

(2009) 10 MAD CK 0023

In the Madras High Court

Case No : W.A. No's. 212 and 213 of 2000, C.M.P. No. 1870 of 2000

Indra Kumar Poddar

APPELLANT

Vs

Union of India (UOI) and Auroville Foundation

RESPONDENT

Date of Decision : 26-10-2009

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 54(2)
Auroville (Emergency Provisions) Act, 1980 — Section 3
Auroville (Emergency Provisions) Ordinance, 1980 — Section 18
Auroville Foundation Act, 1988 — Section 3
Constitution of India, 1950 — Article 21
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 40
Electricity (Supply) Act, 1948 — Section 79
Road Transport Corporations Act, 1950 — Section 45(2)

Citation : (2009) 10 MAD CK 0023

Hon'ble Judges : T.S. Sivagnanam, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Vijay Narayan, for R. Parthiban, for the Appellant; Haja Mohideen Gisthi, ACGSC for 1st Respondent and Radha Gopalan, for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—The above writ appeals have been filed against the order made in W.P. No. 12274 of 1991 and W.M.P. No. 2935

of 1994 in W.P. No. 12274 of 1991 respectively.

2. The facts leading to filing of the writ petition are as stated hereunder:

(a) The Appellant and their grand parents have been devotees of ""Sri Aurabindo"" and ""The Mother"" for quite a long time and it is stated that they

have renounced all their worldly possessions in favour of the Ashram and have dedicated their life for the services of ""Sri Arabindo"" and ""The

Mother"". Finally in the year 1953, they decided to renounce the worldly life and

joined the Ashram at Pondicherry. "The Mother" admitted the Appellant's grandfather, his parents, his uncle, their families, Appellant's four brothers and the Appellant, as permanent members of the Ashram sometime during October/November, 1953. At that time, the Appellant was nine years of age.

(b) According to the Appellant, one of the rules for admission into the Ashram was, when once a devotee was admitted to the Ashram, he was not supposed to own any personal property, but to offer all the wealth that he possessed at the time of admission, to the lotus feet of Sri Aurobindo and The Mother and then the Ashram took upon itself the burden of maintaining him, meeting all his bare minimum needs that are absolutely necessary for a healthy spiritual life. In the case of the Appellant, his parents surrendered all their wealth and it became the responsibility of the Ashram to look after and maintain the entire family, including the Appellant.

(c) During 1960, a Society under the name and style of "Sri Aurobindo Society" was formed for the purpose of disseminating the ideals and teachings of Sri Aurobindo and The Mother, in and outside India. This society was originally registered under the Societies Registration Act, 1860, and subsequently registered under the West Bengal Societies Registration Act, 1961. In terms of Clause 7 of the Memorandum of Association, The Mother shall be the permanent President of the Sri Aurobindo Society, and that she remained President of the Society throughout her life time.

It is stated that The Mother left her body on 17th November, 1973.

(d) Pursuant to the objects and ideas of establishing a spiritualised Society, in a conference held during August, 1964, "The Mother" gave the name Auroville to a project of the Society. In the year 1965, the Society made a public announcement that they are setting up an Universal and Cultural Township about four miles from the Ashram, named Auroville, which means "The city of dawn".

(e) The Appellant stated that he completed his education in the Sri Aurobindo International Centre for Education in the year 1963 and was doing work in the Ashram Department. After public announcement of the project Auroville, "The Mother" herself entrusted to the Appellant in March, 1965, the responsibility of acquiring lands for the Auroville project and from 6.4.1965 onwards the Appellant was purchasing lands for the project.

Since the Appellant was permitted to get married, it is stated that ""The Mother"" had permitted him to have the residence in the Promessee

settlement of the Auroville, in which the Appellant and his wife continued to stay. It is further stated that from April, 1965 to March, 1971, the

Appellant had acquired about 1600 acres of the land for the project.

(f) In or about November, 1975, there arose certain dispute regarding the management of the project as well as the Society and a group of

dissident members were trying to interfere with the original plans of ""The Mother"", which were envisaged and therefore a suit came to be filed by

certain group of persons in O.S. No. 60 of 1976 on the file of the District Munsif Court, Pondicherry, which was subsequently transferred to the

Additional Sub Court, Pondicherry, It is stated that there was an order of interim injunction, which came to be contested by the dissident group of

members.

(g) At that stage, on 18.11.1980, the Government of India issued an ordinance known as Auroville (Emergency Provisions) Ordinance, 1980, by

which the Government took over the management of the Auroville for a temporary period. This ordinance was replaced by The Auroville

(Emergency Provisions) Act, 1980 (Act 59 of 1980). The validity of the Act 59 of 1980 came to be challenged by Sri Aurobindo Society and few

others before the Honourable Supreme Court. It is stated that the Appellant herein was one of the person, who was actively involved in such

litigation and instructing the Learned Counsels appearing before the Honourable Supreme Court. The Honourable Supreme Court by judgment

dated 8.11.1982, upheld the validity of the Act.

(h) In terms of Section 5 of Act 59 of 1980, the Central Government had the powers to appoint an Administrator for the purpose of taking over

the management of Auroville and the Administrator was to carry on the management of the Auroville for and on behalf of the Central Government.

