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**(1953) 09 MP CK 0009**

**In the Madhya Pradesh High Court**

**Case No : Civil Miscellaneous Cases No. 11 to 21 of 1952**

Madhaorao Ramrao and Others

APPELLANT

Vs

State of Madhya Bharat

RESPONDENT

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**Date of Decision : 01-09-1953**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 259(1), 295(1), 31

**Citation : (1953) 09 MP CK 0009**

**Hon'ble Judges : Shinde, C.J;Newaskar, J;Dixit, J**

**Bench : Full Bench**

**Advocate : P.R. Das, P.W. Sahastrabudhe and N.K. Shejwalkar, for the Appellant; K.A. Chitale, General, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Newaskar, J.—These are petitions under Article 226 of the Constitution submitted by Madhaorao Phalke and others in all 11 in number.

2. Of these 11 petitions one is by "Bachat-holder" a term which will be explained hereafter, 5 are by what are known as "Head-quarter Shiledars", 2 by "Shiledars", 2 by "Ekkans" and one by a "Maintenance-holder".

3. The Petitioners belong to the families of Shiledars and Ekkans of former Gwalior State.

4. The case of the Petitioners is that their ancestors accompanied the Scindias in their conquest towards the north nearly 200 years ago and in recognition of exemplary services rendered by them and their descendants in the past and in view of the fact that they might be required at any time to render further services they were "entitled as of right" to receive "a fixed sum of money" per month from the Government from generation after generation and that this right had been recognised in various statutes, orders, rules and regulations having the force of statutes. Petitioners particularly referred to and relied upon "The Regulation for Administration of the Department of Irregulars Samvat 1991

(1934 A.D.) the orders dated 31-3-1929 issued from the Army Head-quarters under the authority of Council of Regency and Gazette Notification of the year 1942 A.D."

5. The Petitioners complain that the cash payments aforesaid to which they were entitled as of right as indicated above were stopped by the Government of Madhya Bharat under an Executive Order dated 18-4-1952 issued in the name of Raj-pramukh, that this action is beyond the powers of the Government or Rajpramukh and prejudicially affects their fundamental right to property. The Petitioner further alleged that they caused notices to be served on the Madhya Bharat Government, one by each Petitioner, calling upon the said Government, to refrain from enforcing the said order but obtained no redress. The Petitioners therefore prayed:

(a) that a writ in the nature of mandamus or alternatively directions or order or writ under Article 226 of the Constitution may be issued calling upon the Respondents (viz., the state of Madhya Bharat and the Government of Madhya Bharat Revenue Department) to show cause why they should not forbear from giving effect to, or acting in any manner by virtue of, or under the said order dated 18-4-52 and

(b) that a peremptory order in terms of prayer

(a) be made if no such cause is shown.

6. In the return submitted on behalf of the Respondents it was contended that the disputed payments could not be reckoned as "property" within the meaning of Article 31 of the Constitution of India but were in the nature of emoluments for military service. It was further submitted as a matter of historical retrospect that the Scindia's Army among other ranks and military officers, comprised of Head-quarter Shiledars, Shiledars and Ekkans who had fought and were expected to fight under their Liege-Lord whenever occasion arose. This, according to the Respondents, was an irregular force organised for Military aid and was maintained by former Gwalior Government and later by the State of Madhya Bharat to secure aid for maintenance of peace and military action. It was further submitted that originally aforesaid Shiledars and Ekkans were expected to maintain and provide troopers with their own equipments and received cash payments commensurate with their obligations and later were allowed to offer substitutes called "Bargirs" whose expenses were deducted from these emoluments.

It is contended that after the commencement of the Constitution "Defence" was taken over by the Union and in this changed Constitutional context there was no occasion to continue these irregular forces and the State of Madhya Bharat therefore by an executive order discontinued these payments thus disbanding the force which they were entitled to do. It is, therefore, urged that the alleged right to receive cash-payments under the circumstances mentioned in the petition is neither property nor was it conferred under a statute or under any

rule, order or regulation having the force of a statute and that the State had every power to stop the payment by an executive order.

