

**(1993) 11 MAD CK 0038**

**In the Madras High Court**

**Case No : Writ Petition No. 13396 of 1993**

Justice S.T. Ramalingam

APPELLANT

Vs

State of T.N. and Another

RESPONDENT

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**Date of Decision : 25-11-1993**

**Acts Referred:**

Constitution of India, 1950 — Article 146, 163, 215, 217, 22

Government of India Act, 1935 — Section 253

High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 2, 22, 22A, 22B, 22C

**Citation : (1993) 2 LW 689 : (1994) WritLR 32**

**Hon'ble Judges : S.M. Ali Mohammed, J; Mishra, J**

**Bench : Division Bench**

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## **Judgement**

Mishra, J.—The instant application by a retired judge of this Court is sadly, but pointedly bringing into focus how the status of the

constitutional function arises such as the Judges of the High Court is viewed and how the High Court Judges are treated by the executive wing of

the State of Tamil Nadu. Before the facts, we feel and like to speak about how pre-Constitution and post Constitution Judges of the High Courts

in India have been treated by the Constitution and the law and how they stand in discharge of their constitutional functions.

2. In pre-Constitution days a High Court Judge appointed under the Government of India Act, 1935 held a civil post under the Crown, but Sec.

253 there of was not applied to him. When the Constitution of India came into force and India became a Sovereign Democratic Republic after

breaking with the bonds of the Crown, Art. 395 of the Constitution specifically repealed the Government of India Act and under Art. 376, the

Judges of a High Court in any province holding office immediately before the

commencement of the Constitution became the Judges of the High Court in the Corresponding State on the commencement of the Constitution and thereupon became entitled to such salaries and allowances and such rights in respect of leave of absence and pension as are provided for under Art. 221 of the Constitution. Under the Constitution's framework, a High Court which exists for each State, is a Court of record and has all the powers of such a Court including the power to punish for contempt of itself. It consists of a Chief Justice and such other Judges as the President may, from time to time, deem it necessary to appoint. Every person appointed to be a Judge of a High Court, before entering upon his office has to make and subscribe oath or affirmation according to the form set out for the purpose in the III Schedule to the Constitution before the Governor of the State or some person appointed in the behalf by him. The tenure of office of a judge is limited by a provision of the constitution and having once held the office of a permanent Judge of a High Court, he is debarred from pleading or acting in the High Court in which he held office or in a Court subordinate to it. Art. 221(1) of the Constitution before the 54th Constitution amendment provided that there would be paid to the Judges of each High Court such salaries as were specified in the Second Schedule of the Constitution and after the 54th amendment, that there shall be paid to the Judges of each High Court such salaries as may be determined by the Parliament or by law and until provision in that behalf is so made, such salaries as are specified in the Second Schedule. Clause (2) of this Article, however, has remained unamended as follows :

Every Judge shall be entitled to such allowance and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and until so determined, to such allowances and rights as are specified in the Second Schedule.

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment".

A Judge transferred to another High Court is entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and until so determined such compensatory allowance as the president may by order fix. The Constitution has, besides other

things, a specific provision that the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges there of in relation to the administration of Justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and to regulate the sittings of the Court and of members there of, sitting alone or in Division Courts, shall be the same as immediately before the commencement of the Constitution and its constitutional authority to issue writs, directions or orders throughout the territories in relation to which it exercises jurisdiction to any person or authority including in appropriate cases any Government within those territories is recognised under Art. 226 thereof. Its superintendence over all Courts and Tribunals throughout the territories in relation to call for returns from such Courts, to make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts, etc., is preserved under Art. 227 of the Constitution.

3. The Madras High Court has, however, derived its pre-Constitution powers from the Letters Patent having ordinary as well as Extraordinary Civil and Criminal Jurisdiction and its power, both Original and Appellate as well as infants and lunatics, testamentary and intestate, and has enjoyed a unique distinction of the continuance without any break with such powers including the power to issue writs, etc., in the name of the Crown ever since its establishment in the year 1862, with such amendments as to its powers and jurisdiction which came directly from Crown and the Acts of the Legislature. The Service Condition Rules exclusively for High Court Judges, however, were not many because the Crown itself in power never thought of equating the High Court Judges with even the ranks in the Indian Civil Service in the executive wing and by the High Court Judges in India Rules, 1922 made it known that they enjoyed a status which was independent and unenviable.

4. The constitutional provision aforementioned has been followed by the High Court Judges (Conditions of Service) Act, 1954, Act 28 of 1954, which has since undergone several amendments. After defining the "Judge" to include the Chief Justice, Acting Chief Justice, Additional Judge and Acting judge of the High Court, the said Act has specified the kinds of leave admissible to a Judge and made provisions as to the leave account

and the aggregate leave which may be granted including leave allowance, allowance for joining time, combining of leave with vacation, pension

payable to Judges and family pension, gratuity, provident fund, travelling allowances, conveyance, etc., and facilities for medical treatment and

other conditions of service. Sec. 23 of the said Act in this behalf provides as follows :

(1) Every Judge and the members of his family shall be entitled to such facilities for medical treatment and for accommodation in hospital as may,

from time to time, be prescribed.

(2) The conditions of service of a Judge for which no express provision has been made in this Act shall be such as may be determined by Rules

made under this Act.

(3) This section shall be deemed to have come into force on the 20th January, 1950 and any Rule made under this section may be made so as to

be retrospective to any date earlier than the commencement of this section

The expression ""prescribed"" in Sub-sec. (1) of this Sec. 23 and ""determined by Rules"" in Sub-sec. (2) as well as ""any Rule made in this section"" in

Sub-sec. (3) of this section have to be understood only by knowing the definition of the word ""prescribed"" in Sec. 2(h)(iii)(i), which says

prescribed"" means prescribes by rules made under this behalf on 24th January, 1956 contain Rule 2 which provides as follows :

The conditions of service of a Judge of a High Court for which no express provision had been made in the High Court Judges (Conditions of

Service) Act, 1954, shall be and shall from the commencement of the Constitution be deemed to have been determined by the rules for time being

applicable to a member of the Indian Administrative Service holding the rank of Secretary to the Government of the State in which the principal

seat of the high Court is situated :

Provided that, in respect of facilities for medical treatment and accommodation in hospital, the provisions of the All India Services (Medical

Attendance) Rules, 1954, in their application to a judge shall be deemed to have been taken effect from the 20th January, 1950.

Note : Cases of reimbursement of medical charges decided before the commencement of these rules shall not be reopened unless it is specifically

so desired by the Judge concerned"".

This provision has undergone a further change by a change by a proviso introduced by G. S. R. No.1175(E) dated November 4, 1986, which

reads as follows :

Provided further that, in respect of facilities for medical treatment and accommodation in hospital -

(a) In the case of Judges of the High Court other than the Delhi High Court and the Punjab and Haryana High Court, the Rules and provisions as

applicable to a Cabinet Minister of the State Government in which the principal seat of High Court is situated shall apply;

(b) In the case of Judges, other than the Chief Justices of the Delhi High Court and the Punjab and Haryana High Court, the rules and provisions as

applicable to a Union Deputy Minister, shall apply;

(c) In the case of the Chief Justice of the Delhi High Court and the Punjab and Haryana High Court, the Rules and provisions as applicable to a

Union Cabinet Minister shall apply

This Proviso has come to stay as a part of the Rules in the interest and in recognition of the status of the Judges, who are extended some more and

specific allowances by the 1986 amendment in the High Court Judges (Conditions of Service) Act, 1954, Such provisions are Sec. 22A in respect

of facility of a rent free house to the judges, Sec. 22-B as to the conveyance facilities, Sec. 22-C as to the sumptuary allowance and Sec. 23-D as

to the medical facilities for retired Judges and their family on par and on the same conditions as a retired officer of the Central Civil Services, Class

I.

5. Petitioner herein has served as Judge of this High Court from 12.11.1985 to 30.6.1991. During his tenure as the Judge, he suffered with cardiac

problem which resulted in undergoing a by-pass surgery at the Apollo Hospitals, Madras, during the month of June, 1991. While the petitioner was

in-patient during the abovesaid treatment, his wife Mrs. Sarala Ramalingam was looking after him all the time and was always at his bed side. On

12.6.1991 when she was besides the patient in order to provide immediate medical treatment as it was diagnosed that she was suffering from

chronic diabetes mellitus, systematic hypertension hyperthyroid state and Tietze's Syndrome. As advised by the doctors, she was admitted at 5.15

p.m. on 12.6.1991 and after treatment for a continuous period of one week she

was discharged on 19.6.1991 at 5 p.m. The above facts are not in dispute. The petitioner incurred expenses of Rs. 9,784 towards the emergency treatment given to his wife at the hospital and the hospital realised from him the said amount by bill No, ICR. 06001. The petitioner sought reimbursement of the amount and sent a letter to the Chief Secretary to the Government of Tamil Nadu on 10.10.1991 enclosing the bill in ICR No. 06001 for the sum of Rs. 9,784. The petitioner's letter to the Chief Secretary was replied to by the Secretary to the Government, Public (Special-B) Department on 10.2.1992 who asked the petitioner to furnish details of investigations done to the patient in the department of Bio-chemistry, Hematology, Micro-Biology and Radiology. The petitioner obtained these particulars from the Apollo Hospitals and forwarded the same to the Government through the second respondent, namely, the Register of the High Court on 21.3.1992 and requested to settle the claim at the earliest. The first respondent has, however, issued orders in G. O. Rt. No. 4189, dated 17.12.1992 sanctioning only a sum of Rs. 591 towards reimbursement of the medical expenses incurred by the petitioner for his wife from 12.6.1991 to 19.6.1991 while he was in service in connection with the treatment taken by her in Apollo Hospitals, Madras.

6. First respondent has filed a return to the above with the affidavit of the Chief Secretary to the Government, Public department, who has said that he is well acquainted with the facts of the case from the records. The stand in the counter affidavit is that the proceedings of the first respondent in respect of the reimbursement of the medical expenses on the treatment of the petitioner's wife in the Apollo hospital are made only under the bona fide impression on the existing rules relating to reimbursement of medical expenses. The first respondent has acknowledged that as per rule 2(a) of the High Court Judges (Conditions of Service) Rules, 1956 as amended by the High Court Judges (Amendment) Rules, 1986, in the case of Judges of the High Courts other than the Delhi High Court and the Punjab and Haryana High Courts, the rules and provisions as applicable to a Cabinet Minister of the State Government in which the Principal seat of the High Court is situated, shall supply. For the first time some facts are disclosed in the return as no communication about them has been ever made to the Court, that :

(1) There are rules known as the Tamil Nadu Legislative Assembly (Medical Attendance and Treatment) Rules, 1964 (Rules evidently made before 1986 amendment to the High Court Judges (Conditions of Service) Rules. The aforesaid 1964 Rules contain provisions as to free of charge accommodation in hospitals maintained by the State Government to a Minister. The speaker, the Deputy speaker or the Parliamentary Secretary and the members of heir family and the medical treatment and attendance on the same terms and conditions as are applicable to the highest category of servants employed under the Government of Tamil Nadu :

(2) The highest category of servants employed under the Government of Tamil Nadu are All India Service Officers;

(3) Every member of the All India Service under Rule 7(1) (a) of the All India Services (Medical Attendance) Rules, 1954, is entitled to free of

charge treatment in such Government Hospital in the station or District where he falls ill which Hospital in the opinion of the authorised medical

attendant provides the necessary and suitable treatment. Also as per Rule 7 (2) of the said Rules, where a member of the service is entitled under

Sub-rule (1) to free of charge treatment in a hospital any amount paid by him on account of such treatment, shall on production of a certificate in

writing by the authorised medical attendant in this behalf, be reimbursed to the member of the service by the Government; provided that the

Government shall reject any claim if it is not satisfied with its genuineness of facts and circumstances of such case, after giving an opportunity to the

claimant of being heard in the matter. While doing so, the Government shall communicate to him the reasons in brief, rejecting the claim and the

claimant may submit an appeal to the Central Government within a period of 45 days of the date of communication of the order;

(4) As per Rule 4(1) of the said rules, nothing in these rules shall be deemed to entitle a member of the service to reimbursement of any cost

incurred in respect of medical services obtained by him or to travelling allowance for any journey performed by him otherwise than as expressly

provided in these rules;

(5) Also as per Rule 14(ii) of the said rules, nothing in these rules shall be deemed to prevent the Government from granting to a member of the

service or to a member of the family of a member of the service any concession

relating to medical treatment or attendance for travelling allowance

for any journey performed by him which is not authorised by these rules;

(6) Also as per Government of India's decisions under Rule 14, so far as the Government is concerned, its inherent power to grant, in suitable and

deserving cases, any concession relating to medical treatment or attendance not authorised by the rules is expressly saved by Clause (ii); The

expression not authorised must be construed to mean ""not sanctioned"" or ""not justified"" by these rules, Clause (ii) can be invoked by the State

Government for granting to a member of the service reimbursement of expenditure incurred by him for the treatment of a member of his family in a

hospital other than a Government hospital outside the State, provided very exceptional circumstances justify such action. Clause (ii) does not

empower the Government to grant to the members of All India Services general additional concession not covered by the rules. But they can grant

in individual, deserving and suitable cases any concession within or outside the framework of the rules"".

