

(2002) 04 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22453 of 1998

J. Venkateswarlu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-04-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 10, 11, 12, 13, 18
Andhra Pradesh Civil Services (Conduct) Rules, 1964 — Rule 9
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 14, 16, 21, 226, 245
General Clauses Act, 1897 — Section 24, 6
Prevention of Corruption Act, 1947 — Section 5A
Prevention of Corruption Act, 1988 — Section 13, 13(1), 13(2), 17, 22

Citation : (2002) 2 ALT 725 : (2002) CriLJ 4009

Hon'ble Judges : V. Eswaraiyah, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : S. Rama Chandra Rao for K.R. Prabhakar, for the Appellant; A.A.G., G. Pedda Babu and B. Narayana Reddy, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner in the instant writ petition invokes the extraordinary jurisdiction of this court under Article 226 of the Constitution of India praying "to issue an appropriate writ, order or direction, declaring Section 13(1) and Section 13(2) of the Prevention of Corruption Act, 1988 as arbitrary, illegal, unjust, violative of the Fundamental Rights guaranteed to the petitioner under Articles 14, 16, 21, proviso to Article 309, Article 311 and also Article 300A of the Constitution of India and also declare Cl. 4 (d) of Memo No.700/SC/D/88-4 dated 13-2-1989 issued by the 2nd respondent herein as arbitrary, illegal, unjust and unconstitutional, if necessary by declaring Sections 5, 6, 8, 12, 18 and 36 of the Administrative Tribunals Act, 1985 as ultra vires, unconstitutional and violating the basic structure and issue the consequential direction to the respondents to drop all proceedings pursuant to the F.I.R. No.10/RC-NLR/95, dated 19-09-1995 initiated by the respondents herein before the Special Judge for SPE & ACB

Cases, Nellore, the 3rd respondent herein, and pass such other order or orders as are deemed fit and proper in the circumstances of the case."

2. During the course of hearing of the writ petition, the petitioner herein filed an application seeking permission of the court to amend the prayer in the writ petition as under:

"It is, therefore, necessary in the interests of justice that this Hon"ble Court may be pleased to issue an appropriate writ, order or direction, declaring Section 13(1) and Section 13(2) of the Prevention of Corruption Act, 1988 as arbitrary, illegal, unjust, violative of the Fundamental Rights guaranteed to me under Articles 14, 16, 21, proviso to Article 309, Articles 311 and 300A of the Constitution of India and also declare Cl. 4(d) of Memo No.700/EC/D/88-4, dt.13-02-1989 issued by the 2nd respondent herein as arbitrary, illegal, unjust and unconstitutional, if necessary by declaring Sections 5, 6, 8, 11, 12, 18, 27 and 36 of the Administrative Tribunals Act, 1985, as ultra vires, unconstitutional and violating the Basic Structure and issue the consequential direction to the respondents to drop all proceedings pursuant to the F.I.R.No. 10/RC-NLR/95, dated 19-9-1995 initiated by the respondents herein before the Special Judge for SPE & ACB Cases, Nellore, the 3rd respondent herein and pass such other order or orders as are deemed fit and proper in the circumstances of the case."

3. Before we proceed to consider the issue relating to the constitutional validity of Sections 13(1) and 13(2) of the Prevention of Corruption Act, 1988 (for short "the POC Act, 1988") and also the constitutional validity of Sections 5, 6, 8, 12, 18 and 36 of the Administrative Tribunals Act, 1985 (for short "the Tribunals Act"), it would be appropriate to notice the relevant facts:

The petitioner herein having been selected and appointed as Assistant Motor Vehicles Inspector in the Transport Department joined the service on 23-4-1988 and working as such in the same capacity. The petitioner claims to be an honest officer.

4. The Inspector of Police, Anti Corruption Bureau (ACB), Nellore District filed a First Information Report in FIR No.10/RC-NLR/95, dated 19-9-1995 before the Special Judge for SPE & ACB Cases, Nellore. The ACB having obtained the requisite warrant from the court of the Special Judge conducted a search at the residence of the petitioner and his relatives on 22-9-1995. Thereafter, the Inspector of Police, ACB, Nellore issued a notice on 5-10-1996 calling upon the petitioner to explain the value of the disproportionate income/assets of Rs.17,35,417-21 paise found in his possession as on 22-9-1995. The same has been arrived at on the basis of the statement of assets, income and expenditure. The total value of the assets acquired and possessed by the petitioner, according to the ACB during the check period, is stated to be Rs.16,83,662-70 paise and the excess expenditure of the petitioner is assessed to be at Rs.51,754-51 paise. The total value of the disproportionate assets, according to the ACB, is Rs.17,35,417-21 paise. The petitioner herein claims to have submitted his

explanation dated 4-1-1997 to the Inspector of Police, ACB, Nellore Range giving details with regard to his income and accordingly requested the authorities to drop the proceedings initiated against him. The explanation runs into several pages and it is not necessary to refer in detail to the explanation offered by the petitioner inasmuch as the court at this stage is not concerned with regard to the truth or otherwise of the allegations levelled against him, and in the same manner with regard to the truth or otherwise of the defence set up by him.

5. In nutshell, it is the case of the petitioner that there is no prima facie case as such made out against him for the offence punishable u/s 13(2) read with Section 13(1)(e) of the POC Act, 1988. The Investigating Officer without considering the explanation and the documentary evidence made available by the petitioner submitted a draft final report and completed the motions of conducting enquiry.

6. It is evident from the record that the Investigating Officer sent the final report to the Principal Secretary to the Government through the Vigilance Commissioner for according sanction for prosecution of the petitioner on 7-10-1997. The Government accorded sanction vide G.O.Ms.No.100, dated 11-6-1998. It is at that stage, the petitioner filed this writ petition and obtained stay of all further proceedings.

7. The petitioner having reliably learnt that the respondents were likely to take necessary steps in order to prosecute him under the provisions of the POC Act, 1988, if necessary by placing him under suspension pending enquiry, invoked the extraordinary jurisdiction of this court by filing this writ petition and successfully obtained an ad interim ex parte order granting stay of all further proceedings including his prosecution, with a view to stall the said proceedings.

8. The petitioner very interestingly and boldly asserts that "he acquired the assets both as a citizen and as a government servant openly and legitimately. Acquisition of assets or properties is nothing wrong or against the law of land."