After the judgment was delivered by the Honourable Supreme Court on 8.11.1982, on the same day two orders were issued and by Order No. I

dated 8.11.1982, the Administrator divested the Appellant of his responsibilities and work in relation to the land and estate management, and by

Order No. 11 dated 8.11.1982, the responsibility for maintenance and development of Promesse settlement was also taken away from the

Appellant and was handed over to another member of the Auroville. It is to be noted that these orders divesting the Appellant of the powers were not questioned by the Appellant.

(i) Subsequently, by office note dated 25.2.1983, the Administrator of the Auroville decided to stop the payment of food and other allowances to the Appellant and his family members with effect from 1.3.1983. According to the Appellant, this order was passed in violation of the principles of natural justice and it was not communicated to the Appellant, but to the Society alone. Therefore the Appellant had submitted a representation on 21.5.1987 followed by further representations on 23.5.1987 and 24.6.1987.

(j) In the order dated 25.2.1983, which is also one of the orders impugned in the writ petition, it was stated that, ""it is felt that Shri Indra Poddar is in a position to maintain himself and his family and so having regard to the dwindling position of funds, further payment of the said allowances to him is stopped."" The Appellant objected to such proceeding and had submitted various representations in the nature of appeal. While considering such representations, an order came to be passed on 29.5.1989 by the Department of Education, Ministry of Human Resources Development, by which it was stated that it is understood that the Appellant was gainfully employed in an establishment during 1983-1989) and as per the rules of Auroville Council, he ceased to be an Aurovillian. The Appellant was further informed that he is not entitled for restoration of his food and other allowances and he may however apply to the Auroville Council for readmission in the Auroville.

(k) Thereafter, the Appellant had submitted further appeal on 22.6.1989. On receipt of the said appeal, the very same officer, who passed the original order dated 29.5.1989, look up the appeal petition and by order dated 8.9.1989 stated that it is the Auroville Council, which decides the question of admission, integration and readmission to the Auroville and advised the Appellant to approach the Auroville Council for readmission to the Auroville. It was further informed that the food and other allowances are no longer paid by the staff in the Auroville, but by the persons in charge of the units with which the Aurovillian concerned may be working.

(1) The Appellant has subsequently made several representations and ultimately by order dated 23.4.1991, the Appellant was informed that

according to Article 19 of the Auroville Foundation Act, 1988, the Governing Body of the Foundation is to be guided by the advice of the

Residents' Assembly of the Auroville and therefore the Appellant was advised to take up his case with the Working Committee of the Residents'

Assembly, which was to be constituted soon.

3. At this juncture, it is relevant to point out that Act 59 of 1980 came to be replaced by the Auroville Foundation Act, 1988 (Central Act 54 of

1988). The powers under the Act 59 of 1980 was restricted to taking over of the management of Sri Aurobindo Society, and Act 54 of 1988 was

for taking over of the ownership and control of the Society.

4. The Appellant has filed the writ petition challenging the order dated 25.2.1983, by which his food and other allowances for himself and his

family members was stopped and the subsequent order dated 29.5.1989, by which the Appellant was informed that he ceased to be an Aurovillian

as he was gainfully employed and the subsequent orders passed on the representations made by him on 8.9.1989 and 23.4.1991.

5. The writ petition was resisted by both the Central Government as well as by the Auroville Foundation and this Court by order dated 17.2.1989

dismissed the writ petition against which W.A. No. 212 of 2000 is filed.

6. When the writ petition was pending, the Appellant had also filed W.M.P. No. 2935 of 1994 for raising additional grounds. Since the writ

petition was dismissed, the miscellaneous petition was also dismissed by order dated 17.2.1999, against which W.A. No. 213 of 2000 is filed.

7. It is seen that the Appellant filed review application in R.A. No. 59 of 1999 seeking review of the order made in the writ petition and the same

was also dismissed by order dated 14.6.1999.

8. Mr. Vijay Narayan, learned Senior Counsel, appearing for the Appellant would assail the correctness of the order passed in the writ petition

and miscellaneous petition on the following grounds:

(i) The impugned order dated 25.2.1983 has been passed without any notice to the Appellant and the same is in violation of the principles of

natural justice and it violates Articles 14 and 21 of the Constitution of India.

(ii) The right, which has accrued in favour of the Appellant for over 30 years has been snatched away without affording even an opportunity to the

Appellant.

(iii) In the impugned order, a reference has been made as "it is felt". However, there is no material in respect of such decision and such an order is

wholly arbitrary and unreasonable.

(iv) The impugned order is discriminatory and amounts to victimisation, since other persons have been given food allowance and the Appellant

alone has been singled out.

(v) That the impugned order has been passed by the Administrator and in terms of the Act 59 of 1980, which was in force during the relevant point

of time, the Administrator had no power to alter the privileges enjoyed by the Appellant.

(vi) Even under the Act 54 of 1988, there is no power vested with the Auroville Council for passing an order permitting a person from being an

Aurovillian and the said power is conferred only with the Residents' Assembly. Therefore the impugned order is without jurisdiction.

(vii) There is no written order determining the status of the Appellant as Aurovillian in the manner known to law.

(viii) Though the appeal was filed as against the order dated 29.5.1989, the same was rejected by the very same authority, who passed the order

dated 29.5.1989 and as such it is illegal.

