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**(2013) 06 SHI CK 0065**  
**In the High Court Of Himachal Pradesh**  
**Case No : CWPIIL No. 11 of 2007**

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| Mahesh Kumar and Others  | Vs | APPELLANT  |
| State of H.P. and Others |    | RESPONDENT |

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**Date of Decision :** 28-06-2013

**Acts Referred:**

Constitution of India, 1950 — Article 14, 162, 166, 19, 21  
Criminal Procedure Code, 1973 (CrPC) — Section 357, 357A, 4  
Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 — Section 3, 6

**Citation :** (2013) 06 SHI CK 0065

**Hon'ble Judges :** A.M. Khanwilkar, C.J.;Kuldip Singh, J

**Bench :** Division Bench

**Advocate :** Sanjeev Kuthiala, for the Appellant; Shrawan Dogra, A.G., Mr. Romesh Verma, Addl. A.G. and Mr. J.K. Verma, Dy. A.G., for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

Kuldip Singh, J.—In this jail petition under Articles 226 and 227 of the Constitution of India, 41 prisoners of Open Air Jail, Bilaspur have assailed notification dated 26.6.2007 No. Home-B (E)3-476/85-Jails-III, published in Rajpatra, H.P. on 21.7.2007 violative of Articles 14, 19, 21, 23 and 300A of the Constitution of India. It has also been prayed that respondent No. 1- State may be directed to restore double remission to the convicts of Open Air Jail, Bilaspur as was available to them before making necessary amendment vide Notification No. Home-B (F)1-2/03-Jails dated 9.8.2004 with further direction to respondent No. 1 to decide the parole cases of prisoners within a period of fortnight as per decision of the Court in Lai Singh vs. State of H.P. The pleaded case of the petitioners is that they are undergoing sentences of various terms awarded by the Courts and are lodged in Open Air Jail, Bilaspur. The respondent No. 1 vide notification dated 26.6.2007 published in Rajpatra on 21.7.2007 has amended Himachal Pradesh Jail Manual, 2000 (for short "Jail Manual"). The terms "Victim Welfare Fund", "Prisoners Welfare Fund", "Committee", "Wages" have been

defined and "Specified Offences" for the purpose of para 598 of the Jail Manual have also been identified. In the Jail Manual, para 598-A, 598-B have been added. At the time of hearing of the petition emphasis has been laid on para 598-B, hence in order to appreciate the contentions on the either side, it is necessary to extract para 598-B of the notification dated 26.6.2007, which is as follows:

598-B. Management of Wages payable.- The Victim Welfare Fund and The Prisoners Welfare Fund:-

(1) The wages payable for labour tasks as provided in para 598 and for rendering services as provided in this para shall be fixed and notified by the State Government from time to time. Separate Wages are to be paid to the unskilled, semi-skilled and skilled labourers.

(2) After considering the volume of work available in the jail for the tasks mentioned in para 598 and the services to be rendered by the prisoners as provided in this para, the Superintendent of the jail shall provide employment to prisoners and the priority for the selection of prisoners for employment shall be in the following order: -

(a) Prisoners undergoing life imprisonment with rigorous imprisonment.

(b) Other prisoners undergoing rigorous imprisonment.

(c) Prisoners undergoing simple imprisonment and who are willing to work.

(d) In sub jails, under trial prisoners, who offer their services, may be employed if the prisoners of the above category are not available.

(3) (a) 35% of the wages earned by the prisoners in a month shall be sent by the Superintendent of the jail to the Chairman of the Committee through a demand draft and deposited in the Victim Welfare Fund.

(b) The money received from various jails towards the Victim Welfare Fund shall be deposited in a Bank account to be operated jointly by the Additional Director General of Prisons/Inspector General of Prisons and Chief Welfare Officer (Prisons).

(c) The amount of compensation from the Victim Welfare Fund as decided by the Committee shall be paid to the deserving victims of specified offences during the year in which the offender is convicted and sent to prison. In case of death of the deserving victim, the compensation shall be paid to the family members of the victim, as may be decided by the Committee.

