

(2014) 09 KAR CK 0325

In the Karnataka High Court

Case No : Writ Petition No. 22801/2014 (S-RES)

Mangala Shridhar

APPELLANT

Vs

The Karnataka Governor's Secretariat Office

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Constitution of India, 1950 — Article 124, 145, 163, 19(1), 217
Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 120(B), 120B, 166, 167, 34
Prevention of Corruption Act, 1988 — Section 13, 19, 7, 8, 9

Citation : (2014) 4 AKR 615 : (2014) ILR 6775 : (2015) LabIC 401

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : K.V. Dhananjaya and I.S. Pramod Chandra, Advocate for the Appellant; Ravivarma Kumar, Advocate General and A.S. Ponnanna, A.A.G. and S.V. Giri Kumar, A.G.A, Advocate for the Respondent

Judgement

B.V. Nagarathna, J.—Petitioner is a member of the Karnataka Public Service Commission (hereinafter, referred to as "the KPSC"), appointed under Article 316 of the Constitution. She has assailed her suspension, which is by order dated 14/05/2014. Petitioner was appointed as a member of KPSC on 24/11/2012. The impugned order of suspension has been passed by His Excellency, the Governor, State of Karnataka, in exercise of the powers conferred under clause (2) of Article 317 of the Constitution. The basis for the impugned order is, allegation of corruption against the petitioner in selection of Gazetted Probationers.

2. The State Government had requested the KPSC to fill up 162 posts of Group "A" and 200 posts of Group "B" under the provisions of the Karnataka Gazetted Probationers' Appointment (Competitive Examination) Rules, 1977 (hereinafter, referred to as "the Rules"). A Notification dated 03/11/2011, inviting applications from eligible candidates was issued. Preliminary examination was conducted on 22/04/2012 and the main examination in various subjects were held on different dates between 15/12/2012 and 06/01/2013. The results of the main examination

were published on 16/03/2013 and the eligible candidates were informed about the conduct of viva-voce, which was for 200 marks. Viva-voce was conducted between 01/04/2013 and 27/05/2013.

3. It appears that one Dr. H.P.S. Maithri, was awarded 75 marks out of 200 in viva-voce. After the publication of her marks, she submitted two representations to Prof. Ravivarma Kumar, learned Advocate General for the State of Karnataka on 24/05/2013 and on 28/05/2014, making certain allegations against the petitioner. A representation was also made to the Governor on 24/05/2013. According to the petitioner, in the first complaint made to the Governor as well as to the Advocate General, there was no specific allegation against the petitioner. According to the petitioner, an anonymous letter dated 27/05/2013 was addressed to the Advocate General for the State of Karnataka, in the name of one Gangadharaiah regarding allotment of marks in the examination. That was forwarded to the Government of Karnataka and Deputy Secretary to the Government, DPAR (service Rules), lodged a complaint in Vidhana Soudha Police Station on 26/02/2013. Thereafter, First Information Report (FIR) in Crime No. 0028/2013 was registered by the Vidhana Soudha Police for an offence under Section 7 of Prevention of Corruption Act, 1988 (hereinafter, referred to as "the PC Act") r/w Sections 120-B, 418, 465 and 34 of the Indian Penal Code (IPC), against the petitioner and seven others, including the Chairman, members and certain officials of the KPSC.

4. Petitioner also submitted a representation to the Chairman of KPSC (Annexure "K") and to the Governor (Annexure "L"). On the basis of the representation submitted by the petitioner to the Chairman of the KPSC, it decided that the result of Dr. Maithri would be subject to further action of the Commission. According to the petitioner, a C.I.D. enquiry was also ordered and based on the report of the C.I.D., the Governor passed the impugned order of suspension by exercising power under clause (2) of Article 317 of the Constitution. Being aggrieved by that order, the petitioner has assailed the same in this writ petition by primarily contending that the order of suspension is ultra vires clause (2) of Article 317 of the Constitution.

5. Petitioner had arraigned the Secretariat of the Governor represented by the Under Secretary to the Governor (Administration) as respondent No. 1 and the State of Karnataka represented by its Chief Secretary as respondent No. 2 and the Circle Inspector of Police, Vidhana Soudha Police Station, as respondent No. 3. Initially, this Court ordered notice to all the respondents. In response to which, the Under Secretary to the Governor (Administration), filed Statement of Objections both on the maintainability of the writ petition against the Governor in view of Article 361 of the Constitution as well as on merits of the matter. Thereafter, when the matter was posted before me by special orders, on 07/07/2014, respondent No. 1 was deleted from the array of parties, having regard to Article 361 of the Constitution and keeping in mind the decision of the Hon'ble Supreme Court in Rameshwar Prasad and Others Vs. Union of India

(UOI) and Another, paragraphs 165 and 166. The first respondent was directed to file a memo with regard to their participation in the proceedings and also with regard to the statement of objections filed by respondent No. 1. On 18/07/2014 respondent No. 1 filed a memo to the effect that the statement of objections is withdrawn and that respondent No. 1 would not participate in these proceedings.

6. State has filed statement of objections defending the action of the Governor by contending that the order of suspension is intra vires the Constitution. It is admitted that Dr. H.P.S. Maithri had given a complaint to the Advocate General of the State on 28/05/2013, giving details as to how specific demands were made by the petitioner as a member of the K.P.S.C., to ensure her selection, which is in the nature of illegal gratification. Acting on that complaint, the State Government had requested the learned Advocate General to give his opinion on the course of action to be taken in the matter, particularly, with regard to the alleged irregularities committed by the KPSC, in conducting the interviews. It is averred that learned Advocate General furnished his opinion and advised on the course of action to be taken in the matter by his communication dated 04/06/2013. Thereafter, F.I.R. was lodged against the petitioner and others in Vidhana Soudha Police Station on 25/06/2013 under various provisions of the P.C. Act as well as the IPC against the petitioner as well as others.

7. At para 4 of the statement of objections filed on behalf of the respondents, it has been averred that on 25.6.2013 F.I.R. had been filed in Vidhana Soudha Police Station regarding the malpractice in the Gazetted Probationers Examinations - 2011 conducted by the Karnataka Public Service Commission. Under Section 34, 120(B), 418, 420 and 465 IPC and Section 7 of Prevention of Corruption Act, 1988 a complaint was registered against Sri Gonal Bhimappa, Chairman, KPSC; Sri Arunachalam, Assistant Secretary (Retired), KPSC; Sri K.R. Sundar, Secretary, KPSC, Dr. Mangala Shridhar @ Sridhar, (petitioner herein), Sri Somesh @ Somnath M. Chickmath, Manager, KSFC, now working in BDA as Executive Engineer and Sri K.R. Rajashekar, Computer Operator, Karnataka Legislative Assembly. Then, the Government decided to entrust the matter to CID for a detailed investigation. By Government Order No. HD 63 CID 2013, dated 27.06.2013 the matter was entrusted to the CID for investigation. The Director General of Police, CID, Special Units and Economic Offences, after thorough investigation, by his letter dated 21.09.2013 had requested sanction be accorded to prosecute the accused named in the F.I.R. u/s. 19 of the P.C. Act and u/s. 197 of Cr.P.C.

8. It is further averred that the Governor appoints the Chairman and Members of the KPSC under Article 316 of the Constitution and therefore, sanction for prosecution of the Chairman and Members of the KPSC had to be given by the Governor. The file pertaining to sanction for prosecution of the petitioner and others was submitted to His Excellency the Governor, who in exercise of the powers vested in him under clause (2) of Article 317 of the Constitution, suspended the petitioner from office, with immediate effect and until an order is

passed by His Excellency, the President of India.

9. It is contended that on the basis of the available material, His Excellency the Governor was satisfied *prima facie*, about the misbehavior and misconduct of the petitioner and therefore, after requesting His Excellency the President, to initiate action for removal of the petitioner from office of the Member of the KPSC, the impugned order of suspension was ordered under clause (2) of Article 317 of the Constitution. According to the State, it is on account of the misbehavior of the petitioner as well as the gravity of charges of corruption against her that has made His Excellency the Governor to suspend her by exercising discretion under clause (2) of Article 163 of the Constitution.

10. According to the State, the exercise of power under clause (2) of Article 163 of the Constitution of India is discretionary in nature and not based on aid and advice of the Council of Ministers and the exercise of discretion is not justiciable. It is also contended that having regard to the grave charges and allegations of corruption against the petitioner, she has been suspended and that the impugned order of suspension would not call for any interference.

11. At the outset, learned Addl. Advocate General (A.A.G.) appearing for the State raised a preliminary objection with regard to the maintainability of the writ petition, by contending that the exercise of power in the instant case is under clause (2) of Article 317 r/w clause (2) of Article 163 of the Constitution and the same is not justiciable in any court of law. Reliance was also placed on Article 361 of the Constitution to contend that a writ petition cannot be maintained against the Governor of the State. In this regard, reliance was placed on *Shri Pratapsing Raojirao Rane and others Vs. The Governor of Goa and others*, to contend that there are four broad categories of orders, which can be passed by a Governor and that where the Governor acts without the aid and advice of the Council of Ministers headed by the Chief Minister, he acts in his own discretion. That under clause (2) of Article 163 of the Constitution, action taken by the Governor in his discretion is final and cannot be called in question on the ground that he ought or ought not to have acted in his discretion.