9. The petitioner challenges the constitutional validity of Sections 13(1) and 13(2) of POC Act, 1988 being violative of Articles 14, 16, 21 and 300A of the Constitution of India. Since we find it difficult to paraphrase the pleadings and issues raised by the petitioner for the manner in which the averments are made in the affidavit, we consider it appropriate to state the manner of attack in the language of the petitioner:

"I submit that apart from the procedural and jurisdictional lapses mentioned above, the action of the Authorities is also vitiated, inasmuch as Section 13 of the act is illegal, unconstitutional and ultra vires the Constitution. I submit that a Public Servant u/s 13(1) of the act is said to commit the offence of criminal misconduct, -- "(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income." The section imposes an active

misconduct on a civil Servant beyond the prescriptions of the A.P. Civil Services (Conduct) Rules, 1964. It is pertinent to mention here that a reading of the A.P. Civil Services (Conduct) Rules, which is framed in exercise of the powers conferred under the Constitution by proviso to Article 309, provides that - no Government employee shall, except with previous intimation to the Government, acquire or dispose of any Immovable property. It is, therefore, to be seen that a permission granted for the same under the A.P. Civil Services (Conduct) Rules cannot be reviewed by initiation of criminal action u/s 13 of the Act. That would be imposing a statutory duty on a statutory authority beyond the Constitutional duty and Constitutional powers provided under the Civil services Rules. It would also clothe a Statutory Authority with power to overreach a Constitutional Authority clothed with a specific power under the Rules made under the Proviso to Article 309. I submit that Section 13 not only has the effect of violating Articles 309 and Article 311 of the Constitution of India but is also liable to be struck down as illegal, inasmuch as it unreasonably shifts the burden of proof from the prosecution to the accused. Alternatively, Section 13(e) must be read down to meaning that once a prima facie valid explanation is given for the income, the burden of proving the disproportionate assets shifts on the prosecution. Unless that is done by this Constitutional court, forcing the petitioner to go through the motions of prosecution, the finality of which would once again come up for judicial scrutiny before this Hon"ble Court, would be an exercise in futility and would be an exercise jeopardizing the Fundamental Rights guaranteed to me under Articles 14, 21 and also Article 226 of the Constitution of India. I submit that the offence under the Prevention of Corruption Act is obviously in the nature of an economic offence. Therefore, providing for compulsory sentence of imprisonment is opposed to the enactment itself and is beyond the scope of the enactment.

Accordingly, Section 13(2) is liable to be declared as unconstitutional. It is further submitted that the service conditions of an employee are strictly within the legislative competence of the State Government. In enacting the Prevention of Corruption Act and applying it to employees of State Government, the Union Legislature has acted ultra vires the Constitutional power and, as such, section 13 of the Act is liable to be declared as ultra vires the Constitution. It is also ultra vires the Constitution, inasmuch as it is violative of Proviso to Article 309 and Article 311 of the Constitution of India. It is also unconstitutional, inasmuch as it is arbitrary, capricious, violative of Articles 14, 16 and 21 of the Constitution of India and it also has the effect of violating Article 14, 16 of the Constitution of India."

10. Sri S.Ramachander Rao, learned Senior Counsel appearing on behalf of the petitioner contends that the law relating to criminal misconduct of a public servant of State Public Services, if at all, could be enacted by the Legislature of the State since it has exclusive powers to make laws with respect to the matters enumerated in Entries 41 and 64 of List-II in the Seventh Schedule of the Constitution. It is contended that no law relating to criminal misconduct of a

public servant of State Public Services could be enacted by the Parliament. The Parliament has no legislative competence to enact any such law. The learned Senior Counsel contends that the State Legislature alone is competent to make any law relating to State Public Services in terms of Entry 41 and also with regard to the offences against the laws with respect to the State Public Services in terms of Entry 62 of List-II of the Seventh Schedule.

11. It is further contended that the Governor in exercise of the power under proviso to Article 309 of the Constitution of India has framed the Andhra Pradesh Civil Services (Conduct) Rules, 1964 (for short "the Conduct Rules"). Rule 9 of the Conduct Rules deals with acquiring or disposing of movable or immovable properties by a government employee after previous intimation to the Government. According to the learned Senior Counsel, Section 13 of the POC Act, 1988, which deals with the criminal misconduct by a public servant, must be held to be ultra vires, so far as it relates to the criminal misconduct by a public servant of State Service. The State Legislature alone is competent to enact such law. The provisions should be read down in such a manner taking the State Public Services from out of its scope and ambit.

12. Sri D.Prakash Reddy, learned Additional Advocate General submits that the pith and substance of POC Act, 1988 is a criminal law falling within Entry 1 of List-III of the Seventh Schedule. It is contended that the acts of omission under Rule 9 of the Conduct Rules cannot be equated with that of the acts constituting an offence of criminal misconduct u/s 13(1) of the POC Act, 1988. The ingredients of Section 13(1)(e) of the POC Act, 1988 and Rule 9 of the Conduct Rules are quite different covering two different fields. It is submitted that as per Section 13(1)(e) of the POC Act, 1988 mere acquisition or disposal of property by a public servant is not an offence, but failure to account for possession of assets disproportionate to the known sources of income constitutes criminal misconduct.

13. This question as to the constitutional validity of Section 13() of the POC Act, 1988 need not detain us any longer as the same is not res integra but squarely covered by a Division Bench Judgment of this court in W.P.No.8727 of 2000 and Batch, dated 28-4-2001. This court in the said decision, after an elaborate consideration of the matter, observed:

"There cannot be any doubt that Entry 41 and Entry 64 of List-II and Entry 70 of List I deal with the legislative competence of the State legislature and Parliament respectively. So far as the public servants holding civil posts are concerned, their service conditions can be prescribed either by reason of a statute or the rules made thereunder by the Governor under the proviso appended to Article 309 of the Constitution of India. They enjoy a status and their services are protected by reason of Article 311 of the Constitution. The short question, which arises for consideration, is whether Prevention of Corruption Act entrenches upon the legislative competence of the State as envisaged under List II as regards the employees of the State Public Service. The answer to the aforementioned

question must be rendered in negative. The Prevention of Corruption Act does not deal with the conditions of service. It may be that for commission of an offence, the Government employee may make himself liable both for prosecution in a Criminal Court as also for misconduct in service whereof, the disciplinary proceeding may be initiated."