(4). 35% of the wages earned by the prisoners shall form the Prisoners Welfare Fund. As such, 35% of the Wages shall be sent by the Superintendent of each Jail to the Committee through Bank draft every month to be deposited in the Prisoners Welfare Fund. This fund too shall be managed by the Committee. The money under this Fund shall be deposited in a separate Bank account to be operated jointly by the Addl. Director General of Prisons/Inspector General of

Prisons and Chief Welfare Officer (Prisons). The Committee shall decide the article (s)/service (s) on which money may be spent from the said Fund. It shall be ensured by the Committee that the money is spent only for the welfare of the prisoners, and the articles/services may include:-

- (a) Purchase of T.V. for the prisoners.
- (b) Purchase of books for the prisoners.
- (c) Purchase of mess utensils.
- (d) Purchase of musical and sports instruments/articles.
- (e) Organising religious/cultural functions in the jails.
- (f) Purchase of spectacles and dentures for the prisoners.
- (g) Providing special menu on special days.
- (h) Providing refundable advance to the prisoners for medical treatment/medicines.
- (i) Any other purpose that relates to the welfare of the prisoners.

(5) The remaining 30% of the Wages shall be paid to the actual Wage earner (i.e. prisoner) in the following manner: -

(a) 50% of the said amount shall be given to the prisoner as and when required, for the purchase of articles of daily needs, for meeting legal expenses and to meet expenses while proceeding on parole, including gifts etc. for his family. This amount shall be expended with the permission of the Superintendent of Jail.

(b) The remaining 50% of the amount shall be deposited in the personal account of the prisoners in a bank/post office account and the passbook thereof shall remain in the personal custody of the Superintendent of Jail. The prisoner shall be allowed to withdraw this amount along with interest on his release from the jail.

2. It has been pleaded that the prisoners lodged in Open Air Jail, Bilaspur were getting facilities of double remission i.e. one day remission for one day work since 14.12.1978 but that facility has been wrongly, illegally taken away by respondent No. 1 by issuing notification No. Home-B (F)1-2/03-Jails dated 9.8.2004. According to the petitioners, the notification dated 9.8.2004 is wrong, illegal. The petitioners have also pleaded that they are entitled to a direction to respondent No. 1 to decide the parole cases of the convicts within fortnight as per verdict of this Court in 1992 in petition titled Lal Singh vs. State of HP.

3. The respondents No. 1 to 4 have contested the petition by filing joint reply. In the preliminary submissions, it has been stated that respondent No. 1 is paying wages to the convicts at par with the wages given under the Minimum Wages Act, 1948, to a normal citizen. The prisoners in the jails are entitled to free

accommodation, food, clothing, bedding, medical treatment/medicines and medical diet etc. The respondent No. 1 is incurring huge expenditure for providing these facilities to the prisoners in jails which is affecting State Exchequer. The State Governments made a request for permission to deduct expenses incurred for food, clothes etc. from the wages of the prisoners. The Supreme Court in Criminal Appeal No. 308 of 1986 on 24.9.1998V State of Gujarat and Another Vs. Hon"ble High Court of Gujarat, directed the Government (s) to make law/rules for setting apart a portion of the wages earned by the prisoners to be paid as compensation to the deserving victims of the offences. In compliance to the judgment dated 24.9.1998, the respondents have created "Victim Welfare Fund" and "Prisoners Welfare Fund" for the Himachal Pradesh Jail Department.

4. It has also been pleaded that "Victim Welfare Fund" has been created for giving compensation to the deserving and willing victims of offences involving murder, rape, culpable homicide and dowry death and "Prisoners Welfare Fund" has been made for the welfare of all prisoners in the jails of the State of Himachal Pradesh. It has been decided to deduct 35% of the wages earned by a prisoner in a month and to be deposited in the "Victim Welfare Fund" for paying compensation to the victims of specified offences. Similarly, 35% of the wages earned by a prisoner in a month were decided to be deducted for the "Prisoners Welfare Fund" and used for the welfare of all the prisoners. The remaining 30% was decided to be paid to the actual wage earner i.e. the prisoner. In order to implement the decision of respondent No. 1, the law was enacted for making deduction from the wages of the prisoners by amending Jail Manual vide notification dated 26.6.2007.

5. On merits, the stand taken by the respondents for deduction of wages in the preliminary submissions has been repeated. It has been pleaded that notification dated 9.8.2004 has been issued keeping in view the larger interest of the prisoners above 21 years, who have been made eligible for Open Air Jail. The condition of hard labour for eligibility for Open Air Jail was also abolished. The prisoners are entitled for remission as per the provisions of Jail Manual. The respondents have supported the notification dated 9.8.2004.