(ix) The order rejecting W.P.M.P. No. 2935 of 1994 filed for raising additional grounds is not tenable and in the affidavit filed in support of the

miscellaneous petition it has been specifically brought out by the Appellant that the reason assigned for stopping the food allowance is not the real

reason and there are certain ulterior motive behind such an order. It is pointed out in the affidavit that the real motive for the expulsion of the

Appellant is revealed in the last but one paragraphs of the letter of the Working Committee dated 23.9.1993, which states that during summer of

1989, the first official Residents' Assembly met in Auroville and one of the topics was the problem created by a number of neutrals residing in

Auroville, whose relationship with the Residents' Assembly was as yet unclear. The decision of the Residents' Assembly was to accept as

members of the Residents' Assembly all of them with the exception of the Appellant and three others, on the ground that the individuals have

actively involved in activities deemed detrimental to the Committee of the

Auroville. Further, the Learned Counsel by relying upon the other averments contained in the affidavit, more particularly paragraphs 7 and 8 would state that the reason assigned in the impugned order is not the actual reason and it is on account of certain other reasons which are clear from the minutes of the meeting of the Working Committee.

(x) That, as the impugned order is punitive in nature, it is all the more necessary that opportunity ought to have been afforded to the Appellant.

(xi) Finally the learned Senior Counsel would submit that in the absence of any valid order terminating or removing the Appellant from his status as

Aurovillian, it is deemed that he continues to be an Aurovillian and there is no justification for the Respondents to stop his food and other allowances.

9. Mr. Haja Mohideen Gisthi, learned Additional Central Government Standing Counsel appearing for the first Respondent would contend that the

writ petition itself was liable to be dismissed on the ground of inordinate delay and laches as the writ petition was filed after the period of eight

years from the date of the order dated 25.2.1983. The other orders dated 29.5.1989, 8.9.1989 and 23.4.1991 cannot be construed as impugned

orders since they were replies given to the representations made by the Appellant. Learned Counsel further submitted that there is no mandatory

obligation on the part of the Respondents to supply food and other allowances to the Appellant and in the absence of any such statutory obligation,

there is no error in the order dated 25.2.1983. It is further contended that by the order dated 23.4.1991, the Appellant had been advised to take

up his case with the Working Committee of the Residents' Assembly, which was to be constituted soon, for his readmission. Finally the Learned

Counsel submitted that the order passed in the writ petition does not call for any interference and that no appeal has been filed against the order

rejecting the review application in R.A. No. 59 of 1999, dated 14.6.1999.

10. We have carefully considered the submissions of either side and perused the materials on record.

11. Though the learned Senior Counsel appearing for the Appellant had taken us extensively through the factual aspects of the matter, the issue

involved in the present appeals lies in a narrow campus, in the sense, it involves the interpretation of two statutes, by which Sri Aurobindo Society

came under the control of the Union of India and as to whether the impugned orders have been passed in accordance with the said statutes and

whether there is any violation of the principles of natural justice and has there been any arbitrariness in the decision violative of Article 14 and

infringement of rights enshrined under Article 21 of the Constitution of India.

12. Act 59 of 1980 came to be passed to provide for the taking over, in the public interest, of the management of Auroville for a limited period

and for matters connected therewith. u/s 3 of the said Act, on and from the appointed day, for a period of two years thereafter, the management of

Auroville shall vest in the Central Government, provided that where the Central Government is of the opinion that in order to secure the proper

management of Auroville, it is expedient that such management should continue to vest in that Government after the expiry of the said period of two

years, it may, from time to time, issue directions for the continuance of such management. Under Sub-section (2) of Section 3, Auroville shall be

deemed to include all the assets, rights, etc., including funds of the Society. u/s 5 of the Act, there was power to appoint an Administrator and in

terms of Sub-section (1) of Section 5, Central Government shall appoint a person or a body of persons for administration for the purpose of taking

over the administration of the Auroville, which carry on the management of the Auroville for and on behalf of the Central Government. In terms of

Sub-section (5) of Section 5, the Administrator shall be entitled, notwithstanding anything contained in the West Bengal Societies Registration Act,

1961, exercise in relation to Auroville, the powers of the Governing Body or Executive Committee, as the case may be, of the Board of Trustees

of the Society, including the powers to dispose of any property or assets of the Society, whether such powers are derived from the West Bengal

Societies Registration Act, 1961 or from the memorandum and rules and regulations of the Society or from any other source. u/s 6, the Advisory

Council was constituted. In terms of Section 15, penalties which could be imposed on any person were also listed out. By virtue of Section 18,

Auroville (Emergency Provisions) Ordinance, 1980, stood repealed.

13. After the Supreme Court upheld the validity of the Act, the Administrator appointed by the order dated 8.11.1982, in exercise of his powers

conferred under Sub-section (5) of Section 5 of the Act, directed that the

Appellant shall hand over all the records and papers and properties pertaining to land and estate management in his possession to two named persons. It was further ordered that the Appellant shall henceforth has nothing to do with the land and estate management. By another order No. 11 dated 8.11.1982, the Appellant's wife, who had been managing the building, etc., of the Promessee on behalf of her husband, was also directed to hand over immediately the same to the named person, all papers and accounts maintained by her in connection with the said charge. It is submitted that the Appellant and his wife carried out the directions in the orders dated 8.11.1982.

