
(1997) 12 AHC CK 0080
In the Allahabad High Court
Case No : C.M.W.P. No. 847 of 1994

Iqbal Ahmad

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 02-12-1997

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 311, 324

Uttar Pradesh Town Areas Act, 1914 — Section 6K, 7A, 7A(1)

Citation : AIR 1998 All 165 : (1998) 1 AWC 288 : (1998) 3 RCR(Civil) 164 : (1998) 1 UPLBEC 83

Hon'ble Judges : D.P. Mohapatra, C.J.; R.A. Sharma, J.; Alope Chakrabarti, J

Bench : Full Bench

Advocate : G.K. Singh and R.N. Singh, for the Appellant;

Final Decision : Disposed Of

Judgement

D.P. Mohapatra, C.J.—On a reference made by a Division Bench of this Court to decide the question whether the State Government is required to give an opportunity of hearing to the Chairman or member of the Town Area Committee before confirming the order of his removal from office u/s 7A of the U. P. Town Areas Act, 1914 (hereinafter referred to as the Act), this case has been placed before the Full Bench. In the reference order, the following questions have been formulated for consideration by the Full Bench—

"(i) Whether it is obligatory on the State Government to provide an opportunity of hearing to the Chairman of Town Area Committee before confirmation under second proviso to Section 7A of the Act of the order of the District Magistrate removing him?

(ii) Whether Government is required to pass a speaking order while confirming the order of the District Magistrate under the above provisions?"

From the discussions in the reference order. it appears that the Division Bench felt the necessity to refer the questions for consideration by Full Bench on being

confronted with two conflicting decisions of different Division Benches of this Court in the case of *Pargana Adliikari, Sirathu v. Ramesh Chandra Venrta*, 1994 (1) UPLBEC 156 and *Parma Lal Khandelwal v. State of U. P.* 1994 ALJ 481.

2. The relevant facts of the case necessary for proper appreciation of the questions raised may be stated thus.

3. The petitioner Iqbal Ahmad is the Chairman of the Town Area Committee, Kopaganj, District Mau. The District Magistrate, Mau passed the order dated 23.12.1993 u/s 7A of the Act for removal of the petitioner from the office of Chairman of the Committee. The State Government by order dated 21.12.1993 confirmed the order of the District Magistrate to remove the petitioner from the office of the Chairman of the Committee. Being aggrieved, the petitioner filed the writ petition challenging the aforementioned orders, inter alia, on the ground that the Government can confirm the order of the District Magistrate removing the Chairman only by passing a reasoned order after giving him an opportunity of hearing. In *Pargana Adhikari, Sirathu v. Ramesh Chandra Verma* (supra), a Division Bench of this Court had laid down that it is obligatory on the Government to provide an opportunity of hearing to the Chairman before confirming the order of the District Magistrate u/s 7A of the Act. It is also laid down therein that it is not necessary for the Government to record elaborate reasons as are given in decisions of a court of law in its order of confirmation ; but the order must indicate that it has given due consideration to the points in controversy. In *Panna Lal Khandelwal v. State of U. P.* (supra), however, another Division Bench of this Court has taken the view that it is not obligatory on the part of the Government to give an opportunity of hearing to the Chairman before passing the order of confirmation. As noted earlier, faced with the said conflicting decisions the Division Bench in this case thought it proper to refer the case to Full Bench for an authoritative decision on the points formulated.

4. Sri R. N. Singh, learned counsel for the petitioner, contended that in the context of the statutory provision in Section 7A of the Act and the consequences flowing from an order of removal of the Chairman or any member of the Town Area Committee, both the questions formulated by the Division Bench should be answered in the affirmative.

5. Sri Yatindra Singh, the learned Additional Advocate General, on the other hand, contended that in the absence of any provision in the second proviso to Section 7A of the Act which mandates the Government to give opportunity of hearing to the Chairman or the member concerned or pass a reasoned order, this Court should answer the questions referred in the negative.

6. Since answer to the questions depends on interpretation of Section 7A of the Act, it would be convenient to quote it in extenso :

"7A. Removal of Chairman or a member of a Committee.--(1) The prescribed authority or, where an authority has not been prescribed, the District Magistrate, may remove a Chairman or any member of the Committee who. In its or his

opinion-

- (a) has been guilty of gross misconduct or failure in the discharge of his duties, or
- (b) has failed to pay for a period of more than one year any taxes or other dues payable by him to the Committee, or
- (c) has become disqualified for being a member u/s 6K.

Provided firstly, that before making an order removing the Chairman or the member, as the case may be. he shall be allowed an opportunity to submit his explanation on the charges or charge against him.

Provided secondly, that no order for removal shall take effect unless it is confirmed by the State Government.