6. It has been pleaded that parole cases of convicts are dealt and processed timely in accordance with the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 and as per the directions of the Court. The delay, if any, in exceptional cases of parole may have resulted due to reasons beyond the control of the respondents which cannot be termed as intentional or willful. The respondents have prayed for dismissal of the petition. The petitioners have filed rejoinder and reiterated their stand taken by them in the petition while denying the case set up by the respondents.

7. The learned Advocate General has stated that notification dated 26.6.2007 has further been amended on 20.6.2009, which is as follows:

Government of Himachal Pradesh Department of Home

No. Home-B (E)3-2/2009-Jails Dated Shimla-2, the June, 2009.

NOTIFICATION

In partial modification of this Department Notification No. Home-B (E)3-476/85-III, dated 26.6.2007, the Governor, Himachal Pradesh is pleased to make the following amendments in the H.P. Jail Manual, 2000 with immediate effect:-

1. In Sub Para-4 of para 598-B of the Himachal Pradesh Jail Manual for the figure "35%" the figure "15%" shall be substituted.
2. In Sub Para 5 of Para 598-B of the said Manual for the figure "30%" the figure "50%" shall be substituted.

BY ORDER Principal Secretary (Home) to the Government of Himachal Pradesh.

Endst. No. as above.

Dated: 20/6/09.

Copy forwarded to:-

1. The Director General of Prisons, H.P. Shimla-171009 w.r.t. his letter 4-42/2004-Jails, dated 2.5.2009 for information and necessary action.
2. The Controller, P & S Govt. Press, Shimla-5 for publication in the Rajpatra.
3. Guard file.

Sd/- under Secretary (Home) to the Govt. of Himachal Pradesh.

On 13.6.2013 after conclusion of hearing, parties were given one week time to file written submissions, but no such submissions have been filed by any party. We, therefore, proceed to decide the petition on the basis of oral submissions.

8. We have heard Mr. Sanjeev Kuthiala, Advocate, Amicus Curiae and learned Advocate General. The learned Amicus Curiae has submitted that deduction of wages from the earnings of the prisoners at any rate by respondent No. 1 is wrong, illegal, arbitrary and has no force of law. He has submitted that no deduction from the wages of the prisoners can be made in the manner it is being deducted by respondent No. 1. The wages earned by the prisoners are their property which cannot be taken away by respondent No. 1 merely by issuing notification dated 26.6.2007/21.7.2007 or notification dated 20.6.2009. He has prayed for a direction to the respondents to refund the amount deducted from the wages of the prisoners under the aforesaid notifications. He has contended that respondent No. 1 has misconstrued, misinterpreted and misapplied State of Gujarat and another versus Hon''ble High Court of Gujarat State of Gujarat and Another Vs. Hon''ble High Court of Gujarat, He has relied on Section 357 and 357-A Cr.P.C. in support of his contention that in view of these provisions, respondent No. 1 has no power, authority in law to make deductions from the wages of the

prisoners for compensation or for paying any amount to the victims. He has submitted that impugned notifications in the facts and circumstances of the case cannot be issued by respondent No. 1 by invoking Article 162 of the Constitution of India for making deductions from the wages of the prisoners. He has submitted that deduction of wages under the head "Prisoners Welfare Fund" is also wrong, illegal and arbitrary.

9. The learned Advocate General has supported notifications dated 26.6.2007/21.7.2007 and 20.6.2009. He has submitted that respondent No. 1 has in compliance of dictum in *State of Gujarat and another versus Hon'ble High Court of Gujarat (supra)*, issued the said notification under Article 162 of the Constitution of India. He has taken help only from Article 162 of the Constitution in support of the validity of notifications dated 26.6.2007/21.7.2007 and 20.6.2009. The learned Advocate General has not relied on any other provision in support of notifications dated 26.6.2007/21.7.2007 and 20.6.2009. He has submitted that all executive actions of the State are to be taken in the name of the Governor under Article 166 of the Constitution. The aforesaid notifications have been issued in the name of the Governor of the State of Himachal Pradesh. In any case, the procedure prescribed by Article 166 of the Constitution is directory. For, it is open to establish from the contemporaneous record that the aforesaid notifications were issued by following due process of law and no fault can be found with the aforesaid notifications. He has submitted that deductions from the wages of the prisoners are being made under the authority of law. The deductions from the wages of the prisoners for "Victim Welfare Fund", "Prisoners Welfare Fund" are neither arbitrary nor illegal. The prisoners constitute a different class. They cannot claim equality with other citizens. The respondent No. 1 has not committed any illegality while making deductions from the earnings of prisoners during their stay in the prison in order to look after victims of offences or for the welfare of the prisoners themselves. The State incurs heavy expenditure on the prisoners during their stay in the prisons. There is nothing wrong or illegal requiring the prisoners to make contribution to the State Exchequer for their maintenance and look after during their stay in the prisons.