14. This court, in the said judgment, while adverting to the contention that the provisions of the POC Act apply only to the Central Government employees observed:

"Acceptance of bribe by a public servant would amount to abetment in the commission of the crime. Entry 1 of List III of the Constitution of India provides for criminal law which is both inclusionary and exclusionary definition. It excludes only those who are specifically covered under lists I and II. The legislative competence in terms of Entry 1 of List III in our considered opinion must receive a liberal construction. An offence committed by a person irrespective of his capacity comes within the purview of criminal liability. Not only by reason of the said provision, the Parliament and the State legislature would be entitled to make any enactment providing for particular acts of commission of offences, but also the mode and manner as to how the investigation, enquiry or trial in respect thereto are conducted are also stated. Thus, different entries deal with that offence. The said question must be answered in an emphatic "no". Action or inaction may constitute both misconduct and offence. Only because, particular act on the part of the Government servant may be considered to be misconduct, the same ipso facto does not mean that the same will not be an offence. A distinction must be made between misconduct and criminal misconduct. Misconduct in course of service is a civil misconduct which if proved would invite imposition of punishment. Such punishment must be imposed on a Government servant upon following the procedures laid down in the service rules. But when an offence is committed the same must be investigated, enquired into in terms of law laid down thereof and must be tried before the forum constituted thereof. Both stand absolutely on a different footing. In a given situation, action may amount to misconduct, but not a crime and vice-versa."

15. This court, in the said decision, relied upon the judgment of the Madras High Court in C.V.Ranganathan V. Union of India 1981 CrL.J. 1754 in which the Madras High Court held that "the pith and substance of the Prevention of Corruption Act, 1947, is "criminal law" falling within Entry 1 of List III of the 7th Schedule to the Constitution." The Madras High Court accordingly rejected the contention that the Parliament has no legislative competence to enact 1947 Act so as to make applicable to the persons in Provincial Service. The Madras High Court held that "the Act will apply to all public servants, whether they belong to the State Public Services or to the Union Public Services." This court in the judgment referred to hereinabove approved the reasoning adopted by the Madras High Court and accordingly held that the pith and substance of the POC Act is "criminal law" falling within Entry 1 of List III of the 7th Schedule to the

Constitution. The enactment is traceable to Entry 1 of List III and not Entry 41 of List II.

16. Is there any reason or justification to take a different view and differ with the view taken by a coordinate Bench of this court?

17. We do not find any reason whatsoever to take any different view. The whole of the writ petition is based upon certain wild assumptions. The petitioner presumes as if the POC Act, 1988 is a legislation made by the Parliament regulating the service conditions of public servants as such.

18. The question that falls for consideration is as to whether the POC Act, 1988 suffers from any lack of legislative competence? Whether the Parliament could not have enacted such a law? Whether the said Act entrenches upon the legislative competence of the State to enact laws with regard to State Public Services? Is it an enactment in relation to and with respect to the State Public Services or whether is it a legislation in relation to and with respect to Union Public Services?

19. Before we proceed to deal with the said questions, it may be necessary to briefly notice that the POC Act, 1988 is an Act intended to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. The Statement of Objects and Reasons reveal that the Act is intended to make the existing anti-corruption laws more effective by widening their coverage and by strengthening the provisions. It inter alia envisages widening the scope of definition of expression "public servant", incorporation of offences under Sections 161 to 165A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. The provisions of Sections 161 to 165A of the Indian Penal Code are incorporated into the Act with enhanced punishment.

20. Section 2(c) of the POC Act, 1988 defines "public servant". "Public Servant" means -

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a Corporation established by or under a Central, Provincial or State act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a Court of justice to perform any duty, in

connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such Court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a Court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1 :- Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2 :- Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

21. Section 13 of the POC Act, 1988 deals with the criminal misconduct by a public servant, and the same is to the following effect:

13. Criminal misconduct by a Public servant:- (1) A public servant is said to

commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or (d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation:- For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

22. We have already noticed the contentions urged by the learned counsel appearing on behalf of either of the parties.

23. The first question that falls for consideration is as to whether the impugned legislation is a legislation with respect to State Public Services at all?

24. Part XI of the Constitution deals with the relations between the Union and the States. Chapter-I in this Part bears the heading "Legislative Relations - Distribution of Legislative Powers".

Clause (1) of Article 245 of the Constitution of India declares that "subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State."

Clause (1) of Article 246 declares that "notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List")." Clause (2) of Article 246 declares that "notwithstanding anything in clause (3), Parliament, and, subject to clause (1) the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List")."

Clause (3) of Article 246 declares that "subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List")."

25. It has been repeatedly held by the Supreme Court that several entries in Lists in the seventh Schedule are mere legislative heads and that it is quite likely though very often they overlapped. It is equally well settled that the entries to the legislative lists are not sources of the legislative power, but are merely topics or fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The Supreme Court in *Ujagar Prints Vs. Union of India (UOI)*, held that "the expression "with respect to" in Article 246 brings in the doctrine of "pith and substance" in the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised the test is whether the legislation, looked at as a whole, is substantially "with respect to" the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic." It is a consequence of doctrine of pith and substance that once a law in pith and substance falls within a legislative Entry in one list, an incidental encroachment of an Entry in another List does not affect its validity. What is required to be probed, whenever an enactment is challenged on the ground of legislative incompetency, is about the true content of law. We may now notice the relevant entries in our Constitution. Entries 41 and 64 in List II of the Seventh Schedule of the Constitution read thus:

41. State public services; State Public Service Commission.

64. Offences against laws with respect to any of the matters in this List.

Entries 1 and 2 in List III of the Seventh Schedule may now be set out:

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with

respect to any of the matters specified in List I or list II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the Civil power.

2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

The entries aforementioned disclose the following features:

(a) Power to make laws with respect to State Public Services; State Public Service Commission, lies with the State (Entry 41 of List II).

(b) Competency of the State Legislature to make laws with respect to offences against laws with respect to any of the matters mentioned in List II (Entry 64 in List II).