On merits, however, without disputing any of the averments of the writ petitioner, the counter proceeds to say that the Government's order dated

17.12.1992 sanctioned a sum of Rs. 591 towards the reimbursement of medical expenses incurred by the petitioner for his wife in the Apollo

Hospital against Rs. 9,784 and cost of admissible medicines purchased in open market for the treatment taken during 12.6.1991 to 19.6.1991,

after calling for the remarks of the Director of Medical Education, who in her letter dated 3.11.1992 had furnished the probable expenditure that

would have been incurred had the patient taken treatment in a Government Hospital. The defence in main is based on G. O. Ms. No. 1023, Health

and Family Welfare Department, dated 17.6.1980, in which according to the first respondent it is clearly stipulated,

(1) Treatment in private hospitals should not normally be resorted to by Government servants :

(2) In case where the patient requires specialised treatment in a private hospital in the normal course, the Government servant should apply for

prior permission of the Director of Medical Education/Director of Medical Services and Family welfare and the Directors should specifically certify

that the treatment proposed to be performed in the particular case is of

complicated nature and is not available in the Government Medical Institution; and

(3) In case of emergency for which the treatment has been undergone in a private medical institution, the claim for such treatment after the treatment should be forwarded through the Director of Medical Education in cases when the treatment was had in the city medical institutions or in towns with teaching hospitals or to the Director of Medical Services and Family Welfare when the treatment was had in other medical institutions to the respective administrative departments of the Secretariat. The Director of Medical services, as the case may be should certify whether the patient needed emergent treatment. In genuine cases, the claims will be restricted to the expenditure that would have been incurred had the patient taken treatment in a Government hospital excepting diet charges.

7. We shall advert to the case of the first respondent that it acted strictly in accordance with rules and decided to pay only such amount of money towards medical expenses incurred by the petitioner for his wife, which the Director of Medical Education found probable and go into the bonafide of the stand of the first respondent in this behalf. Let we postpone this aspect of the matter for a while to see how this G. O. Ms. No. 1023, dated 17.6.1980 has come to play such a role in the case of reimbursement of the medical bills submitted by a sitting Judge of the High Court. We have already seen that the High Court Judges (Conditions of Service) Act, 1954 has contemplated rules framed by the competent authority and rules in this behalf have been notified are called "The High Court Judges (Conditions of Service) Rules, 1956 and are applied retrospectively with effect from 26th January, 1950. Section 24 of the High Court Judges (Conditions of Service) Act has recognised the rule making power in the Central Government and not in the State Government. The rules, however, extended the application of such rules which applied to the members of the Indian Administrative Service holding the rank of Secretary to the Government of the State in which the principal seat of the High Court is situated and specifically recognised. In respect of the facilities for medical treatment and accommodation in hospital, the provisions of All India Services (Medical Attendance) Rules.

1954. The services under the Union including the Indian Administrative Service

and the services under the States are recognised and contemplated under Part XIV of the Constitution of India. Art. 309 of the Constitution says.

Subject to the provisions of this Constitution. Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State :

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and for Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and the conditions of service of persons appointed to such service and posts until provision in that behalf is made by or under an act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provision of any such Act"".

Every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, Art. 310 of the Constitution declares holds office during the pleasure of the president and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the governor of the State, Art. 311(2) has particularly declared that the services known at the commencement of the Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to services created by Parliament under Art. 312. There can, thus, be no confusion that the High Court Judges (Conditions of Service) Rules before the introduction of the proviso aforementioned by amendment in November, 1986 extended the application of the All India Services (Medical Attendance) Rules, 1954, to the High Court Judges as it applied to the Indian Administrative Service, a service created by the Parliament of India. Under the scheme of the rules, thus which existed before the proviso under which the judges were given facilities extended to a Cabinet Minister of the State Government, the Judges enjoyed such allowances and privileges which were specifically prescribed for them under the Act of Parliament or Rules framed by the Central Government as delegates of Parliament under the Act

and if there were no specific provisions or such rules which applied to them for the time being, rules applicable to the members of the Indian

Administrative Service holding the rank of Secretary to Government as delegates of Parliament under the Act and if there were no specific

provisions or such rules which applied to them for the time being, rules applicable to the members of the Indian Administrative Service holding the

rank of Secretary to Government of the State in which the principal seat of the High Court is situated, applied to them and for medical treatment

and accommodation in hospital, the provisions of the All India Services (Medical Attendance) Rules, 1954 applied to them. The amendment has,

however, brought in a new provision for the Judges in respect of facilities for medical treatment and accommodation in hospital that they shall be

applied the same rules and provisions as applicable to a Cabinet Minister of the State Government in which the principal seat of the High Court is

situated, except in the case of the Chief Justices and the Judges of the Delhi and Punjab and Haryana High Courts. In the case of the former, the

rules and provisions as applicable to Union Cabinet Ministers are applied and in the case of the latter, the rules and provisions as applicable to the

Union Deputy Ministers are applied.

8. Exercising however, the power under sec. 14 of the Tamil Nadu Payment of Salaries Act, 1951, read with Sec. 10 and Sub-sec. (4) of Sec. 12

thereof, the State Government have framed rules in the year 1964 and made it effective on and from 6th December, 1962, which has contained a

provision,

Rule 2 : A Minister, the Speaker, the Deputy Speaker, the Chairman, the Deputy Chairman or the Parliamentary Secretary shall for himself and

the members of his family be entitled, free of charge to accommodation in hospitals maintained by the State Government and also to medical

treatment and attendance, on the same terms and conditions as are applicable to the highest category of servants employed under the Government

of Tamil Nadu".

Besides the above, there has been another set of rules framed by the State Government called ""The Tamil Nadu Medical Attendance Rules"" and

made for the purpose of the Government servants employed under the Government of Tamil Nadu and their family, but extended also to persons

who are entitled to medical attendance under the Secretary of State Services (Medical Attendance) Rules, 1938, the All India Services (Medical

Attendance) Rules, 1954 and also to the Tamil Nadu State Higher Judicial Officers who are to be treated on a par with the I. A. S. and I. P. S.

Officers but only to the extent to which they are not inconsistent with these rules. Rule 10 of these rules as respects medical attendance and

treatment has contemplated that a person entitled to free medical attendance when admitted into a Government hospital for treatment will be

allowed free medical and surgical treatment and free nursing as is normally provided by the hospital with its own staff, equipment and apparatus,

and he will be supplied free of charge medicine, sera, vaccines, etc., which are ordinarily stocked in the hospital and which are required for his

treatment irrespective of the cost of the drugs. This rule has a proviso to the effect that the procedure in regard to the recovery or reimbursement,

of course in respect of special medicines supplied from the hospital stock or purchased by the Government servants will be regulated by Rule 29

which prescribes that in-patients whether entitled to free medical attendance or not, shall pay the cost of special and expensive drugs as laid down

under the rules. Rule 10(c) before amendment contemplated as follows :

In places where there are no Government Hospitals, but where there are Panchayat Union or private hospitals or dispensaries (modern medicine

or Indian) the State Government Servants of Groups A and B the Government Servants of Groups C and D and those employees of the local

bodies who draw salaries not exceeding Rs. 300 per mensem and their families may take treatment straightaway in such institutions. The

expenditure incurred by them in that connection including the cost of special and expensive drugs purchased by them on the prescription of the

doctor-in-charge of Panchayat Union Medical Institution be reimbursed subject to the production of relevant vouchers and subject to the scrutiny

of the relative bills by the authorised medical attendant in respect of treatment undergone in institutions of modern medicine. At a time, treatment

can be taken either under modern medicine or any of the Indian system of medicines and treatment should not be taken simultaneously under both

the modern and Indian systems or under two systems coming under Indian system of medicines"".

The amending Rule 10(c) by G. O. Ms. No. 1023, dated 17th June, 1980 has provided the basis of the case of the first respondent which reads

as follows :

It has been observed by the Government that the claims for reimbursement on the expenditure incurred by the Government employees towards

the treatment taken in private hospitals are on the increase though facilities for treatment are available in Government institutions. On grounds of

compassion, reimbursement is being allowed in certain cases even though the claims do not strictly satisfy rules. According to Rule 10(c) of the

Tamil Nadu Medical Attendance Rules, treatment in private hospitals should not be resorted to and that case of emergency, an emergency

certificate from the Authorised Medical Attendant should be produced to the effect that the removal of the patient to the Government Hospital

would have endangered the life of the patient. It should also be certified that such treatment is not available in the Government hospitals. It has also

been observed that necessary certificates are also not being produced by the claimants but the individuals take treatment on their own initiative at

the Christian Medical College Hospital, Vellore, or Railway Hospital, Madras. Even though the facilities for heart diseases are available in the

Government General hospital, Madras, which is a premier institution in the State. Government Servants resort to treatment outside for such

ailments"".

Hence, the Government after careful consideration consider that the existing guidelines require revision. In the place of the existing guidelines

referred to Rule 10(c) of the Tamil Nadu Medical Attendance Rules the following should be substituted :

(1) Treatment in private hospitals not normally be resorted to by Government servants. (2) In case where the patient requires specialised

treatment in a private hospital in the normal course the Government servants should apply for prior permission of the Director of Medical

Education/Director of Medical Services and family welfare and the Directors should specifically certify that the treatment proposed to be

performed in the particular case is of complicated nature and is not available in the Government Medical Institution. (3) In case of emergency for

which the treatment has been undergone in a private medical institution, the

claims for such treatment after the treatment should be forwarded through the Director of Medical Education in cases when the treatment was had in the city medical institutions or in towns with teaching hospitals or to the Director of Medical services and Family Welfare, when the treatment was had in other medical institutions to the respective administrative department of the Secretariat. The Director of Medical Education and the Director of Medical Services as the case may be, should certify whether the patient needed emergent treatment. In genuine cases the claims will be restricted to the expenditure that would have been incurred, had the patient taken treatment in a Government Hospital excepting diet charges.

(4) The views of the Director of Medical Education/Director of Medical Services and family Welfare will be final.

3. The Heads of Departments Collectors and the Department of Secretariat, etc., therefore requested to observe the above rules strictly in future.