10. The prayers of the petitioners for restoration of double remission to the prisoners of Open Air Jail, Bilaspur which was available to them as per notification of the year 1978 and consideration of parole cases of prisoners within a period of fortnight in terms of the decision in the year 1992 in case *Lal Singh vs. State of H.P.* are taken up first. The pleaded case of the petitioners is that on the recommendation of Additional Director General of Prisons vide letter dated 20.11.2003, the notification dated 9.8.2004 has taken away the facilities of double remission earlier available to the Open Air Jail prisoners vide notification dated 14.12.1978 for one day remission for one day work. In the main body of the notification dated 9.8.2004, there is no reference of letter dated 20.11.2003 of Additional Director General (Prisons), only in the copy endorsed to Additional Director General (Prisons) reference of letter dated 20.11.2003 has been made. In the petition letter dated 20.11.2003 has not been elaborated nor notification

dated 14.12.1978 has been placed on record.

11. It does not emerge from the notification dated 9.8.2004 that facility of double remission earlier available to the Open Air Jail prisoners has been taken away. At the time of hearing of the petition also, nothing was brought to our notice to substantiate the case of the petitioners in support of their relief of restoration of double remission to the prisoners of Open Air Jail, Bilaspur. The petitioners have failed to make out any case in support of their contention, therefore, the prayer of restoration of double remission to the prisoners of Open Air Jail, Bilaspur is rejected.

12. In the petition reference has been made to decision of this Court in Lal Singh vs. State of H.P. in the year 1992 for deciding parole cases of the prisoners within a fortnight. At the time of hearing of the petition, no case Lai Singh vs. State, decided in the year 1992 by this Court was brought to our notice. In Lall Chand Vs. State of H.P. and Another, , Section 3 of the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 has been considered so also the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Rules, 1969. In para 8 of the report, it has been held as follows:

In the instant case, the report of the District Magistrate, which has been accepted by the releasing authority, proceeds upon a total misconception of the power exercisable u/s 6 of the Act in light of the relevant provisions of the rules. The distinction between public order and law and order has become totally blurred and the question of grant of parole to the petitioner has been examined without properly appreciating the distinction between the concepts of "public order" and "law and order". An apprehended breach of peace or the possibility of the petitioner committing a heinous crime during the parole period, without anything more, would constitute a law and order problem, but these factors have been taken into account as factors subverting public order. Be it appreciated that the maintenance of law and order by keeping under check the criminal activities of a convict, who is either temporarily released or released after serving out his sentence, is the responsibility of the State and that if the grounds put forward in the report of the District Magistrate were to be accepted as valid, no convict, who could be reasonably imputed with the propensity or proclivity to repeat the crime, can ever be temporarily released, even if there are otherwise strong grounds for such release. The proper course to be adopted in such cases is not to reject the request for temporary release outright but to keep surveillance over the prisoner during the period of his temporary release and to invoke the power conferred by rule 4 of the rules in appropriate cases, if an occasion therefor arises.

The Court in the context directed the State Government to take decision within 15 days of the receipt of the writ. The direction to decide the case of the petitioner to the State Government in 15 days in that case cannot be considered that the Court gave directions that every case of parole is to be decided by the State Government within a fortnight. However, the competent authority is

expected to decide the parole case of prisoner expeditiously. In these circumstances, the prayer of the petitioners for a direction to the respondents to decide the parole cases of the petitioners within a fortnight cannot be considered favourably, hence rejected.