12. This submission was countered by learned counsel for the petitioner by contending that the question here is not as to whether he ought to or ought not to have exercised his discretion in suspending the petitioner but whether in exercising his discretion to suspend her, the provisions of clause (2) of Article 317 of Constitution had been followed or not. In other words, the contention was that if the impugned order of suspension was *ultra vires* clause (2) of Article 317 of the Constitution, the writ petition was maintainable and such an action was justiciable. Placing reliance on *Rameshwarprasad*, a Constitution Bench decision of the Hon'ble Supreme Court, it was contended that personal immunity from answerability provided under Article 361 does not bar the challenge that may be made to the actions of the Governor. It was therefore contended that the impugned order of suspension in the instant case was justiciable and therefore, the writ petition was maintainable.

13. On merits of the case, learned counsel for the petitioner drew my attention to clause (2) of Article 317 of the Constitution and contended that the Governor can suspend a member of the KPSC, only when in respect of such member, a reference has been made to the Supreme Court under clause (1) of Article 317 by the President and only the President can pass orders on receipt of the report of the Supreme Court on such reference. Elaborating the scheme of the Constitution on this aspect, it was contended that Article 315 provides for the constitution of Public Service Commission (hereinafter, referred to as "the PSC") for the Union as well as for each State. Article 316 deals with appointment of Chairman and Members of the PSC and the Governor appoints the Chairman and Members of the State PSC but the removal of the Chairman and Members of the PSC is only on a reference being made by the President to the Hon"ble Supreme Court and after an enquiry is held and a report is submitted in that regard to the President, who has to then pass an order under clause (1) of Article 317 of the Constitution. It was contended that an elaborate procedure has been envisaged in the Constitution both with regard to removal as well as suspension of the Chairman or any Member of the PSC. Having regard to the fact that they hold a constitutional office and position, their tenure of office cannot be lightly interfered with. It was contended that although, the Governor has the power to appoint a Chairman and Member of a State PSC, removal of these persons is in the hands of the President, who can do so, after a report of the Supreme Court on a reference made by him is received. It was pointedly argued that so long as no reference has been made by the President to the Supreme Court in respect of a Chairman or a Member of PSC, the Governor cannot suspend a person. In other words, an order of suspension must be preceded by a reference made by the President to the Supreme Court. A reference to the Supreme Court is a precondition for the Governor to exercise power under clause (2) of Article 317 of the Constitution. That a mere request being made by the Governor to the President to make a reference does not amount to a reference being made by the President to the Supreme Court. It was contended that the order of suspension against the petitioner in the absence of there being any reference made by the President to the Supreme Court was ultra vires clause (2) of Article 317 of the Constitution and hence, the order of suspension may be quashed.

14. Countering this argument, learned A.A.G. contended that the words of the Constitution have to be given a broad and extensive meaning and interpretation. That the Governor of a State has powers to appoint a Chairman or a member of a State PSC but the appointing authority does not have the power of removal. The only point of control that the Governor has, is the power of suspension. No doubt, clause (2) of Article 317 states that the Governor can suspend a Chairman or other members of the Commission in respect of whom a reference has been made to the Supreme Court under Clause (1) of Article 317 but it is not necessary that infact, an order of reference must be made to the Supreme Court by the President. The mere request or communication made by the Governor to the Hon"ble President is a starting point of reference and that the impugned

order also keeps in mind this fact and states that the order of suspension is only until the President passes an order, which means that the order of suspension is till the President passes an order negating the request of the Governor to make reference or until the President passes an order of removal under clause (1) of Article 317 of the Constitution. It was contended that the expression "in respect of whom a reference has been made to the Supreme Court" under clause (1) must be interpreted to mean that when the Governor requests the President to make a reference, that communication itself would be a basis for passing an order of suspension by the Governor. If the President does not accept the request of the Governor to make a reference, then the order of suspension would have to be revoked. But on the other hand, if on the request made by the Governor, the President makes a reference to the Supreme Court under clause (1) of Article 317 then the order of suspension would have to continue. It was urged that suspension being the only aspect of control with the Governor as against the Chairman and Members of a State PSC, the said power cannot be read in a restrictive manner but has to be given a broad interpretation.

15. He also contended that having regard to the fact that grave charges of corruption and allegations under the PC Act and the IPC having been made against the petitioner herein and having regard to probity and purity in the matter of recruitment by the State PSC and also the fact that in recent times, it has been observed that the Chairman and several Members of various PSCs have been guilty of misbehavior and misconduct and in order to build confidence in the KPSC, this Court must give an interpretation to the constitutional provisions bearing in mind the intention of the framers of the Constitution as well as the situation and circumstances of the present times. In this regard, learned A.A.G. has placed reliance on certain decisions.

16. In reply, learned counsel for the petitioner while reiterating his submissions has contended that the interpretation of clause (2) of Article 317 as sought by the State Government is not in accordance with the Constitution, as it would be in violence to the Constitutional provision. That so long as there is no Presidential reference to the Supreme Court (which means that the Supreme Court must actually have received the order of reference from the President's office), there can be no exercise of power of suspension by the Governor. In this regard, it was contended that the Chairman and Members of the KPSC hold constitutional posts and their positions and tenure in office must be protected and their independence cannot be compromised, having regard to the fact that they are entrusted with the responsibility of making appointments to public offices. It was also stated that even a public servant has protection under Article 311 of the Constitution in the matter of his conditions of service and therefore, the constitutional protection given to the Chairman and Members of the State PSC must be upheld. In support of his contentions, learned counsel has relied upon certain decisions.

17. Learned counsel for the respective parties were heard at length and based on

their submissions, the following points would arise for my consideration:-

1. Whether the writ petition assailing the order of suspension made under clause (2) of Article 317 of the Constitution is maintainable?

2. If answer to Point No. 1 is in the affirmative, whether the impugned order of suspension is ultra vires clause (2) of Article 317 of the Constitution?

18. By exercising powers under clause (1) of Article 317 of the Constitution, the petitioner was appointed by the Governor of the State as a Member of the KPSC by Notification dated 24/11/2012. The petitioner has been functioning as a Member of the KPSC from the day she assumed charge till she was suspended by the impugned order of suspension dated 14/05/2005 (Annexure "B"). As the controversy in the present case centers around Notification dated 14/05/2005 at Annexure "B", it would be useful to extract the same for felicity of reference:-

"NOTIFICATION

WHEREAS, Dr. Mythri made a petition to the Advocate General alleging corruption of Dr. Mangala Sridhar, Member, Karnataka Public Service Commission during selection of gazetted probationers held in 2011 and the Advocate General advised the Government to direct a comprehensive/investigation into the allegations, and based on this opinion a complaint was registered against Dr. Mangala Sridhar and seven others in Vidhana Soudha Police Station and investigation was held by CID, Karnataka.

WHEREAS the CID, Karnataka has prepared a report meant to be forwarded to the court wherein it is said that offences u/s. 120(B), 166, 167, 418, 420, 465 and 468 of the Penal Code and Section 7, 8, 9 and 13 of the Prevention of Corruption Act, 1988 appear to have been made out against Dr. Mangala Sridhar and seven others.

WHEREAS having regard to the gravity of the charges, made against Dr. Mangala Sridhar, I have already requested the Hon'ble President of India to initiate action for removal of Dr. Mangala Sridhar from the office of the member of Karnataka Public Service Commission under clause (1) of Article 317 of the Constitution of India.

WHEREAS Dr. Mangala Sridhar is facing very serious allegations and therefore, allowing her to continue as member of the Karnataka Public Service Commission will completely erode credibility of the Karnataka Public Service Commission and destroy the faith and confidence reposed by the public in the institution of Karnataka Public Service Commission.

NOW, therefore, I, Hansraj Bhardwaj, Governor of Karnataka, in exercise of the powers vested in me under Clause (2) of Article 317 of the Constitution of India do hereby suspend Dr. Mangala Sridhar from office of the member of Karnataka Public Service Commission with immediate effect and until an order is passed by the Hon'ble President.

Sd/- (H.R. Bhardwaj) Governor of Karnataka

Sd/- (R. KALPANA) Under Secretary to Governor (Adm.)

19. Before venturing to answer the points for consideration, it would be necessary to briefly advert to Article 315 to 323 of the Constitution, which are in Chapter-II of Part IV of the Constitution for the purpose of answering Point No. 1. Article 315 provides for the constitution of the Union PSC and a PSC for each State or two or more States may agree to have a common PSC. The object of having such a Commission in the matter of appointments of public servants is to ensure that they are appointed solely on the basis of merit by open competition and thus, the PSC is expected to function independently, impartially and with total integrity. The appointment and term of Chairman and Members of the KPSC is dealt with in Article 316 of the Constitution. The qualification for being appointed as a Chairman or Member of the PSC are also stated in the Article. Article 317 deals with removal and suspension of a member of a PSC. As this Article is the center of controversy, this aspect shall be dealt with at length while considering point No. 2. The power to make regulations as to conditions of service of Members and Staff of the Commission is envisaged in Article 318. Article 319 prohibits members of the Commission holding offices on ceasing to be Members of the Commission. The functions of the PSC are delineated in Article 320. Article 321 provides for the exercise of additional functions by the PSC in respect of the local authority or other body corporate constituted by law or of any public institution. The expenses of the PSC including any salaries, allowances and pensions payable to or in respect of the members of the staff of the Commission is dealt with in Article 322 and Article 323 speaks about the reports to be submitted annually by the PSCs.