4. This order issues with the concurrence of the Finance Department vide its U. O. No. 1822/FS/P/80, dated 5.5.1980".

9. We have no reason to think that the administration of the State of Tamil Nadu has been unaware of the status which the Judges in the Court

enjoyed before the days of the Constitution and the attempts of the Judges of the High Court. The High Court today is a creation of and functions

under the Constitution and is constituted of a Chief Justice and the Judges and it will be indeed harsh to suggest that the executive Government of

the State is not aware of the High Court's constitutional independence in the administration of justice like the independence of the legislature in its

field. A Full Bench of the Allahabad High Court in High Court of Judicature at Allahabad v. Amod Kumar Srivastava 1993 I CLR 1008, has only

reiterated what has always been recognised by all concerned that the dispensation of justice by the High Court is its constitutional function and is

termed as regal or sovereign power. It exercises primary and unalienable function of the State, which cannot be left for any other person. In a

recent Bench decision the Allahabad High Court in Red Light on the Cars of the Honourable Judges of the Red light on the Cars of the Hon"ble

Judges of the High Court Vs. State of U.P., , to which we shall refer again later, has expressed in another context, but we find suitable to express

our view in agreement thereof that a Judge of a High Court who is a person

appointed under Art. 217 of the Constitution by the President of India and functions under the Constitution is a person of distinction holding a high office of dignity and honour and the word "Hon'ble" is always prefixed before his name. The rules which are subordinate legislation cannot determine the status of constitutional appointees and functionaries and a subordinate legislation also cannot be interpreted in a manner relegating the status and dignity of constitutional appointees and functionaries by saying that they inspite of being high dignitaries are not so high dignitaries. Can those who have to implement a statue take to themselves the authority to decide what should be given to X and what should be given to Y, if both X and T are by law made equals? It is this aspect of the case that must receiver answer. A proper answer to this can be had by finding out whether the Government of the State have treated the Cabinet Ministers and Judges as equals in the matter of reimbursement of the medical bills or have applied two standards.

10. Our examination of the provisions of the Act and the Rules that are applied to the High Court Judges have also taken us to other aspects in which the Executive Government of the State has chosen to make its own standard of treatment to the Judges of this Court and one such case which has recently been decided by one of us is the case of the Drivers of the staff cars allotted to the Hon'ble Judges of this Court in P. Perumal and 28 Ors. v. State of Tamil Nadu, W.P. No.15014 of 1992 dated 24.9.1993. The executive took notice of the law to allot a staff car to the Judges of this Court as under Sec. 22-B of the High Court Judges (Conditions of Service) Act. 1954 only after a delay of three years and promoted some office assistants as Drivers of such vehicles, which they allotted to them, but sanctioned no allowance as provided to the Drivers of the staff cars allotted to the Ministers in the Government of the State, Secretaries to Government. Government Whip and for V. V. I. Ps to the State Guest House. The Drivers of the staff cars allotted to the Hon'ble Judges of this Court, found that their counterparts in the Secretariat under the establishment control of Public (MV) Department and allotted to the Ministers, Secretaries to Government. Government Whips and V. V. I. Ps were given all route bus passes to enable them to attend work at the call of the Ministers, Secretaries to Government. Government Whip and V.

V. I. Ps. They represented and the Hon"ble the Chief Justice directed the Registrar of the Court and accordingly the Registrar of the Court wrote

to the State Government, vide letter No. 3664/A/91 Estt. 1(A4), dated 4.10.1991 and again on 24.3.1992 conveying the Court's view that the

Government should extend the same benefit of the allowance of all route bus passes to the drivers allotted to the Hon"ble Judges of this Court.

These letters were replied to by the Deputy Secretary to Government, Home (Services-I) Department on 28.7.1992, who stated.

1. that the Registrar, High Court is classified as one of the Heads of Department in the Tamil Nadu Financial Code, and as per orders in G. O. Ms.

No. 1015. Finance Department, dated 27.10.1986, the drivers working in the Registry eligible only for two way bus passes for the journey from

the residence to the place where the vehicle was parked and back like drivers attached to other Heads of Department : and

2. the nature of the duty discharged by the drivers in the Secretariat was entirely different from that of the High Court and that the Drivers under the

establishment control of Public (M/V) Department are attached to Ministers Secretaries to Government. Government Whip and V. V. I. Ps. and

their work is onerous. They are expected to attend the work then and there and at short notice. They have to remain at work at late night also.

Whereas in the case of Drivers of the High Court, their work is very limited and their work cannot be compared with that of the Secretariat

Drivers".

11. The Hon"ble the Chief Justice directed the Registrar of the Court to write once again and vide D. O. Letter No. 3664/A/91/Estt. dated

4.8.1992, the Registrar informed the Government that since the Hon"ble Judges of this Court have enjoyed the facilities and amenities in all aspects

as provided to the Hon"ble Ministers of the Government of Tamil Nadu, the Drivers attached to the Hon"ble Judges are treated on par with the

Drivers attached to the Hon"ble Ministers and therefore, they should also be provided with the same facilities as provided to the Drivers attached

to the Hon"ble Ministers of the Government of Tamil Nadu. In this letter, the registrar pointedly state that the Drivers attached to the Hon"ble

Judges are expected to attend to the work then and there and at short notice, that they attend to the residence and office and return to their

residence only after completing the work assigned to them by the Hon''ble Judges and they also go to the workshops or their residence after

leaving the vehicles in office or in the workshop for repairs, etc. that they have no fixed hours of duty and they have to remain at work at late night

also, that they also report for duty at the residence of the Hon''ble Judges even on holidays including public holidays for which they do not claim

compensatory casual leave or honorarium or overtime allowance and that their work is onerous.

12. One would expect with such categorical statement in the letter of the Registrar of the Court, who only converted to the Government as

directed by the Hon''ble the Chief Justice that the drivers of the staff cars allotted to the Hon''ble Judges of the Court should be granted all route

bus passes, that the Government would revise its opinion and correct its mistake in treating that, (1) the Drivers of the staff cars allotted to the

Hon''ble Judges are under the control of the Registrar of the High Court and that (2) the registrar of the High Court is likely any head of the

department of the Government of the State and that in the case of the drivers of the staff cars allotted to the Hon''ble Judges, the work is limited.

But the Government reply this time by the Secretary to Government.

Home (Courts) Department, not only reiterated what had been earlier stated on their behalf in the letter by a Deputy Secretary, but added,

The Government examined the proposal of the High Court..... and agree that the Drivers of cars attached to the High Court should be issued the

two way bus pass for the journey from their residence to the place where the vehicle is parked and back. The expenditure on this account should

be met from the contingencies of the High Court''.

13. Allowing the writ petition vide judgment dated 14.9.1993, it is observed :

The High Court Judges (Conditions of Service) Act, 1954 has received a substantial amendment with effect from 1.11.1986 which has defined a

"Judge" to mean a Judge of a High Court including the Chief Justice, the Acting Chief Justice, an Additional Judge and an Acting Judge of the

Court. Sec. 22 which provides that every Judge shall receive such reasonable allowance to reimburse him for expenses incurred in travelling on

duty within the territory of India and shall be afforded such reasonable facilities in connection with traveling as may, from time to time, be

prescribed. This has got a boost by the provision in Sec. 22B which has provided that every Judge shall be entitled to a staff car and one hundred

and fifty litres of petrol every month or the actual consumption of petrol per month, whichever is less. There is no contemplation in this section that

the staff car and 150 litres of petrol per month or the actual consumption of petrol whichever is less, is provided only for the Judge's travel from his

residence to the Court and back home after the Court hours. The entitlement is specific and unambiguous that every Judge shall be having a staff

car and he shall be having a staff car and he shall be entitled to consumption of a maximum of 150 litres of petrol each month, the consumption in

excess however of 150 litres will be not at the cost of the State..... One has to note the statement in the counter-affidavit of respondents 1 and 2

with anguish that we have still in the Government of the State of Tamil Nadu the idea that the Registrar of the High Court is like any head of a

Government Department and that while considering how the service conditions of the drivers of the High Court should be treated, their case is

clubbed with the case of the drivers of the other Government Departments who are subjected to a certain condition of service of their own.

According to the counter-affidavit, the Government has found a good reason for giving duty passes to the drivers attached to the Public (Motor

Vehicles) Department, Ministers, Government Whip, etc., because of the nature of the duty discharged by them. According to the return.

..... The Ministers etc., are having jurisdiction all over the State, the duties and responsibilities of the drivers attached to them differ entirely from

the drivers of the High Court".

The respondent have, however, not stated what do they think of the duties of the drivers of the staff cars provided to the Hon"ble Judges and what

do they know about the jurisdiction of the Hon"ble Judges of this Court. It is difficult to believe that the Government of the State of Tamil Nadu is

not aware of the nature of the jurisdiction, function and power of the Hon"ble Judges of this Court and the Constitutional duties they perform.

Ministers in the State of Tamil Nadu have jurisdiction over territories in the State, Hon"ble Judges of this Court have complete control of the

administration of justice in the State of Tamil Nadu as well as the State of Pondicherry, with areas scattered beyond the territories of the State of

Andhra Pradesh and Kerala. The Government of Tamil Nadu, which has got the responsibility under the High Court Judges (Conditions of

Service) Act and the Constitution of India, to reimburse such costs as are reasonably incurred by the establishment of the High Court, Madras,

cannot be unaware of the constitutional status of the Hon''ble Judges of the Court and the fact that they have the administrative freedom under Art.

235 of the Constitution and their jurisdiction is not confined to the precincts of the High Court alone but extends to the entire State of Tamil Nadu

and besides the State of Tamil Nadu to the entire territory of the State of Pondicherry. In their counter-affidavit, respondents 1 and 2 have said

categorically that to enable the drivers attached to the Ministers to attend to office or residence of the Ministers and similarly to enable the drivers

attached to the Government whips and officers to attend to office or residence, the Government has sanctioned for issue of particular person bus

duty passes valid for all city routes and that the duty of the drivers of the High Court is entirely different, without, it seems, even examining the

contents of the letter of the third respondent who conveyed the view and the administrative decision of the Hon''ble the Chief Justice that the

drivers attached to the Hon''ble Judges performed duties on all days of the week, attended them at their residences, took the car to workshops

and maintained the same in good order to facilitate their official and private travels as commanded by them.

It is really sad that the fifty decade of our independent democratic polity, we are required to remind a State Government that Art. 229 of the

Constitution of India has recognised in the Chief Justice of the Court or such other Judge or Officer of the Court, as the Chief Justice may direct,

the authority to make appointments of officers and servants of a High Court, and subject to the provisions of any law made by the Legislature of

the State to decide and prescribe the conditions of service of officers and servants of a High Court, except that the rules made thereunder, as they

relate to salaries, allowances, leave to pension, require the approval of the Governor of the State''".

14. After quoting a passage from the judgment of the Supreme Court in the case of Supreme Employees Welfare Association v. Union of India,

and adopting the same by substituting Art. 74(1), by Art. 163(1) and Art. 146(2) by Art. 229(2) of the Constitution, the judgment in the case of P.

Perumal and 28 Ors. v. State of Tamil Nadu, W. P. No. 15014 of 1992 dated 24.9.1993, has proceeded to state that the rules framed by the

Chief Justice of the High Court should normally be accepted by the Government and the question of exchange of thoughts and views would arise

only when the Government is not in a position to accept the rules relating to salaries, allowances, leave or pensions of the staff of the High Court, it

has also observed that it is clearly a mistake both of fact and of law in not recognising the jurisdiction of the Hon'ble Judges of this Court co-

extensive with the territory of the State when in fact the Hon'ble Judges of this Court exercise jurisdiction not only in the State of Tamil Nadu, but

also in the State of Pondicherry and in equating the drivers under the administrative control of the Registrar of this Court with the drivers of the

Heads of the Departments of the Government. It is further observed :

Appreciating the facts and the law, particularly the constitutional position of the Chief Justice of the Court under Art. 229 of the Constitution of

India, led to the irresistible conclusion that the Government of the State have failed to discharge their constitutional obligation by not acknowledging

the duties of the drivers of the cars attached to the Judges of this Court and treating them as drivers under the Registrar of the Court and thus under

any Head of the Department of the Government....

15. In a recent judgment, the Punjab and Haryana High Court has in the case of M.L. Puri Vs. The Punjab and Haryana High Court, Chandigarh

and others, , found itself placed to consider a public interest litigation because the Government neglected staff cars and left cars which were not

road worthy and dependable to be used by the Judges of the Court and also to examine whether the security of the Judges was neglected by the

Government. A Bench of the Court in its Judgment has said :

It is quite evident that Sec. 22-B of the Act confers a statutory right on the Judge to claim conveyance facility and is entitled to a staff car. Sec.