(1A) The State Government may on the recommendation of the prescribed authority referred to in sub-section (1) or the District Magistrate, as the case may be, place under suspension a Chairman or member against whom action has been commenced under sub-section (1) and, where the Chairman or the member has been so suspended, he shall not, for so long as the order of suspension is in force, be entitled-

(a) to exercise the powers or perform the duties imposed upon him by or under this Act or any other enactment for the time being in force, and

(b) to take part in any proceedings of the Committee.

(2) A member or Chairman removed under this section shall not be eligible for further election or nomination as a member or Chairman for a period of four years from the date of his removal."

7. On a fair reading of the provisions of Section 7A, it is clear that the competent authority/District Magistrate may remove a Chairman or any member of the Committee who in Its or his opinion has been guilty of the acts of omission and commission enumerated in sub-section (1) or has become disqualified for being a member u/s 6K. In the first proviso to sub-section (1), it is mandated that the Chairman or the member concerned, as the case may be, shall be allowed an opportunity to submit his explanation on the charges or charge against him. In the second proviso, it is laid down that no order for removal shall take effect unless it is confirmed by the State Government. In sub-section (1A), power is vested in the State Government, on the recommendation of the prescribed authority referred to in sub-section (1) or the District Magistrate, as the case may be, to suspend a Chairman or a member against whom action has been commenced under sub-section (1). The consequences to follow the order of suspension are also given in sub-section (1AJ). Sub-section (2) mandates that a member or Chairman removed u/s 7A shall not be eligible for further election or nomination as member or Chairman for a period of four years from the date of his removal. The position is manifest that an order of removal of a Chairman or member, by which not only is his term of office brought to a close prematurely

but the order casts a stigma on him and debars him from fresh election for a period of four years. Thus, an order of removal affects the civil rights of the Chairman or member concerned and involves civil consequences. From the statutory provision, it is also clear that the order of removal passed by the District Magistrate becomes effective only on its confirmation by the State Government. The Intent and purpose in making the specific provision attaching finality to the order of the District Magistrate only after its confirmation by the State Government is to vest the power of removal of a Chairman or member of the Town Area Committee, who holds elected office, in the highest executive authority. Therefore, confirmation of the order of the District Magistrate by the State Government is not an empty formality but is a provision of substance which is intended to safeguard the Interest of the Chairman or member concerned. The questions formulated are to be considered in the light of the statutory framework and the consequences flowing from an order of removal as noted above.

8. The position of law has to be taken as well-settled that the principles of natural justice extend even to administrative orders. This position has been reiterated in umpteen number of cases of the Supreme Court and the High Courts. To notice a few, we may refer to *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, . In which a preliminary enquiry relating to date of birth was made but the report of the enquiry officer was never disclosed to the first respondent and thereafter the respondent was required to show-cause why 16th April, 1907 should not be taken as her date of birth and without recording any reason the order was passed. The Apex Court held :

"We think that such an enquiry and decision were contrary to the basic-concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural Justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was. In our Judgment, right in setting aside the order of the State."

9. In the case of *A. K. Kraipak and others v. Union of India and others* AIR 1970 SC , the Apex Court observed :

"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-Judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like India which is regulated and controlled by the rule of law it is inevitable that the Jurisdiction of the administrative bodies to increasing at a rapid rate- The concept of rule of law would lose its vitality if the

Instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a Just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power. "

In the said Judgment the Supreme Court further observed :

"If the purpose of the rules of natural justice is to prevent miscarriage of justice there is no reason why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-Judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-Judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry."

10. Referring to the decision in Suresh Koshy George v. University of Kerala AIR 1969 SC 98, the court observed that the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

11. in the case of Shri Bhagwan and Another Vs. Ram Chand and Another, , the Supreme Court held as follows :

"When a legislative enactment confers Jurisdiction and power on any authority or body to deal with the rights of citizens, it often becomes necessary to enquire whether the said authority or body is required to act judicially or quasi-judicially in deciding question entrusted to it by the statute. It sometimes also becomes necessary to consider whether such an authority or body is a tribunal or not. It is well-known that even administrative bodies or authorities which are authorised to deal with matters within their Jurisdiction in an administrative manner, are required to reach their decisions fairly and objectively, but in reaching their decisions, they would be justified in taking into account considerations of policy. Even so. administrative bodies may, in acting fairly and objectively, follow the principles of natural justice, but that does not make the administrative bodies tribunals and does not impose on them an obligation to follow the principles of natural justice. On the other hand, authorities or bodies which are given

jurisdiction by statutory provisions to deal with the rights of citizens, may be required by the relevant statute to act judicially in dealing with matters entrusted to them. An obligation to act judicially may, in some cases, be inferred from the scheme of the relevant statute and its material provisions. In such a case, it is easy to hold that the authority or body must act in accordance with the principles of natural justice before exercising its jurisdiction and its powers : but it is not necessary that the obligation to follow the principles of natural justice must be expressly imposed on the authority or body. If it appears that the authority or body has been given power to determine questions affecting the rights of citizens, the very nature of the power would inevitably impose the limitation that the power should be exercised in conformity with the principles of natural Justice. Whether or not such an authority or body is a tribunal, would depend upon the nature of the power conferred on the authority or body, the nature of the rights or citizens, the decision of which falls within the jurisdiction of the said authority or body, and other relevant circumstances."