In respect of entries 41 and 64 of List II, the State Legislature alone is competent to make the laws. In respect of Entries 1 and 2 of List III, the Parliament as well as the State Legislature is competent to make laws, inasmuch as with respect to any of the matters enumerated in List III of the Seventh Schedule, the Parliament as well as the State Legislature is competent to make laws. The Parliament as well as the State Legislature can make and enact criminal law, including all matters included in the Indian Penal Code, of course excluding offences against laws with respect to any of the matters specified in List I or List II.

Entry 70 of List I relates to the Union Public Services. It will cover all laws made in relation to or with respect to the Union Public Services and Union Public Service Commission.

Entry 93 in List I relates to the offences against laws with respect to any of the matters in List I.

26. The contention of the learned Senior Counsel for the petitioner appears to be that the law relating to the offences committed by persons in Union Public Service will fall under Entry 93 and, therefore, the POC Act, 1988 dealing with such offences will clearly fall under Entry 93 read with Entry 70 of List I. Similar entries are contained in Entries 41 and 64 of List II empowering the State Legislature to make a law with respect to offences committed by the persons in State Public Services.

27. It is contended that the offences, with reference to the persons in State Public Services, can only be created by a law made by the State Legislature and, therefore, the application of POC Act, 1988 should be limited to the members of Union Public Services.

28. The whole of the submission appears to be based on the presumption that the provisions of POC Act, 1988 deal with economic offences committed by persons in Government Service - be it Central or State.

29. Having regard to the object sought to be achieved by the provisions of the POC Act, 1988, it is not possible to hold that the said Act to be a special law relating to persons in Public Services. As rightly held in C.V. Ranganathan (1 supra) the new offences of misconduct under the POC Act, 1988 cannot be said to be a law relating to public servants. The law creating a new offence may have an effect on the persons in public services. But the subject matter of the legislation cannot be said to be in respect of public servants.

30. There cannot be any dispute whatsoever that Entry 1 of List III takes in the entire law of crimes including all matters included in the Indian Penal Code. The POC Act, 1988 so far as it creates a new offence of misconduct will fall within the expression "criminal law". May be its impact is mainly on the public servants. We have already adverted to the definition of "Public Servant" in the POC Act, 1988 and noticed that it is not confined only to government servants or persons in Public Services. It is true; incidentally the provisions of the POC Act, 1988 may effect the persons in public services including the State Public Services. It is fairly well settled that the constitutionality of law can be decided only with reference to the subject it deals with and not with reference to its incidental effect.

31. In A.S. Krishna Vs. State of Madras, T.L. Venkatarama Ayyar, J, explained:

".....it must be remembered that we are construing a federal Constitution. It is of the essence of such a Constitution that there should be a distribution of the legislative powers of the Federation between the Centre and the Provinces. The scheme of distribution has varied with different Constitutions, but even when the Constitution enumerates elaborately the topics on which the Centre and the States could legislate, some overlapping of the fields of legislation is inevitable. The British North America Act, 1867, which established a federal Constitution for Canada, enumerated in Sections 91 and 92 the topics on which the Dominion and the Provinces could respectively legislate. Notwithstanding that the lists were framed so as to be fairly full and comprehensive, it was not long before it was found that the topics enumerated in the two sections overlapped, and the Privy Council had time and again to pass on the constitutionality of laws made by the Dominion and Provincial legislatures. It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was intra vires, regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to a topic within the competence of the legislature, it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within its competence, the legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the vires of the law even as regards the area of encroachment. Vide Citizens Insurance Co. of Canada V.

William Parsons ((1881) 7 AC 96); Attorney General for Ontario V. Attorney General for the Dominion of Canada (1894 AC 189); Attorney General of Ontario V. Attorney General for the Dominion (1896 AC 348); Union Colliery Co. of British Columbia V. Bryden (1899 AC 580); Attorney General for Canada V. Attorney General for Ontario (1937 AC 117); Attorney General for Alberta V. Attorney General for Canada (1939 AC 117); and Board of Trustees of Lethbridge Northern Irrigation Distt V. Independent Order of Foresters (1940 AC 513)." (Emphasis is of ours).

32. It is a settled principle in the constitutional law that when a question of vires of any enactment is raised, it is to be seen whether, looking at the legislation as a whole, it can be said to be a legislation substantially with respect to any of the Entries in the List.

33. In *India Cement Ltd. V. State of T.N.*, a Constitutional Bench of the Supreme Court observed that "it is the duty of the court to find out its true intent and purpose and to examine a particular legislation in its pith and substance to determine whether it fits in one or the other of the lists." It is further observed:

"Certain rules have been evolved in this regard, and it is well settled now that the various entries in the three lists are not powers but fields of legislation. The power to legislate is given by Article 246 and other articles of the Constitution. See the observations of this Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, .The entries in the three lists of the Seventh Schedule to the Constitution, are legislative heads or fields of legislation. These demarcate the area over which appropriate legislature can operate. It is well settled that widest amplitude should be given to the language of these entries, but some of these entries in different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. Then, it is the duty of the court to find out its true intent and purpose and to examine a particular legislation in its pith and substance to determine whether it fits in one or the other of the lists. See the observations of this Court in *Harakchand Ratanchand Bantia and Others Vs. Union of India (UOI) and Others*, and *Union of India v. Harbhajan Singh Dhillon*, (1972) 83 ITR 582 (SC) . The lists are designed to define and delimit the respective areas of respective competence of the Union and the States. These neither impose any implied restriction on the legislative power conferred by Article 246 of the Constitution, nor prescribe any duty to exercise that legislative power in any particular manner. Hence, the language of the entries should be given widest scope to find out which of the meaning is fairly capable because these set up machinery of the government. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other one in the same list. It is in this background that one has to examine the present controversy."

34. The court while determining the constitutionality of law has to look into the

real and substantial subject matter to be gathered from the provisions of the Act and not by the incidental effect. The court has to look at the true nature and character of the legislature. One is required to see and discern the dominant character or what is called pith and substance for finding out whether a particular law made by the legislature falls within its allocated field.

35. As has been held in C.V.Ranganathan (1 supra) the power to legislate on criminal law under Entry I of List III includes the power to legislate in respect of all persons whether they are public servants or not. "Criminal law" under Entry I of List III cannot be restricted to mean criminal law not affecting public servants. The Entry in a list has to be given wide and liberal interpretation so as to include within its scope all ancillary and incidental matters.