22-B of the Act casts a statutory obligation on the State to provide staff car to the Judges. Implicit in this facility is the requirement that the car

allotted for use as such must, both in its class and stated of repair, be such as is fit for use for this purpose, in keeping with the high status of the

Judge of a High Court. In other words, it must always be in a good running condition, not one which on account of normal wear and tear or other

defect ceases to be a safe or reliable vehicle, having the propensity to break down on a Journey"".

16. The Punjab Court has also observed :

A High Court Judge is entitled to proper security. The High Court Judges decide criminal cases daily some of which are of hard-core criminals.

They cannot discharge their judicial functions without proper security. The adequacy of the security of the Judges should be decided by respondent

Nos. 1 and 2 in consultation with the Chief Justice of the High Court"".

17. The above, however, is not a High Court's own disposition of either the status of a Judge of the High Court or the need of providing to him a

car in good condition. In All India Judges Association v. Union of India, 1991 II CLR 927, the Supreme Court has observed :

We must indicate with all the emphasis at our command that the system has to be saved as for a civilised society an enlightened independent

judiciary is totally indispensable. The High Court must take greater interest in the proper functioning of the subordinate judiciary, Inspection should

not be a matter of casual attention. The Constitution has vested the control of the subordinate judiciary under Art. 235 in the High Court as a

whole and not its Chief Justice alone. Every Judge should, therefore, take adequate interest in the institutional which is placed under the control of

the High Court. We may point out that is what Lord Atkins said in AIR 1943 202 (Privy Council) . And it has been approved by a Constitution

Bench in Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another, . It should be remembered by all the Judges of the High

Court, viz., that the administrative control of the subordinate courts of the State vests not in the Chief Justice alone, but in the Court over which the

Chief Justice presides"".

18. In the above case in review reported in All India Judges Association v. Union of India, 1993 II CLR 770, the Supreme Court has stated about

the status of a member of the Judicial Service of the State in these words :

The judicial services is not service in the senses of employment. The Judges are not employees. As members of the judiciary, they exercise the

sovereign judicial power of the State. They are holders of public officers in the same way as the members of the council of ministers and the

members of the legislature. When it is said that in a democracy such as ours, the

executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the state power are the Ministers, the Legislatures and the Judges and not the members of their staff who implement or assist in implementing their decisions. The council of Ministers or the political executive is different from the Secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the legislators are different from the legislative staff. So also the Judges from judicial staff. The purity is between the political executive, the legislators and the Judges and not between the Judges and the administrative executive, a contrast to the opposite a folly which unfortunately the State of Tamil Nadu has not been able to overcome"".

19. The Supreme Court has in this judgment has further said :

This distinction between the Judges and the members of the other services has to be constantly kept in mind for yet another important reason

Judicial independence cannot be secured by making mere solemn proclamations about it. It has to be secured both in substance and in practice. It

is trite to say that those who are in want cannot be free. Self reliance is the foundation of independence. The society has a stake in ensuring the

independence of the judiciary and no price is too heavy to secure it. To keep the Judges in want of the essential accouterments and thus to impede

them in the proper discharge of their duties, is to impair and whittle away justice itself"".

20. The usual refrain whenever any issue as to the extension of the basic allowance of the Honourable Judges of the High Court or the Judges of

the other Courts in the Government of the State is that if a demand for the Judges is conceded by the Government, the members of the other

services will start making demand for similar service conditions. This has been nailed by the Supreme Court in the review judgment in these words :

It is high time that all concerned appreciated that for the reasons pointed out above there cannot be any link between the service conditions of the

Judges and those of the members of the other services. It is true that under Art. 309 of the Constitution, the recruitment and conditions of service

of the members of the subordinate judiciary are to be regulated by the Acts of the appropriate legislature and pending such legislation, the

President and the Governor or their nominees, as the case may be, are empowered to make rules regulating their recruitment and the conditions of

service. It is also true that after the Council of States makes the necessary declaration under Art. 312, it is the Parliament which is empowered to

create an All India Judicial Service which will include post not inferior to the post of District Judges as defined under Art. 236. However, this does

not mean that while determining the service conditions of the members of the Judiciary, a distinction should not be made between them and the

members of the other services or that the service conditions of the members of all the services should be the same. As it is, even among the other

services, a distinction is drawn in the matter of their service conditions. This Court has in the judgment under review, pointed out, that the linkage

between the service conditions of the judiciary and that of the administrative executive was an historical accident. The erstwhile rulers constituted

only one services viz., the Indian Civil Service for recruiting candidates of the judicial as well as the Administrative Service and it is from among the

successful candidates in the examination held for such recruitment, that some were sent to the administrative side while others to the judicial side.

Initially, there was also no clear demarcation between the judicial and executive services and the same officers used to perform judicial and

executive functions. Since the then Government had failed to make the distinction between the two services right from the stage of the recruitment,

its logical consequences in terms of the service conditions could not be avoided. With the inauguration of the Constitution and the separation of the

State power distributed among the three branches, the continuation of the linkage has become anachronistic and is inconsistent with the

constitutional provisions. As pointed out earlier, the purity in status is no longer between the judiciary and the administrative executive but between

the judiciary and the political executive. Under the Constitution, the judiciary is above the administrative executive and any attempt to place it on

par with the administrative executive has to be discouraged. The failure to grasp this simple truth is responsible for the contention that the service

conditions of the judiciary must be comparable to those of the administrative executive and any amelioration in the service conditions of the former

must necessarily lead to the comparable improvement in the service conditions of the latter".

21. The executives interference and its extension in the administration of justice has led to the constitution of a Bench of nine Judges of the

Supreme Court and in the case of Supreme Court Advocates-on-record Association v. Union of India, (1993) 5 J. T. 483, the independence of

judiciary as an essential attribute of the rule of law has emphasised once again by pointing out :

Independence of Judiciary is the sine qua non of democracy. So long as the judiciary remains truly distinct from both the Legislature and the

Executive, the general power of the people can never be endangered from any quarters. Montesquieu in his book "Spirit of Laws" observed "there

is no liberty, if the power of judging be not separated from the legislative and the executive powers". The framers of the Constitution made it

known in an emphatic voice that separation of judiciary from executive, which is the lifeline of "independent judiciary" is a basic feature of the

Constitution. Dr. B. R. Ambedkar in his speech in the Constituent Assembly on June 7, 1949 observed as under :

I do not think there is any dispute that there should be separation between the executive and the judiciary and in fact all the articles relating to the

High Court as well as the Supreme Court have prominently kept that object in mind".

22. The above thus will give a sanction to the observation by us above as in the case of Red Light on the Cars of the Hon"ble Judges of the Red

light on the Cars of the Hon"ble Judges of the High Court Vs. State of U.P., , that the last bulwark of a State is its Court of Justice and :

the stream of administration of Justice which is a sacred one like river Ganges emanates from the Constitution which unlike other rivers flowing

from the same source has in itself a potentiality of cleansing mechanism not allowing pollution to overcome it, leading to stagnation of rule of law.

The mechanism is based on dignity and honour conferred on the Hon"ble Judges by assigning distinct and sovereign position under the

Constitution. They are constitutional appointees and functionaries possessed of faith of the people which cannot be allowed to receive shock at any

hand. They command respect and obedience from all irrespective of political or religious belief of faith of the people. Slightest disrespect to the

system or its constituents may lead to disastrous effect annihilating the very fabric of rule of law. Anything which erodes the faith of the people in

the rule of law may be not only fatal to the system but may also be a dangerous obstruction of justice requiring proper treatment so as to maintain

the majesty of law".

The observations of the Supreme Court in the All India Judges' Association & Ors. v. Union of India & Ors. 1993 CLR 770, that judicial

independence cannot be secured by making mere solemn proclamations about it, it has to be secured both in substance and in practice, it is trite to

say that those who are in want cannot be free, self-reliance is the foundation of independence give the support base to the view which we propose

to take.

23. Any attempt thus even by remote devices to make the Judges of the Court uncomfortable; to make them plead with the executive Government

for something which naturally and obviously should come to them, is/will be an act of interference in the independence of judiciary, an act almost

touching the core, the power of the Court under Art. 215 of the Constitution of India.

24. Adverting to the case in hand and since we have in the course of the hearing of this case, found from the administrative records of this Court

several acts of obvious disregard of the executive to the constitutional obligation as to, (1) medical and other allowances payable to the Hon"ble

Judges of this Court, (2) security and other facilities like maintenance of the staff car, etc., and non-implementation of the provisions of their official

residences and maintenance thereof, and (3) the sufferings to the administration of justice created mainly on account of the failure of the executive

Government in not making provisions of the essential items like electronic typewriters, standard papers for typing and printing of the judgments of

the Court etc., we have heard learned counsel for the petitioner and learned Advocate General and Mr. K. M. Srirangan, learned Additional

Government Pleader in matters not only confined to the medical allowance, but also other allowances, etc. Learned Advocate General as well as

learned Additional Government Pleader have assisted the Court, we think we must record, in full and to the satisfaction of the Court in all respects,

and while not conceding that there has been neglect of the cause of the Court by

the executive Government, have fairly acknowledged wherever it has been found in the records and in the files of the State Government that there has been any particular failings, and conveyed without reservation that the executive Government shall readily and willingly undo any wrong if already done and shall adopt such a course in future that may be found in keeping with the constitutional position of the Hon<sup>ble</sup> Judges of this Court and the requirements of the statutes in this behalf.

25. Since the case before us has been in respect of the claim of a sitting Judge who has since retired, falling strictly under Sec. 23 of the High Court

Judges (Conditions of Service) Act, 1954 read with the rules in this behalf that is Rule 2 along with the proviso introduced by G. S. R. No.

1175(E), dated November 4, 1986 published in Gazette of India Extraordinary to Part II Section 3, Sub-section (1) dated November 4, 1986 we

propose first to deal with this aspect.

26. We have already referred to the relevant provisions and found that in respect of the conditions of service of a Judge of a High Court, for which

no express provision has been made in the Act or under the Rules framed thereunder, the rules for the time being application to a member of the

Indian Administrative Service holding the rank of a Secretary to the Government of the State in which the principal seat of the High Court is

situated apply. In respect, however, of the facilities for medical treatment and accommodation in hospitals, the All India Services (Medical

Attendance) Rules, 1954 applied with effect from 26.1.1950, but after the amendment aforementioned in the case of Judges of the High Courts

other than the Delhi High Court and the Punjab and Haryana High Court, the rules and provisions as applicable to a Cabinet Minister of the State

Government in which the principal seat of the High Court is situated, have been made applicable and in the case of the Chief Justices of the Delhi

High Court and the Punjab and Haryana High Court, the rules and provisions as applicable to a Cabinet Minister of the Union Government have

been made applicable and to the Judges of these Courts, the rules and provisions as applicable to a Union Deputy Minister have been made

applicable. The amendment thus has clearly indicated that the Judges are required to be treated not on par with persons, who are governed by All