Referring to the decision in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, and the decision of the House of Lords in *Ridge v. Baldwin* 1964 AC 40, the Supreme Court observed that the extent of the area where the principles of natural justice have to be followed and judicial approach has to be adopted, must depend primarily on the nature of the jurisdiction and the power conferred on any authority or body by statutory provisions to deal with the questions affecting the rights of citizens.

12. In the case of *S.L. Kapoor Vs. Jagmohan and Others*, , the Supreme Court ruled that the principles of natural Justice knew of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural Justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural Justice is unnecessary. It all comes from a person who had denied justice that the person who has been denied justice is not prejudiced. The court emphasised on application of the general principle that justice should not only be done but should be seen to be done. The Supreme Court quoted with approval the following passage from Jackson's *Natural Justice* (1980 Edn.):

"The distinction between Justice being done and being seen to be done has been emphasised in many cases.

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The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widgery C.J's judgment in *R. v. Home Secretary, Ex. P. Hosenbail* (1977) 1 WLR 766, 772, where after saying that "the principles of natural justice are those fundamental rules, the breach of which will prevent Justice from being seen to be done" he

went on to describe the maxim as one of the rules generally accepted in the bundle of the rules making up natural Justice."

It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural Justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual Injustice but with the appearance of Injustice, or possible injustice. In *Altco Ltd. v. Sutherland* (1971) 2 Lloyd's 515, Donaldson, J. said that the court, in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important that the parties should not only be given Justice, but, as reasonable men, know that they had justice or "to use the time hallowed phrase" that justice should not only be done but be seen to be done. In *R. V. Thames Magistrates'* Court ex. p. *Polemis* (1974) 1 WLR 1371. the applicant obtained an order of certiorari to quash his conviction by a stipendiary Magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional Court rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defence to the charge.

It is again absolutely basic to our system that that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say : "Well even if the case had been properly conducted, the result would have been the same." That is mixing up doing justice with seeing that Justice is done (per Lord Widgery, C.J. at p. 1375)."

13. In *S.N. Mukherjee Vs. Union of India*, , the Apex Court considered the question of applicability of principles of natural justice in administrative actions. The court ruled that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision. The court further observed that reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its Jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely. It excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or Judicial review. The Supreme Court was of the opinion that the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-Judicial

functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. However, the court added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge. Elucidating the point the court further observed that the object underlying the rules of natural justice "is to prevent miscarriage of Justice" and secure "fair play in action." Keeping in view the expanding horizon of the principles of natural justice the Supreme Court was of the opinion that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority.

14. In *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, , the Supreme Court relying on the decision of *S. N. Mukherjee v. Union of India* (supra) held that the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. They also exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. When an order affects the right of a citizen or a person, Irrespective of the fact whether it is a quasi-judicial or administrative order, and unless the rule expressly or by necessary implication excludes recording of reasons, it is implicit that the principles of natural Justice or fair play require recording of germane and precise relevant reasons as a part of fair procedure. In an administrative decision, Its order/decision itself may not contain reasons. It may not be the requirement of the rules, but at the least the record should disclose reasons. The recording of reasons is also an assurance that the authority concerned consciously applied Its mind to the facts on record. It also adds the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of the Supreme Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person. The omnipresence and omniscience of the principle of natural justice act as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles! of natural Justice is not a rule of thumb or a straight-jacket formula as an abstract proposition of law. It depends on facts of the case, nature of the enquiry and the effect of the order-decision on the rights of the person and attendant circumstances.

15. In the case of Budhwa alias Ramcharan and Others Vs. State of Madhya Pradesh, . the Supreme Court specifically considered the question whether the delinquent's right to be entitled to a copy of the report of the Enquiry Officer was lost after the 42nd Amendment of the Constitution of India abolishing the second stage of the enquiry under Article 311(2). The Apex Court ruled that the deletion of the second opportunity from the Scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the enquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Enquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges, For doing away with the effect of the enquiry report or to meet the recommendations of the Enquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural Justice could be totally ruled out or truncated. nothing has been done by the 42nd Amendment which could be taken as keeping natural justice out of the proceedings and the applicability of the rules of natural Justice to such an enquiry is not affected by the 42nd Amendment. Therefore, supply of a copy of the enquiry report along with recommendations, if any. In the matter of proposed punishment to be inflicted would be within the rules of natural Justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The 42nd Amendment has not brought about any change in this position.