13. The learned Amicus Curiae has contended that para 598-B added vide notification dated 26.6.2007 in Jail Manual, more particularly, sub para (3) and sub para (4) of that notification are wrong, illegal and without authority of law. Similarly, notification dated 20.6.2009 amending sub para (4) and sub para (5) of para 598-B of the Jail Manual is wrong, illegal and without authority of law. The learned Advocate General has relied upon Entry 4 list 2 Schedule 7 of the Constitution in support of his contention that notification dated 26.6.2007/21.7.2007 and notification dated 20.6.2009 have been issued by invoking Article 162 of the Constitution by the State and to comply the directions of the Supreme Court in State of Gujarat and another versus Hon'ble High Court of Gujarat (supra). He has relied R. Chitrlekha and Another Vs. State of Mysore and Others, that Article 166 of the Constitution is directory and not mandatory in character, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor.

14. The notifications dated 26.6.2007/21.7.2007 and 20.6.2009 have been issued in the name of Governor, Himachal Pradesh. There is nothing on record to indicate that requisite procedure was not followed before issuing notifications dated 26.6.2007/21.7.2007 and 20.6.2009. Therefore, it can be safely inferred that notifications dated 26.6.2007/21.7.2007 and 20.6.2009 were issued by the State in the name of Governor by following due procedure and thus, both the notifications can be safely construed to have been issued by the State under Article 162 of the Constitution.

15. The question still remains about the validity of these notifications and the deductions which are being made by the State from the wages of the prisoners more particularly under sub para (3) and sub para (4) of notification dated 26.6.2007/21.7.2007 read with notification dated 20.6.2009. The notification dated 26.6.2007/21.7.2007 consists of mainly three parts comprised in sub paras (3), (4) and (5). The sub para (3) provides 35% deduction for "Victim Welfare Fund" whereas sub para (4) provides 35% deduction for "Prisoners Welfare Fund" and sub para (5) provides 30% balance wages for the prisoner. The petitioners have grievance regarding aforesaid sub para (3) and sub para (4) and if their contention is favourably considered then that will affect balance amount to be kept for prisoner under aforesaid sub-para (5) of the notification.

16. The learned Amicus Curiae has fairly not assailed 35% deductions from the wages of prisoners for "Prisoners Welfare Fund" under sub para (4) of notification dated 22.6.2007/21.7.2007, in view of the subsequent notification produced at the time of hearing dated June, 2009, extracted in para 8 above. The learned Advocate General has relied State of Gujarat and another versus Hon'ble High Court of Gujarat (supra) in support of his contentions. The para 44

of the report is as follows:

When all aspects are considered, we are inclined to think that the request of the Government to permit them to deduct the expenses incurred for food and clothes of the prisoners from the minimum wages rates is a reasonable request. There is nothing uncivilized or unsociable in it. But the Government cannot deduct any substantial portion from the wages on that account. The Government can arrive at the reasonable percentage to be deducted from the minimum wages taking into account the average amount which the Government is spending per prisoner for providing food, clothes and other amenities to him.

The Supreme Court has thus permitted the State Government to deduct the expenditure incurred for food, clothes and other amenities for the prisoners. It has also been held that Government cannot deduct any substantial portion from the wages on that account. The sub para (4) of the notification dated 26.6.2007/21.7.2007 provides that 35% deduction made from the wages of the prisoners shall be spent for the welfare of the prisoners for providing T.V., books, mess utensils, musical and sports instruments/articles, organizing religious/cultural functions, purchase of spectacles and dentures for the prisoners, special menu on special days, refundable advance to the prisoners for medical treatment and any other purpose that relates to the welfare of the prisoners. The deduction of 35% from the wages of the prisoners on account of "Prisoners Welfare Fund" on the basis of notification dated 26.6.2007/21.7.2007 has further been reduced to 15% as per notification dated 20.6.2009/21.7.2007. We are of the considered view that deduction from the wages of the prisoners for "Prisoners Welfare Fund" is just and reasonable and no exception can be made for this deduction.

17. In *Sunil Batra Vs. Delhi Administration and Others etc.*, the Supreme Court has held that prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by jail officials "dressed in a little, brief authority", when Part III is invoked by a convict. It has also been held that where the rights of a prisoner either under the Constitution or under other law, are violated the writ power of the court can and should run to his rescue, the court has a continuing responsibility to ensure that the constitutional purpose is not defeated by the prison administration. The prisoner is in the prison in accordance with law on account of his some act but prisoner is still protected by the Constitution. The State can deal with the prisoner only in accordance with law. The State will have to establish that notifications dated 26.6.2007/21.7.2007 and 20.6.2009 have been issued in accordance with law and State cannot be allowed to take shelter in support of the notifications only on the ground that prisoners in the State constitute a different class and therefore, State has power to deal with them in any manner. No doubt, the State has power to deal with prisoners but that power is to be exercised in accordance with law.