7. On these respective submissions of both the parties the following questions arise for consideration:

Firstly, do the payments in question constitute property within the meaning of Article 31 of the Constitution?

Secondly, is it the statutory right of the Petitioner to receive the payments in dispute?

Thirdly, is the right now available against the Respondents?

8. Mr. P.R. Das who appeared on behalf of the Petitioners contended that this right to receive cash payments either as Bachat-Holders, as Head-quarter Shiledars or as maintenance-holders which vested in the Petitioners and others in similar position was conferred in consideration of the services rendered and to be rendered by certain families to the Scindia Rulers and was recognised in various orders of the Rulers which amounted to statutes as they emanated from sovereign power. He therefore urged that the same amounted to property within the meaning of Article 31 of the Constitution of India and is the fundamental right of the Petitioners.

He further urged that this fundamental right to receive cash payments being a statutory right could not be affected by an executive order and the action of the Madhya Bharat Government or Raj Pramukh in ordering stoppage to these payments is ultra vires as no right recognised by a statute can be affected merely by an executive order. In order to explain his contention that the right in question is a statutory right he referred to the History of various steps taken to organise these irregular forces on a sounder footing and the recognition given to the rights vested in the families of the Petitioners in the orders on the subject by the Scindia Rulers. He particularly drew our attention to the two land-marks in the process of reorganisation of the forces of irregulars as these Shiledars and Ekkans constitute, viz., the reorganisation scheme set down in the "Kalambandi" of Samvat 1969 and that contained in the "Kavayad" of Samvat Year 1991. He also referred to the Notification dated 31-3-1929 issued from Army Head-Quarters under the authority of the Council of Regency in general and Paras 1 and 2 of the same in particular. In these Paras 1 and 2 it is expressed thus

"the Shiledari" force is an ancient one and the ancestors of the present holders had on several occasions from the date of the founding of Scindia dynasty rendered meritorious services and obtained "Asamis" and having regard to their well established right and their present economic plight the Council has sanctioned the scheme (contained therein) to ameliorate their lot".

9. All this, counsel contended, makes two things, clear. Firstly it indicates that the cash payments were not merely the remuneration for the services, to be rendered but were payable in recognition of past services to the family of the

Rulers and for the services to be rendered in future if occasion, arises and secondly it recognises this payment as a. right and as such property. These according to the counsel were grants recognised by statutes with obligation of service attached to them and are not salaries for future services pure and simple. The Petitioners are, therefore, entitled according to the learned Counsel, to a declaration that the action of the Madhya Bharat Government is ultra vires and trenches upon the fundamental right of the Petitioners and an injunction to them, restraining them (from) putting their threat regarding stoppage of these payments into execution.

10. On the other hand the learned Advocate-General drew our attention to the passages from the well known work on Maratha History such as (1) Administrative System of Marathas by Dr. Sen, (2) Military System of Marathas by the same author and (3) Sardesai's History of Marathas and contended that these Shiledars and Ekkans originally constituted an irregular military force. These Shiledars brought their own horses and men and were maintained at State expenses. These Shiledars were remunerated with cash payments at least in the case of Scindia Army and had to render military service when occasion arose either for internal security or meet the threat of aggression or War. He further urged that in their true nature and context they were not grants burdened with service but were services remunerated with cash payments. Their origin and continuance were administrative in nature and liable to be stopped by an administrative order and was neither vested right of the Petitioner nor property within the meaning of Article 31 of the Constitution. Executive Government of Madhya Bharat had, therefore, a perfect right to stop these payments wholly or to such an extent as they pleased.

11. At the outset I felt difficulty in following the propriety of this writ against the Executive Government of the State of Madhya Bharat because according to the contents of the petitions and the return submitted by the Government the obligation alleged had a reference to military forces and, in the absence of agreement between the State and the Union, the liability if any, would devolve upon the Union as according to Schedule VII List I this would be included in item No. 2 viz., Naval, Military and Air Force, and other armed forces of the Union.