14. It is seen on 2.12.1982, the Deputy Administrator of the Auroville had addressed the Administrator stating that he forwarded certain details which had been called for, one of which, is the list of Aurovillians entitled to food and other allowances, in which the name of the Appellant finds place in Sl. No. 1 and by virtue of which, two adults namely the Appellant and his wife and their two children were entitled to food allowance of Rs.

400/- and Education allowance of Rs. 66.66 and prosperity being 10% of the food allowance, in all Rs. 506.66. It is thereafter the impugned order dated 25.2.1983 came to be passed. The said order deals with payment of food and other allowances to three persons named in the order.

The Appellant's name finds place in Sl. No. 2 and the said order reads thus,

It is felt that Shri Indra Poddar is in a position to maintain himself and his family and so having regard to the dwindling position of funds, further payment of the said allowances to him is stopped.

Therefore it is to be noted that the reasons which has weighed in the minds of the Administrator as could be seen from the order is that it was felt

that the Appellant was in a position to maintain himself and his family and having regard to the dwindling position of funds of the Society further payment of the allowance was stopped.

15. It is contended by the learned Senior Counsel for the Appellant that no notice was issued prior to such order being passed. In fact the

Appellant had taken up an employment in a private establishment only on 1.3.1983 and this is because the food allowance had been stopped on

25.2.1983 and he had to seek employment to sustain himself and his family. Therefore, the learned Senior counsel contended that the reason

assigned is incorrect. That apart, it is to be noted that in the affidavit filed in support of the application for raising additional grounds, certain factual details have been placed which would go to show that the reason assigned in the impugned orders dated 29.5.1989 and 8.9.1989 are not the real reason but on account of the opinion expressed by certain members of the Residents' Assembly, which met during summer, 1989. However, the Appellant has not been given any notice prior to such an order being passed. The Appellant on receipt of the said order did not immediately rush to this Court, but had submitted representations and appeals seeking review of the said order.

16. While the appeals were pending, Act 54 of 1988 came to be enacted, which Act was to provide for the acquisition and transfer of the undertakings of Auroville and to vest such undertakings in a Foundation established for the purpose with a view to making long term arrangements for the better management and further development of the Auroville. In terms of Section 3 of the Act 54 of 1988, on and from the appointed day the undertaking of the Society, trust and body as form part of, or are relatable to Auroville and the right, title and interest of the Society, stood transferred and vested in the Central Government. Section 4 provides for general effect of vesting. Section 6 empowered the Central Government to direct vesting of the undertakings in the Foundation. Section 7 of the Act provides for the management of the undertaking. Section 10 deals with establishment and incorporation of the Foundation viz., The Auroville Foundation. In terms of Sub-section (1) of Section 10 with effect from such date as the Central Government may, by notification, appoint in this behalf, there shall be established a Foundation to be called the Auroville Foundation. In terms of Sub-section (2) the Foundation shall be a body corporate and in terms of Sub-section (3) the Foundation shall consists of three authorities, viz., (a) The Governing Board; (b) The Resident Assembly; (c) The Auroville International Advisory Council. The persons, who shall constitute the Governing Board is in terms of Section 11 of the Act. Section 12 deals with the term of office of the members of the said Governing Board. Section 15 deals with Secretary and other officers of the foundation. Section 18 would be very relevant for the purpose of this case, which speaks of Residents' Assembly. Under Sub-section (1) of Section 18, Residents' Assembly shall consists of all the residents of

Auroville, who are for the time being entered in the register of residents maintained. Under Sub-section (2) the Secretary to the Governing Board

shall maintain the register of residents in such manner as may be prescribed and all the persons who are residents of the Auroville and who are of

the age of eighteen years and above are entitled to have their names entered in the register on an application made to the Secretary in such form as

may be prescribed. In terms of Sub-section (3), all the names of residents, which have been included in the register maintained by the

Administrator appointed u/s 5 of the Act, 1980, immediately before the appointed day, shall be deemed to have been included in the register

maintained u/s 18. Section 19 speaks of the functions of the Residents' Assembly and in terms of Clause (a) to Sub-section (2) of Section 19, the

Residents' assembly may allow the admission or cause the termination of persons in the register of residents in accordance with the regulations

made u/s 33. Section 32 deals with the power to make regulations and in terms of Clause (h) to Sub-section (2) of Section 32, the Governing

Board may make regulations relating to admission or termination of persons in the register of residents.

17. Thus, it is to be seen that in terms of Section 18(2) of the Act, all persons, who are residents of the Auroville and who are of the age of 18

years and above, are entitled to have their names entered in the register on an application made to the Secretary, and in terms of Sub-section (3),

all the names of the residents, which are included in the register maintained by the Administrator appointed under the earlier enactment, shall be

deemed to have been included in the register.

