential document required for public hearing, the request of the proponent for waiving off fresh public hearing was not accepted by the Ministry and the proponent was accordingly informed on 29.10.2004 and 20.1.2005. Thereafter the company submitted a report on ecological impact assessment of cement plant and captive limestone mine undertaken by Wildlife Institute of India, Dehradun. The Ministry has also informed the company about the revision of the environmental appraisal proforma and Schedule-II application. Thereafter the then Chief Minister vide letter dated 29.3.2005 requested the Ministry of Environment and Forests to waive off public hearing. The text of letter dated 29.3.2005 (Annexure A-17 in CWP No. 3659/2009) reads thus:

I am sending herewith a representation from M/s Harish Cement Ltd. Dated 28.2.2005 regarding the review of conditional clearance granted by Ministry of Environment and Forest (MOEF), Government of India for setting up an integrated project for manufacturing of cement and captive mining in Sundernagar, District Mandi, Himachal Pradesh. I understand that the application for clearance of the project was submitted by the company to MOEF in accordance with the provisions of Environment Pollution Act and Rules. The project including the captive mining received clearance from Government of Himachal Pradesh after prescribed public hearing in accordance with rules.

The MOEF while clearing the cement project has considered the recommendations of experts group.

However, while granting the site clearance for mines, the MOEF has laid down following conditions:

To submit a study report through Wild Life Institute of India, Dehradun on impact of Bandli Wild Life Sanctuary due to ongoing and proposed mining activity.

Fresh Public Hearing to be conducted as per provisions of EIA notification after preparation of EIA and EMP report. With regard to the above, I understand that condition No. 2 above regarding public hearing may be repetition in view of the fact that the State Government had got public hearing conducted in accordance with rules for the entire project including the proposed mining area. I, therefore, feel that MOEF could take a decision in granting the clearance to the project on the basis of the study already entrusted by the company to wild life Institute of India, Dehradun in pursuance of above conditions No. 1 stipulated by MOEF, I am told that this report is likely to be submitted to MOEF very shortly. May I, therefore, request you to kindly waive of the condition of public hearing laid down by MOEF and clear the mines site on the basis of report of Wild Life Institute, Dehradun likely to be submitted soon.

I hope you would appreciate that speedy clearance of the project would be great benefit to the nation as well as to the hilly state of Himachal Pradesh by boosting the economic activities and generate much sought employment opportunities which is one of the most important components of common minimum

programme of UPA Government.

29. Thereafter on the basis of letter Annexure A-17, dated 29.03.2005, the Ministry of Environment and Forests waived of second public hearing. Consequently, the environmental clearance was granted to the company on 11.11.2005.

30. What emerges from the records is that Ministry of Environment and Forests had directed the company to prepare EIA and EMP report either from Wild Life Institute of India, Dehradun or Bombay Natural History Society to comprehensively study the impact on the wild life in the Bandli Wildlife Sanctuary due to the ongoing and proposed mining activities within 5 kilometers of the sanctuary. Thereafter after preparation of EIA and EMP report, fresh public hearing was to be conducted as per the provisions of the EIA notification, 1994. It is in these circumstances, the proposal was returned on 6.7.2004. Thereafter the company had requested the Ministry of Environment and Forests to waive off the second public hearing. However, the Ministry of Environment and Forests in view of the revised EIA and EMP had insisted that there could not be waiving off fresh public hearing and the company was also informed accordingly. The Ministry of Environment and Forests on the basis of the letter written by the-then Chief Minister decided to waive off fresh public hearing.

31. We are of the considered view that once EIA and EMP were revised, fresh public hearing could not be waived off. The public hearing had to take place on the basis of revised EIA and EMP. Certain new facts had emerged in the fresh EIA conducted by the Wild Life Institute of India, Dehradun showing its concern. Earlier public hearing was conducted on 19.8.2002. The same was based on the earlier EIA and the data, which was available on the basis of 1991 census. In case fresh public hearing had taken place, new data on the basis of 2001 census had become available. The Ministry of Environment and Forests had not applied its mind while waiving off second public hearing. The purpose of conducting public hearing is to give an opportunity to the affected persons to express their views on the project. The public hearing is a very important component of the entire process visualized under the EIA notification issued in 1994.

32. There is ample material on record to come to a conclusion that the Ministry of Environment and Forests was fully justified in insisting upon for fresh public hearing in view of revised EIA and EMP report initially. It is only on the basis of Annexure P-17 dated 29.3.2005 that a "U" turn was taken by the Ministry of Environment and Forests. The competent authority was required to apply its independent mind instead of being swayed by the letter written by the then Chief Minister on 29.3.2005. The public authorities are expected to work independently within the four corners of law. They cannot permit themselves to be dictated on the basis of directions issued by the persons, who have no statutory role to play while granting environmental clearance. Consequently, the decision of the Ministry of Environment and Forests of waiving off the second public hearing vide letter dated 28.7.2005 is declared illegal. Since the decision dated 11.11.2005

has been issued without second public hearing, the same is also declared bad in law.

33. In *Raj Prakash Varshney Vs. Addl. District Magistrate, New Delhi and Others*, the Division Bench has held that a body entrusted with a statutory discretion must address itself independently to the matter for consideration. It cannot lawfully accept instructions from, or mechanically adopt the view "of another body as to manner of exercising its discretion in a particular case, unless that other body has been expressly empowered to issue such directions or unless the deciding body or officer is a subordinate element in an administrative hierarchy within which instructions from above may properly be given on the question issue." The Division Bench has held as under:

. Regarding the sufficiency of the material we will make our observations hereafter. For the time being we will confine ourselves only to the submission that the impugned order and the previous two orders were made under dictate and if so with what effect. We may here reiterate the law regarding "acting under dictation" and will quote from Halsbury's laws of England (Fourth Edition) Colume 1, para 31:

A body entrusted with a statutory discretion must address itself independently to the matter for consideration. It cannot lawfully accept instructions from, or mechanically adopt the view of another body as to manner of exercising its discretion in a particular case, unless that other body has been expressly empowered to issue such directions or unless the deciding body or officer is a subordinate element in an administrative hierarchy within which instructions from above may properly be given on the question issue.

34. Their Lordships of the Hon''ble Supreme Court in *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, have held that discretion if surrendered to an extraneous body or power, would be vitiated by non-application of mind. Their Lordships have held as under:

55. It is true that in exercise of powers of revoking or cancelling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of the former power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The authority cannot permit its decision to be influenced by the direction of others as this would amount to abdication and surrender of its discretion. It would then not be the Authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power of the power conferred upon the authority. De Smsith sums up the position thus: "The relevant principles formulated by the Courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular

manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive.

56. But the question is whether the issue of the show cause notice or the subsequent decision to cancel could be said to have been made at the behest or compulsion of Government. Shri Sorabjee refers to paragraphs 17 and 18 of Shri Kamal Pandey's letter dated 15-10-1985. We are not sure that this is a correct understanding of the position. The High Court did not see any casual connection between the Government's directive dated 15-10-1985 and the proceedings initiated by the Vice-Chairman on 9-1-1986. The High Court was of the view that that directive confined itself to the cancellation of the lease and as incidental thereto, required the stoppage of work pending decision whether the lease should be cancelled or not. This in fact, was the basis for holding that the Vice-Chairman had no power to cancel. Lessees do not rely upon any subsequent directive to the Vice-Chairman from the Government in the matter of revocation of the permission. The earlier directive dated 12-8-1985 from the Government to the Vice-Chairman spent itself out with the then Vice-Chairman declining to act in accordance with it. There is no material to hold that Sri Govardhan Nair felt himself bound by that directive. Sri Sorabjee's contention based on an alleged surrender of discretion cannot, therefore, be upheld.

It has, therefore, to be held that the finding of the High Court that the Vice - Chairman had no competence to initiate proceedings to revoke the permission on the ground that the permission itself had been obtained by misrepresentation and fraud and on the ground that there were violations of the conditions of the grant, appear to us to be unsupportable. The contention of the Respondent - Lessees that the show cause notice, dated 9-1-1986 and the cancellation order, dated 19-4-1986, are vitiated by a surrender of a discretion on the part of the Vice-Chairman cannot also be held to be well founded. Sri Thakur's contention to the contrary on both these points would require to be accepted.

35. Their Lordships of the Hon''ble Supreme Court in Anirudhsinhji Jadeja and another Vs. State of Gujarat, have held that exercise of administrative discretion under direction or in compliance with instructions of some other person or

authority amounts to failure to exercise the discretion altogether. Their Lordships have held as under:

11. The case against the Appellants originally was registered on 19th March, 1995 under the Arms Act. The DSP did not give any prior approval of his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? Was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20A(1)? This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20A(1) was not exercised by the DSP at all.

Reference may be made in this connection to *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, in which the action of Commissioner of Police in cancelling the permission granted to the Respondent for construction of cinema in a Greater Bombay at the behest of the State Government was not upheld, as the concerned rules had conferred this power on the Commissioner, because of which it was stated that the Commissioner was bound to bear his own independent and unfettered judgment and decide the matter for himself, instead of forwarding an order which another authority had purported to pass.

It has been stated by Wade and Forsythe in "Administrative Law", 7th Edition at pages 358 and 359 under the heading "SURRENDER, ABDICATION, DICTATION" and sub-heading "Power in the wrong hands" as below:

Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the Courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them.... "Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise...."

14. The present was thus a clear case of exercise of power on the basis of external dictation. That the dictation came on the prayer of the DSP will not make any difference to the principle. The DSP did not exercise the jurisdiction vested in him by the statute and did not grant approval to the recording of information under TADA in exercise of his discretion.

