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**(2016) 01 AHC CK 0174**  
**In the Allahabad High Court**  
**Case No : Misc. Bench No. 11331 of 2015**

Rajendra Prasad Baudh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 22-01-2016

**Acts Referred:**

Constitution of India, 1950 — Article 14, Article 156, Article 162, Article 2, Article 226, Article 25, Article 26, Article 32, Article 371-F

**Citation :** (2016) 2 ADJ 709

**Hon'ble Judges :** Amreshwar Pratap Sahi and Anant Kumar, JJ.

**Bench :** Division Bench

**Advocate :** Kaushlendra Tewari and Kripa Shankar Yadav, for the Appellant;  
C.S.C. and Akhilesh Kumar Singh, for the Respondent

**Final Decision :** Disposed off

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## Judgement

1. The writ petition prays for a certiorari to quash the order of nomination passed by the State Government on 12th September, 2015 whereby the respondent No. 3 Sri Umesh Dixit has been installed as the Vice President of the International Bauddh Research Institute Uttar Pradesh, initially established at Sarnath in Varanasi in 1985 and registered under the Societies Registration Act 1860, and later on shifted to Lucknow.
2. The society incorporated under the Societies Registration Act 1860 was set up with the avowed object of carrying out research on the moral and spiritual values and for development of culture for the benefit of mankind at large essentially on a consideration of the cardinal virtues of Buddhism.
3. The amended memorandum of association which is on record of Writ Petition No. 1689 of 2012 as Annexure 4 therein further reflects that the main object of the society is to collect Buddhist Literature from all over the world and carry out research on the strength thereof in aid of the aforesaid object.
4. There are ten subheads indicated for fulfilling the purpose of the said object.

In effect Buddhist religious studies and research and other associated activities have been enumerated therein.

5. The society was thus established with a purpose to preserve moral and spiritual values and the religious culture of Buddhism through the teachings of Lord Buddha with the aid of the followers of Buddhism combined with a complete State patronage to the society by providing infrastructure, finances and control by the State Government as is evident from the adopted amended bye-laws of the society, filed as Annexure 3 to the writ petition.

6. Initially the society had no State control, but later on it received heavy patronage with extensive State participation after amendment and introduced the control by Buddhist Monks and followers with all State facilities.

7. The petitioner who is a follower of the tenets of Buddhism and is a Bauddh by religion, holding the degrees of Post Graduation and M. Phil., has challenged the nomination of the respondent No. 3 contending that the said respondent neither belongs to the Buddhist community nor is a follower of the Buddhism.

8. It has been urged by the learned counsel for the petitioner that the respondent No. 3 is a Hindu by religion, by caste a Brahmin, and by profession a Law Graduate practicing as a Lawyer belonging to the district of Etawah and was on account of his mere affiliations with the leaders of the present ruling Samajwadi Party picked up by the respondent State Government to be nominated as a Vice President without being essentially a follower of Buddhism.

9. It is urged by the learned counsel that this arbitrary nomination by the State Government is totally political which does not serve the purpose for which a Vice President is to be nominated and has been done only with a view to provide benefit of salary, perks and status to the respondent No. 3 as he happens to be closely associated to political leaders on party lines with the present ruling party governing the State of U.P.

10. A representation dated 15th October, 2015 was filed before the Principal Secretary - Respondent No. 1 with a request to annul the said nomination as it is not in accordance with the bye-laws of the society or the purpose for which the society has been set up to advance the cause of Buddhism.

11. The writ petition was entertained by this Court to which a counter affidavit was filed on behalf of the State pursuant to the order dated 5th January, 2016. Finding the said affidavit to have not essentially complied with the order passed, the matter was adjourned and the State Government was also called upon to produce the records. In response thereto a supplementary-counter affidavit has been filed on behalf of the State and the original records have been also handed over to the Court for perusal as directed earlier.

12. The respondent No. 3 through Sri Akhilesh Singh Advocate has also filed his counter affidavit defending his nomination.

13. We may also mention that from Annexure CA-3 to the counter affidavit of the respondent No. 3 in the present case it was pointed out that in relation to the dispute of such nominations was also earlier raised which is subject matter of Special Appeal No. 19 of 2014.

14. We have summoned the records of the said special appeal and have also perused the records of Writ Petition No. 1689 of 2012 that has given rise to the said special appeal.

15. From the said record we also find that one Mr. Jaideep Singh, Special Secretary to the department of Housing, Government of U.P. had filed the counter affidavit therein bringing on record the unamended byelaws.

16. In Special Appeal No. 19 of 2014 we find a counter affidavit filed by Mr. Kripa Shanker Shukla, Undersecretary in the department of Housing, which is dated 19th September, 2014 in relation to the aforesaid issue of nomination. The same, Sri Kripa Shanker Shukla has filed the counter affidavit and the supplementary-counter affidavit in the present writ petition but he has not mentioned any fact relating to the aforesaid proceedings in Writ Petition No. 1689 of 2012 on Special Appeal No. 19 of 2014 for reasons best known to him.