20. The role and importance of the PSC as envisaged under the Constitution has been highlighted by the Hon''ble Supreme Court in several decisions and they may be referred to at this stage.

a) In re Reference under Article 317(1) of the Constitution of India (1990) 4 SCC 262, Special Reference No. 1/83, decided on 03/08/1990, the Hon''ble Supreme Court observed that "the conduct of a Member of the PSC has been considered important enough to be directly dealt with by the Constitution itself. The efficiency and purity of administration are greatly dependent on the right choice of the candidates to be entrusted with official duty; and to ensure that suitable persons, in whom the public may have full faith are selected, it was considered necessary to have a body with members of integrity, sincerity and practical wisdom capable of commanding the confidence of the people for examining the merits of the candidates and make available to the appointing authorities their conclusion. Taking into account the possibility of their being subject to pressure, they were given special protection by the Constitution under Article 317. Examining the position in this background, it cannot be said that the conduct of a Member of the Commission under scrutiny of the Supreme Court in a reference made by the President can be ignored on account of the tenure being over." The

Court further observed that persons occupying high public offices should maintain irreproachable behavior. A certain minimum standard of code of conduct is expected of them. What may be excusable for an uneducated young man cannot be tolerated if a Member of a Public Service Commission is involved.

b) In *In Re: Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission*, , the Hon"ble Supreme Court explained the position held by the Members of the PSC thus:-

"1. Founding Fathers of the Indian Constitution relying upon the experience in other countries wherever democratic institutions exist, intended to secure an efficient civil service. This is the genesis for setting up an autonomous and independent bodies like the Public Service Commission at the center and in the States. The values of independence, impartiality and integrity are the basic determinants of the constitutional conception of Public Service Commissions and their role and functions.

2. The Constitution has made provisions to protect civil service, as far as possible, from political or personal influence and give it that position of stability and security, which is vital to its successful working as an impartial and efficient instrument of the State.

3. To enable the Public Service Commissions to discharge their constitutional duties and obligations in a full measure, the framers of the Constitution not only armed them with enhanced powers and increased functions, but also, provided security of tenure for the Chairman and Members. Strict judicial procedure contained in Article 317(1) and the Rules framed thereunder by this Court and the requirement that the President must have the supporting report of the Supreme Court in order to suspend or remove the Chairman or Member of a Public Service Commission are undoubtedly intended to also provide safeguard to the Chairman and Members of the Commission against motivated or wrong charges of misbehavior, in the larger interest of the administration of civil services in the country.

4. Keeping in line with the high expectations of their office and need to observe absolute integrity and impartiality in the exercise of their powers and duties, the Chairman and Members of Public Service Commission are required to be selected on the basis of their merit, ability and suitability and they in turn are expected to be models themselves in their functioning. The character and conduct of the Chairman and Members of the Commission, like Caesar's wife, must therefore be above board. They occupy a unique place and position and utmost objectivity in the performance of their duties and integrity and detachment are essential requirements expected from the Chairman and Members of Public Service Commissions.

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34. The credibility of the institution of Public Service Commission is founded upon

faith of the common man on its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the Members of the Commission act subjectively and not objectively or that their actions are suspect. Society expects honesty, integrity and complete objectivity from the Chairman and Members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that the society does not lose confidence in the Commission. The high constitutional trustees, like the Chairman and Members of the Public Service Commission must for ever remain vigilant and conscious of these necessary adjuncts."

c) In *In Re: Smt. Sayalee Sanjeev Joshi, Member, Maharashtra Public Service Commission*, while commenting upon the Maharashtra PSC, it was observed as under:-

"17. There is no doubt that the first respondent, Public Service Commission has clearly fallen from grace and the exalted status it enjoys under the Constitution. That one scam after another should erupt in respect of such a constitutional body is a very disturbing aspect. If constitutional institutions fail in their duties or stray from the straight and narrow path, it would be a great blow to democracy, a system of governance that we have given unto ourselves and the great vision our Constitution-framers had about the future of this country. During the course of our detailed enquiry, we also felt that it is possible that an attempt is also made not to expose everything in connection with the erupted scandal but to brush at least some of the aspects under the carpet. This is also an unhappy augury for the working of our institutions."

d) In *Ram Kumar Kashyap and Another Vs. Union of India (UOI) and Another*, at para 14, it has been observed as under:

"14. The Public Service Commission is an institution of utmost importance created by the Constitution of India under Article 315. For the efficient functioning of a democracy it is imperative that the Public Service Commissions are manned by people of the highest skill and irreproachable integrity, so that the selections to various public posts can be immunised from all sorts of extraneous factors like political pressure or personal favouritism and are made solely on considerations of merit."

e) In *In Re: Mehar Singh Saini, Chairman, HPSC and Others*, it has been observed that the PSCs have been established under the Constitution with the primary object of providing equal opportunity to the people of India in matters relating to appointment. PSCs are expected to adopt a fair and judicious process of selection to ensure that deserving and meritorious candidates are inducted to the services of the State. This should not only be done but also appear to have been done. The working of the Commission and its members has to be of impeccable integrity and rectitude. Stating that the members of PSCs are, in one sense given a higher degree of protection by the Constitution, as far as possible, of political pressures in the matter of their removal, the framers of the

Constitution clearly distinguished appointments to the Commission from appointments to the State services or All India services.

Thus, the members of the Commission cannot be subjected to regular departmental enquiries and can only be removed from their office by strictly complying with the provisions of Article 317 of the Constitution, which is a complete and comprehensive procedure to be adopted by the President before a Chairman or a Member of the Commission can be removed from his office. Thus, the principles of service jurisprudence cannot be strictly applied to the proceedings under Article 317 of the Constitution.

Regarding Point No. 1:-

21. In the instant case, the Governor of the State has exercised powers under clause (2) of Article 317 of the Constitution to suspend the petitioner. According to the State, that power has been exercised by virtue of clause (2) of Article 163 of the Constitution whereby, the Governor has acted in his discretion and such an action is not justiciable in any Court of law. In this context, reliance was also placed on Article 361 of the Constitution to contend that the Governor cannot be made answerable to any Court of law in respect of any of his actions as a Governor and that he has a personal immunity in that regard.

22. In order to answer this contention on the maintainability of the writ petition, it is necessary to advert to Article 163 of the Constitution which reads as under:-

"163. Council of Ministers to aid and advise Governor.- (1) There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court."

23. Clause (1) of Article 163 states that the Council of Ministers with the Chief Minister as the Head, has to aid and advice the Governor in exercise of his functions except insofar as he is by or under the Constitution, required to exercise his functions or any of them in his discretion. Therefore, the functions of the Governor are generally divided into two categories" those functions, which the Governor performs on the aid and advice of the Council of Ministers and those which are performed by the Governor in exercise of his discretion.

24. Clause (2) of Article 163 states that if any question arises whether any

matter is or is not a matter in respect of which the Governor is by or under the Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. This clause essentially deals with two aspects. Firstly, with the acts to be done by the Governor in his discretion and secondly, a challenge to the validity of the exercise of discretion. No doubt, the Article says that the decision of the Governor in his discretion is final and also, the validity of the act of the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. Therefore, exercise of discretion to act or not to act on a matter is not justiciable. Also, the result of the exercise of discretion is not justiciable. But once discretion has been exercised to act in a particular way, judicial review of that action is always permissible particularly, in order to ascertain as to whether that action was in accordance with the Constitution or ultra vires the Constitution and any other applicable law. In other words, the decision of the Governor on merits cannot be reviewed but the decision making process while exercising discretion by the Governor can be judicially reviewed. Clause (3) of Article 361 also states that the Court cannot enquire into the question whether any and if so, what advice was tendered by Ministers to the Governor. The exercise of discretion by the Governor in discharge of his administrative functions can always be a subject matter of judicial review. In that, the Court can go into the question as to whether the decision making process was valid but not on the merits of the decision. In fact, in India, if a decision is taken by any administrative authority in exercise of discretion, Courts would not give its finding or sit in judgment over the decision but would only go into the validity of the decision-making process.

25. Therefore, the contention of the State that the impugned order of suspension passed under clause (2) of Article 317 of the Constitution by the Governor in the instant case is under clause (2) of Article 163 of the Constitution and therefore, not justiciable or cannot be judicially reviewed, cannot be accepted. What is being examined in the instant case is not the exercise of discretion by the Hon'ble Governor to suspend the petitioner but whether the order of suspension is in accordance with the constitutional provisions or not.

26. In support of the above argument, reliance was also placed on Article 361 to contend that the Governor of the State cannot be made to answer in any Court for the exercise and performance of the powers and duties of his office or for any act done or purported to be done by him in the exercise and performance of those powers and duties. There can be no cavil to the fact that the Governor has a personal immunity from answerability in any Court of law under Article 361 of the Constitution and that there is a complete bar to implead and issue notice to the President or Governor in as much as they are not answerable to any Court for the exercise and performance of their powers and duties. But that does not bar a challenge that could be made to their actions.