12. Article 295(1) of the Constitution of India runs as follows:

(1) As from the commencement of this Constitution- (a) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union if the purposes for which such property and assets were held immediately before such commencement will thereafter be purpose of the Union relating to any of the matters enumerated in the Union List, and (b) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purpose for which such rights were acquired or liabilities or

obligations, were incurred before such commencement will thereafter be the purposes of the Government of India relating to any of the matters in the Union List, subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

13. We, therefore, called upon the State of Madhya Bharat to disclose whether there is any agreement between the State and the Union on the subject. Thereupon the learned Advocate General laid before us correspondence which took place between the Government of India and various Raj Pramukhs.

14. In the correspondence thus admitted there is D.O. letter No. F6 D/50 dated 17-1-1950 from the Government of India addressed to Raj Pramukhs of Rajasthan, Madhya Bharat, Pepsu and Saurashtra, Para 9 of which reads as follows:

The Central Government will not be financially concerned with (a) non-Indian States Forces units and personnel (b) hereditary military pensions, and (c) pensions of non-Indian States Forces military personnel retiring on or after 1st April 1950.

Further there is a copy of letter No. F 218/49/D. 1 (a) dated 9-3-50 issued from the Government of India to the Chief of Army Staff and Commander-in-Chief, Indian Army which contains the following communication:

The President is pleased to sanction the following arrangements in connection with State Forces of Union States:

1. With effect from 1st April 1950 Government of India will assume complete financial liability in respect of the I.S. units of these States existing at the time.

Madhya Bharat Force order regarding division of Madhya Bharat Force F.O. No. 108/50 dated 6th April 1950 indicates that:

1. 1st Regiment Shiledari
2. 2nd Regiment Shiledari and
3. Beda Risala Ekkans are included in the category of purely non-I.S.F. units.

15. No specific agreement bearing on the point has been produced before us but it appears from the documents referred to above that the financial obligations pertaining to these non-I.S.F. units continue with the State Government and this may be assumed to be the agreement between the State and the Union. It is significant that in the return submitted on behalf of the State no challenge is based on the ground that obligation with respect to the claim of the Petitioners, if it exists at all, rests with the Union Government. Further had this, been the attitude taken by the State Government action for disbanding that force and for stoppage of these payments would not have been taken by the Executive Government of the State but by the Central Government. The executive order of the State moreover makes a provision for continuance of Nemnuks in the case of

widow or minor children of deceased Shiledars and also Shiledars and Ekkans who are suffering from physical infirmity or disability.

16. I am, therefore, clear that if the payments claimed by the Petitioners constitute their statutory right and hence property the obligation with respect to them will rest upon the State and not upon the Union.

17. The only point, therefore, that remains to be considered is whether the payments claimed by the Petitioners constitute their statutory right and property. I shall consider this question, therefore, in somewhat details.

18. As a matter of history Scindias were Military Governors of Peshwas who ruled from Poona and Scindias' Army was in its origin part of the Army of Peshawas and some light will be thrown on the origin and nature of these irregular forces which at the time of commencement of the Constitution assumed the character of (I) First Regiment Shiledari (II) Second Regiment Shiledari and (III) Beda Risala Ekkans from the historical account of the Peshawa's Army.

19. Dr. Sen the well known historian in his work on Military System of Marathas at page 80 says:

The Cavalry of Peshwa consisted of four classes:

1. The Khasgi Paga.
2. The Shiledars.
3. The Ekas or Ekkans and
4. The Pendharis.

20. These Shiledars brought in their own horses and men and were remunerated by the State while the Ekkans or Ekandas were volunteers who joined the Maratha Camps bringing their own horses and accountments. They too were paid in cash in proportion to the value of their horse. During the period of military action these payments were stopped and they were allowed to have a share in the spoils of war.

21. Scindias after the northern conquest by them as the Military Generals of Peshwas were appointed Military Governors and retained their Army which included regular and irregular forces such as Shiledars and Ekkans.