36. In the circumstances, we have no doubt whatsoever to hold that the POC Act, 1988 should be taken to be a law only made under Entry 1 of List III of the Seventh Schedule to the Constitution. The Parliament and the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List III of the Seventh Schedule. The POC Act, 1988 enacted by the Parliament made under Entry I of List III of the Seventh Schedule does not suffer from any infirmities. It does not suffer from any lack of legislative competence. It in no manner entrenches upon the legislative competence of the State to enact laws with regard to the State Public Services since the law made by the Parliament is not with respect to State Public Services. Nor is it a legislation in relation to and with respect to Union Public Services.

37. The submission that Section 13 of the POC Act, 1988 imposes an active misconduct of a civil servant beyond the prescriptions of the Conduct Rules is totally misconceived. Rule 9 of the Conduct Rules put an embargo on the civil servants working in the State in the matter of acquisition, disposal, exchange, purchase, sale, gift or otherwise of the properties without prior permission or intimation to the competent authority. Violation of the said rule by an employee/civil servant may render himself liable to for departmental action for imposition of major and minor penalties. It is difficult to discern as to how and in what manner Rule 9 of the Conduct Rules, which does not deal with any criminal offence, can be equated with that of the criminal misconduct under the provisions of the POC Act, 1988. The ingredients of Section 13(e) of the POC Act, 1988 and Rule 9 of the Conduct Rules are quite different and covering two different fields. They do not operate in the same field and area. The provisions of the POC Act, 1988 do not in any manner whatsoever deal with any classification and conduct of civil servants. It is not a law made with respect to State Public Services. The Andhra Pradesh Civil Services (Conduct) Rules, 1964 fall squarely within Entry 41 of List II of the seventh Schedule to the Constitution. Entry 64 of the same list empowers the State Legislature to enact laws with respect to offences arising in all matters in this list. Therefore, it follows that the State Legislature could prescribe what acts or conduct would be regarded as offences in relation to State Public Services. Admittedly, the Conduct Rules do not

prescribe what acts or conduct of a civil servant would be regarded as offences in relation to State Public Services. The rules are mere conduct rules. Contravention and non-compliance of those rules may result in departmental action. The department may impose major or minor penalties, as the case may be. Those rules do not have any bearing whatsoever upon misconduct of a public servant within the meaning of POC Act, 1988. The submissions made in this regard are totally misconceived.

38. In the circumstances, we are inclined to agree with the view taken by a Division Bench of this court in W.P.No.8727 of 2000 and Batch, dated 28th April, 2001.

39. We do not find any merit whatsoever in the contentions raised by the petitioner in this regard.

40. The next question that falls for consideration is about the validity of clause (4) (d) of the Government Memo No.700/SC/D/88-4, dated 13-2-1989.

41. The Government of Andhra Pradesh having noticed a number of complaints that the investigations/enquiries by the Anti Corruption Bureau were taking long time resulting in officers, placed under suspension pending enquiry, to languish under suspension for long periods reviewed, in detail, the measures necessary to streamline the investigations/ enquiries in ACB cases and accordingly issued guidelines with a view to ensure the expeditious completion of enquiries/ investigations by the ACB. The instructions issued in Memo No.700/SC/D/88-4, dated 13-2-1989 are mere guidelines. They are made for the guidance of all the concerned including the investigating/enquiring authorities. Those guidelines in no manner interfere with the discretion and jurisdiction of the competent authorities concerned either in the matter of placing the accused officer under suspension pending enquiry or initiating such action, as may be necessary, in public interest to protect the integrity and purity of the investigation process. Clause (4) (d) of the said Memorandum of guidelines suggests that in a case where the charge sheet is filed against an accused officer he should be placed under suspension. In our considered opinion, the impugned clause does not suffer from any legal infirmity. The Government is always entitled to issue guidelines for the benefit of its officers in order to structure their discretion in the matter of exercise of statutory power in public interest.

42. What is wrong in government directing the authorities concerned to place its officers under suspension particularly when a charge sheet under the provisions of POC Act, 1988 is filed in a competent court of jurisdiction after completing the investigation?

43. It is needless to restate that the charge sheet in a criminal case is nothing but a gist of the result of the investigation. If the investigation reveals the commission of an offence of criminal misconduct by an officer, it is but natural for the authority concerned to set the law in motion to initiate appropriate further action against such public servant against whom a prima facie case is made out.

However, the guidelines issued are not in the nature of any command as such. The authorities concerned have to weigh and take various relevant factors into consideration before exercising their jurisdiction to place an officer under suspension pending enquiry. At any rate, the petitioner herein is not yet placed under any suspension pending enquiry and, therefore, no opinion need be expressed in this regard. Suffice it to observe that the competent authority cannot be prevented from initiating any action as such against the petitioner. Such a course is not permissible in law. We do not find any substance in this contention.

44. It is next contended by the learned Senior Counsel appearing on behalf of the petitioner that the failure to complete the investigation within six months in terms of the instructions issued in Memo No.700/SC/D/88-4, dated 13-2-1989 vitiates the entire investigation and the report submitted by the Investigating Officer. It is contended that no further proceedings can be allowed to go on against the petitioner since the Investigating Officer failed to complete the investigation within six months as is required in accordance with the said Memo issued by the government.

45. In the said Memorandum of guidelines the State Government issued certain guidelines for compliance by the Investigating Officers of the Anti Corruption Bureau. One of the guidelines relates to the investigation to be completed within six months. In the instant case, the first information report was registered on 19-9-1995; searches were conducted on 22-9-1995 and a draft final report was submitted on 18-1-1997 by the Investigating Officer. During the course of investigation, the prosecution examined number of witnesses. Be that as it may, the question that falls for consideration is as to whether those guidelines issued by the government have any statutory force? Whether the whole of the prosecution itself gets vitiated on account of delay in investigation?

46. In our considered opinion, the guidelines issued by the Government requiring the Investigating Officers to complete the investigation expeditiously, preferably within six months, do not have any statutory force and they were merely in the nature of instructions for the guidance of the Investigating Officers. It is well settled that a writ in the nature of Mandamus cannot be issued to enforce the administrative instructions. The guidelines issued by the Government to its Investigating Officers do not confer any enforceable right upon any person. Any breach of those guidelines, in our considered opinion, is not justiciable. The guidelines issued by the government did not give rise to any legal right in favour of the petitioner. In the circumstances, a writ of Mandamus does not lie to enforce the guidelines, which were nothing more than administrative instructions. (See: J.R. Raghupathy and Others Vs. State of A.P. and Others, . Breach of those guidelines would not give rise to any cause of action.