27. In Rameshwarprasad, the Hon"ble Supreme Court has categorically stated the position of law in the following words:-

"166: A plain reading of the aforesaid Article shows that there is a complete bar to the impleading and issue of notice to the President or the Governor inasmuch as they are not answerable to any Court for the exercise and performance of their powers and duties. Most of the actions are taken on aid and advice of Council of Ministers. The personal immunity from answerability provided in Article 361 does not bar the challenge that may be made to their actions. Under law, such actions including those actions where the challenge may be based on the allegations of mala fides are required to be defended by Union of India or the State, as the case may be. Even in cases where the personal mala fides are alleged and established, it would not be open to the Governments to urge that the same cannot be satisfactorily answered because of the immunity granted. In such an eventuality, it is for the respondent defending the action to satisfy the Court either on the basis of the material on record or even filing the affidavit of the person against whom such allegation of personal mala fides are made. Article 361 does not bar filing of an affidavit if one wants to file on his own. The bar is only against the power of the Court to issue notice or making the President or the Governor answerable. In view of the bar, the Court cannot issue direction to President or Governor for even filing of affidavit to assist the Court. Filing of an affidavit on one's own volition is one thing than issue of direction by the Court to file an affidavit. The personal immunity under Article 361(1) is complete and, therefore, there is no question of the President or the Governor being made answerable to the Court in respect of even charges of mala fides.

x x x

172. The position in law, therefore, is that the Governor enjoys complete immunity. Governor is not answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. The immunity granted by Article 361(1) does not, however, take away the power of the Court to examine the validity of the action including on the ground of mala fides."

28. In view of the aforesaid position in law, the challenge made to the impugned order of suspension in the present case is not immune to judicial review under Article 226 of the Constitution. Neither clause (2) of Article 163 nor Article 361 in any way assist the State to contend otherwise. Thus, Point No. 1 is answered against the State and it is held that the writ petition is maintainable.

Regarding Point No. 2:-

29. The main contention urged on behalf of the petitioner was that the impugned order of suspension was ultra vires clause (2) of Article 317 of the Constitution inasmuch as the President had not made any reference to the Hon"ble Supreme Court with regard to an enquiry against the petitioner and in the absence of such

a presidential reference, the Governor could not have suspended the petitioner. In other words, the contention was that an order of reference made by the President to the Supreme Court was a condition precedent for a Chairman or a Member of the PSC to be suspended by the Governor. That in the instant case, in the absence of such a reference the Government could not have suspended the petitioner.

30. As already noted, under Article 316 of the Constitution, appointment of the Chairman and other Members of a Union PSC is made by the President while in the case of a State PSC, it is by the Governor of the State. Article 317 speaks about removal and suspension of the Chairman or Member of the PSC, which reads as under:-

"317. Removal and suspension of a member of a Public Service Commission

(1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehavior after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehavior."

31. Under clause (3) of Article 317, discretion is given to the President to remove a Chairman or any member of the PSC from office under any of the aforesaid circumstances. When it is a case of removal on the ground of misbehavior, a procedure is prescribed under clause (1) of Article 317 namely, a presidential reference to the Supreme Court; an enquiry by the Supreme Court as envisaged under Article 145 of the Constitution and a report to be submitted by the Supreme Court to the President that such a person ought to be removed and an order of removal to be passed by the President. Thus, a Chairman and Member of a State PSC appointed by the Governor of the State can be removed on the ground of misbehavior under clause (1) or under any of the situations mentioned under clause (3) of Article 317 only by the order of the President.

32. Under clause (2) of Article 317, the Governor can suspend the Chairman or any Member of the State PSC in respect of whom a reference has been made to the Supreme Court under clause (1). If an order of suspension is made by the Governor against any Chairman or Member of the State PSC, that order operates only until the President passes an order on receipt of the report of the Supreme Court on a reference being made to it. Therefore, on receipt of the report from the Supreme Court, the President can accept that report and pass an order of removal under clause (1) of Article 317. But the controversy in this case is on the point as to when the Governor can pass an order of suspension against the Chairman or Member of the State PSC.

33. In this context, the argument of petitioner's counsel was that so long as reference was not actually made by the President to the Supreme Court under clause (1) of Article 317, the Governor was not empowered to suspend such a person. Emphasis was laid on the phrase "in respect of whom a reference has been made to the Supreme Court under clause (1)", to contend that the President has infact, made or sent an order of reference to the Supreme Court and the Supreme Court is seized of that reference. Till then, the Governor is not empowered to pass an order of suspension against the Chairman or any other Member. In this context, it was contended that having regard to the plain meaning of the words, a literal interpretation, must be made by the Court. That in the instant case, admittedly, no reference had been made by the President to the Supreme Court in respect of the petitioner herein. Therefore, the order of suspension in the absence of such a reference was ultra vires the Constitution and must be quashed was the submission on behalf of the petitioner.

34. On the other hand, the contention of the State was that the Constitution does not indicate the starting point of a reference to be made by the President to the Supreme Court. It was contended that a reference to be made to the Supreme Court does not mean an actual order of reference that is submitted to the Supreme Court. The procedure for making a reference commences with the Governor requesting the President to make a reference in respect of the Chairman or Member of the PSC and when once a request is submitted by the Governor to the President, the reference to the Hon"ble Supreme Court

commences and the Governor is empowered to pass an order of suspension. That the order of suspension operates in the instant case, only till the President makes an order on the request made by the Governor to refer the matter to the Supreme Court in respect of the petitioner. That means, if on the request made by the Governor, the President orders that in his discretion no reference to the Supreme Court is required, then the order of suspension would have to be revoked by the Governor. But if on the request made by the Governor to the President to make a reference to the Supreme Court, infact, results in an actual reference being made by the President to the Supreme Court, then, the order of suspension would continue till the President passes an order on receipt of the report of the Supreme Court on such reference. It was contended that the expression "a reference has been made to the Supreme Court under clause (1)" must be given its widest possible meaning and an expansive interpretation, keeping in mind the fact that the Governor, who is the appointing authority does not have the power of removal of the Chairman or Member of the State PSC and the power of suspension is the only means of control which the Governor has over such persons. It was also contended that an expansive interpretation is required in the present times having regard to the serious allegations that are being made against members of the PSCs and innumerable complaints that are being received with regard to the illegalities committed by the Chairman and Members of the PSCs in the matter of recruitment to public service not only in the State but in other states as well. It was also contended that if in the initial stage, the recruitment is tainted then, the beneficiaries of recruitment, who are appointed as public servants would be polluting administration and governance. In this context, several decisions have been relied upon by the respective parties with regard to the interpretation of a constitutional provision. Therefore, before giving a finding on the validity of the impugned order of suspension, it would be useful to delineate on the interpretation of a constitutional provision and the rules thereof.

35. Though a number of citations have been relied upon by the respective parties on Article 317 of the Constitution, there is no case directly touching upon the validity of an order of suspension. Having regard to the aforesaid position, it is proposed to answer Point No. 2, keeping in mind the parameters of interpretation of a constitutional provision, in light of the settled rules of such interpretation, keeping in mind the scheme of the Constitution on this aspect.

36. A member of the Commission of the PSC may be removed from his office in the manner provided in clause (1) or (3) of Article 317. Clause (1) of Article 317 states that the Chairman or Member of the PSC can be removed from his office by order of the President on the ground of misbehavior after the Supreme Court, on reference being made to it by the President has, on enquiry held in accordance with the procedure prescribed under Article 145, reported that the Chairman or such other Member, as the case may be, ought on any such ground to be removed. Thus, even in the case of Chairman or Member of a State PSC although the appointment is made by the Governor of the State, he or she can

be removed from office only by an order passed by the President. The ground for removal is misbehavior. The President has to make a reference to the Supreme Court for the latter's enquiry and on receipt of the enquiry report, the President may remove the Chairman or Member of the PSC from office.

37. Clause (2) of Article 317 speaks about the suspension of the Chairman or Member of a PSC. It states that the President in the case of a Union Commission or a Joint Commission and the Governor in the case of a State Commission, may suspend from office the Chairman or any other Member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed an order on receipt of the report of the Supreme Court on such reference. Thus, in the case of a Chairman and Member of the State PSC, the power of suspension is vested with the Governor of the State. The order of suspension is operational until the President passes an order on receipt of the report of the Supreme Court on reference being made by the president. It can be made only if there is misbehavior by the Chairman or Member of the PSC and not on any other ground. Therefore, prima facie, the President has to satisfy himself that there is misbehavior on the part of the Chairman or Member of the PSC before he makes a reference to the Supreme Court for enquiry. Thus, suspension of a Chairman or Member of the PSC arises only when a reference has been made to the Supreme Court under clause (1) of Article 317. The crucial words in clause (2) of Article 317 are "in respect of whom a reference has been made to the Supreme Court under clause (1)". The expression "in respect of whom", obviously refers to the Chairman or any Member of the Commission. But the controversy in the instant case is as to whether infact, a reference has to be made by the President to the Supreme Court i.e., whether the latter ought to have in fact, received a presidential reference before an order of suspension could be made or whether it is sufficient if the Governor communicates to the President about the misbehavior of a Chairman or Member of the State PSC and that communication made by the Governor to the President is sufficient to hold that there is a reference within the meaning of clause (1) of Article 317 of the Constitution.