36. Their Lordships of the Hon"ble Supreme Court in A.P.

A.P. Bankers and Pawn Brokers Association Vs. Municipal Corporation of Hyderabad, have held that even for subjective satisfaction, it must be based on some relevant material. Their Lordships have held as under:

12. Faced with this position Mr. Nageshwar Rao relied upon the case of Chief Constable of the North Wales Police v. Evans, (1982) 3 All ER 141, RV Radio Authority, ex parte Bull, (1997) 2 All ER 561, M.A. Rasheed and Others Vs. The State of Kerala, and Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, Based on these authorities it is submitted that the opinion of the Commissioner as to whether any activity is dangerous or is likely to create nuisance is a subjective opinion. He submits that judicial review in such a case is very limited and the Court would not substitute its opinion for the opinion of the Commissioner. There can be no dispute with the legal proposition. However the opinion has to be based upon some relevant material. In the present case no material has been placed before us to show on what basis the Commissioner considers such businesses to be dangerous and are likely to cause nuisance. More importantly it has not been shown how such trades and occupation are regulated by the Respondent. The only circumstances are those extracted above from the impugned judgment. However, it is not shown or averred that all shops are in residential areas inhabited by middle class and poor families or that all members of the Appellant Association issue advertisements or that all shops are in crowded areas. If one or two or some shops are set up on the thick of a residential locality inhabited by middle class or poor families or set up in a crowded place or issue an advertisement, the entire trade or occupation cannot be termed to be dangerous to life, health or property or likely to create a nuisance. To be noted that the opening part of Section 521 talks of "trades and operations". Similarly Section 521(e)(i) also talks of trades and operations. However, Section 521(e)(ii) uses the word "trade or occupation." Thus if a shop or some shops are set up in crowded areas or require any regulation, then it would be a matter for regulating that particular shop or those particular shops by laying down appropriate conditions. Merely because a pawn broker or a money lender is likely to set up a shop in the thick of a residential locality or in a crowded place would be no ground for the Commissioner to come to a conclusion that the entire trade or occupation of money lending and pawn broking is dangerous or likely to create nuisance. It is clarified that this Court is not saying that the Commissioner cannot u/s 521(e)(ii) notify a particular trade or operation, i.e. include all persons carrying on that particular trade or operation.

37. Their Lordships of the Hon"ble Supreme Court in Tarlochan Dev Sharma Vs. State of Punjab and Others, have held that in the system of Indian democracy governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision making authority and be prepared to give way or be pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. Their Lordships have held as under:

16. In the system of Indian Democratic Governance as contemplated by the Constitution senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a Government servant. No Government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior. In *Anirudhsinhji Jadeja and another Vs. State of Gujarat*, this Court has held that a statutory authority vested with Jurisdiction must exercise it according to its own discretion; discretion exercised under the direction or instruction of some higher authority is failure to exercise discretion altogether. Observations of this Court in *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, are instructive and apposite. Executive officers may in exercise of their statutory discretions take into account considerations of public policy and in some context policy of Minister or the Government as a whole when it is a relevant factor in weighing the policy but they are not absolved from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for instructions by a superior to bind them. As already stated we are not recording, for want of adequate material, any positive finding that the impugned order was passed at the behest of or dictated by someone else than its author. Yet we have no hesitation in holding that the impugned order betrays utter non-application of mind to the facts of the case and the relevant law. The manner in which the power u/s 22 has been exercised by the competent authority is suggestive of betrayal of the confidence which the State Government reposed in the Principal Secretary in conferring upon him the exercise of drastic power like removal of President of a Municipality u/s 22 of the Act. To say the least what has been done is not what is expected to be done by a senior official like the Principal Secretary of a wing of the State Government. We leave at that and say no more on this issue.

38. Their Lordships of the Hon'ble Supreme Court in *Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others*, have held that where a statute vests certain power in an authority to be exercised in a particular manner that power has to be exercised only in that manner. Their Lordships have held as under:

27. Then it is to be seen that the Act requires the board to exercise the power u/s 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income tax authorities for proper administration of the Act, the commission while exercising its quasi-judicial power of arriving at a settlement u/s 245D cannot have the administrative power of issuing directions to other income tax

authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so since the commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power u/s 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in Sub-section (2) of Section 119.

39. Their Lordships of the Hon''ble Supreme Court in Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others, have held that courts may intervene where fairness is lacking in Government functions. Their Lordships have held as under:

1. The most accepted methodology of governmental working ought always to be fairness and in the event of its absence, law Courts would be within its jurisdiction to deal with the matter appropriately. This proposition is so well settled that we need not dilate further on to this. It is this concept of fairness which Mr. Ganguli, appearing in support of the Petition for contempt very strongly contended, is totally absent in spite of three final rounds of litigation upto this Court between the parties. Mr. Bhaskar Gupta, learned senior advocate appearing for the alleged contemnors, however, contended that the conduct of the Respondents can neither be termed to be unfair or in disregard to the orders of the Court on a true reading of the order - this stand of the Respondents, however, stands negated by Mr. Ganguli. The conduct, Mr. Ganguli, contended, is not only deliberate but utterly perverse and in grossest violation of the orders of this Court and by reason therefore the fruit of the litigation has not yet been made available and being decried to the Petitioner for one reason or the other for the last about 15 years. Incidentally, it would be convenient to note that the principal issue involved in the matter pertains to the entitlement of the Petitioners to the scale equivalent to that of Physical Instructors in the scale of Rs. 700-1600 as on 2/07/1984 and Rs. 2200-4000 w.e.f. 1986.

40. Their Lordships of the Hon''ble Supreme Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, have again reiterated that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner alone. Their Lordships have held as under:

40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well-settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The state and other authorities while acting under the said Act are only creature of statute. They must act within the four-corners thereof.

41. Their Lordships of the Hon''ble Supreme Court in Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, have held that judicial review is open in cases of failure to exercise discretion and excess or abuse of discretionary power or illegality, irrationality and procedural impropriety and non consideration or non application of mind to relevant factors renders exercise of discretion manifestly erroneous

calling for judicial interference. Their Lordships have further held that discretion must be exercised reasonably. Their Lordships have held as under:

13. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. (See *Kendriya Karmchari Sahkari Grih Nirman Samiti Ltd. and Another Vs. New Okhla Industrial Development Authority and Others*, At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictates of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts *ultra vires*.

14. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those class of cases which relate to deployment of troupes, entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of the Courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality" the second "irrationality, and the third "procedural impropriety." These principles were highlighted by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* (1984 (3) All ER 935) , (commonly known as CCSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as

manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See *Commissioner of Income Tax, Bombay and Others Vs. Mahindra and Mahindra Limited and Others*, The effect of several decisions on the question of jurisdiction have been summed up by Grahame Aldous and John Alder in their book "Applications for Judicial Review, Law and Practice" thus: "There is a general presumption against ousting the jurisdiction of the Courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the Courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the Government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in *Council of Civil Service Unions v. Minister for the civil service* this is doubtful. Lords Diplock, Seaman and Roskill appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject-matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest." (Also see *Padfield v. Minister of Agriculture, Fisheries and Food* (LR (1968) AC 997).

15. The Court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

The famous case commonly known as "the *Wednesbury*'s case" is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.

Before summarizing the substance of the principles laid down therein as shall refer to the passage from the judgment of Lord Greene in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* (KB at p. 229; All ER p. 682). It reads as follows:

... It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person

entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers the authority.... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another." Lord Greene also observed (KB p. 230: All ER p. 683) "... It must be proved to be unreasonable in the sense that the Court considers it to be a decision that no reasonable body can come to. It is not what the Court considers unreasonable.... The effect of the legislation is not to set up the Court as an arbiter of the correctness of one view over another." (Emphasis supplied) Therefore, to arrive at a decision on "reasonableness" the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view.

The principles of judicial review of administrative action were further summarised in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows:

... Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality," the second "irrationality" and the third "procedural impropriety." That is not to say that further development on a case-by-case basis may not in course of time and further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European Economic Community." Lord Diplock explained "irrationality" as follows: "BY "irrationality I mean what can by now be succinctly referred to as Wednesbury unreasonableness." It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

20. In other words, to characterise a decision of the administrator as "Irrational" the Court has to hold, on material, that it is a decision "so outrageous" as to be

in total defiance of logic or moral standards. Adoption of "Proportionality" into administrative law was left for the future.

42. Their Lordships of the Hon^{ble} Supreme Court in *Ganesh Bank, Kurundwad Ltd. and Others Vs. The Union of India (UOI) and Others*, have culled out the following grounds for judicial review.

50. There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision making authority exceeded its powers (c) committed an error of law (d) committed breach of the rules of natural justice and (e) reached a decision which no reasonable Tribunal would have reached or (f) abused its powers. Administrative action is subject to control by judicial review in the following manner:

(1) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(2) Irrationality, namely, *Wednesbury* unreasonableness.

(iii) Procedural impropriety.

43. Their Lordships of the Hon^{ble} Supreme Court in *V.C.*

V.C., Banaras Hindu University and Others Vs. Shrikant, have held that judicial review will be available if order passed by the statutory authority ignores the procedure prescribed in law and take into consideration irrelevant or extraneous matters not germane for decision. Their Lordships have held as under:

41. Although, laying down a provision providing for deemed abandonment from service may be permissible in law, it is not disputed that an action taken thereunder must be fair and reasonable so as to satisfy the requirements of Article 14 of the Constitution of India. If the action taken by the authority is found to be illogical in nature and, therefore, violative of Article 14 of the Constitution, the same cannot be sustained. Statutory authority may pass an order which may otherwise be bona fide, but the same cannot be exercised in an unfair or unreasonable manner. The Respondent has shown before us that his leave had been sanctioned by the Director being the Head of the Department in terms of the leave rules. It was the Director/Head of the Department who could sanction the leave. Even the matter relating to grant of permission for his going abroad had been recommended by the Director. The Respondent states and it had not been controverted that some other doctor was given the charge of his duties. We have indicated sufficiently that the Vice Chancellor posed unto himself a wrong question. A wrong question leads to a wrong answer. When the statutory authority exercises its statutory powers either in ignorance of the procedure prescribed in law or while deciding the matter takes into consideration irrelevant

or extraneous matters not germane therefore, he misdirects himself in law. In such an event, an order of the statutory authority must be held to be vitiated in law. It suffers from an error of law.

42. Such an error of law is capable of being rectified by judicial review. Reasonableness in the order and/or fairness in the procedure indisputably can also be gone into by the writ Court.

44. Their Lordships of the Hon^{ble} Supreme Court in *Management of Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Another*, have held that if an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review and one of such modes of exercising power, known to law is the "doctrine of proportionality". Their Lordships have further held that "proportionality" involves "balancing test" and "necessity test".

Their Lordships have held as under:

17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived at in our legal system but has come to stay. With the rapid growth of Administrative Law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by Courts. If an action taken by any authority is contrary to law, improper, unreasonable, irrational or otherwise unreasonable, a Court of Law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".

"Proportionality" is a principle where the Court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise _ the elaboration of a rule of permissible priorities.

De Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former ("balancing test") permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter ("necessity test") requires infringement of human rights to the least restrictive alternative. "Judicial Review of Administrative Action"; (1995); pp. 601-605; para 13.085; see also Wade & Forsyth; "Administrative Law"; (2005); p.366].

20. In Halsbury's Laws of England, (4th edn.);

Reissue, Vol.1(1); pp.144-45; para 78, it is stated; "The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or

where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness.

45. Their Lordships of the Hon^{ble} Supreme Court in *Noida Entrepreneurs Association v. Noida and Ors.* (2007) 10 SCC 385 have held that even orders passed by the executive have to be tested on the touchstone of reasonableness.

Their Lordships have held as under:

11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. (See: *Tata Cellular Vs. Union of India*, and *Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others*, The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to *Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas*, , *Hindustan Petroleum Corporation Ltd. and Others Vs. Sarvesh Berry*, and *Uttaranchal Road Transport Corpn. and Others Vs. Mansaram Nainwal*, .

The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short the "Evidence Act"). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant

statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. A three-judge Bench of this Court in Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., analysed the legal position in great detail on the above lines.

16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.

46. Their Lordships of the Hon^{ble} Supreme Court in Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others, have held that statutory power must be exercised within the corner of statute. Their Lordships have held as under:

16. Apart from the said constitutional restrictions, the statute does not put any embargo upon the corporation to exercise its power u/s 29 of the Act. Indisputably, the said provision was enacted by the Parliament with a view to see that the dues of the Corporation are realized expeditiously. When a statutory power is conferred, it is a trite law that the same must be exercised within the four corners of the Statute. Power of a lender to realize the amount lent either by enforcing the charged and / or hypothecated or encumbrance created on certain property and/ or proceeding simultaneously and/ or independently against the surety/ guarantor is a statutory right. Different statutes provide for different remedies. We may by way of example refer to Pawan Kumar Jain Vs. The Pradeshia Industrial and Investment Corporation of U.P. Ltd. and Others, where a statutory mandate has been given to realize the dues from sale of the mortgaged properties and then to sell other properties of the borrower. We are, however, not concerned with such a situation.

47. Their Lordships of the Hon^{ble} Supreme Court in Pancham Chand and Others Vs. State of Himachal Pradesh and Others, have held that where statute constitution an independent quasi-judicial authority for dealing with grant of permits, State or Minister/Chief Minister cannot interfere with the functioning of such authority. Their Lordships have further held that State Government does not function through the Chief Minister alone. Their Lordships have held as under:

17. Section 67 of the Act empowers the State Government to control road transport having regard to the factors enumerated therein. Section 68 provides for constitution of the State Transport Authority. An application for grant of Stage Carriage Permit, as envisaged u/s 69 of the Act, is to be filed in terms of Section

70 thereof, detailing the particulars specified therein. Section 71 provides for the procedures to be followed by the Regional Transport Authority in considering application for stage carriage permit. Section 72 empowers the Regional Transport Authority to grant stage carriage permit in respect of any route or the area specified in the application. The other provisions contained in the said Chapter provide for the mode and manner for dealing with the applications for grant of other types of permits.

Apart from the fact that nothing has been placed on record to show that the Chief Minister in his capacity even as a Member of the Cabinet was authorized to deal with the matter of transport in his official capacity, he had even otherwise absolutely no business to interfere with the functioning of the Regional Transport Authority. Regional Transport Authority being a statutory body is bound to act strictly in terms of the provisions thereof. It cannot act in derogation of the powers conferred upon it. While acting as a statutory authority it must act having regard to the procedures laid down in the Act. It cannot by-pass or ignore the same.

Factual matrix, as indicated hereinbefore, clearly goes to show that the fourth Respondent filed the application before the Chief Minister straightaway. Office of the Chief Minister communicated the order of the Chief Minister, not once but twice. Respondent No. 2 acted thereupon. It advised the Regional Transport Authority to proceed, after obtaining a proper application from Respondent No. 4 in that behalf. This itself goes to show that prior thereto no proper application was filed before the Regional Transport Authority. Such an interference on the part of any authority upon whom the Act does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme. It interferes with the independent functioning of a quasi judicial authority. A permit, if granted, confers a valuable right. An applicant must earn the same. In *D. Nataraja Mudaliar Vs. The State Transport Authority, Madras*, this Court held:

The Authority must, remember that a permit holder has an ordinary right of renewal unless it is shown that outweighing reasons of public interest lead to a contrary result. Permits are not bounty but right, restricted reasonably by the Motor Vehicles Act." The application of the Respondent No. 4, therefore, was to be entertained alongwith other similarly situated persons.

22. In the matter of grant of permit to individual applicant, the State has no say. The Chief Minister or any authority, other than the statutory authority, therefore, could not entertain an application for grant of permit nor could issue any order thereupon. Even any authority under the Act, including the appellate authority cannot issue any direction, except when the matter comes up before it under the statute.

23. In *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, this Court held:

It is clear to us from a perusal of these rules that the only person vested with authority to grant or refuse a license for the erection of a building to be used for

purposes of public amusement is the Commissioner of Police. It is also clear that under Rule 250 he has been vested with the absolute discretion at any time to cancel or suspend any license which has been granted under the rules. But the power to do so is vested in him and not in the State Government and can only be exercised by him at his discretion. No other person or authority can do it.

24. Yet again in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself." Orders are not like old wine becoming better as they grow older.

25. It is not a case where the statutory authority was hearing a grievance from the public that buses are not plying in a particular route as a result whereof the villagers were suffering.

The public hearing, as visualized under the law, was sine-qua-non before granting the environment clearance on 11.11.2005. The then Chief Minister has written a letter on 29th March, 2005, on the basis of which, the decision was taken to waive of public hearing. The decision was required to be taken in letter and spirit of the notification dated 27.01.1994. It could not be taken merely on the basis of external dictation as per letter dated 29.03.2005. The decision to waive of second public hearing dated 28.07.2005 was forbidden and not authorized under the law. The relevant considerations contemplated under the environmental laws read with notification dated 27.01.1994, were required to be considered objectively. The decision dated 28.07.2005 is irregular and unreasonable. In this case, there is illegality, procedural impropriety and irrationality while granting the environment clearance in the action of the Ministry.

Now, the Court will advert to the issue whether the process of acquisition of land is in conformity with law or not. It is strenuously argued by the learned Advocates appearing on behalf of the Petitioners that notification u/s 6 of the Land Acquisition Act, 1894 could not be issued without complying with the mandatory provisions of Rule 4 of the Land Acquisition (Companies) Rules, 1963. It will be appropriate at this stage to take bird's eye view of the provisions of the

Land Acquisition (Companies) Rules, 1963. These rules have been framed u/s 55 of the Land Acquisition Act, 1894. Rule 3 whereof provides for the constitution of Land Acquisition Committee. Rule

4 deals with the satisfaction of the Government with regard to certain matters before initiating acquisition proceedings. Rule 4 reads thus:

4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings.

(1) Whenever a company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely:

(i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition;

(ii) that the company has made all reasonable efforts to get such lands by negotiation with the person interested therein on payment of reasonable price and such efforts have failed:

(iii) that the land proposed to be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the company is in a position to utilise the land expeditiously; and (vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity, to make any representation in this behalf, hold an enquiry into the matters referred to in Sub-rule (1) and while holding such enquiry he shall:

(i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land:

(ii) determine, having regard to the provisions of Sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land which, in the opinion of the Collector, should be acquired for the company; and (iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired. Explanation:

For the purpose of this rule " good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under Sub-rule (2), the Collector shall submit a report to the appropriate Government and a copy of the same be

forwards by that Government to the Committee.

(4) No declaration shall be made by the appropriate Government u/s 6 of the Act unless-(i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted u/s 5A of the Act; and (ii) the agreement u/s 41 of the Act has been executed by the company.

48. In the instant case, notification u/s 4 has been issued on 29.2.2008 and 9.7.2008. Notices u/s 5-A were issued on 27.9.2008 and 28.9.2008. Petitioners in C.W.P. No. 2292 of 2010 have filed the objections to the same. Thereafter Respondent No. 2 prepared the report u/s 5-A and submitted the same to the State Government on 9.2.2009 (Annexure P-3 in CWP No. 2292/2010). The State Government thereafter issued notifications under Sections 6 and 7 on 31.1.2009 and 7.7.2009.

49. Learned Advocates appearing on behalf of the Respondents have strenuously argued that since the report has been furnished by the Land Acquisition Collector to the State Government on 9.2.2009 u/s 5-A, no separate inquiry was necessary under Rule 4 of the Land Acquisition (Companies) Rules, 1963.

50. Their Lordships of the Hon''ble Supreme Court *Abdul Hussain Tayabali v. The State of Gujarat and others* AIR 1968 SCC 432 have discussed the scope of Rule 4 of the Land Acquisition (Companies) Rules, 1963 as under:

8. Rule 4 requires the Collector to make an inquiry regarding the matters stated therein, such matters inter alla being that the land requested by the Company for acquisition is not excessive, that the Company has made efforts and offered reasonable price to buy the land from the owners, that is the land happens to be good agricultural land, there is no other alternative land suitable for the Company''s purpose and the approximate amount of compensation which would be payable if the lands were acquired. The Collector after making such inquiry has to submit his report to the Government. The Government then forwards it to the Land Acquisition Committee and the Committee has to advise the Government. Rule 4 prohibits the Government from issuing notification u/s 6 unless it has consulted the Committee and considered the said report as also the report made u/s 5-A and unless an agreement with the Company u/s 41 has been executed.

51. Their Lordships of the Hon''ble Supreme Court in *State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others*, have held that the owners of land are entitled to opportunity of being heard in an enquiry under Rule 4 and enquiry u/s 40 of the Act.

52. Their Lordships have further held that objection can be raised under Rule 4 cannot be raised in inquiry under Rule 5.

53. Consequently, their Lordships have held that notification issued u/s 6 was invalid. Their Lordships have held as under:

54. The Respondent land owner challenged the notification dated 29 September, 1965 u/s 4 of the Act as well as the notification u/s 6 of the Act dated 18 January, 1969. The High Court accepted the contention of the Respondent that the enquiry contemplated under Rule 4 of the Land Acquisition (Companies) Rules had not been held lawfully, and, therefore the notification u/s 6 of the Act was illegal. The reason given by to High Court was that the enquiry under Rule 4 contemplated giving opportunity to the owner of the land to make effective representation against the proposed acquisition. The High Court held that the enquiry under Rule 4 was bad because no opportunity had been given to the owners of the land.