17. It is pertinent to point out that in the said proceeding an order of cancellation of nomination of the office-bearers and fresh nomination was involved therein including the post of Vice Chairman which is presently involved. To our mind the said facts ought to have been placed on record which has not been done for reasons best known but we are taking judicial notice of the aforesaid facts as they are necessary for being mentioned and considered for the adjudication of the present controversy as well.

18. Ms. Bulbul Godiyal, learned Additional Advocate General has appeared on behalf of the State to defend the action and has urged that this power of nomination exercised by the State Government is discretionary and is governed by the doctrine of pleasure with which no interference is called for by this Court in the exercise of jurisdiction under Article 226 of the Constitution of India, as it squarely falls within the exclusive domain of the State Government, and which power even otherwise has been exercised keeping in view the bye-laws and also its purpose. The order of nomination does not suffer from any such fault so as to call for an intervention by this Court.

19. It is also submitted that even otherwise the Court cannot intervene to suggest any suitable alternative, or form a different opinion, as this Court does not exercise an authority in appeal over such decisions of nomination, nor can any mandate be issued for exercise of such power which the court in its opinion may find to be more suitable.

20. The learned Additional Advocate General in support of her submissions has relied on the dictionary meaning for the nomination of a "follower of Buddhist religion" as Vice President and on some texts which according to her reflect as to

who can be treated to be a follower of the Buddhist religion for the purpose of nomination. Reliance has also been placed on three judgments, namely Dr. G.C. Tripathi v. State of U.P., , 1994 (23) Allahabad Law Reports 296; State of Orissa v. Gopinath Dash, , 2005 (13) SCC 495 and Ekta Shanti Foundation v. Government of NCT of Delhi, , 2006 (6) JT 500 to substantiate the submissions.

21. On exchange of affidavits and conclusion of arguments we reserved the judgment vide order dated 12th January, 2016 and we have also retained the original records for consideration as produced by the State Government.

22. Before we answer the issue of the objection of the learned Additional Advocate General in proceeding to entertain this petition and maintain it, it would be appropriate to refer to the status of the society, its purpose and the manner of its governance through the bye-laws coupled with the extent of role of the State Government and the exercise of its executive and administrative powers for controlling the affairs of the society.

23. The society admittedly is a body corporate, registered under the Societies Registration Act. Clause 2(Ga) defines government as the Government of Uttar Pradesh.

24. Clause 3 defines the general membership and the officebearers of the General Body. It provides for a President who shall be a Bauddh Bhikshu. The Vice President shall be a follower of Buddhist religion. Both will be nominated by the State Government. In addition thereto, there will be eleven non-official members, out of whom eight will be Bauddh Bhikshus and three would be followers of Buddhist religion.

25. Apart from these thirteen persons, the same provision of the bye-law, nominates the Principal Secretary, Finance Department, Government of Uttar Pradesh or his nominated representative who shall not be less than the rank of Deputy Secretary as an Ex-Officio Member, followed by a similar provision nominating the Principal Secretary Department of Planning and the next is the Principal Secretary, Higher Education.

26. The bye-law also provides for a Director who shall be a member of the said General Body Ex-Officio and the Secretary of the General Body shall be the Principal Secretary, Housing and Urban Development, Government of U.P.

27. It is from this constituted General Body that the officebearers of the executive committee shall be further constituted as per Clause 7.

28. The Executive Committee is to be the main governing body that consists of eleven persons. The President of the Executive Committee shall be the President of the General Body Ex-Officio and similarly the Vice President of the General Body shall also be the Vice President of the Executive Committee. The Principal Secretary, Housing and Urban Planning shall be a Member alongwith the Principal Secretary (Finance), Principal Secretary Higher Education and Principal Secretary, Planning, Government of Uttar Pradesh.

29. Apart from this, there are three non-official members to be nominated by the State Government from amongst the eleven non-official members of the General Body.

30. The Director of the Institute shall be ex-officio Secretary of the Executive Committee.

31. The tenure of the nominated President, Vice President and Non-Official Members, is five years as per Clause 4 of the bye-law subject to the limitations of membership as defined in Clause 5.

32. According to Clause 15, the Director shall be appointed by the Executive Committee and his terms and conditions of appointment shall be such as determined by the Executive Committee.

33. As per Clause 16, a Finance Officer has to be appointed who shall be a salaried officer of the Finance Department, Government of Uttar Pradesh to be sent on deputation to the society.

34. As per Clause 18, the Corpus Funds and Bank Accounts shall be operated jointly by the Director and the Finance Officer so appointed. Clauses 22 and 23 indicate that the seal of the society shall be on the recommendation of the State Government and any alteration in the bye-laws including its purpose, object or otherwise would be with the prior approval of the State Government. The bye-laws can be amended with the prior approval of the State Government by calling a meeting in this regard.