18. The power to admit or terminate any person was vested with the Residents' Assembly in terms of Section 19(2)(a). Though it has been stated

that such admission or termination shall be in accordance with the regulations made u/s 32, no such regulation has been framed for the purpose of

admission or termination. Therefore, as pointed out earlier, on the date when the impugned order dated 25.2.1983 came to be passed, the

enactment which held the field was only the Act 59 of 1980. By virtue of the said Act, the Administrator had only control over the management of

the Society and did not have any other powers. Only under the Act 54 of 1988, powers for the purpose of admission and termination were vested

with the Residents" Assembly. Even in terms of Section 18, all names of the residents included in the register shall be deemed to have been

automatically entered as members of the Residents" Assembly. Therefore, there was no power vested with the Administrator to stop the food

allowances granted to the Appellant, by passing the impugned order dated 25.2.1983. All that the Administrator was entitled to do under the 1980

Act was to manage the affairs of the Auroville for and on behalf of the Central Government. It is only after the Act 54 of 1988 came into force, the

entire assets stood vested with the Central Government. Therefore, we are satisfied that the order dated 25.2.1983 came to be passed by the

Administrator, who never had jurisdiction to stop the food allowance granted in favour of the Appellant. That apart, it is to be noted that the reason

assigned in the order stating that he is in a position to maintain himself was also erroneous in view of the fact that he had taken up employment

outside the Auroville only on 1.3.1983 and subsequently resigned the job on 20.2.1989.

19. It is interesting to note from the affidavit filed in support of W.M.P. No. 2935 of 1994 that the reason assigned in the impugned orders dated

29.5.1989 and 8.9.1989 are not the real reasons behind for passing the said orders. The Appellant contended in the affidavit filed in support of

W.M.P. No. 2935 of 1994 that he is in possession of documents which clearly establish that the reasons for passing the order dated 29.5.1989

and 8.9.1989 was not due to the fact that the Appellant had taken up employment in a private establishment, but such reason was only to cover up

the real motive of certain Aurovillians. The Appellant relied on the letter dated 22.9.1993 written by the Working Committee of the Residents"

Assembly addressed to Shri L.K. Tripathy, Secretary, Auroville Foundation, and his reply dated 6.10.1993 as published in the Auroville News

No. 506, dated 7.10.1993. The relevant paragraph reads as follows:

The Working Committee had given to me a copy of the minutes of a group meeting of Aurovillians which took place on the 4th October, 1988,

wherein there is one particular para which has been cited in support of your contention. The para reads as follow:

It took the core Group some time to agree upon what had been decided at the general meeting. There seemed to be a larger majority of general

meeting who did not want Shyam Sunder, Indra Poddar and Guru Prasad on the Master list but felt that the other names were either acceptable,

eligible or entitled to be on. Some of the opinions expressed were

The expression used in this paragraph would show that what was conveyed through this paragraph is only an expression of a view and it was not a

decision as such. Nowhere it says that the Residents' Assembly has decided to exclude Shri Shyam Sunder and others from Auroville Community.

In the Circumstances, I find that no representative body of Auroville has overtaken a decision to remove the name of Shri Shyam Sundar from the

list of Aurovillians following a proper procedure including the principle of natural justice and that an expression of a view cannot be taken as

substitute for a proper decision which is done following certain established procedure.

During the summer of 1989, the first official Residents' Assembly met in Auroville, one of the topics was the problem created by a number of

neutrals residing in Auroville whose relationship with the Residents Assembly was as yet unclear. The decision of this Residents Assembly was to

accept as members of the Residents Assembly all of them with the exception of four names viz., Mr. Indra Poddar (Appellant), Mr. Shyam

Sundar, Mr. Michael Bonke and Mr. Guru Prasad, on the ground that these individuals had been actively involved in activities deemed detrimental

to the community of Auroville. This decision was communicated to and accepted by the then Custodian Mr. Manavalan and until any further

decision is made by the Residents Assembly, must be considered binding.

By relying upon the above facts the Appellant submits that it is clear that no decision was taken to expel the Appellant on account of his

employment in a private establishment and the said reason is only to cover up the real motive. It is further contended that the Auroville Foundation

was established only on 29.1.1991 and the Residents' Assembly could not have been in existence prior to the said date and therefore there is no

valid meeting of the "Residents' Assembly".

20. Thus, it could be seen that the reason assigned in the impugned order dated 29.5.1989 stating that on account of the Appellant's employment,

he ceased to be an Aurovillian, is not the real reason and it is on account of certain opinion expressed by certain members of the Residents'

Assembly. Therefore, on this ground also we find that the reasoning given in the impugned order is not the real reason for which the order came to be passed.

21. Now we deal with the contention raised by the learned Senior Counsel about the manner in which the appeals filed by the Appellant were disposed of. After the Appellant was served with the order dated 25.2.1983, he had submitted representations on various dates and it is relevant to note that the representations dated 23.2.1989, 21.3.1989 and 29.3.1989 were in the nature of appeals to review the earlier decision stopping the food allowance. While considering such appeals, the authority stated that it is understood that the Appellant is gainfully employed in an establishment during 1983 to 1989 and as per the rules of the Auroville Council, he ceased to be an Aurovillian. Under the same letter, he was advised that he may however apply to Auroville Council for readmission in the Auroville, however it was informed that the food and other allowances will not be restored.

22. It is to be seen whether the second Respondent had jurisdiction to pass such an order. As pointed out earlier, the power of admission or termination to the register of residents was vested with the Residents' Assembly in terms of Section 19(2)(a) of the Act. Therefore, any removal from the approved list as maintained u/s 18(3) could be done only in accordance with the statute. As per the statute, it is only the Residents' Assembly, which had powers to remove or include any member. Therefore, by virtue of being employed between 1983 to 1989, it cannot be stated that the Appellant ceased to be an Aurovillian. Such cessation or termination of his right has to be done only in accordance with the statute.