55. The contention of the State that the enquiry under Rule 4 is administrative and that the owner of the land is not entitled to be given an opportunity to be heard at the enquiry cannot be accepted for these reasons. The enquiry under Rule 4 shows that the Collector is to submit a report among other matters that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed. The persons interested therein are the owners of the land which is proposed to be acquired. The Company at such an enquiry has to show that the company made negotiations with the owners of the land. The owners of the land are, therefore, entitled to be heard at such an enquiry for the purpose of proving or disproving the reasonable efforts of the company to get such land by negotiation. The contention on behalf of the State that the owners of the land will get an opportunity when an enquiry is made u/s 5-A of the Act is equally unsound. Section 17 of the Act provides that the appropriate Government may direct that the provisions of Section 5-A shall not apply, and if it does so direct a declaration may be made u/s 4 at any time after the publication of the notification u/s 4 of the Act. Therefore, the enquiry u/s 5-A may not be held.

56. There is another reason why the enquiry under Rule 4 should be in the presence of the owners of the land. Reference may be made to the Rules for the guidance of officers in dealing with objections u/s 5-A of the Act. These rules are made in exercise of the powers conferred by Section 55 of the Act. Under these Rules it is stated that the objections are of the following nature:(i) the notified purpose is not genuinely or properly a public purpose; (ii) the land notified is not suitable for the purpose for which it is notified; (iii) the land is not so well suited as other land; (iv) the area proposed is excessive;

57. the objector's land has been selected maliciously or vexatiously; (vi) the acquisition will destroy or impair the amenity of historical or artistic monuments and places of public resort; will take away important public right of way or other conveniences or will desecrate religious buildings, graveyard and the like. The nature of objections under these rules shows that the matters which are to be enquired into under Rule 4, and" in particular, that the Company made all efforts to get such land by negotiation with the persons interested therein on payment of price and such efforts failed is not one of the objections which can be

preferred in an enquiry u/s 5-A. It is true that in the present case there was an enquiry u/s 5-A of the Act but the enquiry was also before the agreement between the State and the Company u/s 41 of the Act and without any enquiry u/s 40 of the Act to enable the Government to give its consent.

58. The provisions Sections 38 - 41 of the Act indicate that the provisions of Sections 4 - 37 of the Act cannot be applied to acquire land for any company unless the State Government gives previous consent thereto and the Company executes an agreement with the State as mentioned in Section 41 of the Act. Second, Section 40 of the Act indicates that the State Government cannot give consent unless there is an enquiry as provided in that section. It is noticeable that any enquiry u/s 5-A of the Act is not an enquiry within the meaning of Section 40 of the Act. The reason is that the Gujarat Amendment Act 1963 being Gujarat Act No. 20 of 1965 deleted the words "either on the report of the Collector u/s 5-A Sub-section (2) or" from Section 40 of the principal Act. Similarly, in Section 41 of the Act as a result of the Gujarat Amendment Act the words "either on the report of the Collector u/s 5-A Sub-section (2) or" were deleted. The effect of the deletion of those words by the Gujarat Amendment Act is that the enquiry u/s 5-A is not an enquiry within the meaning of Section 40 of the Act.

59. In the present case, the enquiry under Rule 4 of the Land Acquisition (Companies) Rules was held before the notifications under Sections 4 and of the Act were issued in the year 1965. The enquiry pursuant to the notifications in the year 1961 and previous to the fresh notifications in 1965 is of no effect in law for two principal reasons. First, the 1961 notification was cancelled, and, therefore, all steps taken thereunder became ineffective. Second, the enquiry under Rule 4 in 1961 was held without giving opportunity to the landowner Respondent and, therefore, the enquiry is invalid in law.

60. The Division Bench of Allahabad High Court in *Sahkari Kraya Vikraya Samiti Ltd. Vs. Ram Kumar and Others*, has held that a report u/s 5-A of the Act is merely intended to indicate which land in the locality would suit the purpose of acquisition. The requirement of a report under Rule 4 (1) is a requirement which is in addition to the requirement of a report u/s 5-A of the Land Acquisition Act. The Division Bench has further held that there is nothing in Sub-rule (4) of Rule 4 of the Rules to indicate that once a report u/s 5-A is made and an agreement u/s 41 is executed, it is not feasible or possible for the appropriate Government to obtain the report from the Collector under Rule 4 (1) and to consult the Land Acquisition Committee constituted under Rule 3 before issuing a notification u/s 6 of the Act. The Division Bench has declared the notification u/s 6 of the Act in contravention of the Rule 4 as void. The Division Bench has held as under:

9. We are unable to accept this submission. Sub-rule (4) to Rule 4 clearly indicates that the report submitted by the Collector under Sub-rule (1) is something quite different from that made u/s 5-A. Although the two reports are made in order to help the State Government in arriving at the conclusion

whether or nor a particular land should be acquired, they are (sic) intended to be made under R. 4 is meant to indicate to the Government that the Company, for whose purposes the land is sought to be acquired, has made genuine efforts to find land in the locality, which is fit for being acquired and that it had made all reasonable efforts to get such land by private negotiation after paying a reasonable price etc. A report u/s 5-A of the Act is merely intended to indicate which land in the locality would suit the purpose of acquisition. The requirement of a report under Rules 4 (1) is a requirement which is in addition to the requirement of a report u/s 5-A of Land Acquisition Act. There is nothing in Sub-rule (4) of rule-4 of the Rules to indicate that once a report u/s 5-A is made and an agreement u/s 41 is executed, it is not feasible or possible for the appropriate Government to obtain the report from the Collector under Rule 4(1) and to consult the Land Acquisition Committee constituted under rule-3 before issuing a notification u/s 6 of the Act. In our opinion, even though the request for acquiring the land had been made on behalf of the Company prior to the coming into force of the Land Acquisition (Companies) Rules, 1963. The state Government as provided in Rule(4) of the Rules was bound to obtain a report from the Collector under R.4 (1) and to consider the same after consulting the Land Acquisition Committee. The notification issued u/s 6 of the Act, in contravention of the aforesaid rule was, therefore, void and was rightly struck down by the learned single Judge.

56. Their Lordships of the Hon"ble Supreme Court in State of Gujarat and Others Vs. Ambalal Haiderbhai and Others, have held that inquiry under Rule 4 requires compliance with rules of natural justice. Their Lordships have held as under:

8. Although the above mentioned rule is silent regarding the mode and method of the enquiry to be held by the Collector and the report of the Collector is of a recommendatory character, yet regard being had to the legislative history and purpose of the rule, and the mischief sought to be prevented, we have no hesitation in holding that, in conducting the enquiry, the Collector has, in the interest of fair play, to observe the principles of natural justice by affording the persons interested in the land a reasonable opportunity of being heard and of adducing material before the Collector to refute the allegations of the company. The concept of natural justice as evident from the observations made in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, has undergone a great deal of change in recent years. The dividing line between an administrative and quasi-judicial function is often blurred.

57. In General Government Servants Cooperative Housing Society Ltd., Agra and Others Vs. Sh. Wahab Uddin and Others, their Lordships of the Hon"ble Supreme Court have held that Rule 4 of the Land Acquisition (Companies) Rules is mandatory. Their Lordships have held as under:

8. In the instant case, as stated earlier, the first Respondent on receipt of the notice u/s 9(3) of the Act submitted a representation. After the representation, a brief written note of the arguments was also supplied (Annexure 6). The first

Respondent's objections, inter alia against the acquisition of the land were: (1) that the land being that of the Government cannot be legally acquired; (2) that the land or lessee rights having been once acquired by the Central Government under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, it cannot be acquired by the State Government and (3) that the proceedings for the acquisition of the land for the Appellant were illegal as the mandatory procedure for acquisition of land for private companies have not been followed. It was also stated in the representation that no efforts to purchase the rights of the first Respondent by negotiation were made. The inquiry report submitted by the Collector does not show that he applied his mind to the provisions of Rule 4 as stated above, or to the objections of the first Respondent. In fact there was no report under Rule 4. The report that was submitted was one u/s 5A of the Act. We have examined this aspect of the matter to see that although the enquiry was belated and not in accordance with law, there has been no failure of justice. In our opinion there has been failure of justice. Agreeing with the finding of the High Court, although for different reasons, we hold that the notification u/s 6 is invalid for non-compliance of Rule 4 of the Rules. As a result we dismiss the appeals with costs.

58. In *Abdul Ghaffar Vs. State of U.P. and Others*, the Division Bench of Allahabad High Court has held that opportunity to landowner to contest proceeding under Rule 4 must be given. Their Lordships have held as under:

4. Rule 4 of the Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as the Rules) lays down that whenever the company makes an application for acquisition of any land, the Government shall direct the Collector to submit a report forthwith on the matters enumerated therein. The Collector is required to give reasonable opportunity to the company to make representation and hold inquiry into the matter specified in Sub-rule (1) of Rule 4 and thereafter he will submit his report to the Government. One of the matters which has to be inquired into by the Collector is that whether the company has made all reasonable efforts to get such land by negotiation with the person interested therein on payment of reasonable price and such efforts have failed. The Collector is further required to hold an inquiry into the matter as to whether the company has made its best endeavour to find out other land in the locality suitable for the purpose of acquisition. The collector under Clause (3) of Rule 4 of the said rule is required to submit a report to the Government. Clause (4) of R. 4 further lays down that no declaration shall be made by the Government u/s 6 of the Act unless appropriate Section 6 of the Act unless appropriate government has consulted the committee and has considered the report under this rule and the report if any, submitted u/s 5-A of the Act. Rule 4 does not expressly lay down that the Collector should issue notice to the person whose land is sought to be acquired but having regard to the object and purpose of the inquiry, it is implicit in the rule that the notice of the proceedings should be given to the person interested whose land is proposed to be acquired. If the rule is silent regarding the mode and method of inquiry to be held by the Collector, the rules

of natural justice would apply and the Collector is under a duty to give notice to the person interested while holding the inquiry. In the absence of notice to the person whose land is sought to be acquired, the inquiry as contemplated by Rule 4 cannot be a valid enquiry as the owner of the land whose land is proposed to be acquired, is the best person to demonstrate before the Collector that the company has not made any effort to get the land by negotiation. In the absence of notice to the owner, the inquiry, if any, held by the collector would be no enquiry in law.