38. In this context, learned counsel for the petitioner has submitted that the expression "a reference has been made to the Supreme Court under clause (1)", must be given a plain meaning and a literal interpretation must be made to those words. While the learned A.A.G. appearing for the State has contended that the making of a reference by the President to the Supreme Court commences with the Governor writing to the President about the misbehavior of the Chairman or Member of the PSC and once the Governor has communicated to the President requesting the latter to make a reference to the Supreme Court, it would mean that a reference has been made to the Supreme Court under clause (1) of Article 317 of the Constitution.

39. Before giving a finding as to which of the two interpretations must be accepted in the instant case, in order to test the validity of the order of

suspension, at this stage itself, it would be relevant to refer to the following decisions of the Hon"ble Supreme Court and other High Courts in order to bring to focus the point for consideration.

(a) In *Dr. Ram Ashray Yadav Vs. State of Bihar and Another*, , the facts were that the Chairman of the Bihar Public Service Commission was suspended by the Governor of Bihar in exercise of powers under clause (2) of Article 317 of the Constitution, by issuing an order of suspension dated 22/01/1997 and that order was served upon him on 23/01/1997, after his tenure had come to an end. Petitioner therein contended that the condition precedent to the passing of an order of suspension had not been satisfied in the case inasmuch as according to him, an order of suspension could be passed only when there was a preceding reference and in his case, there was no reference as such and hence, the order of suspension could not be sustained. It was also contended that the order of suspension was communicated to him when he had already relinquished his office on the expiry of six years of his appointment. Therefore, such an order had no effect. However, in that case, the State Government in its counter affidavit had stated that on 22/01/1997 itself, the President had made a reference to the Supreme Court for enquiry and report. In the counter affidavit, it was also stated that the order of suspension was issued after the reference was made by the President. In the facts and circumstances of the case, it was held that the action of the Governor in suspending the petitioner therein was a follow-up of the action taken by the President. It was also observed that the Constitution did not provide either expressly or even by necessary implication that the Governor could exercise his power in a direction or a manner which contradicted or ran counter to the exercise of discretion by the President. Therefore, the Governor could exercise his discretion especially when the power of suspension was by way of an interim measure was clear from the language of clause (2) of Article 317. The Governor could act independently in exercise of his discretion having regard to the nature of this function which was clearly in aid of and as a supplement to the exercise of discretion by the President were the observations of the Court.

(b) In *Ram Kumar Kashyap*, writ petitions were filed seeking quashing of reference made by the Hon"ble President under clause (1) of Article 317 of the Constitution and also for a direction that the order of suspension passed by the Governor of the State be declared illegal and be quashed. When the matter came up for consideration, the petitioners therein did not press their prayer with regard to the order of reference and therefore, the consideration of the case was as to whether the suspension of eight members and Chairman of PSC made by the Governor of Haryana was valid or not. In that case, a contention was raised that before passing the order of suspension, the Chairman and Members of the PSC had to be heard. That contention was negatived by placing reliance on earlier decisions of the Hon"ble Supreme Court in the case of *reference under Article 317(1) of the Constitution of India*, *In re*, (1990) 4 SCC 262 and also *Reference under Article 317(1) of the Constitution of India*, for inquiry and report on the charges leveled against Dr. H.B. Mirdha, Chairman, Orissa Public Service

Commission, .

(c) In Sayalee Sanjeev Joshi, at Paragraph 2, it was observed as follows:-

"2. ... Since a request was made to the President of India to act in terms of Article 317(1) of the Constitution, the placing of the respondent under suspension under Article 317(2) of the Constitution was proper."

40. In that case, the facts were that the member of the Maharashtra PSC (petitioner therein) was arrested in a crime in connection with the complaint lodged by the PSC relating to malpractice in respect of an examination conducted in the year 1999. As she was lodged in jail, the Governor of Maharashtra requested the President of India to initiate action under Article 317 of the Constitution for her removal. He also suspended her from office until an order had been passed by the President under clause (1) of Article 317 of the Constitution. It was in the above premise that the aforesaid observations were made. The Hon"ble Supreme Court further observed that considering the nature of the scam that emerged and the Constitutional position enjoyed by the PSC, the reference to this Court under Article 317(1) of the Constitution seemed to be a proper step to be taken. The Governor had made the request to the President by letter dated 05/08/2003 to initiate action under Article 317 of the Constitution and the Hon"ble President had made reference by letter dated 13/12/2003. It is in the context of the aforesaid two dates that the Hon"ble Supreme Court observed that since a request was made to the President to make a reference to the Supreme Court, the placing of the respondent therein under suspension under clause (2) of Article 317 of the Constitution was proper. Much reliance has been placed by the learned AAG on this decision to contend that it is not necessary that infact, a reference has been made by the President to the Supreme Court but a request made by the Governor of the State to the President to take action in terms of clause (1) of Article 317 of Constitution is sufficient for the Governor to place the Chairman or Member of the State PSC under suspension.

41. In Ram Kumar Kashyap, while referring to the aforesaid decision, it was categorically held that the rationale behind empowering the Governor of the State to issue such an order of suspension even before the reference is actually decided by the Supreme Court is to maintain public trust and confidence in the impartial and honest working of the PSC. Though the aforesaid decision centers around controversy as to whether the Chairman and Members of the PSC were entitled to an opportunity to show cause or to be heard before an order of suspension was passed against them by the Governor and while holding that they were not entitled to such an opportunity to show cause or to be heard, the aforesaid observations were made. The crucial words in the aforesaid observations are "to maintain the public trust and confidence in the impartial and honest working of the Public Service Commission". Delineating on those aspects of the matter, the Hon"ble Supreme Court further observed that the PSC is an institution of utmost importance created by the Constitution under Article 315.

For the efficient functioning of a democracy it is imperative that the PSCs are manned by people of the highest skill and irreproachable integrity, so that the selections to various public posts can be immunized from all sorts of extraneous factors like political pressure or personal favouritism and are made solely on considerations of merit.

42. But the question is as to whether the aforesaid observations can be extended to cover a case where even prior to an order of reference actually made by the President to the Supreme Court, the Governor on requesting for action to be initiated under clause (1) of Article 317 of the Constitution against the Chairman and Members of the PSC, can suspend such a person.

43. Thus, what emerges on a reading of the aforesaid judgments of the Hon'ble Supreme Court is the absence of any direct decision on the point that arises for consideration in the instant case namely, as to whether the presidential reference to the Supreme Court under clause (1) of Article 317 is a condition precedent for an order of suspension of the Chairman or Members of the State PSCs to be made by the Governor of a State or whether the mere request made by the Governor to the President to make a reference under clause (1) of Article 317 of the Constitution is to be construed as the starting point of the reference and thus, sufficient for enabling the Governor to suspend the Chairman or Member of a State PSC.

44. In this context, learned counsel for the petitioner has emphasised on the interpretation of words in clause (2) of Article 317 of the Constitution particularly, the expression "in respect of whom a reference has been made to the Supreme Court under clause (2)". They are as under:

(a) While referring to the expression "has been", reliance was placed on Stroud's Judicial Dictionary of Words and Phrases, wherein it is stated that it has to be construed as "is", in the sense of indicating a continuous fact and with reference to the expression "made", which means "brought into existence", i.e., in fact, a reference has been made to the Supreme Court.

(b) But in K.J. Aiyer's Judicial Dictionary (Fourteenth Edition), it has been stated as under:-

"Whether the expression "has been" occurring in a provision of a statute denotes transaction prior to the enactment of the statute in question or a transaction after the coming into force of the statute will depend upon the intention of the legislature to be gathered from the provision in which the said expression occurs or from the other provisions of the statute. [Secretary, Regional Transport Authority, Bangalore and Another Vs. D.P. Sharma and Others,]."

(c) Learned counsel for the petitioner with reference to interpretation of statute, quoted Lord Greene M.R. in *Re A Debtor* (1948) 2 All E.R. 533, at p. 2 All E.R. 533, at p. 536, to the following effect:-

"If there is one rule of construction for statutes and other documents, it is that

you must not imply anything in them which is inconsistent with the words expressly used". If language is clear and explicit, the court must give effect to it, "for in that case the words of the statute speak the intention of the Legislature".

(d) Reference was also made to Maxwell on The Interpretation of Statutes (Twelfth Edition), wherein it has been opined that the "object of interpretation is to discover the intention of Parliament, "but the intention of the Parliament must be deduced from the language used" for "it is well accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law." "Thus, when the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise and the interpretation of the statute is not to be collected from any notions which may be entertained by the Court as to what is just and expedient. Words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. The duty of the Court is to expound the law as it stands, and to leave the remedy to others."

(e) Referring to Principles of Statutory Interpretation by Justice G.P. Singh (Tenth Edition, 2006), it was contended that "in all ordinary cases and primarily the language employed is the determinative factor of legislative intention. The first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself." Thus, "when the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences."