Admittedly no proceedings have been taken by the Residents' Assembly as required to be done u/s 19(2)(a) of the Act. Therefore, in our view the order dated 29.5.1989 is illegal and without jurisdiction. Thereafter the Appellant submitted an appeal petition on 22.6.1989 and copy of the appeal petition was also forwarded to Sri. Deepak Panwar, I.A.S., Director, Department of Education, Ministry of Human Resources Development, Government of India, New Delhi. The Appellant submitted another appeal on 26.6.1989 to the Joint Secretary, Custodian, Auroville Foundation, requesting to review the earlier decision dated 29.5.1989

communicated by Sri Deepak Panwar, Director, Department of Education, Ministry of Human Resources Development.

23. Curiously these appeal petitions have been taken up for consideration by the very same authority viz., Deepak Panwar, I.A.S., Director,

Department of Education, Ministry of Human Resources Development, Government of India, New Delhi, and the same have been rejected by

order dated 8.9.1989 stating that it is the Auroville Council, which decides the question of admission, integration and readmission to the Auroville

and the Appellant was advised to approach the Auroville Council. In our view, the order dated 8.9.1989 is wholly illegal, firstly on the ground that

the appeal cannot be disposed of by the said officer viz., Deepak Panwar, as he had passed the original order, therefore the order is clearly illegal

and hit by the principle that "no man can be Judge of his own cause". Secondly, the observations in the order that it is the Auroville Council which

decides the question of admission and readmission is contrary to the provision of the Act, as such power is vested only with the Residents'

Assembly in terms of Section 19(2)(a) of the Act. Therefore, on these two grounds the order dated 8.9.1989 is illegal.

24. Thereafter the Appellant submitted appeal petitions which also came to be rejected by order dated 23.4.1991. In the said order it has been

stated that the Residents' Assembly is the competent person to reconsider the matter and the Appellant was directed to take up his case with the

Working Committee of the Residents' Assembly, which was to be constituted soon. It is to be noted that as or. 24.3.1991 Residents' Assembly

was not constituted. That apart, unless and until the Appellant was validly removed from the list of register of Auroville, the question of readmission

would not arise. As we have held in the preceding paragraphs, the order dated 25.2.1983, stopping the food allowance to the Appellant itself is

illegal and without jurisdiction, the subsequent order dated 29.5.1989 stating that the Appellant ceased to be an Aurovillian is also void ab initio

and therefore the question of his readmission does not arise. In our view, the Appellant's right as Aurovillian had not ceased to exist and continued

to remain intact. These orders dated 25.2.1983 and 25.9.1989 cannot extinguish a vested right in the Appellant by virtue of being automatically

registered in the register maintained by the Administrator in terms of Section

18(3) of the Act.

25. It is further noted that the Appellant had submitted an appeal on 8.4.1991 requesting that his food allowance may be restored. While

considering the said request, the impugned order dated 23.4.1991 had been passed directing him to approach the Residents' Assembly. As we

have held earlier that the order dated 25.2.1983 itself is illegal, the question of the Appellant approaching the Residents' Assembly which was not

even constituted on that day, does not arise.

26. It was pointed out by the learned Senior Counsel for the Appellant that u/s 19(2)(a) of Act 54 of 1988, the power to admit or terminate

persons in the register of residents vested with the Residents' Assembly and shall be in accordance with the regulations made u/s 32 of the Act.

However no regulation has been framed under the said section for the purpose of admission or termination from the register of persons. Therefore

a question arises as to whether in the absence of any regulation in this regard the Residents' Assembly would be competent to exercise its powers.

The learned Senior Counsel placed reliance on the following judgments of the Honourable Supreme Court in support of his submission.

(a) In Orissa State (Prevention and Control of Pollution) Board Vs. Orient Paper Mills and Another, , the Honourable Supreme Court was

considering the scope of Section 54 of the Ar (Prevention and Control of Pollution) Act, 1981. Under the said provision it is stated that subject to

the provision of Sub-section (3), the State Government may by notification in the official gazette make rules to carry out the purpose of the Act in

respect of the matters involving within the purview of Section 53. Therefore the question which arose for consideration was as to whether as long

as the manner is not prescribed under the rule for declaration of an area as air pollution control area, a valid notification u/s 19(1) of the said Act

could be published in the Official Gazette or not. Answering the said question, the Honourable Supreme Court in paragraph 20, held as follows:

20. We feel that so far as the point relating to the meaning of the word ""may"" used u/s 19 of the Act is concerned, it is not relevant for resolving the

controversy we are concerned with. Once the manner is prescribed under the rules undoubtedly, the declaration of the area has to be only in

accordance with the manner prescribed but absence of rules will not render the

Act inoperative. The power vested u/s 19 of the Act, would still be exercisable as provided under the provision i.e. by declaring an area as air pollution control area by publication of notification in the Official Gazette. Non-framing of rules does not curtail the power of the State Government to declare any area as air pollution control area by means of a notification published in the Official Gazette. The part of the provision ""in such manner as may be prescribed"" would spring into operation only after such manner is prescribed by framing the rules u/s 54(2)(k) of the Act. This view as indicated earlier, is amply supported by the decision of this Court referred to above in the case of T. Cajee which is a decision by a Constitution Bench of this Court. It has been followed in a subsequent decision of this Court reported in Surinder Singh v. Central Govt. The Central Government had not framed rules in respect of disposal of property forming part of the compensation pool as contemplated under the provisions of the relevant Act. It was claimed by one of the parties that the authority constituted under the Act had no jurisdiction to dispose of urban agricultural property by auction-sale in absence of rules. The contention was repelled with the following observations: (SCC p.673, para 6)

Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute.