5. In the State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others, the Supreme Court held that the owners of the land are entitled to be heard at such an enquiry for the purpose of proving or disproving the reasonable efforts of the company to get such land by negotiation and, therefore, the owner of the land is entitled to be given an opportunity to be heard at the inquiry held by the Collector. In the State of Gujarat and Others Vs. Ambalal Haiderbhai and Others, the Supreme Court again considered Rule 4 and observed as under (at Pp. 2004-5):

Although the above mentioned rule is silent regarding the mode and method of the enquiry to be held by the Collector and the report of the Collector is of a recommendatory character yet regard being had to the legislative history and purpose of the rule, and the mischief sought to be prevented, we have no hesitation in holding that, in conducting the enquiry, the Collector has, in the interest of air play, to observe the principles of natural justice by affording the persons interested in the land a reasonable opportunity of being heard and of adducing material before the Collector to refute the allegations of the Company.

59. The effect of non-compliance of Rule 4 was again considered by the Supreme Court in General Government Servants Cooperative Housing Society Ltd., Agra and Others Vs. Sh. Wahab Uddin and Others, and on detailed discussion the Supreme Court held that Rule 4 is mandatory, its compliance is no idle formality, unless the directions enjoined by Rule are complied with, the notification u/s 6 would be invalid. It, therefore, follows that Rule 4 is mandatory and it enjoins upon the Collector to give notice to the owner of the land and the afford a reasonable opportunity of placing his version and to contest the Company's claim. If the Collector fails to give notice of opportunity to the owner of the land, the subsequent notification issued u/s 6 would be rendered invalid and illegal.

60. Their Lordships of the Hon''ble Supreme Court in Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others, have held that compliance of Rule 4 of the Land Acquisition (Companies) Act, 1963 is not a condition precedent for issuance of notification u/s 4 of the Act. However, their Lordships have held that consideration of reports under Rule 4 of the Rules and Section 5-A of the Act must precede issuance of notification u/s 6 and not u/s 4. Their Lordships have further held that if the inquiry under Rule 4 should precede issuance of notice u/s 4, then that may upset the fixation of the market value and escalation of price with the passage of time between publication of the

notifications under Sections 4 and 6 would make acquisition difficult. Their Lordships have held as under:

15. The said sub-rule significantly does not prohibit or forbid issuance of notification u/s 4 of the Act unless R. 4(1) has been complied with. If it is now insisted that there should be no issuance of notification under S. 4 of the Act before enquiry under R. 4 then this sub-rule has to be re-written by stating that no notification u/s 4 and no declaration u/s 6 issued or made as the case may be unless the requirements mentioned in cls. (i) and (ii) of Sub-rule (4) of R. 4 have been complied with. We find no warrant to do that. On the contrary, it will be contrary to the scheme and purpose of the acquisition proceedings because the compensation for the acquisition has to be fixed u/s 23 of the Act keeping the market rate as on the date of the issuance of the notification u/s 4 in view. If it be that the enquiry as contemplated by Rule 4 should also precede issuance of notice u/s 4 of the Act then that may upset the fixation of the market value and escalation of price with the passage of time between publication of the notifications under Sections 4 and 6 would make acquisition difficult.

16. An argument was sought to be built on the basis of the heading of R. 4 which stipulates that "Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings". It is true that before the initiation of the acquisition proceedings, government had to be satisfied of certain matters mentioned in the various sub-rules of R. 4 as well as various provisions of the Act. Though preliminary steps for initiation of Acquisition proceedings are necessary and those can only be taken by the authority of the notification u/s 4 as mentioned in the decision of Babu Barkya Thakur Vs. The State of Bombay and Others, (Supra) the initiation of the acquisition proceedings for all practical purposes begins after S. 6 notification. Satisfaction is necessary for proceedings for acquiring the land u/s 6 of the Act but S. 4 unlike S. 6 does not require for the issuance of the notice to be satisfied but it might act only "when it appears" to it that the land is needed or is likely to be needed for any public purpose.

19. In this connection our attention was drawn to S. 39 of the Act which provides that provisions of Ss. 6 - 37 (both inclusive) shall not be put into force in order to acquire land for any Company unless with the previous consent of the appropriate Government nor unless the Company shall have executed the agreement thereafter mentioned. This section, in our opinion, has no relevance for determining whether to be a proper acquisition, enquiry contemplated under Rule 4 must precede issuance of the notification u/s 4 of the Act. In the decision of this Court referred to hereinbefore, this question did not really fall for consideration because there was compliance with Rule 4 before issuance of the notification and the infirmities of the enquiry under R. 4 urged on behalf of the Appellants were not established.

25. On the scheme of the Act, we are of the opinion that on a correct interpretation, it is not necessary that enquiry under R. 4 must in all cases

precede issuance of the notification u/s 4 of the Act. In an appropriate case if it is possible, enquiry under R. 4(1) may be held before the issuance of the notification u/s 4. But it is not mandatory requirement that it must precede before the issuance of the notification u/s 4.

60. Their Lordships of the Hon^{ble} Supreme in Shyam Nandan Prasad and Others Vs. State of Bihar and Others, have again reiterated that Rule 4 of the Land Acquisition (Companies) Rules, 1963 is mandatory and essentially to be complied with. Their Lordships have further held that the Collector is entitled to hold inquiry in a quasi-judicial sense and would give not only to the company a reasonable opportunity to make good its representations in that behalf but would also to fulfill the needs of rules of natural justice. Their Lordships have relied upon State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others, and General Government Servants Cooperative Housing Society Ltd., Agra and Others Vs. Sh. Wahab Uddin and Others, . Their Lordships after considering these judgments have held as under:

17. Under Rule 3, a Land Acquisition Committee is constituted for the purpose of advising the appropriate government in relation to acquisition of land under Part VII of the Act, which is required to tender its advice within one month from the date of which it is constituted though the time can be extended by two months. Here again the Collector is required to hold an enquiry in a quasi-judicial sense and would give not only to the company a reasonable opportunity to make good its representations in that behalf but would also, to fulfill the needs of rules of natural justice, give sufficient opportunity to the land owners to refute the case of the company at least insofar as a matter like negotiation of price is concerned, as also on other relevant matters. That Rule 4 is mandatory and essential to be complied with has been ruled by this Court in various decisions. Reference may be made to some of them, they being: State of Gujarat v. Patel Chaturbhai Narsibhai , State of Gujarat v. Ambalal Haiderbhai and General Govt. Servants Cooperative Housing Society Ltd. v. Wahab Uddin.

61. Their Lordships of the Hon^{ble} Supreme Court in Swasthya Raksha Samiti Rati Chowk Vs. Chaudhary Ram Harakh Chand (D) by LRs. and Others, have held that since the objections that could possibly be raised in Rule 4, enquiry can also be raised in Section 5-A enquiry and in the absence of any specific requirement in Rule 4 as to the issuance of notice to the landowners of being heard in such an enquiry, hearing the landowners at the stage of Rule 4 enquiry would lead only to duplication and cause delay. Their Lordships of the Hon^{ble} Supreme Court in the Swasthya Raksha Samiti Rati Chowk" s case have referred to Babu Barkya Thakur v. State of Bombay. This judgment was rendered by their Lordships of the Hon^{ble} Supreme Court on 08.08.1960. However, the Land Acquisition (Companies) Rules, 1963 were notified in the year 1963. Their Lordships of the Hon^{ble} Supreme Court have taken into consideration the Rule 4 of the Land Acquisition (Companies) Rules, 1963 in State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others, , General Government Servants Cooperative

Housing Society Ltd., Agra and Others Vs. Sh. Wahab Uddin and Others, and Shyam Nandan Prasad and Others Vs. State of Bihar and Others, Their Lordships of the Hon'ble Supreme Court in this judgment have held Rule 4 to be mandatory in nature. It is also clear from the judgment, i.e., *Swasthya Raksha Samiti Rati Chowk v. Chaudhary Ram Harakh Chand (D)* by LRS and others that the referring Bench, however, felt that though the enquiry under Rule 4 is mandatory, issuance of notice to the landowners of such enquiry is not mandatory, because they will anyway be heard in Section 5-A of the Land Acquisition Act, enquiry even in regard to the validity of the acquisition in favour of a company. It is, thus, evident that their Lordships of the Hon'ble Supreme Court have referred the matter to the larger Bench as far as the question of issuance of notice to the landowners is concerned.

62. In a recent judgment, their Lordships of the Hon'ble Supreme Court in *Devinder Singh and Ors. v. State of Punjab and Ors.* (2008) 1 SCC 728 have again reiterated that Rule 4 of the Land Acquisition (Companies) Rules, 1963 is mandatory. Their Lordships have also taken into consideration the judgment in *Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others*, in this judgment. Their Lordships have held as under:

44. Another question which arises for our consideration is as to whether Rule 4 of the Companies Rules is mandatory or directory in nature. The High Court held it to be directory.

Rule 4 of the Rules employs the word "shall" not once place but twice. Ordinarily, it is imperative in character. No reason has been shown before us as to why it should be held to be directory provision particularly when the Land Acquisition Act is an expropriatory legislation. In *State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others*, this Court held:

15. The contention of the State that the enquiry under Rule 4 is administrative and that the owner of the land is not entitled to be given an opportunity to be heard at the enquiry cannot be accepted for these reasons. The enquiry under Rule 4 shows that the Collector is to submit a report among other matters that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed. The persons interested therein are the owners of the land which is proposed to be acquired. The Company at such an enquiry has to show that the company made negotiations with the owners of the land. The owners of the land are, therefore, entitled to be heard at such an enquiry for the purpose of proving or disproving the reasonable efforts of the company to get such land by negotiation. The contention on behalf of the State that the owners of the land will get an opportunity when an enquiry is made u/s 5A of the Act is equally unsound. Section 17 of the Act provides that the appropriate Government may direct that the provisions of Section 5A shall not apply, and if it does so direct a declaration may be made u/s 6 at any time after the publication of the notification u/s 4 of the Act. Therefore, the enquiry u/s 5A may not be held.