18. The executive power of the State under Article 162 of the Constitution is subject to other provisions of Constitution and therefore, the State has limited power under Article 162 of the Constitution. The Constitution Bench of the

Supreme Court in *Naraindas Indurkha Vs. The State of Madhya Pradesh and Others*, has held as follows:

10. This contention relates to 28 text books printed and published by the Text Books Corporation. The State Government prescribed these 28 text books for use in the primary and middle school classes at the time when the Act of 1973 had not been enacted and the question is whether the State Government was entitled to do so. There was, of course, then no statutory provision, like Section 4, sub-sec. (1) of the Act of 1973, which empowered the State Government to prescribe any text books and the prescription of these 28 text books had, therefore, no legal force. But that does not mean that the State Government was not entitled to prescribe these 28 text books in exercise of its executive power under Article 162 of the Constitution. The executive power of the State Government under Article 162 extends to all matters with respect to which the State Legislature has power to make laws and since education is a subject which falls within Entry 11 of List II of the Seventh Schedule to the Constitution, the State Government could apparently in exercise of its executive power prescribe these 28 text books, provided that in doing so it did not trench on the rights of any person. It is now well settled by the decision of this Court in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, that the State Government can act in exercise of executive power in relation to any matter with respect to which the State Legislature has power to make laws, even if there is no legislation to support such executive action, but such executive action must not infringe the rights of any person. If the executive action taken by the State Government encroaches on any private rights, it would have to be supported by legislative authority, for under the rule of law which prevails in our country every executive action which operates to the prejudice of any person must have the authority of law to support it. Vide paragraph 27 of the judgment of this Court in *Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others*, . The executive action of the State Government in entering upon the business of printing publishing and selling text books in *Rai Sahib Ram Jawaya's* case (*supra*), though not supported by legislation, was upheld because it did not operate to the prejudice of any person. This court took care to point out that if it were "necessary to encroach upon private rights in order to enable the Government to carry on their business, a specific legislation sanctioning such course would have to be passed". The same view was reiterated by this Court in *State of Madhya Pradesh and Another Vs. Thakur Bharat Singh*, where referring to the decision in *Rai Sahib Ram Jawaya's* case (*supra*), this Court pointed out that in that case it specifically held that "by the action of the Government no rights of the petitioners were infringed, since a mere chance or prospect of having particular customers cannot be said to be a right to property or to any interest or undertaking. It is clear that the State of Punjab had done no act which infringed a right of any citizen: the State had merely entered upon a trading venture. By entering into competition with the citizens, it did not infringe their rights." It would, therefore, seem that the State Government could prescribe these 28 text books in exercise of its executive

power provided that such action did not infringe the rights of any one.

19. In *Hindustan Times and Others Vs. State of U.P. and Another*, the question of validity of orders dated 24.9.1991 and 16.10.1991 issued by the Special Secretary, Government of U.P. whereunder the directions were issued that at the time of payment of bills for publication of government advertisements in all newspapers having circulation of more than 25,000 copies, 5% of the amount thereof, forming part of a fund for the purpose of granting pension to working journalists would be deducted. One of the question raised before the Supreme Court was that State of U.P. has no legislative competence, it could not have issued the impugned orders in exercise of its powers under Article 162 of the Constitution of India or otherwise. In the report para 41 in *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, has been noticed which is as follows:

41. There still remains the question whether the seizure of wheat amounts to deprivation of property without the authority of law. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300-A. The word "law" in the context of Article 300-A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law.

(emphasis supplied)

The Supreme Court further held as under:

In any event, the State cannot make any compulsory exaction from any citizen unless there exists a specific provision of law operating in the field. In relation to a compulsory payment, it is well settled, there is no room for any intendment.