A reference was also made to the decisions of this Court in the cases reported in B.N. Nagarajan v. State of Mysore and Mysore SRTC v.

Gopinath Gundachar Char. Reliance was also placed on U.P. SEB v. City Board, Mussoorie.

(b) In the case of Surinder Singh Vs. Central Government and Others, , the Honourable Supreme Court was considering the correctness of the

order passed by the High Court, which held that the disposal of property forming part of compensation pool was subject to the rules framed as

contemplated under Sections 8 and 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and since no rules had been

framed by the Central Government with regard to the disposal, the authority had no jurisdiction. While holding that the view taken by the High

Court was incorrect, the Supreme Court in paragraph 6 held as follows:

6.... In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise

power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules

unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power

expressly and unconditionally conferred by the statute. The expression ""subject to the rules"" only means, in accordance with the rules, if any. If

rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no

void and the authority is not precluded from exercising the power conferred by the statute....

(c) In the judgment of the Supreme Court in U.P. State Electricity Board Lucknow Vs. City Board, Mussoorie and Others, , the contention which

was raised was that in the absence of any regulation framed by the Electricity Board u/s 79 of the Electricity (Supply) Act, 1948, regarding the

proposed fixing of grid tariff, it was not open to the Electricity Board to issue notification, which was impugned in the said case. While deciding the

issue, the Supreme Court in paragraph 7 held as follows:

7. The first contention urged before us by the City Board is that in the absence of any regulations framed by the Electricity Board u/s 79 of the Act

regarding the principles governing the fixing of Grid Tariffs, it was not open to the Electricity Board to issue the impugned notifications. This

contention is based on Sub-section (1) of Section 46 of the Act which provides that a tariff to be known as the Grid Tariff shall in accordance with

any regulations made in this behalf, be fixed from time to time by the Electricity Board. It is urged that in the absence of any regulations laying down

the principles for fixing the tariff, the impugned notifications were void as they

had been issued without any guidelines and were, therefore, arbitrary. It is admitted that no such regulations had been made by the Electricity Board by the time the impugned notifications were issued. The Division Bench has negated the above plea and according to us, rightly. It is true that Section 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But Section 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations made in this behalf. That means that if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations u/s 79 (h) of the Act cannot be a condition precedent for fixing the Grid Tariff. A similar contention was rejected by this Court in *Mysore State Road Transport Corporation v. Gopinath Gundachar Char* which was a case arising under the Road Transport Corporation Act, 1950. u/s 14 of that Act a Road Transport Corporation was entitled to appoint officers and servants as it considered necessary for the efficient performance of its functions. u/s 34(1) of the Road Transport Corporation Act, 1950 the State Government had been empowered inter alia to issue directions to the Road Transport Corporation regarding recruitment, conditions of service and training of its employees. u/s 45(2) (c) of that Act, the Road Transport Corporation was empowered to make regulations regarding the conditions of appointment and service and the scales of pay of officers and servants of the Corporation other than the Chief Executive Officer, General Manager and the Chief Accounts Officer. Admittedly no regulations had been framed u/s 45(2)(c) of that Act. It was contended that the Corporation could not appoint officers and servants referred to therein or make any provision regarding their conditions of service until such regulations were made. This Court rejected the said plea with the following observation at p. 770:

The conjoint effect of Sections 14(3)(b), 34 and 45(2)(c) is that the appointment of officers and servants and their conditions of service must conform to the directions, if any, given by the State Government u/s 34 and the regulations, if any, framed u/s 45(2)(c). But until such regulations are framed or directions are given, the Corporation may appoint such officers or

servants as may be necessary for the efficient performance of its duties on such terms and conditions as it thinks fit.

Thus, in view of the law laid down by the Honourable Supreme Court in the aforementioned decisions it has to be held that even in the absence of any regulation u/s 32 of the Act, there is no bar for the Residents' Assembly to exercise its powers u/s 19(2)(a) of the Act, for the purpose of allowing admission or causing termination of the persons in the roll of Residents' Assembly.

27. The Learned Counsel appearing for the first Respondent submitted that the writ petition itself was liable to be dismissed on the ground of laches and the same was specifically raised in the counter affidavit filed in the writ petition and also raised at the time of arguments, but was not considered as the writ petition came to be dismissed on other grounds. It is further contended that the impugned order is dated 25.2.1983 and the writ petition came to be filed only on 5.8.1991 and the delay is inordinate and therefore the writ petition was liable to be dismissed on the ground of unexplained delay. The other orders dated 29.5.1989, 8.9.1989 and 23.4.1991, which were impugned in the writ petition were only reply sent to the Appellant on his appeals/representations and therefore cannot be taken note of for the purpose of computing the period of delay in filing the writ petition.