45. Per contra, learned Addl. Advocate General with reference to the facts of the present case and the specific charges against the petitioner herein, contended that the words of a "statute" and particularly, of a "Constitution", must be given an interpretation, which is in tune with the present times and not a restrictive interpretation based on the plain meaning of the words. He contended that an expansive interpretation is called for in the present case having regard to the position that the Chairman and Members of the PSCs hold under the Constitution and the high hope and trust that is placed in the office so as to ensure that hope and faith of the common man in the PSC is not eroded but restored.

46. While considering the rival approaches to interpretation of the words in clause (2) of Article 317 of the Constitution, it would be necessary to delineate the postulates of interpretation of a Constitution such as the Constitution of India, which is a written Constitution. While, there may be no contra opinion on the principles quoted in the aforesaid treatises on the interpretation of a statute, quoted by learned counsel for the petitioner, it is also necessary to keep in mind that the Hon'ble Supreme Court has also adopted contextual interpretation of a statute when the need arises. This means that the text of a statute or an Act must be read and interpreted bearing in mind the purpose for which it is made. Such an interpretation requires both intrinsic and extrinsic aids of interpretation. In a sense, contextual interpretation is also purposive interpretation, vide

Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, at para 33 and Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat, at para 30 it has been held in textual or contextual approach what is kept in mind is that the context determines the meaning of the words. That the words in the statute cannot have a workable meaning de hors the context in which the statute has been passed. Therefore, Courts have to understand the statute in its background or context to find out the legislative intent. If the aforesaid approach is applicable to interpreting a statute, then in my view, such an approach is more relevant while interpreting a written Constitution. Many a times, words used in the Constitution are not mere words but a large number of them are concepts. Sometimes, concepts are more important than mere words as it is conceptual foundation of the Constitution that has to be understood while interpreting a written Constitution.

47. In this context, it would also be relevant to keep in mind that the Indian Constitution, is an organic law, which has created the three fundamental organs of a democratic State such as legislature, executive and judiciary. Their powers, functions and their inter se relationship as well as the limits of their powers and functions are important aspects to be taken note of. While interpreting the Constitution, it must be borne in mind that the framers of the Constitution did not intend that it was a static piece of legislation but one which had an inherent dynamism i.e., the Constitution being amenable to an interpretation with changing times but without disturbing its foundation or basic structure.

48. Thus, while interpreting the words in a Constitution, Courts cannot be restricted to adopt strict rules of interpretation of an ordinary statute. It must be borne in mind that a written Constitution is a symbol of the nation's socio-economic and political ethos. It is the supreme law. A Constitution is not meant for a particular generation but for generations to come and for posterity. The words in the Constitution are intended to endure the present and future vicissitudes. Thus, Judges of a Constitutional Court have a wider latitude in the interpretation of the words in the Constitution than the Judges in the ordinary Courts of law who interpret the ordinary statutes.

49. According to Salmond, a celebrated jurist, interpretation or construction of a statute is the process by which Courts seek to ascertain the meaning of the legislation through the memorandum of the authorities in which it is expressed (see Salmond on Jurisprudence, Twelfth Edition at Page 12). In Black's Law Dictionary, "interpretation" means "the art or process of discovering and expounding the intended signification of the language used, that is, the meaning which the authors of the law designed it to convey to others."

50. While interpreting a written Constitution, several core aspects have to be kept in mind. One of which is doctrine of transparency whose underlying concept is the process of democratizing public administration which incorporates within it not only free access to information and elimination of secrecy but prevention of corruption and promotion of public accountability. In fact, there is also the

doctrine of accountability and Governments must intend to promote accountability and to seek to control corruption by demonstrating that no one can violate the law with immunity and go scot free. [Source: Constitutions, Constitutional Interpretations and Human Rights] Ibohal Singh Vol. I]

51. Thus, the aforesaid doctrines are some of the postulates of a written Constitution, which along with other postulates are collectively known as Constitutionalism. In the aforesaid background, it is inferred that Constitutional Law differs from a Statutory Law and thus, while interpreting the Constitution, the fundamental rules of Constitutional interpretation must be borne in mind. The text of the Constitution must be read and interpreted having regard to the fact that it is the supreme sovereign will of the people embodying noble ideas and the supreme law for ages to come. It is the Indian Constitution which is the house of powers and functions of the three great organs of the Government and the repository of human rights and fundamental freedom and incorporating a basic structure as envisaged by the Hon'ble Supreme Court in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, . In State of Rajasthan and Others Vs. Union of India and Others, , it was observed that it is for the Supreme Court to uphold the Constitutional values and to enforce the Constitutional limitations. This is the essence of the Rule of Law.

52. While considering the rules of interpretation of the Indian Constitution, the fact that it is supreme law must be borne in mind. The Constitutional Courts while interpreting the Indian Constitution must be conscious of the difference between a written Constitution and a statute and keeping in mind that the Constitutional Courts have a duty to bear in mind the ethos and the basic concepts of the Indian Constitution, it must be interpreted in such a manner, not being restricted by general rules of statutory interpretation.

53. One of the rules of interpretation of the Constitution is purposive, dynamic or progressive interpretation. By this, it means the Constitution must be interpreted in a manner which is capable of wider application and not merely to the original purpose for which a provision had been made in the Constitution. One of the celebrated Judges of the Supreme Court of the United States of America, Justice Benjamin M. Cardoso, has said "the great generalities of the (United States) Constitution have content and significance that vary from age to age". The Hon'ble Supreme Court of India in several decisions has applied the rule of purposive interpretation while discerning the intention of the Constitution. At this stage, some of those decisions could be referred to:-

(a) His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , is quoted in Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, . In Para 66 it has been stated that the primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent", which can be gathered from the language of the provision. If the language is precise of plain and thus, by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to. But if the words used in

the provision can reasonably bear meanings more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation. It is further observed as under:-

"67. Where two alternative constructions are possible, the Court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment. These canons of construction apply to the interpretation of our Constitution with greater force, because the Constitution is a living, integrated organism having a soul and consciousness of its own. The pulse beats emanating from the spinal cord of its basic framework can be felt all over its body, even in the extremities of its limbs. Constitutional expositions is not mere literary garniture, nor a mere exercise in grammar. As one of us (Chandrachud, J. as he then was) put it in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala,]

While interpreting words in a solemn document like the Constitution, one must look at them not in a school-masterly fashion, not with the cold eye of a lexicographer, but with the realization that they occur in "a single complex instrument in which one part may throw light on the other" so that the construction must hold a balance between all its parts."

(b) In Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , it has been observed that the law exist to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of the society. It must reflect the Ideas and ideologies of that society. It must keep time with the heartbeats of the society and with the needs and aspirations of the people. As the society changes, the law cannot remain immutable. The law must, therefore, in a changing society march in tune with the changed ideas and ideologies, Legislatures are, however, not best fitted for the role of adapting the law to the necessities of the time, for the legislative process is too slow and the legislatures often divided by politics are slowed down by periodic elections and overburdened with myriad other legislative activities. A constitutional document is even less suited to this task, for the philosophy and the ideologies underlying it must of necessity be expressed in broad and general terms and the process of amending a Constitution is slow and cumbersome one to meet the immediate needs. Therefore, by a judicial interpretation made by the

Courts, the law and particularly, the Constitution can be made to suit the needs of society.

Quoting Justice Oliver Wendell Holmes's "The Common Law", containing the most celebrated statement, "the life of the law has not been logic, it has been experience", the Hon"ble Supreme Court opined that the framers of our Constitution were men of vision and ideals, and many of them had suffered in the cause of freedom. They wanted an idealistic and philosophic base upon which to raise the administrative superstructure of the Constitution. Therefore, while interpreting the Constitution, one must know what it is and in order to know what it is, one must know what it has been and what it tends to become, was the guidance given by the Hon"ble Supreme Court.

(c) In Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, , the Hon"ble Supreme Court has reminded that a Constitution is not to be construed as mere law but as the machinery by which laws are to be made. Thus, the Constitution cannot be interpreted in a narrow or pedantic sense but must be interpreted broadly bearing in mind a wise balance of jurisdiction. A Constitutional Court, one must bear in mind, will not strengthen, but only derogate from its position if it seeks to do anything but declare the law; but it may rightly reflect that a Constitution is a living and organic thing, which of all instruments has the greatest claim to be construed broadly and liberally.