22. Hereditary character of service in the Government was a marked characteristic in some of the services during the Maratha Regime, and hereditary nature in these irregular forces was not an exception.

23. After Scindias became independent of the Central control of Peshwas these forces became their forces but retained their essential characteristics.

24. Army of Scindias no doubt consisted of these Shiledars and Ekkans besides regular State forces. Some of these Shiledars were stationed at the Head Quarter

(viz. Gwalior) and were termed Head Quarter Shiledars. Others were Shiledars and Ekkans and were posted in various Districts of Gwalior State both far and near. These latter Shiledars were required to render active service and were used for keeping peace and order. No materials were placed before us to indicate what was the nature of service which was expected of the Head-Quarter Shiledars in the early stages of Scindia but from the printed orders of His Highness Madhaorao Scindia of Samvat Year 1969 and known as "Kalambandi" Intajam Mahakme Irregular Behede Shiledari Samvat 1969" and subsequent similar Kalambandi of 1991 issued at the time of the last Ruler it appears that these Head Quarter Shiledars were not required to render any active Military Service. All that was expected of them was to keep themselves fit militarily by subjecting themselves to drill and to receive cash payments mentioned against them in these Kalambandis. They represented a reserved force which might be required to do active service any time.

25. In the Kalambandi of Samvat Year 1969 (1912 A.D.) which was intended to reorganise this irregular force and put it on a proper footing weeding out abuses that had crept therein, these Shiledars and Ekkans were divided into different groups:

1. Shiledars of 10 Paigas (Battalions)
2. Head-Quarter Shiledars.
3. Pandit Shiledars.

From the Shiledars of 10 Paigas consisting of 1250 horsemen active service was expected. They were stationed at different districts of Gwalior State and could be utilised for maintenance of peace and order. These horsemen were drawn mainly from hereditary Shiledars. Though provision was made for employing outsiders in case the particular family became extinct.

26. If particular Shiledar in the Paigas became infirm or disabled his next heir answering the requisite qualifications could be given the job and if there be no such person the office would be given to an outsider. During the minority of an heir of a Shiledar other person called "Aiwaji" could be employed who would be given full pay of the post and maintenance would be given to the minor. Rule regarding succession was laid down.

27. In case of Head Quarter Shiledars no duty apart from their performing the drill was expected. The succession to them was similar to that of other Shiledars.

28. In Section 54 it is mentioned that "as the Shiledars Asami is for service the same could not be attached in execution of a decree of a creditor".

29. As regards Pandit Shiledars i.e., those Shiledars who were found to be unsuitable for Military jobs they were employed as the Head Quarter in the clerical staff of the Head-quarter or were posted at various stations where these forces were placed.

30. In the Kalambandi of 1934 A.D. all these provisions were practically reiterated with the only difference that in the case of infirm or disabled Shiledars system of offering substitutes known as Bargirs was recognised and they were given a portion of cash payments payable to Shiledars and the balance known as "Bachat" was liable to be taken by the infirm or disabled Shiledars. In the case of minor Shiledar Bargirs would be employed who would be paid portion of the pay of Shiledar and the rest would be credited to the State and the minors would be paid maintenance at a scale fixed by the Government. Similar provision was made for Pandit Shiledars.

31. Provision was also made for establishment of right to succeed to the office of the deceased Shiledar in case of disputed claims.

32. In Section 36 of this "Kalambandi" again emphasis is laid that Shiledari Asami being for service, is not liable to attachment for the debts of a creditor.

33. In the Notification issued in pursuance of a resolution by the Council of Regency a reference is made in Clause (1) that Made Shiledari service is ancient and the ancestors of the holders of (most of) the present holders of office had done meritorious service and obtained the Asamis. In Clause (2) it is stated that having regard to their rights and their pitiable financial plight the council had decided to ameliorate their condition and made the following provision etc.