47. In *General Government Servants Cooperative Housing Society Ltd., Agra and Others Vs. Sh. Wahab Uddin and Others*, , this Court held:

13. Sub-rule (1) requires the Government to direct the Collector to submit a report to it on the matters enumerated in Clauses (i) to (vi) of the Sub-rule (1) which is for the benefit of the Company. The purpose is to avoid acquisition of land not suitable for a Company. Clause (ii) of Sub-rule (1) requires that the Company has to make all reasonable efforts to get such lands by negotiation with the person interested therein on payment of reasonable prices and that such efforts have failed. The purpose of Clause (ii) seems to be to avoid unnecessary land acquisition proceedings and payment of exorbitant prices. The purpose of Clauses (iii), (iv) and (v) is obvious. The purpose of Clause (vi) is to avoid acquisition of good agricultural land, when other alternative land is available for the purpose. Sub-rule 2 of Rule 4 requires the Collector to give reasonable opportunity to the Company so that the Collector may hold an inquiry into the matters referred in Sub-rule (1). The Collector has to comply with Clauses (i), (ii) and (iii) of Sub-rule 2 during the course of the inquiry under Sub-rule (1). The Collector under Sub-rule 3 then has to send a copy of his report of the inquiry to the appropriate Government and a copy of the report has to be forwarded by the Government to the Land Acquisition Committee constituted under Rule 3 for the purpose of advising the Government in relation to acquisition of land under Part VII of the Act, the duty of the Committee being to advise the Government on all matters relating to or arising out of acquisition of land under Part VII of the Act (Sub-rule (5) of Rule 3). No declaration shall be made by the appropriate Government u/s 6 of the Act unless the Committee has been consulted by the Government and has considered the report submitted by the Collector u/s 5A of the Act. In addition, under Clause (ii) of Sub-rule (4) of Rule 4, the Company has to execute an agreement u/s 41 of the Act. The above consideration shows that Rule 4 is mandatory; its compliance is no idle formality, unless the directions enjoined by Rule 4 are complied with, the notification u/s 6 will be invalid. A consideration of Rule 4 also shows that its compliance precedes the notification u/s 4 as well as compliance of Section 6 of the Act.

63. In *Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others*, a three-Judge Bench of this Court categorically held:

17. Reading the Act and the Rules and keeping in view the scheme of the Act, it is apparent, in our opinion, that before the issuance of Section 4 notification, there is no requirement as such of compliance with the procedure contemplated by Rule 4 of the Rules. We are therefore unable to subscribe to the view that enquiry by Rule 4 must precede the issuance of notification u/s 4(1) of the Act. Furthermore as indicated before certain matters which are required to be done under Rule 4 can not be done because the officer or the person authorised by him would have no authority unless notification u/s 4 is issued.

Repelling a contention that the provisions of Sections 6 - 37 are not required to be complied with in view of Section 39 thereof, it was held:

This Section, in our opinion, has no relevance for determining whether to be a proper acquisition, enquiry contemplated under Rule 4 must precede issuance of the notification u/s 4 of the Act

The lands in question are recorded as Shahi lands. It is not in dispute that they are agricultural lands. The Act contemplates that such lands may not be acquired.

We may notice that in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, this Court held that such a contention requires an indepth study, stating:

27. The validity of the impugned notification was also challenged on the ground that even though the acquisition is for the Sammelan, a company, the notification was issued without first complying with the provisions of Rule 4 of the Land Acquisition (Companies) Rules, 1963. The High Court has negated this challenge. We must frankly confess that the contention canvassed by Mr. Nariman in this behalf would necessitate an indepth examination of the contention. However, we consider it unnecessary in this case to undertake this exercise because the judgment of the High Court is being upheld for the additional reason that the acquisition in this case was mala fide. Therefore, we do not propose to examine the contention under this head.

It is, on that premise, we have undertaken some study in this behalf.

64. The decision of this Court in Somawanti (supra) holding that the stage at which Rule 4 is required to be complied with is not the stage prior to issuance of a notification u/s 4 of the Act, but declaration u/s 6 does not appear to be correct from the decisions of this Court in Patel Chaturbhai Narsibhai (supra) and Wahab Uddin (supra), the earlier binding precedent, with utmost respect, having not been taken into consideration in its entirety.

53. In Abdul Husein Tayabali and Others Vs. State of Gujarat and Others, this Court observed: "Next it was urged that the inquiry under Rule 4 has to be held after the notification u/s 4 is issued and not before and therefore the inquiry held by Master was not valid. We do not find anything in Rule 4 or in any other Rule to warrant such a proposition. The inquiry, the report to be made consequent upon such inquiry, obtaining the opinion of the Land Acquisition Committee, all these are intended to enable the Government to come to a tentative conclusion that the lands in question are or are likely to be needed for a public purpose and to issue thereafter Section 4 notification.

65. In Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others, noticing Somavanti (supra) wherein it was held that the manufacturing of the articles was for the benefit of the community and to save substantive part of foreign exchange and staff quarters to workmen, it was held:

On the other hand, in the case of an acquisition for a company, the compensation has to be paid by the company. In such a case there can be an agreement u/s 41

for transfer of the land acquired by the Government to the company on payment of the cost of acquisition, as also other matters. The agreement contemplated by Section 41 is to be entered into between the company and the appropriate Government only after the latter is satisfied about the purpose of the proposed acquisition, and subject to the condition precedent that the previous consent of the appropriate Government has been given to the acquisition. Section 6 is in terms, made subject to the provisions of Part VII of the Act. The declaration for acquisition for a company shall not be made unless the compensation to be awarded for the property is to be paid by a company. In the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition is for a public purpose and that the cost of acquisition should be borne, wholly or in part, out of public funds. Hence an acquisition for a company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. If, on the other hand, the acquisition, for a company is to be made at the cost entirely of the company itself, such an acquisition comes under the provisions of Part VII

66. The approach of the High Court in this behalf, in our opinion, is totally erroneous. A provision of a statute is either mandatory or directory. Even if a provision is directory, the same should be substantially complied with. It cannot be ignored in its entirety only because the provision is held to be directory and not an imperative one.

67. What emerges from the definitive and authoritative law laid down by their Lordships of the Hon"ble Supreme Court is that Rule 4 is mandatory. The scope and object of the objections filed u/s 5(A) is entirely different from the purpose of the enquiry provided under Rule 4 of the Land Acquisition (Companies) Rules, 1963. Section 5-A of the Land Acquisition Act, 1894 provides that any person interested in any land which has been notified u/s 4, Sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be. Thereafter, under Sub-section (2) of Section 5-A, the Collector in writing shall give the objector an opportunity of being heard and after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, Sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. Lodging objections by the person interested u/s 5-A cannot be a substitute for the enquiry contemplated under Rule 4 of the Land Acquisition (Companies) Rules, 1963. According to Rule-4, after the company

makes an application to the Appropriate Government for acquisition of any land, the Government shall direct the Collector to submit a report on the matters with regard to;

1) that the company has made its best endeavour to find out land in the locality suitable for the purpose of acquisition;

2) that the company has made all reasonable efforts to get such land by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;

3) that the land proposed to be acquired is suitable for the purpose; iv) that the area of land proposed to be acquired is not excessive; v) that the company is in a position to utilize the land expeditiously; and vi) whether the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

68. . In the instant case, the Agriculture land is also involved. The Collector, thereafter, is required to give the company a reasonable opportunity to make any representation in that behalf and to hold an enquiry into the matters referred to in Sub-rule (1) of Rule 4 and while holding such enquiry, he is required to look into following matters:

(1) in any case where the land proposed to be acquired is agricultural land consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;

(2) determine, having regard to the provisions of Sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the company; and (iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

69. Thereafter, after complying with Sub-rule (1) and Sub-rule (2), the Collector is required to submit a report to the Appropriate Government and a copy of the same is also required to be forwarded by the Government to the Committee, to be constituted under Rule-3 of the Land Acquisition (Companies) Rules, 1963. It is also evident from the plain language of Sub-rule (4) of Rule-4 that no declaration can be made by the Government u/s 6 of the Act unless the Appropriate Government has consulted the Committee and has considered the report submitted under Rule-4 and the report, if any, submitted u/s 5-A of the Act. Thereafter, the company is required to enter into an agreement u/s 41 of the Act. The Government is required to take into consideration the report furnished under Rule-4 and in addition thereto, the report submitted u/s 5-A of the Act. In case the report u/s 5-A is treated to be a final report before the declaration u/s 6 of the Act, the Rule-4 of the Land Acquisition (Companies) Rules, 1963 will be rendered otiose and the very objective of framing the Rules shall be defeated.

The legislature and the rule making authority were well aware of the scope and nature of enquiry contemplated u/s 5-A of the Act and Rule-4 of the Land Acquisition (Companies) Rules, 1963. The phraseology of rule-4 makes it abundantly clear that the language is imperative and mandatory. The Land Acquisition Committee is constituted under Rule-3 of the Land Acquisition (Companies) Rules 1963 to advise the Appropriate Government. It is the duty of the Committee to advise the Appropriate Government on all matters relating to or arising out of acquisition of land under Part VII of the Act, on which it is ascertained. The purpose of Rule-4 is to get the report by the State Government from the Collector whether the best endeavour has been made by the Company to find out lands in the locality suitable for the purpose of acquisition. One piece of land may be suitable for a particular activity and the same chunk land may not be suitable for another industry. The State Government has to ensure that the Company has made all reasonable efforts to get the land by way of negotiation and the persons interested get reasonable price. Thereafter, the State has to ensure that the land proposed to be acquired is suitable for the purpose and the same is not excessive. It has also to be seen that the Company is in a position to utilize the land expeditiously. The most important aspect, which has to be looked into by the State Government through the Collector, is to ensure whether the land acquired is good agricultural land and no alternative suitable site could be found to avoid acquisition of that land. These are the parameters on which the Appropriate Government directs the Collector to submit the report. The Company is also given opportunity to make any representation in that behalf. The Collector in the case when the land proposed is agriculture land, has to consult the Senior Agricultural Officer of the district to ensure whether or not the said land is good agricultural land or not. He has also to determine, having regard to the provisions of Sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, is to be acquired for the company. He has also to ascertain whether the company offered a reasonable price to the persons interested in the land proposed to be acquired. The Collector, as noticed above, has to supply the copy of the enquiry report to the State Government and the State Government is required to forward the same to the Land Acquisition Committee. The Appropriate Government has to consult the Land Acquisition Committee and also to take into consideration the report submitted under Rule-4 and the report, if any, submitted u/s 5-A of the Act. The objective of Rules 3 and 4 of the Land Acquisition (Companies) Rules, 1963 is to ensure that the persons interested get reasonable price and the land acquired is not excessive and should be put to use expeditiously and the agricultural land should not be acquired unless or until it can not be avoided, that too after consultation takes place with Senior Agricultural Officer. The Committee constituted as per Rule-3 of the Land Acquisition (Companies) Rules, 1963 is duty bound to advise the Government after taking into consideration the report submitted under Rule-4 of the Act. It is only thereafter, the notification under Section-6 can be issued. It is in these circumstances that the objection under Rule 5-A cannot be compared with the

scope and nature of enquiry contemplated under Rule-4. The Collector, the Land Acquisition Committee and the State have to take decisions objectively. In the instant case, admittedly, no enquiry has been held under Rule-4 of the Land Acquisition (Companies) Rules, 1963. The notification has been issued under Section-6 of the Land Acquisition Act without holding any enquiry under Rule-4 of the Land Acquisition (Companies) Rules, 1963. The action of the Respondent-State of issuing notification under Section-6 without complying with Rule-4 of the Land Acquisition (Companies) Rules, 1963 is declared illegal.