28. It is to be noted that by the first order dated 25.2.1983, the Appellant's food allowance alone was stopped and the Appellant continued as an Aurovillian and continued to stay in the premises and he had taken up a job on 1.3.1983 and continued as such. Thereafter he submitted representations on 21.5.1987, 23.6.1987, 24.6.1987 and a telegraphic representation on 25.6.1987 and in all these representations the Appellant requested for restoration of his food allowance. On 3.10.1988 the Auroville Foundation Act, came into force. Thereafter, the Appellant submitted representations on 23.2.1989, 21.3.1989, 29.3.1989, 24.4.1989, 26.4.1989 and 19.5.1989. It is thereafter, for the first time, by order dated 29.5.1989 the Appellant was informed as if he ceased to be an Aurovillian and his food allowance cannot be restored. The Appellant filed an appeal against such order on 22.6.1989. The appeal came to be rejected by an order dated 8.9.1989 by the same authority, who passed the

earlier order dated 29.5.1989. The Appellant submitted representation dated 23.10.1989, 3.5.1990, 15.5.1990, 10.9.1990, 22.10.1990 and the

same were pending before the Government of India. On 23.4.1991, a notification was issued by the Government of India u/s 10(1) of the Act

establishing the ""Auroville Foundation"" and by further notification dated 30.1.1991, in exercise of the powers under Sections 11 and 12 of the Act,

the Governing Board of the Foundation was constituted. The Appellant submitted appeal to the Chairman on 22.2.1991 followed by reminder on

5.4.1991. On consideration of the said appeal, the impugned order came to be passed on 23.4.1991 and the Appellant filed the writ petition on

5.8.1991. Thus, it is seen that before approaching this Court, the Appellant had exercised all the remedies available to him and thereafter filed the

writ petition. It is to be seen that the status of the Appellant as an Aurovillian came under dispute only after the impugned order dated 29.5.1989

and therefore this cannot be said to be only a reply to the Appellant's representations. By the order dated 8.9.1989, the Appellant was directed to

approach the Auroville Council and on further appeal, the Appellant was directed by order dated 23.4.1991 to approach the Residents'

Assembly, which was not constituted on the said date. Hence the contention of the Learned Counsel for the Respondent that the orders dated

8.9.1989 and 23.4.1991 are reply to the Appellant's representations, is not tenable, as each of these orders give rise to a separate cause of

action. Therefore, the Appellant's writ petition cannot be thrown out of the question of laches, when on facts, as seen above there is no laches on

the part of the Appellant.

29. The other contention which was raised by the Learned Counsel for the Respondent is that there is no statutory obligation to provide food

allowance to the Appellant. On the date when the order dated 23.2.1983 was passed stopping the food allowance for the Appellant and his

family, Act 59 of 1980 was in force, which Act provided for taking over of the management of Auroville for a limited period. No specific provision

has been pointed out under the said Act, which empowers the Administrator to withdraw the privileges enjoyed by the members prior to coming

into force of the Act, that too without following the principles of natural justice. Hence, we hold that right to get food allowance stood vested with

the Appellant prior to Act 59 of 1980, cannot be taken away as had been done, and the first Respondent cannot contend that there is no statutory

obligation to provide such allowance. It is to be borne in mind that the Appellant's parents and all their family members contributed all their

personal property to the Ashram and the Ashram took upon itself to maintain the family and at that time the Appellant was nine years of age.

Hence the contention raised by the first Respondent deserves to be rejected.

30. In view of the above reasons we hold that the order dated 25.2.1983 stopping the food and other allowances to the Appellant is without

jurisdiction, illegal and in violation of the principles of natural justice and the same would amount to discrimination and hit by Article 14 of the

Constitution of India. Likewise, the orders dated 29.5.1989 and the consequential orders dated 8.9.1989 and 23.4.1991 are ab initio void, since

the question of cessation of the status of the Appellant as an Aurovillian has not been done in accordance with the statute and the authorities who

had passed the orders were not competent to issue such proceedings and in fact at no point of time, there was an order stating that the Appellant

ceased to become an Aurovillian. Therefore the impugned orders are liable to be set aside and accordingly set aside.

31. It is needless to state that the status of the Appellant shall continue to be as Aurovillian, unless and until the same is determined in the manner

prescribed under the statute.

32. As regards restoration of the food allowance, it is brought to the notice of this Court by the learned Senior Counsel for the Appellant that the

Appellant's children have grown up and they are employed and they are independent and his wife is also receiving remuneration from one of the

units attached to the Foundation. Therefore we deem it proper that food and other allowance shall be paid to the Appellant only prospectively,

bearing in mind that the Respondent organisation is a service oriented organisation.

33. As held by us in the earlier paragraphs, the reasonings given in the impugned order is not the real reasoning, which is clearly illustrated from the

minutes of the meeting held during the summer of 1989, which has been extracted in the affidavit filed in support of the petition raising additional

grounds. We have already held that the impugned orders are unreasonable and

are in violation of the principles of natural justice and also punitive.

34. For the foregoing reasons,

(i) W.A. No. 212 of 2000 filed against the order dated 17.2.1999 made in W.P. No. 12274 of 1991 is allowed and the orders passed by the first

Respondent dated 29.5.1989, 8.9.2009 and 23.4.1991 are quashed and the Respondents are directed to restore the food allowance only for the

Appellant prospectively.

(ii) W.A. No. 213 of 2000 filed against the order dated 17.2.1999 made in W.M.P. No. 2935 of 1994 in WP. No. 12274 of 1991 is allowed

and the prayer in W.M.P. No. 2935 of 1994 is allowed as prayed for.

(iii) There will be no order as to costs in both the writ appeals.

(iv) Connected miscellaneous petition is closed.