47. It is next contended that the authorities were likely to take steps to accord sanction for the prosecution of the petitioner in utter violation of principles of natural justice. From the averments made in the affidavit filed in support of the

writ petition, it is difficult to discern as to what exactly is the nature of the complaint of the petitioner in this regard. Relevant averment in the affidavit may be noticed:

"I submit that after the inordinate delay and after utter violation of the Provisions of the law and the procedure prescribed by the authorities, I reliably understand that recently, i.e., in July, the respondents are taking steps to take further proceedings, including prosecution. Such a sanction would be in utter violation of the principles of natural justice and would be perpetuating an act without jurisdiction. Hence, this approach."

48. This statement made by the petitioner is absolutely false and baseless. It is evident from the record and the averments made in the counter affidavit that the Government having considered the final report submitted in the matter through the Vigilance Commissioner accorded sanction vide G.O.Ms.No.100, dated 11-6-1998 for the prosecution of the petitioner. This writ petition has been filed on 6-8-1998. In the circumstances, it cannot be believed that the petitioner has no knowledge about the government according sanction of his prosecution. Be that as it may, the validity of G.O.Ms.No.100, dated 11-6-1998 according sanction for the prosecution of the petitioner is not impugned in this writ petition. The submission made in this regard is totally misconceived.

49. It is contended that the investigation done by the Inspector of Police is illegal and without jurisdiction. It is submitted that the investigation as is required u/s 17 of the POC Act, 1988 shall be done by the Deputy Superintendent of Police or a police officer of equivalent rank. Reliance is placed upon Section 17 of the POC Act, 1988, which reads: 17. Persons authorised to investigate:- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,-

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan area of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefore without a warrant;

Provided further that an offence referred to in clause (e) of sub-section (1) of

Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

50. In the counter affidavit filed by the respondents, it is stated that the Government of Andhra Pradesh vide G.O.Ms.No.170, General Administration (SC-D) Department, dated 20-3-1968 issued a notification in exercise of the power conferred by the first proviso to sub-section (1) of Section 5A of the Prevention of Corruption Act, 1947 authorising the Inspectors of Police of the Anti Corruption Bureau of Andhra Pradesh to investigate any offence punishable under Sections 161 and 165 or 165A of the Indian Penal Code without the order of a Magistrate of First Class. It is further brought to the notice of the court that the Director, Anti Corruption Bureau who is in the rank of Inspector General issued proceedings dated 11-9-1995 in exercise of the powers vested in him u/s 17 of the POC Act, 1988 authorising the Range Inspector-I, A.C.B., Nellore Range, Nellore to register a case u/s 13(1)(e) read with Section 13(2) of the POC Act, 1988 for conducting investigation against the petitioner.

51. The question that falls for consideration is not *res integra*, but squarely covered by an authoritative pronouncement of the Supreme Court in *State of Punjab V. Harnek Singh* 2002 (1) Sc 642. Similar question had fallen for consideration in the said decision. The questions of law to be adjudicated in the said decision were formulated as under:

(1) Whether the notifications issued by the State Government in exercise of the powers conferred upon it u/s 5A(1) of the Prevention of Corruption Act, 1947 (since repealed) empowering and authorising Inspector of Police to investigate the cases registered under the said Act are not saved under the saving provisions of the re-enacted Prevention of Corruption Act, 1988.

(2) Whether the aforesaid notifications not being inconsistent with the provisions of the re-enacted act continue to be in force and be deemed to have been issued under the Prevention of Corruption Act, 1988 till aforesaid notifications are superseded or specifically withdrawn.

52. The Supreme Court after an elaborate consideration of the matter held: (paragraphs 22, 23 and 25).

"We do not find any force in the submission of the learned counsel appearing for the respondents that as reference made in sub-section (2) of Section 30 of 1988 Act is only to Section 6 of General Clauses Act, the other provisions of the said Act are not applicable for the purposes of deciding the controversy with respect to the notifications issued under the 1947 Act. We are further of the opinion that the High Court committed a mistake of law by holding that as notifications have not expressly been saved by Section 30 of the Act, those would not enure or survive to govern any investigation done or legal proceeding instituted in respect of the cases registered under the 1988 Act. There is no dispute that 1988 Act is both repealing and re-enacting the law relating to prevention of corruption to which the provisions of Section 24 of the General Clauses Act are specifically

applicable. It appears that as Section 6 of the General Clauses Act applies, to repealed enactments, the Legislature in its wisdom thought it proper to make the same specifically applicable in 1988 Act also which is a repealed and re-enacted statute. Reference to Section 6 of General Clauses Act in sub-section (1) of Section 30 has been made to avoid any confusion or misunderstanding regarding the effect of repeal with regard to actions taken under the repealed act. If the Legislature had intended not to apply the provisions of Section 24 of the General Clauses Act to the 1988 Act, it would have specifically so provided under the enacted law. In the light of the fact that Section 24 of the General Clauses act is specifically applicable to repealing and re-enacting statute, its exclusion has to be specific and cannot be inferred by twisting the language of the enactments. Accepting the contention of the learned counsel for the respondents would render the provisions of 1988 Act redundant inasmuch as appointments, notifications, orders, schemes, rules, by-laws, made or issued under the repealed Act would be deemed to be non-existent making impossible the working of the re-enacted law impossible. The provisions of the 1988 Act are required to be understood and interpreted in the light of the provisions of the General Clauses Act including Sections 6 and 24 thereof.

There is no substance in the arguments of the learned counsel appearing for the respondents that the provision made in two enactments were inconsistent and sub-section (2) of Section 30 would not save the notifications issued under the 1947 Act. The consistency, referred to in sub-section (2) of Section 30 is with respect to acts done in pursuance of the Repealed Act and thus restricted it to such provision of the Acts which come for interpretation of the court and not the whole of the scheme of the enactment. It has been conceded before us that there is no inconsistency between Section 5A of the 1947 Act and section 17 of the 1988 Act and provisions of General Clauses Act would be applicable and with the aid of sub-section (2) of Section 30 anything done or any action taken or purported to have been done or taken in pursuance of 1947 Act be deemed to have been done or taken under or in pursuance of the corresponding provision of 1988 Act. For that purpose, the 1988 Act, by fiction, shall be deemed to have been in force at the time when the aforesaid notifications were issued under the then prevalent corresponding law. Otherwise also there does not appear any inconsistency between the two enactments except that the scope and field covered by 1988 Act has been widened and enlarged. Both the enactments deal with the same subject matter, i.e., corruption amongst the public servants and make provision to deal with such a menace.