70. Now, we will consider whether safer distance could be reduced from 800 meters to 200 meters or not vide letter dated 20.02.2009 from Tarambri DPF. We have perused the records carefully to ascertain on what basis the safe distance was reduced from 800 meters to 200 meters. This request was made as per the records made available to us by company on 4.8.2007. Thereafter the matter was placed before the Expert Appraisal Committee (Mining) and it was considered in its meeting on 18/20.6.2007. The proponent was asked to get the matter examined from the Wild Life Institute of India. The Wild Life Institute of India and the Forest Department of the Government of Himachal Pradesh thereafter jointly undertaken the review and submitted the joint report entitled, "Environmental Clearance of Keran Limestone Mining Project, Sundernagar, Himachal Pradesh: a review, 2008 to the Ministry on 29.4.2008. The following recommendations have been made in the report as per records:

(5) The relaxation in the condition to roll back the "no mining zone" from 800m belt to 200m belt below the Tarambri DPF Closed Area can be considered only if proposal to set up Tarambri Conservation Reserve (TCR) is implemented as an offset measure to mitigate the residual impact of the project associated with the relaxation in the condition of Mo E and F.

The project authorities will provide the financial support for establishment of the proposed Tarambri Conservation Reserve (TCR). The HPFD has provided the detailed action plan and financial proposal for setting up of the Conservation Reserve which is placed as Section 7 of the report.

71. This proposal was considered by the Expert Appraisal Committee (Mining) in its meeting held on 17/18.6.2008. Thereafter based on the information received, the proposal was further considered by the Expert Appraisal Committee (Mining) during its meeting held on 23/25.9.2008. In view of the recommendations of the Wild Life Institute of India, the Expert Appraisal Committee (Mining) recommended the modification of the said condition subject to all of the safeguards and action plan conservation and protection of the forest and wildlife as mentioned in the report of Wildlife Institute of India and the State Forest Department, Government of Himachal Pradesh dated April, 2008 was to be effectively implemented in consultation with the State Forest and Wildlife Department and the cost towards the same was to be borne out of project cost. The mining plan was to be revised incorporating the changes in the mining area and got approved by IBM before starting work on the project. Thereafter the

matter was approved for modifications of the condition by reducing the safe distance from 800 meters to 200 meters. However, on 30.1.2009, it was observed that the environmental clearance was subject to grant of clearance to the project by the Chief Wildlife Warden, Government of Himachal Pradesh and the project proponent shall not commence any mining operation at the site till the requisite clearance from the Chief Wildlife Warden is obtained. Thereafter on 13.2.2009, the draft letter was modified by way of stipulation of following two conditions:

(1) Environmental clearance is subject to final order of the Hon'ble Supreme Court of India in the matter of Goa Foundation v. Union of India in Writ Petition (Civil) No. 460 of 2004, as may be application to this project.

(2) Environmental clearance is subject to obtaining clearance under the Wildlife (Protection) Act, 1972 from the Chief Wildlife Warden, Government of Himachal Pradesh and the project proponent shall not commence any mining operation at the site till the requisite clearance from the Chief Wildlife Warden is obtained.

72. Thereafter, letter was issued vide Annexure P-25 placed on record in CWP No. 3659/2009 on 20.2.2009. We are of the considered view that the safe distance in question could not be reduced from 800 meters to 200 meters. The condition of 800 meters of safe distance was provided after due application of mind. There is no cogent and convincing material on record why the distance has been reduced from 800 meters to 200 meters. The sanctity of Tarambari DPF cannot be altered only by providing Tarambri Conservation Reserve (TCR), as recommended by Wildlife Institute of India and State of Himachal Pradesh as per MOEF submitted on 29.4.2008. We have held that the environmental clearance accorded to company on 11.11.2005 was bad in law. However, we have undertaken this exercise to see the manner in which the distance has been reduced from 800 meters to 200 meters to evaluate the decision making process by the Ministry of Environment and Forests. The conditions imposed initially could not be subsequently modified or diluted without sufficient and cogent reasons. Respondents have failed to show what were the factors/grounds necessitating the reduction of area from 800 meters to 200 meters from Tarambri DPF.

75. We are also not oblivious to the doctrine of "sustainable development". However, we cannot be oblivious to the degradation caused to the fragile environment and ecology in the States like Himachal Pradesh. State has to strike a balance between the development and environment. The balance can also be maintained by adhering to the norms prescribed under the Environmental Laws. In this case there is transgression of the environmental laws since the decision has been taken by the Ministry of Environmental and Forests to waive off public hearing at the instance of third party and also when it decided to reduce the safe distance from 800 meters to 200 meters from Tarambri DPF. Bandli Wildlife Sanctuary is also in close proximity to the site/mining area. The endeavour of the State should be to protect the environment and ecology of the area, more

particularly, where cement plant is to be set up and the mining operation is to be carried out.

73. Their Lordships of the Hon^{ble} Supreme Court in Hinch Lal Tiwari Vs. Kamala Devi and Others, have held that forests, tanks, ponds, hillocks and mountains etc. are nature's bounty, they help maintain the delicate ecological balance and need to be protected for that reason. Their Lordships have held as under:

13. It is important to note that material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for proper and healthy environments which enable people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the Constitution. The Government, including revenue authorities, i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.

74. Their Lordships of the Hon^{ble} Supreme Court in A.P. Pollution Control Board II v. Prof. M.V. Nayudu (Retd.) and Ors. (2001) 2 SCC 62 have held that granting exemption to particular polluting industries is violative of Article 21 of the Constitution of India. Their Lordships have further held that exercising a power to show favour to a particular industry and granting it exemption from the provisions of prohibitory order u/s 3(2)(v) of Environment (Protection) Act against establishment of polluting industries in an area would be violation of the right to clear water under Article 21 of the Constitution of India besides arbitrary and contrary to public interest. The Lordships have also discussed in this judgment "precautionary principles".

75. Their Lordships of the Hon^{ble} Supreme Court in M/s. Live Oak Resort P. Ltd. and Another Vs. Panchgani Hill Station Municipal Council and Another, have stressed upon balance between development and ecology. Their Lordships have held as under:

5. Incidentally, be it noted that the two hill stations of Panchgani and Mahabaleshwar recently have acclaimed to be very popular tourist resorts and tourism has thus turned out to be a great economic benefactor to the State - and it is this possible improved economic situation that the State Government in the year 1971 issued a circular (more fully dealt with hereinafter in this judgment) under which an additional FSI was made available to the luxury hotels (with 3 star facilities and above) - obviously the State Government at the time of issuance of the circular had in its mind the long catena of cases of this Court as also that of various High Courts that while ecology cannot be given a go by, in the same vein development process cannot be ignored: As a matter of fact the law Courts thus evoked the factum of striking of a balance between the development and ecology since in a developing economy there cannot be either

development or ecology but both must exist and thus a balance shall have to be struck between the two, as otherwise the society will perish in the absence of either of the two elements noticed above.

76. Their Lordships of the Hon''ble Supreme Court in Bittu Sehgal and Another vs. Union of India and Others, (2001) 9 SCC 181 have held that "polluter pays" principle and the "precautionary principle" are part of the law of the land. Their Lordships have held as under:

5. Mr. M. C. Mehra, learned Counsel for the Petitioner has also invited our attention to various paragraphs relating to the protection of oceans, all kinds of seas, from Agenda 21 adopted by the RIO Conference. He has also referred to the report by the Department of Ocean Development, Government of India, regarding the status of marine pollution in coastal offshore waters in India. According to Mr. Mehta, the guidelines given in Agenda 21 and the report by the Department of Ocean Development have to be considered by the State Governments while protecting the area declared by the Government of India as ecologically-fragile areas.

77. Their Lordships of the Hon''ble Supreme Court in Essar Oil Ltd. Vs. Halar Utkarsh Samiti and Others, have held that while granting permission under the Wild Life (Protection) Act, 1972, the State Government must invariably see that the habitat is at least sustained and that the damage thereto does not result in destruction of wildlife. Their lordships have held as under:

35. For this purpose the State Government must ask for and obtain an environmental impact report from expert bodies. The applicant must also come forward with an environmental management plan which must be cleared by the experts. To prevent possible future damage, the State Government must also be satisfied that the damage which may be caused is not irreversible and the applicant should be prepared and must sufficiently secure the cost of reversing any damage which might be caused. The State Government should also have in place the necessary infrastructure to maintain periodical surveys and enforce the stipulations subject to which the permit may be granted. In future the State Government should, before granting the approval, also call upon the applicant to publish its proposal so that public, particularly those who are likely to be affected, are made aware of the proposed action through the sanctuary or natural park. This will ensure transparency in the process and at least safeguard against a decision of the State Government based solely upon narrow political objectives. Besides the citizens who have been made responsible to protect the environment have a right to know. There is also a strong link between Article 21 and the right to know particularly where "secret Government decisions may affect health, life and livelihood" Reliance Petrochemical Ltd. v. Proprietors of Reliance Petrochemicals Ltd. Vs. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. and Others, The role of voluntary organizations as protective watch-dogs to see that there is no unrestrained and unregulated development, cannot be over-emphasized. Voluntary organisations may of course be a front for

competitive interests but they cannot all be tarred with the same brush. Our jurisprudence is replete with instances where voluntary organisations have championed the cause of conservation and have been responsible for creating an awareness of the necessity to preserve the environment so that the earth as we know it and humanity may survive.

36. Once the State Government has taken all precautions to ensure that the impact on the environment is transient and minimal, a court will not substitute its own assessment in place of the opinion of persons who are specialists and who may have decided the question with objectivity and ability. See: *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, Courts cannot be asked to assess the environmental impact of the pipelines on the wild life but can at least oversee that those with established credentials and who have the requisite expertise have been consulted and that their recommendations have been abided by the State Government. If it is found that the recommendations have not been so abided by, the mere fact that large economic costs are involved should not deter the Courts from barring and if necessary undoing the development .