(d) In Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , the Hon"ble Supreme Court opined that legislation, both statutory and constitutional, is enacted, it is true, from experience of evils. But its general language should not, therefore, necessarily be confined to the form that that evil had taken. Time works changes, brings into existence new conditions and purposes and new awareness of limitations. Therefore, a principle to be valid must be capable of wider application than the mischief which gave it birth. This is particularly true of the constitutional constructions. Constitutions are not ephemeral enactments designed to meet passing occasions. Quoting Chief Justice Marshall of the American Supreme Court that the Constitution is "designed to approach immortality as nearly as human institutions can approach it...", the Apex Court held that "in the application of a constitutional limitation or inhibition", our interpretation cannot be only of "what has been" but of "what may be". Continuing further, it was opined that whenever a statute comes up for consideration, it must be remembered that it is not within human powers to foresee the manifold set of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The Hon"ble Court observed by quoting Lord Denning that when a question arises whether the power has been properly conferred and even if so, the extent of it, a judge in such a situation cannot simply fold his hand and blame the draftsmen and look for new enactment. The judge must set to work on the construction task of finding the intention of the Parliament or the law making body which must be

done not only from the language of the statute because, language is an imperfect medium. But the Judge must also do it from a consideration of the social conditions which give rise to it, and of the mischief which it was intended to remedy and also in the light of the constitutional inhibitions and then supplant the written words and add to it and give "force and life" to the intention and purpose of the Parliament. On the aforesaid premise, the Hon"ble Supreme Court opined that while attempting to discover the legislative intent, the conventional practice was only to look to the words of the statutes. Now, the entire spectrum has to be examined. The Hon"ble Court went on to say that Parliament gives the Court the power to supplant and supplement the expressions used to say what was left unsaid. This is a power which is an important branch of judicial power, the concession of which if taken to the extreme is dangerous, but denial of that power would be ruinous and this is not contrary to the expressed intention of the legislature or the implied purpose of the legislation.

(e) In *Life Insurance Corporation of India and Union of India and another Vs. Prof. Manubhai D. Shah and Cinemart Foundation*, , while interpreting "freedom of speech and expression", in Article 19(1) of the Constitution, to include not only freedom of the press but also electronic media such as, radio and television, opined that a constitutional provision is never static, it is ever evolving and ever changing and, therefore, does not admit of a narrow, pedantic or syllogistic approach. While interpreting "freedom of speech and expression", the Hon"ble Court held that it must be broadly construed to include the freedom to circulate one's views by word of mouth or in writing or through audio-visual instrumentalities. It, therefore, includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television or other electronic media.

(f) In *Pathumma and Others Vs. State of Kerala and Others*, , a seven Judge Constitution Bench of the Hon"ble Supreme Court, while considering the constitutional validity of the Kerala Agriculturists' Debt Relief Act, 1970, observed that Courts interpret the constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the legislature in its wisdom, through beneficial legislation seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather rigid. It must take into consideration the changing trends of economic thought, the temper of the times and the living aspirations and feelings of the people.

(g) In *Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others*, , the Hon"ble Supreme Court has reiterated that it is a well settled principle of interpretation that a Constitution must not be construed in a narrow or pedantic sense and that construction which is most beneficial to the widest possible amplitude of its power, must be adopted. A broad and liberal spirit should,

therefore, inspire those whose duty it is to interpret the Constitution, and the courts are not free to stretch or to pervert the language of an enactment in the interest of any legal or constitutional theory. The Court must look upon a Constitution that it is a living and organic thing and must adapt itself to changing situations and pattern in which it has to be interpreted. It has also to be borne in mind that where division of powers and jurisdiction in a federal Constitution is the scheme, it is desirable to read the Constitution in a harmonious way. That the Constitution of India is an organic document, which should be interpreted in the light of experience. It has to be flexible and dynamic so that it adapts itself to the changing conditions and accommodates itself in a pragmatic way the goals of national development were the observations of the Hon"ble Supreme Court.

(h) In Supreme Court Advocates-on-Record Association and another Vs. Union of India, , a nine Judge Constitution Bench of the Hon"ble Supreme Court, while interpreting Articles 124 and 217, dealing with appointment of Judges of the Higher Judiciary - High Courts and Supreme Court, opined that Courts have to undertake an onerous mission in exploring the "real intention" and "original meaning" of the Constitution beyond all obscurities and to expound the principles underlying the philosophy of the Constitution and declare what the Constitution speaks about and mandates.

According to the Hon"ble Supreme Court, the exploration of the new principles are essential in those areas not before explored; more so when the old principles are found to be not responding to the unresolved and unforeseen modern challenges or to have become inapplicable to the new situations or found to be unsound. At the same time, it is not to be lost sight that in the above institutional task, the Court does not create any new right not known to the constitutional text or history but merely discovers and announces only the existing right so far hidden under the surface on a better understanding of the values of the underlining intent and spirit of the Constitution in light of a new set of conditions.

Observing further, the Hon"ble Supreme Court at paragraphs 16 and 17, held as under:-

"16. The proposition that the provisions of the Constitution must be confined only to the interpretation which the framers, with the conditions and outlook of their time would have placed upon them is not acceptable and is liable to be rejected for more than one reason - firstly, some of the current issues could not have been foreseen; secondly, others would not have been discussed and thirdly, still others may be left over as controversial issues, i.e., termed as deferred issues with conflicting intentions. Beyond these reasons, it is not easy or possible to decipher as to what were the factors that influenced the mind of the framers at the time of framing the Constitution when it is juxtaposed to the present time. The inevitable truth is that law is not static and immutable but ever increasingly dynamic and grows with the ongoing passage of time.

17. So it falls upon the superior courts in large measure the responsibility of exploring the ability and potential capacity of the Constitution on a proper diagnostic insight of a new legal concept and making this flexible instrument serve the needs of the people of this great nation without sacrificing its essential features and basic principles which lie at the foot of Indian democracy. However, in this process, our main objective should be to make the Constitution quite understandable by stripping away the mystique and enigma that permeate and surround it and by clearly focusing on the reality of the working of the constitutional system and scheme so as to make the justice delivery system more effective and resilient."

(i) In *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, , it has been observed that the Constitution is an organic living document. Its outlook and expression as perceived and expressed by the interpreters of the Constitution must be dynamic and keep pace with the changing times. Though the basics and fundamentals of the Constitution remain unalterable, the interpretation of the flexible provisions of the Constitution can be accompanied by dynamism and lean, in case of conflict, in favour of the weaker or the one who is more needy.

54. In *Mehar Singh Saini*, the Hon"ble Supreme Court while speaking on the interpretation of the Constitution observed that it is necessary to understand the true message, the Constitution intends to convey; second, to assert the original meaning in that message in the light of the constitutional provisions; and third, to pronounce what the law is, in harmony with meaningful purpose, original intent and true spirit of the Constitution.

55. On a consideration of the aforesaid judgments of the Hon"ble Supreme Court and placing reliance on them, what emerges is that Constitution of India has to be interpreted in a dynamic or progressive manner. The Hon"ble Supreme Court has opined that the Constitution is a living document, an organism, which is capable of growth and development by imbibing current/prevalent socio-economic and political thought and ethos and has the solutions to emerging socio-economic and political issues. The Constitution can thus adapt itself to contemporary and emerging socio economic ideas as well as notions about justice. A dynamic or progressive interpretation of the Constitution envisages the need to interpret it by bearing in mind the changing vision of every generation. By this, the basic foundation or structure of the Constitution is not altered. Infact, the Constitution can be interpreted in the back drop of current and emerging socio economic and political issues in light of its general and fundamental principles. In such an approach to the interpretation of the Constitution, a literal or a plain interpretation of the words would not find a place. The Constitutional Court would have to expound, modify and mould the words in the Constitution, so as to realize the vision and ideals of the framers of the Constitution even in the fact of ever changing socio economic and political values and ethos. The interpretative and adjudicatory function of the Court should be directed towards achieving the vision of the framers of the

Constitution, which is like an eternal beacon.

56. In Rameshwarprasad, Hon^{ble} Supreme Court opined that "a Constitution is an unique legal document, it enshrines a special kind of norm and stands at the top of normative pyramid. It reflects events of the past. It lays the foundation for the present. It determines how the future will look. It is the philosophy, politics, society and law all in one."

57. In Shri Kihota Hollohon Vs. Mr. Zachilhu and others, , the Hon^{ble} Supreme Court held that "a Constitutional document outlines only broad and general principles meant to endure and be capable of flexible application to changing circumstances - a distinction which differentiates a statute from a Charter under which all statutes are made".

58. Of course, in this context, learned counsel for the petitioner has placed reliance on several authorities with regard to the interpretation to be adopted but those authorities are in the realm of the interpretation of statute. In fact, reliance was placed on the observation of Gwyer C.J., of the Federal Court in the case of [In re The C.P. and Berar Act 1938 (1939) F.C.R. 18], wherein, it has been stated that "a broad and liberal spirit should inspire those whose duty it is to interpret (the Constitution); but that does not imply that one is free to stretch or pervert the language of the enactment in the interests of any legal or Constitutional theory, or even for the purposes of supplying omissions or of correcting supposed errors. It is also observed that the Constitution is a living and organic thing, which of all instruments has greatest claim to be construed "ut res magis valeat quam pereat".

59. An argument was also made by the petitioner's counsel by placing reliance on Keshavan Madhava Menon Vs. The State of Bombay, , on the concept of the spirit of the Constitution. In that case, the Hon^{ble} Supreme Court held that the spirit of the Constitution is a powerful appeal to sentiment and motion; but a Court of law has to gather the spirit of the Constitution from the language of the Constitution. Thus, the doctrine against supposed spirit of the Constitution (as source of power) emphasizes on statutory or literal interpretation of the Constitution. This is diametrically opposite to a liberal interpretation of the Constitution.