It is, therefore, evident that the notifications issued by the Government of Punjab, in exercise of the powers conferred u/s 5A of the 1947 Act, empowering and authorising the Inspectors of Police posted in Special Inquiry Agency of the Vigilance Department, Government of Punjab to investigate the cases registered under the said Act were saved under the saving provision of the re-enacted 1988 Act. Such notifications are not inconsistent with the provisions of re-enacted Act and are deemed to continue in force as having been issued under the re-enacted

1988 Act till the aforesaid notifications are specifically superseded or withdrawn or modified under the 1988 Act. The investigation conducted by the Inspectors of Police authorised in that behalf under the 1947 Act are held to be proper, legal and valid investigation under the re-enacted Act and do not suffer from any vice of illegality or jurisdiction. The High Court committed a mistake of law in holding the aforesaid notifications as not saved under the re-enacted 1988 Act. The quashing of the proceedings on the basis of the First Information Report registered against the respondent-accused was illegal and contrary to the settled position of law. The judgment of the High Court, impugned in these appeals, is, therefore, liable to be set aside."

53. We need not to state anything further as the issue is completely answered by the Supreme Court. The contention is accordingly rejected.

54. The petitioner incidentally challenges the constitutional validity of Sections 5, 6, 8, 12, 18 and 36 of the Tribunals Act. In the affidavit filed in support of the writ petition, it is stated that Section 18 of the Tribunals Act enables the appropriate Government to make provisions from time to time to notify the distribution of the business of the Tribunal specifying the matters which are to be dealt by each Bench, thereby conferring power upon the appropriate government from time to time to supervise all applications made to the Tribunal and such provision makes a mockery of independence of judiciary. It is contended that the party to a litigation cannot decide the distribution of work amongst the Judges. Such a provision seriously affects the independence of the judiciary and the judicial process.

55. Section 13(1) of the Tribunals Act is impugned on the ground that it empowers the government to make rules relating to financial and administrative powers of the Chairman, the salary and allowances and conditions of service of the officers which would amount to conferring supervisory and controlling power upon the Tribunal which is a judicial body entrusted with the power of judicial review in service matters.

56. In fine, it is stated that Sections 5, 6, 8, 12, 18 and 36 of the Tribunals Act are liable to be declared as "seriously affecting the right of judicial review, contrary to the basic structure of the constitution and violative of Articles 14, 16 and 21 of the Constitution of India."

57. This is the nature of pleading attacking the constitutional validity of a central enactment. However, an application is filed seeking leave of the court to raise additional grounds challenging the constitutional validity of Section 11(d) and 27 of the Tribunals Act. So far as the constitutional validity of Section 11(d) of the Tribunals Act is concerned, the challenge, in the words of the petitioner, is as follows:

"I submit that Section 11(d) enables a Vice Chairman with a couple of years service as Administrative Member is made eligible for being appointed as Chairman of the Tribunal. On the other hand the parameters laid down by

Supreme Court in Sampath Kumar's case has reiterated in Chandrakumar's case contemplate the appointment of a person as Chairman who has either functioned as Chief Justice of a High Court or as a Senior Judge of the High Court with necessary judicial training and equipment. On the other hand the enabling provision u/s 11(d) makes an Administrative Member who acted as Vice Chairman for two years has been made eligible to be a Chairman of the Administrative Tribunal. This takes away firstly - the necessary judicial acumen, equipment and training which is a condition precedent and pre-requisite to be a Chairman by making a mere Administrator as Chairman, to that extent Section 11(d) is unconstitutional and contrary to the requirements of the dicta of the Apex Court."

58. So far as the validity of Section 27 of the Tribunals Act is concerned, the attack, again in the words of the petitioner, is to the following effect:

"I submit that from the text of the provision it is emanated that there is no procedure is contemplated to execute the orders of the Tribunal. It is also pertinent to mention that Section 22 of the Act says that the CPC has no application to the procedure that is being followed by the Tribunal."

59. We are unable to discern as to the nature of the attack about the constitutional validity of those provisions.

60. We fail to appreciate as to how and in what manner, Section 11(d) of the Tribunals Act, which makes the Vice-Chairman of a State Administrative Tribunal or a Joint Administrative Tribunal eligible for appointment as the Chairman of that Tribunal or as the Chairman or Vice-Chairman of the Central Administrative Tribunal, suffers from any constitutional infirmity. The provision makes the Vice-Chairman of a State Administrative Tribunal or a Joint Administrative Tribunal ineligible for any other employment either under the Government of India or under the government of a State. The provision, in fact, imposes disqualification upon the Vice-Chairman of a State Administrative Tribunal from being appointed into any other employment either under the Government of India or under the Government of a State. It merely makes the Vice-Chairman of a State Administrative Tribunal eligible for appointment as the Chairman of that Tribunal. The qualifications for appointment of the Vice-Chairman are provided under sub-section (2) of Section 6 of the Tribunals Act. It says that a person shall not be qualified for appointment as the Vice-Chairman unless he- (a) is, or has been, or is qualified to be, Judge of a High Court; or (b) has, for at least two years, held the post of a Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; or (bb) has, for at least five years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or (c) has, for a period of not less than three years, held office as a judicial Member or an Administrative Member.

61. Section 6(1) of the Tribunals Act prescribes qualifications for appointment of the Chairman and it provides that a person shall not be qualified for appointment as the Chairman unless he is or has been a Judge of a High Court; or has for at least two years, held the office of Vice-Chairman. It is thus clear that a person who has held the Office of the Vice-Chairman for at least two years is made eligible and qualified for appointment as the Chairman. It is not Section 11(d) of the Tribunals Act, which makes eligible or qualifies the Vice-Chairman of a State Administrative Tribunal for appointment as the Chairman of that Tribunal. The qualifications for appointment of the Chairman, Vice-Chairman and other members are provided for u/s 6(1) of Tribunals Act. On the other hand, Section 11(d) of the Tribunals Act makes a provision as to holding of the office by the Chairman and Vice-Chairman on ceasing to be such Chairman or Vice-Chairman, as the case may be, and makes them ineligible for any other appointment either under the Government of India or under the government of a State.