34. Then follows the detailed provision for the purpose. In the year 1942 further measures were taken for increasing the pays of the pensions of Beda Risala Ekkans.

35. Thus having regard to all these Kalambandis and orders the following things are clear:

(I) There are no Sanads supporting the claim of the Petitioners as hereditary grants.

(II) The Shiledars are primarily intended as a part of the Military Service.

(III) The enlistment to these is hereditary in the sense that so long as a person from the family of the holder of the office is available the office would go to him. The manner of succession being laid down by the order of the Ruler in accordance with the preexisting practice. If there are several sons only one of them gets it and there is no rule of primogeniture strictly so called.

(IV) Initially substitutes were allowed in case of those who cannot render service themselves for special reasons but later practice grew even amongst others and this gave rise to practice of paying "Bachat" to the Shiledar and fixed proportion of pay to the substitute or Bargirs.

(V) In the case of Head-quarter Shiledar no definite service was expected but Military fitness by resorting to drill was necessary.

36. Having regard to all these circumstances as they appear from the

reorganization schemes contained in the two Kalambandis and notification from Army Head Quarter it is clear that the payments were for service only and there were no hereditary grants as such. The mere hereditary character, exhibited in the enlistment of the new cadets cannot mean that it was property belonging to the particular Shiledar or Ekkan. Moreover new enlistment was permissible to maintain the strength of the force. No doubt Head-quarter Shiledars were not required to render any tangible service and cash payment to them was sumptuous and secure and certain consideration probably of past service might have been involved in their case but essential character of service never changed and throughout they were only treated as part of the Shiledar and Ekkans Bedas. The provision for drill was intended to ensure their military preparedness.

37. It is also apparent that the payments varied as the standards of living conditions changed as also the value of money, although, it appears that in the case of head quarter Shiledars and Ekkans this remained uniform at least from Samvat Year 1959 upto the date of stoppage.

38. Provision for payment of the maintenance, allowance to widow or minor children of the deceased Shiledar does not necessarily mean that there was any proprietary interest in the deceased Shiledars as regards the payments which he used to receive. This can only be regarded as compassionate allowance.

39. I am therefore of the opinion that the payments claimed by the Petitioners do not constitute property belonging to them whether the same be, as Bachat holders, Head-quarter Shiledars or Ekkans. The provisions in the two Kalambandis are in the nature of recognition schemes of administrative nature and do not involve conferment of or recognition of a statutory right. I am also of the opinion that these payments claimed cannot be classed as hereditary grants burdened with services. During the course of argument our attention was drawn to two rulings of their Lordships of the Privy Council viz., -Alexander John Forbes v. Ivleer Mohomed Tuquee 13 Moo Ind App 433 (A) and - AIR 1931 157 (Privy Council)

40. Both these cases pertain to grants of land evidenced by Sanad and the question involved therein was whether they were the cases of grant of land burdened with services or grants of office remunerated by the use of land.

41. These cases are not of much assistance in arriving at the true nature of these payments. It is difficult to call them grants and place them on the footing of grants supported by Sanads and burdened with services. In the latter cases service was ancillary and grant was the principal thing. This is not so in the present case. Ancillary character of service in the case of Head-quarter Shiledars was not in its inception but appeared at a later stage.

42. I am, therefore, inclined to the view that the Petitioners have neither any statutory right nor property in the payments claimed by them as Bachats, maintenance amount or salaries as Head Quarter Shiledars, Shiledars and Ekkans. The stoppage of these all or some of them by the executive Order did

not involve infringement of their fundamental right and are not entitled to seek redress through any of the writs provided for by Article 226 of the Constitution from this Court.

The petitions are therefore dismissed.

Shinde, C.J.

43. I agree.

Dixit, J.