16. Subsequently. In the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , a Constitution Bench of the Supreme Court considered the question whether the report of the Enquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank? The court held that whenever the service rules contemplate an enquiry before a punishment is awarded, and when the Enquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Enquiry Officer's report notwithstanding the nature of the punishment. In paragraph 2 of the judgment the court formulated seven incidental questions which arose for consideration in connection with the basic question as formulated above. One of the incidental questions was to the effect whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary enquiry are silent on the subject or are against it? The answer to the question was as follows :

"Since the denial of the report of the Enquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural Justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not

permit the furnishing of the report or are silent on the subject."

Another incidental question formulated by the Court was "Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?". The answer to the question was in the following terms :

"Since it is the right of the employee to have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him. It will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him."

17. From the conspectus of the views expressed in the aforementioned decisions of the Supreme Court, the position that emerges is that rules of natural justice are not rigid rules ; they are flexible. Their application depends upon the setting and the background of statutory provision ; nature of the right which may be affected and the consequences which may entail its application. The question of applicability of the principles of natural justice is to be decided on the facts and circumstances of each case. An administrative authority in dealing with a judicial or quasi-judicial proceeding is required to follow the principles of natural Justice and fair procedure and give an opportunity of hearing to the delinquent. Even if the proceeding is not a judicial or quasi-judicial proceeding, but an administrative matter affecting the rights of the party, the authority concerned is required to act in a just and fair manner in deciding the controversy and the requirement of Just and fair procedure mandates that a reasonable opportunity of hearing should be given to the party proceeded against and a copy of the order of the Enquiry Officer/Authority should be served on him before final decision in the matter is taken.

18. When an administrative authority deals with a Judicial or quasi-judicial proceeding or a proceeding affecting the rights of the person concerned, it should state in short and explicit manner the reasons which have prompted it to pass the order. The necessity to pass a reasoned order is all the more necessary for the original authority. The requirement of reasoned order will also extend to a case where the order of the original authority is not appealable or revisable under the statute or the rules. A reasoned order will not merely help the appellate or revisional authority or the High Court under Article 226 of the Constitution or the Supreme Court in appeal under Article 136 of the Constitution to Judge whether the concerned authority passed the order consciously and on application of mind to relevant matters, but also help to avoid the criticism that the order is arbitrary, capricious, whimsical or biased.

19. Judging the present case in the light of the aforementioned principles, we have no hesitation to hold that in the backdrop of the framework of the statute, the nature of the order passed u/s 7A of the Act, the consequences which flow from such an order and the extent to which it prejudicially affects the rights of the Chairman or Member concerned not merely to prematurely end his term of

office but also to debar him from contesting/being nominated for four years in future and in the absence of any provisions which expressly or by necessary implication excludes the application of principles of natural Justice or Just and fair procedure, it is our considered view that the State Government, before passing the order of confirmation, has to provide an opportunity to the Chairman/Member, who is sought to be removed, by supplying him a copy of the order passed by the Collector and provide him an opportunity of putting his case before the State Government in writing. However, the State Government is not bound to provide oral hearing to the Chairman/Member concerned.

20. The view taken by us gains support from the principles laid down by the Supreme Court in *S. L. Kapaor v. Jagmohan. and others* (supra) in which it has been ruled that it is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision. The relevant observations in the judgment are quoted hereunder :

"It is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision. It may be a weighty consideration to be taken into account but the weightier consideration is whether the administrative action entails civil consequences. This was also the view taken in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . where it was observed (at p. 316) :

"We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the rules and inferentially where it has not specified it is otiose. There is no such statute. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Article 324 vests a wide power and where some direct consequence on candidates mandates from its exercise we must read this functional obligation."

The State Government should indicate the reasons in the order which would show that it has given due consideration to the relevant matters relating to the controversy, though it is not necessary for the State Government to record elaborate reasons as are given in decisions of a court of law.

21. Thus, the decision in the case of *Pargana Adhikari, Sirathu, Allahabad and another v. Ramesh Chandra Verma and another* (1994) 1 UPLBEC 156, has our support. We are also of the considered view that the decision in the case of *Ponna Lal Khandelwal v. State of U. P. and others*, (1994) 23 ALR 481, does not lay down the correct legal position.

22. Therefore, both the questions formulated by the Division Bench are answered in the affirmative. The case will be listed before a Division Bench for disposal in accordance with this judgment and the law.