(emphasis supplied)

20. The Supreme Court in *State of Gujarat and another versus Hon"ble High Court of Gujarat* (supra) in para 49 has held as follows:

49. It is a constructive thinking for the State to make appropriate law for diverting some portion of the income earned by the prisoner when he is in jail to be paid to deserving victims. In the absence of any law for that purpose, we are prevented from issuing a direction to set apart any portion of the prisoner's earned wages for payment to the victims because of the interdict contained in Article 300-A of the Constitution. Hence, we suggest that the State concerned may bring about a legislation for that purpose.

In *P.H. Paul Manoj Pandian Vs. Mr. P. Veldurai*, , it has been held that once a law

occupies the field, it will not be open to the State Government in exercise of its executive power under Article 162 of the Constitution to prescribe in the same field by an executive order. The Section 357 of the Code of Criminal Procedure, 1973 (for short "Code") provides that when a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied in the manner as provided in the Section which includes payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court. Thus, it is the discretion of the Court to impose fine on case to case basis. The impugned notification issued on the subject of compulsory deduction of amount towards victim compensation is encroachment on that power. The Section 357A of the Code provides "Victim Compensation Scheme" to be framed by every State Government in coordination with the Central Government for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. The field of victim compensation is occupied in view of Section 357A of the Code. Once the field of victim compensation is already covered by Section 357A and compensation to any person u/s 357 of the Code, then State has no executive power under Article 162 of the Constitution to issue notifications dated 26.6.2007/21.7.2007 and 20.6.2009 to make deduction from the wages of prisoners for "Victim Welfare Fund" even if it is assumed that State has power to make law on the subject in view of Entry 4, list II Seventh Schedule of the Constitution.

21. The wages earned by the prisoner in the prison is his property which cannot be taken away in view of Article 300A of the Constitution without following due process of law. In "Bishambhar Dayal Chandra Mohan" noticed in Hindustan Times (supra), it has been held that the State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, is subject to other provisions of the Constitution. The word "law" in the context of Article 300-A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law.

22. In the notification dated 26.6.2007/21.7.2007 "Victim Welfare Fund" has been defined as follows:

Victim Welfare Fund" means the fund created for the Himachal Pradesh Jail Department for the purpose of giving compensation to deserving victims of specified offences.

Similarly in the notification dated 26.6.2007/21.7.2007 specified offences have been elaborated as follows:

Specified Offences" for the purpose of para 598 means offences involving:

(i) Murder (ii) Rape (iii) Culpable Homicide (iv) Dowry death.

Clause (c) sub para (3) of para 598-B provides that amount of compensation from the "Victim Welfare Fund" as decided by the Committee shall be paid to the deserving victims of specified offences during the year in which the offender is convicted and sent to prison. In case of death of the deserving victim, the compensation shall be paid to the family members of the victim, as may be decided by the Committee. The sub para (3) of notification dated 26.6.2007/21.7.2007 provides deduction from the wages of prisoners irrespective of the offences for which they have been convicted and sentenced. In case the offender is not convicted for murder, rape, culpable homicide and dowry death, still under aforesaid clause (c) such offender is liable to contribute from his wages and pay for victim of specified offences namely murder, rape, culpable homicide and dowry death for victims of specified offences prior to the conviction, sentence and may be prior to the commission of offence by the prisoner. Therefore, State cannot make any deduction for "Victim Welfare Fund" from the wages of the prisoner to deprive the prisoner of his property by invoking Article 162 in view of Article 300A of the Constitution. Thus, any deduction made by the respondents from the wages of prisoners on account of "Victim Welfare Fund" under sub para (3) (a) of notification dated 26.6.2007/21.7.2007 is illegal, arbitrary and not sustainable.

In view of above, petition is partly allowed to the following effect:

i) 35% deductions from the wages of prisoners under sub para (3) (a) for "Victim Welfare Fund" vide notification dated 26.6.2007/21.7.2007 read with notification dated 20.6.2009 is held wrong, illegal, arbitrary, without authority of law and unconstitutional and therefore, sub para (3) (a) of notification dated 26.6.2007/21.7.2007 is quashed.

ii) The respondents No. 1 to 4 are directed to refund entire amount to respective prisoner deducted from his wages under sub para (3) (a) for "Victim Welfare Fund" vide notification dated 26.6.2007/21.7.2007 read with notification dated 20.6.2009 within a period of three months, failing which respondents No. 1 to 4 shall pay interest at the rate of 9% per annum after three months from today on such amount to such prisoner.

We place on record valuable assistance rendered by learned Amicus Curiae.