44. I agree that these petitions should be dismissed. I think it is of assistance in approaching the matters which arise in these petitions to state and emphasise the real nature of "Kalambandi Intzam Mahakame Irregulars" Samvat-1991 of the former Gwalior State, on which the Petitioners substantially base-and I think exclusively-their claim to receive a fixed sum of money from the, State of Madhya Bharat. On behalf of the applicants Mr. Das contended that the Kalambandi was a statute and gave to the Petitioners a right to get a fixed sum of money every month from the opponent State and this statutory right could not be taken away by an executive order. Learned Counsel for the Petitioners conceded that if the Kalambandi is not a statute, then he must fail.

The first main question to be determined is, therefore, whether the Kalambandi is a statute or rules having the force of a statute, or whether it is merely a collection of executive directives. Mr. Das suggested that the Kalambandi was a statute because it was an act of the sovereign body of the former Gwalior State and contained a preamble repealing the Kalambandi of 1969. In reply the learned Advocate-General submitted that the provisions of the Kalambandi themselves made it clear that the Kalambandi was no more than a set of administrative rules; that the enumeration in Section 2 of the Kalambandi of the names of particular persons entitled to salaries specified therein was inconsistent with the Kalambandi being a statute, and that the Kalambandi of Samvat 1969 which was superseded by the Kalambandi of Samvat 1991, was treated by His Highness Maharaja Madhavrao Scindia as administrative orders and as such was amended by him by a direction in Vol. III "Darbar Poliey" (English version) relating to the Police and Military departments at page 16.

45. In my judgment, the Petitioners have failed to establish the fact that the Kalambandi of 1991 is a statute, according to the law making machinery or custom of Gwalior State and according to the forms and solemnities required in that State for authentication of Statute. The fact that the Kalambandi was issued by the sovereign is by means conclusive of the nature of the Kalambandi. I confess that while dealing, with orders or rules issued by the Rulers of some of the Covenanting States, where there was no organized legislature and where the supreme legislature and executive functions were vested in one person. I have always found some difficulty in distinguishing between administrative orders or rules, and statutes or rules or orders having the force of a statute. A preamble is

not a distinctive feature or an essential part of a statute. It is also found in policy proclamations, notices and deeds. It is merely a preliminary statement explaining the reasons by the writing. It makes no difference to the administrative, executive or statutory character of a rule whether there is a preamble to it any more than whether it affects the public at large or affects a particular person by name.

To my mind, one test which may usefully be adopted to differentiate between orders and rules made, by a Ruler of a State of the type referred to above in his capacity as the supreme executive authority from those made in his capacity as the supreme legislative authority is to see whether the order or rule was enforceable in a Court of law by the person or persons affected thereby and whether the construction or interpretation of the rule or order was a matter for the Court or for the administrative or executive authorities. If the rule is not enforceable in a Court of law and if its construction is a matter for the administrative authority and not for the Court, then clearly the rule cannot be called a statute or a rule having the force of a statute.

Applying this test to the provisions of the Kalambandi of Samvat 1991, I think there is no other conclusion to which this Court could come, than that the Kalambandi is not a statute or a set of rules having the force of a statute. A study of the provisions of the Kalambandi shows that it primarily and in substance contains directions relating to the constitution, strength, enrolment and conditions of service of irregular Army. The title of Kalambandi suggests that the rules embodied therein are for the government and administration of "the Department of Irregulars". Section 1 of the Kalambandi deals with the strength and constitution of the force. Section 2 enumerates the names of certain Shiledars entitled to receive salaries mentioned in the section as members of the force. Section 3 declares the eligibility of Shiledars to "Officer-posts" in the force and says when appointed to such a post a Shiledar would get only the salary attached to the post. Sections 4 to 15 relate to the training of "Pandit Shiledar", the loan of colours" to processions, the size of horses in the force, uniform arms, equipment, drill, barrack-accommodation, accounts, duties of the Commanding Officer, leave, supervision and inspection of forces and the employment of the force for the keeping of peace and order.