India Service (Medical Attendance) Rules after 4.11.1986, but on part with the

Cabinet Ministers of the Government of the State. The rule before amendment had already given to the Judges of the High Court benefits or facilities for medical treatment and accommodation in hospitals under the provisions of the All India (medical Attendance) Rules, 1954. In Tamil Nadu, however, under the Tamil Nadu Payment of Salaries Act, 1951 as regards the salary and other allowances of Ministers, Rules are framed, which say that a Minister, the Speaker, the Deputy Speaker, or the Parliamentary Secretary shall for himself and for the members of his family be entitled to free of charge accommodation in hospitals maintained by the State Government and also to medical treatment and attendance, on the same terms and conditions as are applicable to the highest category of servants employed under the Government of Tamil Nadu. The rule is silent about any treatment to the Minister, the Speaker or the Deputy Speaker of the Parliamentary Secretary for himself and the members of his family in any hospital other than the hospitals maintained by the State Government. But as to medical treatment and attendance. It has provided that they shall be given medical treatment and attendance on the same terms and conditions as are applicable to the highest category of servants employed under the Government of Tamil Nadu. It is conceded before us and it is not in doubt that the expression ""highest category of servants employed under the Government of Tamil Nadu"", has been understood by the respondents to mean cadre of officers, who are governed by the All India Service (Medical Attendance) Rules, 1954. It cannot be disputed as we have observed earlier that the State Legislature has got the competency to enact the law as to salaries and allowances of Ministers, the Speaker and the Deputy Speaker, Parliamentary Secretary, etc. The Parliament alone, however, is competent as we have already noticed, to create one or more All India Services including All India Judicial Services common to the Union and the State and make provisions by law as to the conditions of service of such persons. The Judges of the High Court as constitutional authorities stand apart by specific provisions in this behalf in the Constitution and the Parliament alone by or under a law is empowered to determine what allowances and other service conditions from them should be made. On a strict interpretation of these provisions, it is possible to hold that the Ministers, Speaker, etc., of the State Government, who

are subjected to the Medical Attendance Rules framed under the Tamil Nadu Payment of Salaries Act, are not entitled to the medical treatment

and attendance on the same terms and conditions as are applicable to the members of the All India Services and they, that is to say, the Ministers,

etc., are entitled only to the terms and conditions as are applicable to the services employed under the Government of the State of Tamil Nadu that

is to say, the members of the highest category of a service of the State of Tamil Nadu. It will not be possible even by stretching the provisions as in

the Constitution of India and the laws made by Parliament to equate a holder of a post in All India Service with that of a holder of a post in a state

service except by a statute creating such equality and/or by such provisions which are intended to be made applicable to the members of All India

Services as well as the members of the State Government Services. The Tamil Nadu Medical Attendance Rules are intended to apply to the

persons who are entitled to the facilities and the benefits under the All India Service (medical Attendance) Rules as well only to the extent to which

they are not inconsistent with the rules thereunder. Since the Tamil Nadu Medical Attendance Rules are applicable to the Government servants

employed in the Government of Tamil Nadu that is to say, the whole time Government servants belonging to Groups A and B who appear to be

the highest ranking Government servants in the state and under the Tamil Nadu Legislative Assembly (Medical Attendance and Treatment) Rules,

1964 applicable to the Ministers, they have been given the same facilities as are given to the highest category of servants employed under the

Government, they (Ministers and others) are governed by these rules. When these rules thus permitted only treatment in the Government Hospitals

and accommodation in the Government Hospitals free of charge and the amendment, the sheet anchor of the defence that is G. O.Ms.No. 1023,

Health and Family Welfare department, dated 17.6.1980 in Rule 10(c) of the Tamil Nadu Medical Attendance Rules restricted any allowance by

way of reimbursement of the charges incurred for treatment undergone by a person in a private medical institution to the extent that would have

been incurred, had the patient taken treatment in a Government Hospital excepting diet charges, no Minister, Speaker or any other person who is

governed by the Tamil Nadu Medical Attendance Rules and the Tamil Nadu Legislative Assembly (Medical Attendance and Treatment) Rules,

1964, could get anything beyond the limit prescribed under these Rules except by a violation thereof and by extending the eligibility of such persons

under the All India Service (Medical Attendance) Rules, 1954. We have no hesitation in holding that in the case of Judges of this Court who are

governed by their own service condition Rules, who notwithstanding the equation by the Amendment Act of 1986 for the purposes of the benefits

and facilities of medical treatment with the Cabinet Ministers of the State for the reason that the State Legislature has equated a Minister, the

Speaker, the Deputy Speaker or the Parliamentary Secretary and the members of his/her family for the accommodation in hospital and medical

treatment and attendance with the highest category of servants employed under the Government of Tamil Nadu, can be subjected to the Rules that

are applied to the servants employed under the Government of Tamil Nadu, can be subjected to the Rules that are applied to the servants

employed under the Government of Tamil Nadu. Any attempt to do so shall be a violation of the guarantee under Art. 22(2) of the Constitution of

India. The framers of the Tamil Nadu Medical Attendance rules, however, were aware that members of All India Service cannot be subjected to

any such provision in these rules if they are inconsistent with any rules in the All India Services (Medical Attendance) Rules, 1954. They, for the

said reason, kept themselves pronounced in the statute itself that these rules shall apply to persons who are entitled to medical attendance under the

All India Services (Medical Attendance) Rules, 1954 only to the extent to which they are not inconsistent with these Rules. It is indeed pathetic, if

not obnoxious how the respondents decided to enforce the rule in G. O. Ms. No. 1023, Health and Family Welfare Department, dated 17.6.1980

in the case of a Honourable Judge of the High Court.

27. Learned Advocate General as well as learned Additional Government Pleader, have brought to our notice certain files relating to the medical

reimbursement bills of Ministers of the State, All India Service Officers and the Hon"ble Judges of this Court. In the case of the latter two, who in

our opinion, cannot be subjected to a rule, which is inconsistent with All India Services (medical Attendance) Rules, 1954 (inconsistency we shall

demonstrate a little later), reimbursement for treatment in private medical institutions have been confined to the rule in G. O. Ms. No. 1023, Health

and Family Welfare Department, dated 17.6.1980. In the case of the former, that is to say, the Ministers of the State, who in our opinion, are

subject to Tamil Nadu Medical Attendance Rules and, therefore, this G. O. Ms.No. 1023, Health and Family Welfare Department, dated 17th

June, 1980 has not been applied.

28. Learned Advocate General as well as Additional Government Pleader have not been able to bring to our notice even one medical

reimbursement file of a Minister of the Government of the State in which the payment for treatment in a private hospital has been limited to the rules

in G. O. Ms. No. 1023, Health and Family Welfare Department, dated 17.6.1980. The three files (vide File No. G. O. Rt. No. 3141, Public (P.

S. B.), dated 5.10.1990, G. O. Ms. No. 539, P. S. B. dated 7.5.1992, 1384, dated 4.12.1992 and G. O. (D) 76, P. S. B., dated 22.3.1993

dealing with the medical reimbursement for treatment in a private hospital of the Ministers of the State show that in one case for a bill under Rules 2

and 6 of the Tamil Nadu Legislative Assembly (Medical Attendance and Treatment) Rules, 1964 for a sum of Rs. 46.841 for treatment in a private

hospital at Madras in August and September, 1990, Rule 14(ii) of the All India Services (Medical Attendance) Rules, 1954 was invoked, but not

the rule in G. O. Ms. No. 1023, Health and Family Welfare Department, dated 17.6.1980 and the bill was settled in full by the State Government.

29. Other two bills are cases where it is difficult to find any Government order of sanctioning reimbursement of the bills of the Minister's treatment

and accommodation in a private hospital. They are said to have claimed advances for treatment abroad and as demanded by them, money has

been paid and it is said, on return and after the treatment as claimed by them, they have reimbursed/refunded the excess taken by them in advance.

No one seems to have been ever aware either of the requirements of the Tamilnadu Medical Attendance Rules or even the requirements of All

India Services (Medical Attendance) Rules. There are no orders anywhere in any of these two files to show that at any level of the Government,

there has ever been any application of any the rules including the rules as in G. O. Ms. No. 1023, Health and Family Welfare Department, dated

17.6.1980. We have known that a person, who makes the law is obliged to abide by it and the famous saying is that the law is above one who

makes it. The Tamil Nadu Legislature has made the Tamil Nadu Payment of Salaries Act and the Government of Tamil Nadu, obviously representing the Council of Ministers, has framed the Tamil Nadu Legislative Assembly (Medical Attendance and Treatment) Rules. They have put the Ministers, the Speaker, the Deputy Speaker and the Parliamentary Secretary on the same terms and conditions as are applicable to the highest category of servants employed in the Government of Tamil Nadu. They have framed the Tamil Nadu Medical Attendance Rules. They have amended the said Rules by G. O. Ms. No. 1023, Health and Family Welfare Department, dated 17.6.1980. But they have always been, it seems, above the law, which they themselves have framed in this behalf.

30. We postponed the demonstration of the inconsistency of the provisions in the Tamil Nadu Medical Attendance Rules and in particular in G. O.

Ms. No. 1023, Health and Family Welfare Department, dated 17.6.1980 which we may now take up. The All India Services (Medical

Attendance) Rules, 1954 applied to the Judges of the High Courts before the amendment in the High Court Judges (Conditions of Service) Rules

in 1986 and which we are inclined to assume, will continue to apply for the reason that the rules framed under the Tamil Nadu Payment of Salaries

Act, 1951 for the medical attendance bills of the Ministers and others, if applied to them, appears to deny what they must legitimately get in terms

of the said Rules. Application of the rules that reduce the allowances already granted to the Judges is not permissible under Art. 221(2) of the

Constitution of India. These rules framed by the State Legislature are to be applied to members of the services serving in connection with the affairs

of the State. They cannot, for the reason of the constitution of the All India Services and the service conditions determined by the All India

Services Act, 1951 apply to the members of All India Services. The rules that are framed by the Central Government under the said Act

prescribes for the appointment of the Authorised Medical Attendant, who the Rules stipulate has to be a principal Medical Officer appointed by

the Government to attend their medical needs in the station or district where they are working. A Medical Officer, who in rank is equal or

immediately junior to such principal Medical Officer and who is attached to any hospital or dispensary in the station where such principal Medical

Officer is posted, is also made competent to attend to their medical needs, if there is no principal Medical Officer appointed by the Government for

the station at which or the district in which the members of the service is posted. There is a proviso which stipulates that the principal Medical

Officer shall be the officer appointed by the Government as the Authorised Medical Attendant. The Authorised Medical Attendants under these

Rules is competent to take decision whether the case of a patient is of such a serious or special nature as to require medical attendances by some

person other than himself. In such a situation, he is required to obtain beforehand, the approval of the chief Administrative Medical Officer of the

State, except the case where the delay involved would entail danger to the health of the patient. In that case, with the prior approval of the Chief

Administrative Officer or in the case of an emergency, the Authorised Medical Attendant without the approval of the Chief Administrative Officer

may send the patient to the nearest specialist or any other medical officer by whom, in his opinion, medical attendance is required for the patient or

if the patient is too ill to travel, summon such specialist or other medical officer to attend upon the patient. Where a patient is sent to a specialist or

other medical officer, he shall, on production of a certificate in writing by the Authorised Medical Attendant in this behalf, be entitled to travelling

allowance for the journey to and from the head-quarters of the specialist or other medical officer. These Rules, have undergone several

interpretations and clarifications by the Central Government (the rules themselves stipulate, the power to interpret in the Central Government). The

Central Government, as far back as 17th July, 1964, clarified that if the Authorised Medical Attendant is of the opinion that suitable facilities for

hospital are not available, or the condition of the patient is such that he cannot be shifted to the hospital without risk of deterioration in his health, he

may give treatment to the member of the Service or the member of his family at his residence. In cases where illness is not severe or the disease is

of a chronic nature, the patient should consult the Authorised Medical Attendant, either at his consulting room, if it has been so maintained or in the

hospital as an out-door patient, and further that ordinarily a member of the service is expected to receive treatment from the authorised Medical

Attendant, but in exceptional circumstances, reimbursement of the cost of medical treatment incurred on the advice of the private practitioner can

be reimbursed by the State Government, if the State Government are satisfied of the existence of special circumstances in which treatment could

not be had through the Authorised Medical Attendant and the refusal to reimbursement of such cost is likely to cause undue hardship to the officer.

This power is available in Rule 14, which says.