60. But in my considered view, every written Constitution requires liberal and progressive interpretation as a Constitution once framed and adopted is intended to serve for generations to come and for posterity and if that is to be borne in mind then, so long as the words of the Constitution or its language are not stretched beyond their limits then, it is appropriate to adopt a purposive construction of the words and the language of the Constitution. Thus, the Constitutional Courts without replacing the words in the Constitution can introduce change through an interpretation of the meaning of the words so as to meet the changing needs of the times. Therefore, while keeping in mind the authorities cited by petitioner's counsel including the extracts from Chapter-II of

Interpretation of the Constitution from Constitutional Law of India - Fourth Edition by H.M. Seervai, I am of the view that sub-clause (2) of Article 317 of the Constitution must be so interpreted that it would meet the needs of the changing times. Therefore, while interpreting the words in sub clause (2) of Article 317 of the Constitution, it is most appropriate to adopt a dynamic or a purposive interpretation rather than a static, fixed or a rigid textual interpretation.

61. Infact, the Hon''ble Supreme Court itself has given a due in this direction in the case of in re Sayalee Sanjeev Joshi, wherein, in para 2 it has been observed on the facts of that case that since a request had been made to the President to act in terms of Clause (1) of Article 317 of the Constitution, placing of the respondent therein under suspension under Clause (2) of Article 317 of the Constitution was proper. Also in Ram Kumar Kashyap it has been observed that the rationale behind empowering the Governor of a State to issue such an order of suspension even before the reference is actually decided by the Supreme Court is to maintain the public trust and confidence in the impartial and honest working of the said PSC. It may be argued that those observations were only passing remarks of the Hon''ble Supreme Court as the validity of the order of suspension was not called in question in that case. Nevertheless, even passing remarks or observations of the Hon''ble Supreme Court or obiter dicta, are binding on other Courts including the High Court. Infact, in The Oriental Insurance Company Limited Vs. Meena Variyal and Others, , the Hon''ble Court has stated that "an obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court. But as far as this Court is concerned, though not binding, it does have clear persuasive authority".

62. In the absence of there being any direct decision, on the validity of suspension of a Chairman or a Member of a PSC as in the present factual matrix, learned counsel for the parties resorted to interpretation of sub-clause (2) of Article 317 having regard to the words used in that Article and bearing in mind the manner in which a constitutional provision has to be construed or interpreted. Keeping in mind the obiter dictum in Sayalee's case, it is held that pending reference to be made by the President to the Supreme Court, the Governor can suspend a Chairman or a Member of a PSC by invoking Clause (2) of Article 317 of the Constitution.

63. Infact, in the impugned order of suspension, the Governor has stated that the order of suspension is binding till the order of the President, which means that if the President decides not to make a reference and returns the request made by the Governor, then in that case, order of suspension would have to be revoked. But on the other hand, if the President acting on the request made by the Governor, makes a reference to the Supreme Court, and the reference is heard and a report is submitted to the President and the President thereafter, passes an order of removal. The order of suspension would operate till then.

64. It is necessary to give such an interpretation not because of the facts of the

present case, but keeping in mind the intention and purpose of suspending a Chairman or a Member of the PSC pending an actual reference being made by the President to the Supreme Court. Infact, the Governor is the appointing authority of a Chairman or a Member of a State PSC but has no authority to remove such a person as such a power is conferred only on the President. This is in order to ensure that the tenure of office of the Chairman and Member of the PSC and their discharge of duties is immune from local or political influence. But the Governor of the State, who is the appointing authority has no means of control over these constitutional functionaries other than to suspend them. Certain facts and circumstances may require an order of suspension to be passed by a Governor of a State. One cannot predict at this stage as to what would be those circumstances which would warrant an order of suspension to be passed by the Governor as against the Chairman or Member of the PSC. But when an order of suspension is required to be passed by the Governor, keeping in mind the factual circumstances and the Governor is not empowered to do so because, there is no Presidential reference made to the Supreme Court against such a Chairman or Member of a PSC then, in that case, the power that has been conferred in Governor would be negated. Therefore, sub-clause (2) of Article 317 of the Constitution has expressly stated as to when an order of suspension would come to an end i.e., when the President passes an order on the receipt of the report from the Supreme Court on a reference made by him. But sub-clause (2) of Article 317 is silent as to when the reference by the President to the Supreme Court would commence. The expression in sub-clause (2) of Article 317 "in respect of whom a reference has been made to the Supreme Court under clause (1)", no doubt, are words of mandatory import, which means that suspension has a nexus to the reference to the Supreme Court by the President. But the question is, as to whether the expression "has been made", must be interpreted so as to imply that as a matter of fact, a reference must have been already made by the President to the Supreme Court before the governor could pass an order of suspension. In my considered view, the expression "has been made" cannot be interpreted to mean a past event but has a connotation of a continuous circumstance or contemporaneity, the starting point of which is when the Governor makes a request to the President to make a reference.

65. It is also necessary to bear in mind that such an interpretation would not cause any violence to the words used in clause (2) of Article 317 of the Constitution. Certain circumstance, such as an arrest of a Chairman or Member of the PSC may call for an immediate suspension. There could be circumstances such as malpractices committed during the course of selection of public servants. If an order of suspension is not passed immediately by the governor on making a request to the President to make a reference to Supreme Court, the entire selection would be tainted and illegal. In such an event, the Governor can make a request to the President to make a reference to the Supreme Court on the alleged misbehavior of the Chairman or a Member of the PSC and pending such a reference, pass an order of suspension. On the request made by the Governor,

the President would require some time to apply his/her mind and then, make a reference. But any lapse of time in that regard may result in the Chairman or a Member of the PSC continuing to function which would be to the detriment of the PSC. If it is held that the Governor cannot pass an order of suspension, until the President has, infact made a reference to the Supreme Court, the whole object of conferring power on the Governor to suspend a Chairman or a Member of the PSC would be set at naught. No doubt, in order to ensure their independence, the Chairman and the Member of the PSC can be removed only by an order to be passed by the President although, the Governor of the State is the appointing authority. But the Governor has no power of control on the Chairman or Member of the PSC, other than suspending them, which must be given a meaningful and purposive interpretation.

66. Therefore, the provision of suspension must be so interpreted as to give a positive content to the power of the Governor. Thus interpreted, the Governor, on making a request to the President against a Chairman or Member of the PSC to make a reference to the Supreme Court, pending such a reference to be made by the President, can suspend him or her. Therefore, the expression "in respect of whom, a reference has been made to the Supreme Court under clause (1)", would mean that the starting point of the reference is when the Governor makes a request to the President to make a reference to the Supreme Court. The words "has been made", cannot be given a past continuous connotation but must be read as a present continuous circumstance. The intention of Parliament is that before a Chairman or a Member of the PSC could be suspended by the Governor, there must be a request to the President to make a reference to the Supreme Court on the alleged misbehavior of such a person. Therefore, the condition precedent is that the Governor on application of mind would have requested the President to make a reference to the Supreme Court on the alleged misbehavior of the Chairman or Member of the PSC. Once such a request is made, the Governor is empowered to suspend the Chairman or Member of the PSC on the alleged misbehavior. The Governor need not wait for the actual reference to be made by the President to the Supreme Court. Of course, as already stated, the suspension is till the President passes an order, either declining to make a reference or till an order of removal is made on receipt of the report from the Supreme Court.

67. Having regard to the aforesaid interpretation, the impugned order of suspension in the instant case is valid and in accordance with the Constitution. In the result, the writ petition has to be dismissed.

68. Before parting with this case, I wish to add that credibility of the Institution of the PSC is founded upon the faith of the common man on its proper functioning. Great powers have been vested in the Commission and therefore, it must ensure that it is above reproach. The object and function of an independent Commission for making appointments to public offices is to exclude nepotism and political patronage. Principles of public accountability and transparency in the

functioning of the Institution are a sine qua non for its effective governance. Therefore, the conduct of the Chairman and Members of the Commission in the discharge of their duties must be above board and beyond censure. One of the ways of ensuring this is to appoint persons of character, credibility and high moral authority apart from learning, to be the Chairman and Members of the Commission. Society expects complete objectivity, integrity and honesty from them. They are required to select persons to public offices on the basis of merit, ability and suitability, for that they have to be models in themselves in their functioning. As often said the Chairman and Members of the Commission, like Caesar's wife, must therefore be above board. That means, they must work with utmost objectivity and detachment. Therefore, a great responsibility is cast on the authority vested with the duty of making appointments to the PSC. Appointment of Chairman or a Member of a PSC cannot be based only on political or other loyalties. Their appointments must also be on merit i.e., not only should the appointees to the PSCs have learning and experience in governance but also be men and women of character, independence and beyond reproach. Adjudication on such matters such as the present one gives raise to anguish in the mind of the Court. The Court can only hope that appointment to such constitutional posts would be with lot of responsibility and circumspection, so that the appointees would not give room for any allegation being made against them which would require adjudication by Courts. Ultimately, it is the persons who man the system who should be flawless in the discharge of their public duties. Therefore, this Court can only hope and trust that the appointments made to the Public Service Commission by the State would be with all responsibility.

69. In the result, the writ petition is dismissed. Parties to bear their own costs.