I do not think, it can be disputed that the above provisions of the Kalambandi are merely administrative directives. Sections 16 to 32 lay stress on the maintenance of the strength of the force and provided for the filling up the vacancies in the force in the manner indicated therein on the death, infirmity or disability of a Shiledar. Under these provisions a person claiming to be an heir of the deceased Shiledar could not say that he was entitled as of right to fill a vacancy or to get some money grant instead. The recognition of an heir to fill a vacancy, the appointment of a substitute, the payment of "Bachat" were all made subject to the approval of the Inspector General of Army and in some cases of the Darbar. The provision in the Kalambandi that a vacancy caused by the death, disability or

infirmity of Shiledar would be filled by appointing his heir, did not alter the position that the appointment of a Shiledar was at the discretion and during the pleasure of the Darbar.

There is, in my view, nothing in the Kalambandi to lend any colour to the suggestion that the Kalambandi conferred on Shiledars or their heirs a right enforceable in a Court of law, with regard to their appointment or their conditions of Shiledars service. It laid emphasis on the performance of the service and not on the individual who was to perform the service. The mere inclusion in the Kalambandi of provisions (Sections 36 and 37) exempting from attachment the "Shiledari Asami" and certain payments and articles in execution of a decree cannot, in my opinion, give statutory force of the material provisions alluded to above.

46. I think a complete answer to the question whether the Kalambandi of Samvat 1991 in a statute is furnished by the argument of the learned Advocate General that the Kalambandi of Samvat 1989 which it repealed, was itself amended by His Late Highness Madhavrao Scindia by giving an administrative directive in his publication known as Darbar Policy. In volume III of "Darbar Policy" relating to "Police and Military departments" he observed at page 16 that S. 48 of that Kalambandi as it was worded did not "convey the real object in view" and directed that "it should, therefore, be read as given below and the Kalambandi should as well be corrected accordingly." Again in Appendix No. III of the volume it is stated at page 237 that "the wording of Section 48 in the Kalambandi of 1969 was not very lucid; the section has accordingly been redrafted (as above) in this Policy to remove any misunderstanding on the subject and to bring out clearly the object which the Darbar have in view and it should be read and complied with as now given". The "Darbar Policy" as has now been held by this Court in *Malojirao v. State of M.B.* AIR 1953 MP 97 (O), is not a statute but a statement of principles which were intended to be followed in executive action.

If, therefore the Kalambandi of 1969 was regarded by the Ruler who issued it as administrative rules and as such capable of amendment by a administrative direction, it follows that the Kalambandi of 1991 which repealed the previous Kalambandi is no more than a set of administrative rule. The Petitioners produced before us a copy of a decision given on 1-10-34 by the Council of Regency (Gwalior State) in a dispute about Shiledari succession. It was said that by that decision the Council held that the Kalambandi was a statute law. On a perusal of that decision, I find that the Resolution passed by the Council in that dispute nowhere says that the Kalambandi is a statute law. In that dispute the Army Member and the Law Member of the Council no doubt expressed the opinion that the Kalambandi was a statute. But there is nothing in the Resolution of the Council to show that the opinion of these members was adopted by the Council and ultimately became the decision of the Sovereign body functioning at that time in the quondam Gwalior State.

47. On the question whether the payments were made to the Petitioners because

they were as of right entitled to it, I agree with my brother Newaskar J., who after a close analysis of the provisions of the Kalambandis of Samvat 1969 and 1991, and after reference to the history and origin of Shiledari system, has reached the conclusion, that the payments were for service only and not hereditary grants and that they did not constitute property belonging to the Petitioners. The suppliants hold no sanads of any hereditary grant. The Kalambandis did not confer on them any hereditary right to cash payments or to any office.

Even if it is assumed that the applicants were grantees of an office to which certain payments were attached by way of remuneration, then on the principle laid down in the Privy Council decisions, 13 Indian Appeals and 1931 PC 157 prima facie the payments could be stopped on the maintenance of Irregular forces by the opponent State and the performance of service therein by the applicants under the provisions of the Kalambandi becoming impossible by reason of the orders issued by the Resident from time to time under Article 259(1) of the Constitution of India.

48. For these reasons, these petitions, in my opinion, should be rejected.