Nothing in these rules shall be deemed to -

(i) entitled a member of the service to reimbursement of any cost incurred in respect of medical services obtained by him, or to travelling allowance

for any journey performed by him otherwise than as expressly provided in these rules, or

(i-a) entitle a member of the service to reimbursement of any cost incurred in respect of :

(a) such preparations which are not medicines, but are primarily used as food, tonic, toilet or disinfectant, and

(b) such expensive drugs, tonic, laxatives and other elegant and proprietary preparations (for which drugs of equal therapeutic value are available)

as may be notified by the Central Government;

(ii) prevent the Government from granting to a member of the service, or to a member of the family of a member of the service any concession

relating to medical treatment or attendance or travelling allowance for any journey performed by him which is not authorised by these rule.

The above rule with the clarification alone will guide the Government in deciding whether the claim of a member of any All India Services should be

granted. It is trite law that no person vested with a discretion under a law can act at his whim and use his fiat in deciding, who should be benefited

by the exercise of discretion and who should not be. The clarification has put forward two requirements. The two requirements are : (1) satisfaction

that the treatment could not be had through the Authorised Medical Attendant and (2) refusal to reimbursement is likely to cause undue hardship to

the officer.

31. There is no limit prescribed for the amount upto which the controlling officer can allow reimbursement, but in a case falling under rule 14(ii)

above, sanction of the Government will be necessary. To clarify, however, that the "Government" for the purpose of the rule, should not always be

the "Government of India" excepting cases where any clarification is required,

the Government of India has said in a letter dated 10th August, 1964 (G. I. MHA, letter No. 7/10/63-AIS (III) (G. I. MHA, letter No. 7/2/65-AIS (III), dated 20th April, 1965) that the State Government are the competent authority to regulate such procedural matters and the State Government are themselves competent to grant to an All India Service Officer serving in connection with the affairs of the State any concession relating to medical attendance or treatment which is not authorised under the Rules.

32. We have seen thus that the Rules put no limit upon the discretion of the competent authority to regulate and prescribe no procedure how such reimbursement should be claimed and what should be found satisfied before the reimbursement is ordered in cases not covered by the Rules. We have also seen that a role is envisaged under the Rules for the Authorised Medical Attendant and the Government of the State, is competent to notify who the Authorised Medical Attendant will be for any station or district.

33. In the proviso to the definition of an "authorised medical attendant", the rule, however, has called, in the absence of no principal Medical Officer appointed by the Government for particular station, the principal Medical Officer appointed for the district in which the station or district is situated, as the Authorised Medical Attendant. These rules, however, do not recognise the role of any other authority in the Government except the authority that is envisaged for the officers superior in rank to the Authorised Medical Attendant. The Government of the State is given a role in sanctioning or authorising the reimbursement of the expenses incurred for the accommodation, treatment and travelling when found necessary as required by the ailment for which treatment is sought. A vital role is conceded, however, for the State Government to play in granting to a person to whom the Rules apply, any concession relating to medical treatment or attendance or travelling allowance. We have gone in some details into the Rules only to find for ourselves whether the legislative intention in amending in particular the rule as regards reimbursement of medical charges was/is to give to the Hon'ble Judges of this Court something more than the All India Services (Medical Attendance) Rule, 1954, had/has given. We have noticed that before these amendment, the Hon'ble Judges of this Court enjoyed all facilities for medical treatment and accommodation in

hospital in accordance with the All India Service (Medical Attendance) Rule, 1954. This equation, the framer of the Rules, intended to change and

thus came G. S. R. No. 1175 (E), dated November 4, 1986 saying.

In respect of facilities for medical treatment and accommodation in hospitals. In the case of Judges of the High Courts other than Delhi and Punjab

& Haryana High Courts, the rules and provisions as applicable to a Cabinet Minister of the State Government in which the principal seat of the

High Court is situated shall apply.

We have also seen that a set of rules have been in existence in Tamil Nadu, which were/are framed under the Tamil Nadu Payment of Salaries Act

(XX of 1951), which contain a prescription that the Minister and members of their family would/will be entitled to accommodation free for charge

in hospitals maintained by the State Government and also to medical treatment and attendance on the same terms and conditions as are applicable

to the highest category of servants employed under the Government of Tamil Nadu. It obviously cannot be conceived that the notification dated

4.11.1986 amending the High Court Judges (Conditions of Service) Rules, intended in any manner to bring down the scale of the medical facilities

which the Hon"ble Judges of this Court were already enjoying. The amendment had/has got the obvious intendment of improving the facilities for

medical treatment and accommodation in hospital and to give to the Hon"ble Judges of the High Court something better and more than the

provisions of the All India Services (Medical Attendance) Rules, 1954 had/has given to them. The rule makers could obviously not entertain any

idea of reducing the facilities for medical treatment and accommodation in hospital to the Judges for, any such thing, we have already found,

would/will be in the teeth of Art. 221(1) of the Constitution of India.

34. There is a significant use of the word "provision" in the expression ""the rules and provisions"" as applicable to a Cabinet Minister of the State

Government in the Notification G. S. R. No. 1175(E), dated 4.11.1986. The Oxford Dictionary defines the word "provision" to mean,

providing, provided amount of something; supply of good, eatables & drunkables; legal or formal statement providing for something clause of this,

appointment to benefice not yet vacant; ordinances for checking king's misrule drawn up by barons under Simon de Montfort in 1258; to supply

with.

If the intention was/is to give to the Judges of the High Court only that much which is prescribed by the rules framed by the State Legislature for

Cabinet Ministers, the word ""provisions"" was/is not necessary. We have been assisted by the learned Advocate General and the learned

Additional Government Pleader, in order to get full information as to whether in the case of Ministers, the rules framed under Act XX of 1951

were ever applied. When questions how reimbursements were made to the Cabinet Ministers came up for discussion in the course of the hearing

of the case it is found that at no time these Rules were ever extended to them. The learned Additional Government Pleader has made a reference

to a rule in the Tamil Nadu Financial Code, for making grants and concessions at the Government's discretion and contended that the Government

have used only third power in the case of the Ministers. We need not pursue our enquiry into this aspect any further for, it is almost conceded that

the Cabinet Ministers have enjoyed everything and have always been treated above the rules which they have framed for themselves. If the

executive has not subjected the Cabinet Ministers to the inhibitions under the Rules, how can they put the Judges of the High Court under such

rules? The High Court Judges (Conditions of Service) Rules after amendment have extended to the High Court Judges all facilities for medical

treatment and accommodation in hospital which are given to the cabinet Ministers. It is hardly pertinent for the government to subject the medical

reimbursement bills of the Hon''ble Judges of this Court to such set of rules, which they could never apply to the Ministers.

35. Had the case of the petitioner been an isolated or sole example of such treatment by the executive to the medical reimbursement bill of a High

Court Judge, we would have chosen to close the matter on the basis of the information furnished to us by the learned Additional Government

Pleader that since the hearing of the instant petition, the petitioner's bills have been sanctioned in full. It has been brought to our notice in the course

of the hearing by the learned Advocate General and learned Additional Government Pleader that medical reimbursement bills of several other

Hon''ble Judges have been subjected to the same kind of treatment. There may be/are outstanding reimbursements for more than years where

perhaps even implementation of the Rules in the case of the bills, would have been found unnecessary. Some of them, more than a year old, have

been pending (sanctioned only after the hearing of the instant case is concluded). There are still, however, cases where special sanctions under rule

14(2) of the All India Services (Medical Attendance) Rules, 1954, have been restricted under G. O. Ms. No. 1023. Health and Family Welfare

Department, dated 17.6.1980. In such cases, there is obviously a violation of the constitutional mandate and denial of a right recognised in every

Judge of this Court by the High Court Judges (Conditions of Service) Act, 1954 as amended from time to time and the Rules framed thereunder.

36. We, however, record with satisfaction that the Government of the State has chosen it has been so represented before us by the learned

Advocate General and by the learned Additional Government Pleader to rise above the bureaucratic inhibition and the political/popular

Government of the day, is willing to extend everything that is necessary and to which the Judges of the Court are entitled by dint of their

constitutional status and by prescriptions under the High Court Judges (Conditions of Service) Act, 1954, as amended from time to time and the

Rules framed thereunder. We are conscious at the same time. how so eminent a Judge may be he should keep his requirements in limits and should

expect only such perquisites which are essential and which are granted to him in accordance with law. If the Judges are not given what is necessary

and due to them, there is chance of their compromising with their independence and surrendering the very basis of the independent existence of a

judicial system in the country. If they are given more than necessary and due and accept they obviously fall a prey to temptation. A correct balance

can be achieved by the executive Government of State by recognising all such necessary requirements and making available to the Judges without

waiting for demands from them and the Judges accepting any perquisite only after being satisfied that it is necessary and that it is due to them.

37. We have indicated earlier in the course of the hearing of the case about matters how Judges of this Court are treated for the purpose of

security, how they have been provided the Official accommodation and furnishings, how they have been provided with staff cars and how their

cars are maintained, how the Government fix their accommodation when they go in circuit work to the districts and such other stations of the

State, and how many provisions which are overdue for a proper and effective functioning of the Court are neglected and how in the present day

system, the Court is functioning with constraints as against the shortage of staff, typewriters, standard stationery including judgment paper and how

a promise for installation of a fax machine has remained unfulfilled, etc. We have primarily concerned ourselves in the instant case with the case in

hand and heard learned counsel for the parties but in course of the hearing also informed about other matters. We think, it is not necessary to deal

in any detail with every such item of discussion in the course of the bearing of the case, but to some such items, which need immediate attention and

about which as we have already observed earlier there is a complete consensus, we may advert to.

38. There has been a meeting held at the State Guest House Chepauk on 22.4.1991 during the period when the State was ruled by the Governor

with the aid and advice of the Advisors appointed for the said purpose. The then Hon"ble the Chief Justice, the two Advisors to the Governor, the

Principal Secretary (Home), the Secretary to Government, Public, the Secretary to Government. P. W. D., the Registrar of the Court and the

Chief Engineer (Buildings), P. W. D. participated in the said meeting. There is mention therein as item 3 on furnishing of the residences of the

Judges that the same would be decided after the elected Government assumed office. It seems, nothing moved in the Government of the State, but

the High Court Judges (Conditions of Service) Rules were subjected to an amendment repealing Rule 2-B, which has provided that the value of

free furnishing including electrical appliances provided free of rent in an official residence allotted under Sec. 22A of the Act, in the case of the

Chief Justice, would be Rupees five thousand more than the scale provided to a Cabinet Minister to the State Government and to a Judge of a

High Court at the scale as provided to the Cabinet Minister, was amended and furnishing for the Chief Justice was fixed at Rs. 1,00,000 only and

the other judges, Rs. 70,000 only. It is known, however to all concerned that the Public Works Department is yet to provide to many of the

Hon"ble Judges refrigerators, geysers and like electric appliances in many houses occupied by them. There has been, it means, some demand for

the sanction of the additional cars and as the minutes of this meeting reveal, in supersession of all earlier orders, the Government sanctioned the

following number of cars.

Chief Justice - One A/c. Contessa Car.

- One A/c. Ambassador Car.

Judges - One non A/c. Ambassador Car each.

Registrar - One non A/c. Ambassador Car.

Protocol - One non A/c. Ambassador Car.

- Three spare cars for use of

Judges and visiting V.I.Ps.

(not to be used as staff car)".

At this meeting, it was also resolved that whenever Government bungalows were not available for allotment to Judges as official residence, private

bungalows could be taken on rent and placed at the disposal of the Judges and since the Act and the Rules did not stipulate any ceiling on rent for

private bungalows, the resolution said, "however in the interest of economy, the present ceiling of Rs. 3,000/- will be increased to Rs. 5,000/- per

ensem with effect from 1.4.1991. The Chief Engineer, P. W. D. will fix suitable private bungalows for the Judges upto this level. If the rent is to

be higher than the ceiling limit, prior Government's sanction will be necessary. In case private bungalow owners demand advance, the Chief

Engineer may be authorised to make such payments subject to a maximum of six months rent".

39. The amendment to the High Court Judges (Conditions of Service) Act introduced provisions as to facility of rent free house and conveyance

facilities saving.