78. Their Lordships of the Hon'ble Supreme Court in *Consumer Education and Research Society v. Union of India and Ors.* (2005) 10 SCC 185 have held that distance of 2.5 kilometers would be ideal distance from the vicinity of wildlife sanctuary for the purpose of mining under the Wild Life (Protection) Act, 1972. Their Lordships have held as under:

3. Earlier, the expert body referred to the adverse mining impact as per the visual observations made by it in three sites - Site A, Site B and Site C according to which the range varies from 2.00 km to 2.35 km. The expert body reported that the best indicator of the range of adverse mining impact, as per the data collected in the course of study, is 2.35 km as observed in the case of Site A. However, keeping in view the fact that the study was not done in all the seasons and there could be scope for some variation, the Committee commented that "the maximum range affected by the mining pollution would be more than the estimation of range based on the above visual observations i.e. a realistic range would be more than 2.35 km".

4. The report then stated as follows:

In view of the aforesaid discussions and considerations, it appears that accepting a buffer range of adverse mining impact of about 2.5 km would be appropriate. Therefore, it is inferred from the present study that up to 2.5 km from the sanctuary boundaries, mining operations should be considered as detrimental to the wildlife and wildlife habitat of the sanctuary.

5. An opportunity was given to the parties concerned to submit their responses to this report. The Government of Gujarat, Forests and Environment Department has filed an affidavit stating as follows:

I further state that the State Government has carefully examined the above opinion and keeping in view the optimum use of natural resources available and the interest of wildlife of the sanctuary decided that no new mining lease shall be allowed within one kilometre from the outer boundaries of the notified Narayan Sarovar Wildlife Sanctuary.

Apart from the vague statement made as above, the State Government has not chosen to give any reasons for deviating from the recommendation of the expert body. The 1 km limit, suggested by the State Government, seems to be in tune with the earlier report of the same expert body furnished in the year 2001 which stated that "in order to reduce the effects of developmental activities on long-term conservation prospect of the sanctuary mining activities should not be allowed within 1000 metres of the sanctuary boundary". This report was apparently obtained by the State Government pursuant to Direction (3) in the operative part of the judgment in *Consumer Education and Research Society Vs. Union of India and Others*, The latest report of the expert body has adverted to the view expressed in the earlier report and commented that the reasons for prescribing 1 km buffer zone have not been clearly spelt out in the said report. Moreover, the earlier expert body did not examine the issue from the standpoint of prescribing a reasonable outer limit beyond the notified area in the interests of conservation of wildlife.

84. Their Lordships of the Hon''ble Supreme Court in *Intellectuals Forum, Tirupathi Vs. State of A.P. and Others*, have held that when the projects harms environment, the investment made in these project, permission cannot be based solely upon investment made. Their Lordships have held as under:

67. The responsibility of the state to protect the environment is now a well-accepted notion in all countries. It is this notion that, in international law, gave rise to the principle of "state responsibility" for pollution emanating within one's own territories *Corfu Channel Case*, ICJ Reports (1949) 4. This responsibility is clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 (*Stockholm Convention*), to which India was a party. The relevant Clause of this Declaration in the present context is Paragraph 2, which states:

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Thus, there is no doubt about the fact that there is a responsibility bestowed upon the Government to protect and preserve the tanks, which are an important part of the environment of the area.

79. No doubt, the wishful thinking and the desire of the Appellant- forum, that the Tanks should be there, and the old glory of the tanks should be continued, is laudable. But the ground realities are otherwise. We have already noticed the

ground realities as pointed out by the Government of Andhra Pradesh, TUDA and TTD in their reply to the Civil appeals by furnishing details, datas and particulars. Now a days because of the poverty and lack of employment avenues, migration of people from rural areas to urban areas is a common phenomenon. Because of the limited infrastructure of the towns, the towns are becoming slums. We, therefore, cannot countenance the submissions made by the Appellant in regard to the complete restoration and revival of two tanks in the peculiar facts and circumstances of this case. We cannot, at the same time, prevent the Government from proceeding with the proper development of Tirupathi town. The two Government Orders which are impugned have been issued long before and pursuant to the issuance of the Government Orders, several other developments have taken place. Constructions and improvements have been made in a vast measure. Because of spending crores and crores of rupees by various authorities, the only option now left to the Appellant and the Respondents is to see that the report submitted by the Expert Committee is implemented in its letter and spirit and all the Respondents shall cooperate in giving effect to the Committee's report.

80. One particular feature of this case was the competing nature of claims by both the parties on the present state of the two tanks and the feasibility of their revival. We thought that it would be best, therefore, if we place reliance on the findings of the expert committee appointed by us which has considered the factual situation and the feasibility of revival of the two tanks. Thus in pursuance of a study of that committee, this Court passes the following orders.

81. The appeals are disposed of with the following directions: With regard to Peruru tank:

- (1) No further constructions to be made.
- (2) The supply channel of Bodeddula Vanka needs to be cleared and revitalized. A small check dam at Malapali to be removed to ensure the free flow and supply to the tank.
- (3) Percolation tank to be constructed and artificial recharge to be done to ensure the revival of the tank, keeping in mind its advantage at being situated at the foot hills.
- (4) The area allotted by Mandal Revenue Office for construction of the tank to be increased to a minimum of 50 acres. Percolation tank with sufficient number of recharge shafts to be developed to recharge the unsaturated horizons up to 20 m. The design of the shafts etc. to be prepared in consultation with the CGWB. The proposed percolation tank to be suitably located along the bund keeping in view the inlets, irrigation sluices and surplus water.
- (5) Feasibility and cost estimation for the revival of the old feeder channel for Swarnamukhi River should be carried and a report to be submitted to the Court.
- (6) Each house already constructed by the TTD must provide for roof top rain

water harvesting. Abstraction from ground water to be completely banned. No borewell/ tubewell for any purpose to be allowed in the area.

(7) Piezometers to be set up at selected locations, in consultation with the CGWB to observe the impact of rain water harvesting in the area on ground water regime. With regard to Avilala tank:

(1) No further construction to be allowed in the area.

(2) Each house already constructed by the APHB/ TUDA must provide structure for roof top rain water harvesting. All the storm water in the already built colonies to be recharged to ground water. Structures for such purposes to be designed in consultation with the CGWB.

(3) No borewell/ tubewell for any purpose to be allowed in the area.

(4) An area of 40 acres presently reserved for the Government should not be developed in any way that may lead to concretization of the ground surface. Recharge structures to be constructed for rainwater harvesting.

(5) Piezometers to be set up at selected locations, in consultation with the CGWB to observe the impact of rain water harvesting in the area on ground water regime.

87. Their Lordships of the Hon^{ble} Supreme Court in Intellectuals Forum's judgment have held that natural resources are held by the State as trustee of the public. A high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use and to properly scrutinize such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit and the special more demanding obligation which may have as a trustee of certain public resources. Their Lordships have held as under:

74. Another legal doctrine that is relevant to this matter is the Doctrine of Public Trust. This doctrine, though in existence from Roman times, was enunciated in its modern form by the US Supreme Court in *Illinois Central Railroad Company v. People of the State of Illinois* (1892) 146 US 537 where the Court held:

The bed or soil of navigable waters is held by the people of the State in their character as sovereign, in trust for public uses for which they are adapted. [***] the state holds the title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State, which does not recognize and is not in execution of this trust is permissible. What this doctrine says therefore is that natural resources, which includes lakes, are held by the State as a "trustee" of the public, and can be disposed of only in a manner that is consistent with the nature of such a trust. Though this doctrine existed in the Roman and English Law, it related to specific types of resources. The US Courts have expanded and given the doctrine its contemporary shape whereby it encompasses the entire spectrum of the environment.

82. The Supreme Court of California, in the case of *National Audubon Society v. Superior Court of Alpine Country*, 33 Cal.419 also known as the Mono Lake case summed up the substance of the doctrine. The Court said: Thus the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands., surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust.

This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the state holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny upon any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such actions of the Government, the Courts must make a distinction between the government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources, [Joseph L. Sax "The public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", *Michigan Law Review*, Vol.68 No. 3 (Jan.1970) PP 471-566)]. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to imposed by the public trust doctrine [ibid]:

the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;

the property may not be sold, even for fair cash equivalent the property must be maintained for particular types of use. (i) either traditional uses, or (ii) some uses particular to that form of resources.

88. Their Lordships of the Hon"ble Supreme Court in *Tirupur Dyeing Factory Owners Association Vs. Noyyal River Ayacutdars Protection Association and Others*, have held that "precautionary principles" and "polluter pays principles" are to be read alongwith doctrine of sustainable development. Their Lordships have held as under:

6. The concept of "sustainable development" has been explained that it covers the development that meets the needs of the person without compromising the ability of the future generation to meet their own needs. It means the development, that can take place and which can be sustained by nature/ecology with or without mitigation. Therefore, in such matters, the required standard is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. The development of the industries, irrigation resources and power projects are necessary to improve employment opportunities and generations of revenue; therefore, cannot be

ignored. In such eventuality, a balance has to be struck, for the reason that if the activity is allowed to go, there may be irreparable damage to the environment and there may be irreparable damage to the economic interest. A Similar view has been reiterated by this Court in T.N. Godavaraman Thirumulpad Vs. Union of India (UOI) and Others, ; and M.C. Mehta Vs. Union of India (UOI) and Others,

34. Undoubtedly, there has been unabated pollution by the members of the Appellant Association. They cannot escape the responsibility to meet out the expenses of reversing the ecology. They are bound to meet the expenses of removing the sludge of the river and also for cleaning the dam. The principles of "polluters-pay" and "precautionary principle" have to be read with the doctrine of "sustainable development". It becomes the responsibility of the members of the Appellant Association that they have to carry out their industrial activities without polluting the water.

83. Accordingly, in view of the observations and discussion made hereinabove, the letters dated 28.07.2005 and 11.11.2005 are quashed and set aside. The notifications issued under Sections 6 and 7 of the Land Acquisition Act, 1894 on 31.1.2009 and 7.7.2009 by the State of Himachal Pradesh are also quashed and set aside. All the petitions are disposed of in the aforesaid terms. There shall, however, be no order as to costs.