62. In *L. Chandra Kumar Vs. Union of India and others*, it has been urged that only those who have had judicial experience should be appointed to the Administrative Tribunals. It was contended that the Administrative Members who have been appointed have little or no experience in adjudicating such disputes. It was further contended that those members do not have enough experience in adjudication and in cases where they do acquire the ability; it is invariably on the eve of the expiry of their tenures. It was also urged that the appointment of the Administrative Members to Administrative Tribunals be stopped. The court repelled the contentions and held that "it must be remembered that the setting up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialized knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of Judicial Members and those with grass root experience would best serve this purpose. To hold that the Tribunal should consist only of Judicial Members would attack the primary basis of the theory pursuant to which they have been constituted."

63. Nothing is suggested either in the pleadings or during the course of hearing as to how such a provision prescribing the qualifications for appointment of the Chairman, Vice-Chairman and other Members suffers from any constitutional infirmity. Section 11(d) of the Tribunals Act, in our considered opinion, does not suffer from any constitutional infirmity, inasmuch as, it does not deal with the eligibility or qualification of the Vice-Chairman to become the Chairman, since it is the Section 6(1) which provides and makes eligible the Vice-Chairman to become the Chairman of the Tribunal. The constitutional validity of Sections 5 and 6 of the Tribunals Act came up for consideration in *L.Chandra Kumar* (7 *supra*) and the same has been upheld by the Supreme Court.

64. The constitutional validity of Sections 3, 5, 6, 8, 10, 11,12, 18 and 26, 27, 28, 29, 34, 36 and 37 of the Tribunals Act has been challenged in *Muthineni Krishna Rao and others Vs. Union of India and Others*, and a Division Bench of

this court specifically formulated the question relating to the validity of those provisions in the following manner:

"That the statutory provisions contained in Sections 3, 5, 6, 8, 10, 11,12, 18 and 26, 27, 28, 29, 34, 36 and 37 of the Tribunals Act encroach upon the independence of judiciary violating the basic structure of the Constitution of India and as such, they are unconstitutional."

65. The court ultimately in Krishna Rao (8 supra) declared Section 8 of the Tribunals Act as unconstitutional and void. However, the said decision, it is brought to the notice of the court, is the subject matter of an appeal in the Supreme Court. In the circumstances, this court once again cannot go into the question of constitutional validity of Sections 5, 6, 8, 10, 11,12, 18 26, 27, 28, 29, 34, and 36 of the Tribunals Act as prayed for by the petitioner.

66. It is, however, urged by the learned Senior Counsel that no specific findings as such are recorded by this court in M.Krishna Rao (8 supra) about the constitutional validity of Sections 11, 12 and 27 of the Tribunals Act and, therefore, not only the question relating to the constitutional validity of those provisions is open, but also this court is required to go into the same. We are not sitting in appeal over the judgment of this court in M.Krishna Rao (8 supra).We are not concerned as to in what manner this court having framed the issue relating to the constitutional validity of those provisions dealt with the same. The fact remains that the constitutional validity of those provisions was put in issue and this court except declaring Section 8 of the Tribunals Act to be unconstitutional did not interfere with any other provisions of the Tribunals Act. The same question cannot be permitted to be re-agitated by the petitioner.

67. Be that as it may, on what basis this court should make any substantial enquiry into the constitutional validity of those provisions impugned in the writ petition. The pleadings as formulated attacking the constitutional validity do not convey any meaning. Of late, it has become fashionable to assail the constitutional validity of enactments without laying any proper foundation as is required in law to enable the court to make a detailed probe in order to ascertain and decide the constitutional validity of the provisions. It is the duty of all the concerned to formulate the pleadings properly and precisely and project the issue requiring adjudication. The court is not obliged to judicially review and adjudicate the constitutional validity of the provisions of an enactment in the absence of proper pleadings. The submissions across the Bar would not be enough to go into the constitutional validity of the legislations enacted by the competent legislature.

68. In the instant case, we are left with a feeling that the petitioner in order to avoid approaching the Tribunal as is required in accordance with law declared by the Supreme Court in L.Chandra Kumar (7 supra) raised the plea of constitutional validity of the provisions and filed this writ petition. The pleadings do not reflect any seriousness and effort as such on the part of the petitioner to

highlight or project any constitutional infirmities as such with regard to the impugned provisions. The petitioner merely indulged in speculative litigation.

69. It is not as if this court would readily embark upon an enquiry to decide the constitutional validity of the provisions of an enactment by a mere asking. Expression of doubt as to the constitutional validity of law is not enough for striking down any legislation. There is a presumption in favour of constitutionality and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt. It is equally well settled that the court cannot decide the constitutional questions if the case is capable of deciding on other grounds. It is the settled practice to decide no more than what is absolutely necessary for decision of a case.

70. Since we have upheld the constitutional validity of the provisions of the POC Act, 1988 and accordingly refused to grant any relief to the petitioner herein and also in view of the decision of this court in M.Krishna Rao (8 supra) upholding the constitutional validity of the provisions of the Tribunals Act, we do not consider it necessary to make any further enquiry into the constitutional validity of the provisions of the Tribunals Act. We are not persuaded to consider as to the effect of the decision of this court in M.Krishna Rao (8 supra) and also its correctness. The decisions rendered by a coordinate Bench are binding. The correctness of the judgment cannot be examined by a Bench of same strength on mere asking. The questions raised by the petitioner have become academic.

71. At any rate, we are of the opinion that this court is not bound to make any enquiry into the constitutional validity of a statute if questioned on vague and indefinite grounds without proper and requisite foundation in the pleadings. This court cannot take upon itself the task of deciding the constitutional validity in the absence of proper foundation.

72. For all the aforesaid reasons, we do not find any merit whatsoever in this writ petition. The same shall accordingly stand dismissed with costs, quantified at Rs.5,000/- (Rupees five thousand only).

73. The interim order earlier granted by this court shall accordingly stand vacated.

74. The respondents shall forthwith proceed in the matter and expedite the investigation from the stage where it has been interdicted by this court.