Every Judge shall be entitled to a staff car and one hundred and fifty litres of petrol every month or the actual consumption of petrol per month

whichever is less".

The type of the car, the period for which a car should be used and thereafter changed, the fittings and furnishings provided in such cars, etc., are

not stated in the Act or the Rules. There has, however, been a general consensus that the Judges cars should be fitted with such items as are not in

the realm of luxury but are necessary for providing much needed comforts and necessary security and seclusion while travelling. It is one thing to

say that Judges' cars have not been brought to that level and another when by a Government notification, it was conceded vide, G. O. Ms. No.

742, Public, dated 3.5.1988 that the Judges' cars will be provided with the same facilities as are provided to the cabinet Ministers of the State

Government, and by a subsequent notification certain extra fittings were made available to the Cabinet Ministers only, and the Cabinet Ministers'

cars were/are put to fittings of such lights and glasses as the Government notification described were/are necessary for security reasons. The

Government has also issued another notification dated 16.11.1990, and introduced a prohibition that except those enumerated in the notification,

others will not be entitled to use revolving red light in their vehicles. This notification has included in the list of such privileged persons, all the

Ministers, some policemen and atleast two Secretaries, Judges of the High Court are not included in it except the Chief Justice. The Government

has reiterated the same once again on 5.5.1992, but has made a mention this time that.

The proposal for the grant of permission to use revolving red light in the vehicles of the following officials is under the consideration of the

Government.

(1) District Collector.

(2) Hon'ble Judges of the High Court.

(3) Certain Police Officers".

How Government have assumed this power and why are different question, which questions we shall separately. How the Government, however,

value the Judges of this Court can be inferred from the equation, they have to stand for their turn with the District Collectors. The Motor Vehicle

Act, 1988, which holds the field and under which the Motor Vehicles Rules, 1989 have been framed are the only statutory provisions which are

known to give competence or authority for various action as respects the motor vehicles. The State Government's competence to make rules

under the said Act is confined to matters covered by the Central Rules. Rule 108 of the Central rules reads as follows :

Use of red or white lights : No motor vehicle shall show a red light to the front or light other than red to the rear :

Provided that the provision of this rule shall not apply to -

- (i) the internal lighting of the vehicle, or
- (ii) the amber light, if displayed by any direction indicator or top light;
- (iii) a vehicle carrying high dignitaries as specified by the Central Government or the State Government from time to time or a vehicle escorting such vehicle;
- (iv) the blinker type of red light with purple glass fitted to an ambulance van used for conveying patients; or
- (v) to a vehicle having a lamp fitted with an electrical bulb, if the power of the bulb does not exceed seven watts and the lamp is fitted with frosted glass or any other material which has the effect of diffusing the light".

The prohibition is imposed by the rule aforementioned upon the use of red or while lights. The Central Government or the State Government, can

specify in exercise of the power under Clause 3 of the proviso aforequoted vehicles carrying high dignitaries so that the prohibition is not applied to

such vehicles. We are not required to make an independent study of this aspect of the law as a Bench of the Allahabad High Court in a recent

judgment in *Red Light on the Cars of the Hon'ble Judges of the High Court v. State*, AIR 1933 All. 211, has gone into this question and has said

as follows :

Undoubtedly there could be two categories of public functionaries -

(a) one those appointed under the Constitution on the post office, contained in the Constitution on the post office, contained in the Constitution and function thereunder.

(b) other, those appointed under some statute of the rules, regulations of the bye-laws, as the case maybe framed thereunder or the rules framed

under the Constitution and function on the post created thereunder and are specified under Rule 108.

The question regarding coverage of the Hon'ble Judge under the category (a) (supra) is not res intergra.

Who are the dignitaries or high dignitaries is not defined under the 1988 Act or the 1989 Rules or under the 1939 Act or the 1940 Rules and as

such dictionaries may be resorted to discover what these might be....

Thus a Judge of a High Court who is a person appointed under Art. 217 of the Constitution by the President of India functions under the

Constitution is a person of distinction, holding a high office of dignity and honour and the word "Hon"ble" is always prefixed before his name.....

The learned Chief Standing Counsel fairly did not advert to any other interpretation. It remained undisputed that the Hon"ble Judges of the High

Court by virtue of their constitutional status are high dignitaries. According to him also no such interpretations to Rule 108 of 1989 Rules which

lowers down the status and dignity of the constitutional appointees and functionaries including the Hon"ble Judges of the High Court can be given".

The Court found invalid any attempt on the part of the executive Government of the State or the police to interfere with the use of the revolving red

light in the vehicle of the Hon"ble Judges and pointed out.

So far as the position of Hon"ble Judges of the High Court, the constitutional appointees and functionaries, is concerned, there would be no

contrary effect under Rule 108 of the 1989 rule regarding the use of red light on the top of the vehicles by them being high dignitary requiring no

specification, but of course the other persons, who are not the constitutional appointees and functionaries would not be entitled to use the red light

at the top of the vehicles used by them, unless under 3rd clause of proviso to Rule 108 of the 1989 Rule, they are specified".

40. What appears to be, however, an insult to the institution of the Judges by the Executive is a correspondent on the subject whether the staff cars

allotted to the Judges of this Court should be fitted with halogen head lamps as are provided to the cars of all the Cabinet Ministers for better

illumination, when Ministers are on tour and also for security measures. The Government's reply is as terse as one may find from one, who treats

the institution with contempt. The Government's letter dated 5.8.1993 has been forwarded by the Superintendent, Motor Vehicles Maintenance

Department. The Government's letter reads as follows :

I am directed to invite the attention to the reference cited and to state that the Registrar, High Court, has proposed that as in the case of Ministers,

the Cars of the Judges may also be fitted with halogen head lamps. In this connection I am to state that the ministers have been allowed this facility

since they undertake intensive tour. Further on security grounds also, this has been provided to them. As such compelling reasons do not extend in

the case of Judges. I am therefore to state that there is no reason to accept the

proposal".

41. It is not known who in the executive hierarchy has acted in the name of the Government and has directed for the above communication, who

has taken the decision and when that Judges are not required to undertake intensive tour and who has taken the decisions that Judges of this Court

do not need such halogen head lamps and other fittings for the reason of security? Without being self-placating, we can say with confidence that

Judges have more reasons to undertake intensive tours than the Ministers except the latter's tours for political, social or personal activities, which it

is common knowledge, they take more often than the official tours. Judges do not go on tours for political or social orders. They do go on tours

and mostly official tours for inspection and other purposes, for which they are not required to take orders from any other authority and details

about which no one can ask and details of which are alone relevant and form part of the administrative records of the High Court.

42. As to security, we will have a word how the executive Government and the police in the State of Tamil Nadu have stretched it beyond all

limits. We can say with confidence, this time not using our words but what is said by the Supreme Court as to the reasons of security of the Judges

of the subordinate Courts in *All India Judges Association & Ors. v. Union of India & Ors.* 1993 II CLR 200, as under :

It would be appropriate to remind all concerned of the distinct nature of the duties that a Judge is called upon to discharge, the society's

expectations of the conduct of the Judge, the life-style of the Judge, the occupational hazards to which he is exposed and of the need to keep

Judges above their essential wants. We can do better than to quote in this behalf, relevant excerpts from David Pannick's book "Judges" after

omitting those which have already been referred to earlier. Although the observations made there are in the context of English Judges, they are

equally, if not more applicable to the Judges in this country.

The reasons which Judges must give to justify their decisions can be gnawed over at their leisure by the teams of lawyers trained and generously

paid to extract for the purpose of an appeal, every morsel of error.... The Judge has the burden of resolving, day after day and week after week a

long succession of issues, each one of which occupies the professor critic for

months and even years of specialised study".

The English Judge has no clerks or assistants to research or write his judgments. The barristers who argue the case before him will "vary much in their ability". Sometimes they help but often they may be a hindrance to the just determination of the issues.....

The Judge has burdensome responsibilities to discharge. He has power over the lives and livelihood of all those litigants who enter his Court. His decisions may well affect the interests of individuals and groups who are not present or represented in Court. If he is not careful, the Judge may precipitate a civil war... or he may accelerate a revolution. He may accidentally cause a peaceful but fundamental change in the political complexion of the country".

Judges today face tribulations, as well as trials, not contemplated by their predecessors... Parliament has recognised the pressures of the job by providing that before the Lord Chancellor recommends anyone to the Queen for appointment to the Circuit Bench, the Lord Chancellor "shall take steps to satisfy himself that the person's health is satisfactory".... This seems essential in the light of the reminiscences of Lord Roskill as to the mental strain which the job can impose.... Lord Roskill added that, in his experience, the workload is intolerable seven days a week 14 hours a day....

Only in England could the vocation of the Judges be described as "something like a priesthood" or "analogous to Royal Family", requiring practitioner to "seclude themselves" in various ways....

In England we expect the Judge to adopt a respectable lifestyle, free from any hint of the unusual, let alone the deviant".

In 1950 a Member of Parliament..... recommended an even greater degree of Judicial isolation.... So effective is the isolation of our judiciary that the personalities and characteristics of our Judges are unknown to laymen....

The English Judge ensures in a quiet but effective manner that his pay accords with his status. He avoids the public display of militancy. Judge

Rank Coffin of the US Court of Appeals complained in 1985 about the inadequacy of "compensation" for judges. In the previous few year, he

amended, judicial salaries had become so insufficient that only the mediocre or the wealthy would henceforth be willing to take judicial

appointments. Perhaps disappointing pay levels help to explain why a clinical psychologist was helping Judges in Massachusetts to cope with stress.... He also provided counselling to enable the retired Judge to main self-esteem".....

He (Judge) is a symbol of that strange mixture of reality and illusion, democracy and privilege, humbug and decency, the suitable network of compromises, by which the nation keeps itself in is familiar shape"".

The qualities desired of a Judge can be simply stated; "that if he be a good one and that he be thought to be so". Such credentials are not easily acquired. The Judge needs to have "the strength to put an end to injustice" and "the faculties that are demanded of the historian and the philosopher and the prophet

It is unlikely that men and women will ever cease to wound, cheat and damage each other. There will always be a need for Judges to resolve their disputes in an orderly manner. As people grow ever less willing to accept unreservedly the demands of authority, the judiciary like other public institutions, will be subjected to a growing amount of critical analysis. The way in which "Judge & Co." is run a matter of public interest and will increasingly be come a matter of public debate"".

43. The supreme Court has also reminded us what the Law Commission in its 14th report had said in connection with the work of the judicial officers...

The great responsibility of the work which a judicial officer is called upon to discharge needs no emphasis... judicial integrity is of the greatest

importance and to except persons discharging responsible functions to live on low salaries not commensurate with their office and responsibility is

unrealistic and ignores present day living conditions. Elsewhere, we have also dealt with the difficulties which judicial officers, as a class, have to

face in the matter of securing residential accommodation and how, in some parts of the country, a very high percentage of their salary has to be

spent towards house rent alone. Considering these facts and circumstances, we are of the view that the scale of pay should be substantially higher

than it is at present in order to enable an officer to maintain a proper standard of living and avoid obligations which may be embarrassing to him in

the discharge of his duties....

44. In a nutshell, it will be no exaggeration if it is said that the High Court Judges are higher dignitaries, who by virtue of their office and the nature of work that is to say dispensation of justice, exercise a regal or sovereign function; their work forms part of a constitutional duty of the State and they discharge inalienable functions of the constitutional Government, which no one else is entitled to perform. They are to be faithful and true to the duties of their office and to function without fear or favour, affection or ill-will and act only to uphold the Constitution and the laws framed thereunder. They have to be aloof to some extent from others. These and other acts which judges perform make them the object of regard and respect of others. Their functions as demanded by their office make them important for the society. No one in the Government's bureaucratic set-up can ignore their position as such. How and why then some one in the Government of the State thought it proper to say that the staff cars of the judges will not be fitted with such lights and glasses which are needed for security reasons and they should not be by dint of their position and status recognised as such category of people, who should be given security and protection from such quarter who may desire to interfere with their independent functioning as Judges? We are constrained to observe, even though we do not desire to relax the refrains which the judges deciding a case must follow, the decision of the executive Government that they are yet to take a decision whether the staff cars used by the Hon"ble judges of this Court should be fitted with red revolving lights, and the decision taken by them that the judges' cars should not be fitted with halogen lamp and such other lights and glasses, which are provided to the cars of the Ministers of the State Government for security reasons, are wholly arbitrary beyond their competence and most uncalled for.

45. The communication in the letter dated 2.9.1993 referred to above in reply to this Court's letter dated 26.8.1992, however, has ignored altogether the specific informations conveyed to the Director Vehicles (Maintenance) Department that (1) there are reports that some of the original parts of the Hon"ble judges' cars are removed in the workshop when sent for repair : (2) the drivers of the staff cars of the Hon"ble judges are not allowed to see what is being done to the cars in the workshop : (3) works Managers of the workshop are used to give evasive replies and

make no report to the High Court as to what fittings are provided and what not and why?

46. How inconvenient the judges of the Court have been feeling about the state of disrepair of the cars in the workshop and how, for the Registry

of the Court, it has become almost impossible to secure maintenance of the staff cars allotted to the Hon"ble judges of this Court, however, are

reflected in the various resolutions passed by the judges of this Court at the Full Court Meetings and the direct communication to the Government

on the subject that the Court will prefer nominating a workshop and getting staff cars repaired at such workshop than handing over cars for repairs

to the Government workshop. The Court's proposal, in this behalf, it seems, has received resistance at the instance of the Director, Motor

Vehicles Maintenance Department, who has in a communication to the Government said.

Government have fixed the ceiling on expenditure according to age of the vehicle. If the vehicle owning officer is permitted to entrust the work

without referring the M. V. M. D. then the vehicle owning officer will indiscriminately spend on the vehicle without analysing the need, justification

of works proposed. Also the reasonableness of the rates offered could not be arrived by them as they may not be aware of the technical

knowledge of the proposed job and this will result in more expenditure leading to excess expenditure than the ceiling. As already vehicle owning

officers have been given enough powers (vide G. O. Ms. No. 2503, Tpt., dated 18.9.1991) for attending any immediate minor nature of repairs

the existing status quo may be continued.

The Government have sought the opinion of the Court on the objections to the above proposal by the Director, Motor Vehicles Maintenance

Department

47. There can be no objection to keep the expenditure on maintenance of the staff cars at the minimum level. There can also be no objection to the

Directorate performing necessary repairs. There can be no objection to the executive Government of the of the State taking the entire responsibility

of maintaining in proper order and of the standard the cars used by the judges of this Court. If they do what they are expected to do, no one can

object. It is only the experience of undoing instead of doing by the alleged

removal of some original parts of the Court's vehicles at the workshop, low standard of repairs and almost leaving the vehicles un-dispaired and in cases where the repair work should have been completed within a period of hours, detention/retention of the vehicle in the workshop for days and months, that the judges at a meeting thought they should intervene and see that at least in the matter of maintenance of the cars used by them, they are not made to suffer.

48. Along with the staff cars provided to the Hon"ble judges of this Court, is the provision for 150 litres of petrol. The Government's decision

reflects in minutes of the meeting dated 28.2.1992 aforementioned, has acknowledged two A/c cars allotted to the Hon"ble the Chief justice, one

non A/c Ambassador car to each Hon"ble judge" one non A/c Ambassador car to the Registrar, one non A/c Ambassador car to the Protocol and

three non A/C Ambassador cars for use of judges and visiting V. I. Ps. - called as spare cars and has thus complied with the requirement of the

1986 amendment to the Act, which has given to the judges including the Chief justice staff car with 150 litres of petrol per month. The Government

has given to the Registrar of the Court one car and three spare cars for use of judges and visiting V. I. Ps. obviously, recognising the Registrar's

status as an officer of the Court and extending accordingly to him the same facilities as are given to the judges of this Court. The three spare cars

which are for use of judges and visiting V. I. Ps. obviously cannot run without petrol and should be maintained as the cars of the Hon"ble judges.

These additional cars are to be used as spares when needed by the judges for extra work and for the visiting V. I. Ps. for which purpose 150 litres

of petrol per month may be the normal consumption. How and in what manner these spare cars are being used, however, is a matter to be

internally resolved by the Court.

49. A full Court meeting of the Court has resolved to urge to the Government that instead of the present system of the petrol provided at the

Government petrol station, amount equivalent to the value of petrol subject to a maximum of 150 litres (on the certificate of the consumption of

petrol under the authority of the Hon"ble judges), be paid. The judges of the Court have done so for the obvious reason of serious inconvenience

in filling of the car tanks at the petrol bunk of the State Government in the

Secretariat even during times when the judges are either not in the city or living at a long distance from the Secretariat. The Government have the obligation to provide a maximum of 150 litres of petrol, any more or excess requirement of the judge is no responsibility of the Government. The Government by accepting the above, will save the judges from a regular inconvenience.

50. The minutes dated 22.4.1991 we have already noticed, record that where Government bungalows are not made available for allotment to the judges of this Court, private bungalows will be taken on rent and allotted to them. The judges who are living in their own houses are receiving the standard House Rent Allowance of Rs. 2,500/-. Some of the judges of the Court are not given any official residence and they are also not living in their own houses. In their case, the Government have got to provide a Government accommodation free of rent and such Government accommodation can be had only by conversion of private houses in their occupation as Government accommodation. The judges in such cases are entitled to ask the Government to pay to their landlord the amount determined in terms of the resolution at the meeting dated 22.4.1991 and there is no reason why the Government should not honour its own commitment. Since we think the assurance at the Bar on behalf of the respondents that there will not be unreasonable delay in these matters is enough, we do not say more on it.

51. The above are items which appear to us of immediate concern and then of course if the issue of security provided to the judges about which some specific observations are necessary. We do say and reiterate that all citizens moving on the roads of the city of Madras and on highways beyond the city limits are all to observe the rules of the road and Ministers and judges and/or any other person are no exception. There may, however, be reasons of security and in such cases, road signals may stand altered and the persons so ear-marked for security may be given a danger free passage. This, however, will require not only the identification of the person in danger and the need of the security, but also from whom he or she has any threat or danger. It is not understandable, who in the Government and in the police hierarchy of the State of Tamil Nadu, has found that movement of the judges in their cars, while any such VVIP/VIP

receiving security is moving, will also be a danger to the security of such person. We have already noticed and we reiterate that judges of this Court by dint of their position and regal and sovereign authorities stand as a class in themselves and not belong to all such categories of people and they, for that reason, themselves are entitled to all needed and necessary security. The experiences of the judges of this Court, which are not denied and disputed are many which cause concern; they have on many occasions, been stopped at traffic signals for the reason of the passage of some VVIP/VIP convoy and/or directed to other routes. When we emphasise the need of the security to the judges, we also emphasise that as a rule and in keeping with the status of the judges of this Court, they cannot be equated with such unidentifiable dangerous persons in a crowd, who should be kept away from the convoy of the VVIP/VIP. The security requirements of the judges are already placed in several communications addressed to the appropriate quarters in the Government. It is not denied that the judges of this Court have not been given adequate security

52. There are various areas of the functioning of the Court in which the executive has not shown its due concern, such as the provisions of a fax machine, new electronic type-writers, computerisation of the records, etc., and several other items such as increase in the number of the subordinate staff like bailiffs in the office of the Deputy Sheriff, Personal Assistants to the Additional Registrars, Steno-typists to the Deputy Registrars/Assistant Registrars and Private Secretaries to the Hon"ble judges, etc. There is a pressing need to ensure accommodation to the Hon"ble judges on their visits to stations other than the headquarters. While, in respect of what has been specifically dealt with by us, we are inclined to issue specific directions for such other matters which are not specifically covered by our discussions in the judgment and in respect of which no specific directions are issued by us, we think, it will be appropriate that immediate steps are taken by the second respondent/Registrar of this Court to acquaint the Hon"ble the Chief justice, with the desire of the Court, that a meeting should be convened at the behest of the Court, in which, on behalf of the Court, besides the Hon"ble the Chief justice, two seniormost Hon"ble judges and any other Hon"ble judge or judges nominated by the Hon"ble the Chief justice participated and the Government is

represented by the Chief Secretary the secretary to Government, Home (Police), the Secretary to Government P. W. D. and the Secretary to Government public information of such meeting should also be given to the Chief Minister of the State, who may nominate anyone of her Ministers to participate at that meeting. The Registrar of the High Court may act as a convenor of the meeting. The meeting should take up all matters and decide in one session or more than one, but expeditiously as determined by the Hon"ble the Chief justice.

53. Having considered the case thus in all such aspects in which learned counsel for the parties have addressed us and looked into the materials placed before us by the Registry of the Court as well as the concerned Government Department, we feel no hesitation in holding that G. O. Ms.

No. 1023, Health and Family Welfare Department, dated 17th June, 1980 is inapplicable to the Hon"ble judges of this Court. The first respondent is bound to extend to the Hon"ble judge of this Court all facilities as to medical treatment and accommodation in hospitals, etc.. as are provided to the Cabinet Ministers, irrespective of any constraints of the rules aforementioned including the rules framed under the payment of Salaries Act, 1951.

54. The first respondent is duty bound to honour the status and the sovereign and independent position of the Hon"ble judges of this Court by directing all concerned that.

(1) the staff cars allotted to the Hon"ble judges of this Court shall be fitted with red revolving lights, halogen headlight and all such equipments and

furnishings as are provided for the reasons of security to the Cabinet Ministers of the State Government;

(2) their cars shall not be subjected to any traffic regulation imposed for the reason of the security of any other person including the diverting of

their vehicles to other routes for the said reason;

(3) that the judges" security is met equally to that of a Cabinet Minister at their residences, the Court premises and other stations other than the

headquarters when they are on visits to such stations as well as in the public;

(4) that the judges" cars are maintained with the same standard and alertness as that of the cars of the Cabinet Ministers and as desired by the

Court, repairs to the said cars are entrusted to the workshop nominated by the High Court;

(5) that orders are issued permitting the staff cars allotted to the Hon"ble judges of this Court to take petrol at any private petrol bunk and

undertaking to reimburse the price of not more than 150 litres of petrol on certificate in this behalf under the authority of the Hon"ble judges

concerned; that

(6) orders are issued to attend to the requirements and maintenance of the official residences of the Hon"ble judges as indicated in the judgment

above and; that

(7) judges, who have not been provided with a Government bungalow and who do not like to reside in their own houses, are provided with a

private house in accordance with the minutes of the meeting dated 22.4.1991.

55. We record in the end our appreciation to the learned counsel for the parties for the assistance rendered to us and the co-operation extended

by the Registry of the Court and the various departments of the Government of the State. We, however, have felt the need of the directions

aforementioned and accordingly ordered. We have also felt the need of some corrective steps to see that the functioning of the Court is not

affected by the lack of resources. We accordingly suggest constitution of a committee as above. We give no direction in this behalf only because,

in our view, none will know more about the requirements of the Hon"ble judges of this Court as well as the Court than the Hon"ble the Chief

justice of the Court.

56. In the result, the petition is allowed. The respondents are directed to comply with the directions and observations in our judgment at the

earliest. In view of our judgment, the second respondent may represent the medical reimbursement bills of the Hon"ble judges, which have been

denied on the ground of G. O. Ms. No. 1023, Health and Tamil Welfare Department, dated 17th June, 1980 and sanction pending bills of the

Hon"ble judges of this Court accordingly without any delay. Compliance of the implementation of the directions aforementioned should be

reported by the first respondent at the second respondent/Register of the Court, no sooner the Government orders are issued. The second

respondent is directed to circulate all such communications from the first

respondent to all the Hon''ble judges of this Court. Let relevant extract of the judgment be circulated to the Hon''ble the Chief justice. There shall be no order as to costs in this petition.

57. Petition allowed.