35. As per Clause 25, the Annual Accounts shall be prepared by the Executive Committee and shall be sent to the State Government for its approval. The Executive Committee also has the powers to frame regulations which shall be with the prior approval of the State Government including, the terms and conditions relating to payments and finances to the officebearers, terms and conditions of service and salary to the employees of the society, regulation of fees and other matters as per Clause 27. The State Government shall have supervisions control for inspection and calling for a report on such matters as it may deem fit as per Clause 28. The advertisement and propagation about the activities of the society as per Clause 31 is entrusted to the Tourism Department, Government of Uttar Pradesh.

36. It is thus to be seen as per the aforesaid provisions in the bye-laws that there is a deep and pervasive administrative and financial control of the State Government with the active presence and participation of State Government officials, both in the General Body as well as in the Executive Committee. Thus the activities of the society is under the direct control of the State Government with its administrative and financial participation in the manner aforesaid.

37. For the purpose of the present writ petition relating to the nomination of the Vice President, the relevant provisions to be noted under the bye-laws, are the power of nomination of the President under Clause 3 which also includes the

power to nominate the Vice President and other non-official members. The nominated President, who is to be a Bauddh Bhikshu, is to be a Bauddh by religion entitled to a fixed salary of Rs. 40,000/- per month, which shall be treated to be the basic salary and dearness allowance thereon shall be admissible at par with the State Government employees. The Home Department of the State Government was to provide adequate security with the protocol of the level of a State Minister. This is as per Clause 12(Ka) read with the Government Order issued in this regard. Identically, as per Clause 13, the Vice President is to receive Rs. 35,000/- per month as fixed salary treating it to be the basic pay with dearness allowance at par with State Government employees and with the benefit of security to be provided by the Home Department of the State Government. The non-official members are to be provided with a salary of Rs. 25,000/- with D.A. admissible to the State Government employees at par.

38. In addition to the aforesaid salary which is payable to the President, Vice President and Members, there are additional perks provided to the President and the Vice President apart from the facilities to be provided to the guests who may be invited to be housed at Bauddh Vihar Shanti Upwan at Varanasi where the Institute is housed under Clause 30 of the bye-laws. These perks include boarding and food facilities to the invited members at the said Upwan, free of cost, to be borne by the Institute. The members would also be entitled to travelling allowances at par with State Government employees and the nominated Bauddh Bhikshus would be entitled for stay at any Circuit House, Inspection Bungalow or State Guest House with free lodging and food facilities to be provided by the District Magistrate of the district concerned throughout the State.

39. The President of the Society will also be entitled to an Air Conditioned Tata Safari for his use and the Vice President will be entitled to an Ambassador Air Conditioned Car. There would be an additional Air Conditioned Tata Safari for the guests which shall be provided by the department of Housing and Urban Development, Government of Uttar Pradesh and shall be maintained by the Institute. The provisions for other Bauddh Bhikshus and invitees on arrival at the Institute at the Upwan shall be made and the expenses shall be borne by the Institute. In the event any additional requirement is needed then finances shall be provided by the Housing and Urban Development Department.

40. The aforesaid provisions therefore make it clear that the financial expenses, including facilities aforesaid, are also to be provided and if the funds are needed the same shall be provided by the Housing and Urban Development Department. Thus the society is also financially State supported with a fixed salary, in the present case to the Vice President to the tune of Rs. 35,000/- as basic pay and D.A. at par with the State Government employees.

41. The post of Vice President to be nominated by the State Government is thus a salaried office under the bye-laws as per the aforesaid terms and conditions.

42. The running of the Institute is clearly in the hands of an Executive Committee which is manned by State Government officials apart from the President, Vice President and the unofficial nominated members, and there is a substantial financial support from State Funds as indicated above together with perks and facilities as provided and mentioned in the bye-laws itself.

43. The aforesaid status of the society and its running clearly indicates that the functioning and control over the society is deep and pervasive by the State Government and its authorities.

44. It is in this background that the power of nomination to be exercised by the State Government being its absolute discretion has to be visualized in order to consider the argument of the learned Additional Advocate General about the permissibility of judicial review by this Court under Article 226 of the Constitution of India.

45. This has to be assessed keeping in view the nature of the dispute raised and the purpose for which the writ petition has been filed, namely the unbridled exercise of power of nomination in favour of the respondent No. 3.

46. To understand this further, the facts which have to be necessarily borne in mind and have been brought on record need to be enumerated.

47. According to the facts that have emerged on the pleadings of the parties, the office of President was occupied by one Bhikshu Chandima who is stated to be continuing on the strength of the interim order dated 17.1.2014 in Special Appeal No. 19 of 2014. This is evident from the document filed as Annexure C-A-3 to the counter affidavit of the respondent No. 3. The facts of this dispute pending have nowhere been mentioned in the nomination process on the original file of the State Government.

48. The original records produced by the State Government is five pages in all, the top most page being the office notings after the order of nomination was passed impugned herein.

49. The first document to be noted is a recommendatory letter by one by one Mr. Mukesh Siddharth - Vice Chairman of the Uttar Pradesh Scheduled Caste and Scheduled Tribe Commission dated 8.9.2015. The same is reproduced hereunder:--

50. This demi official letter addressed to the Chief Minister of the State is accompanied by a notary affidavit said to have been sworn by the respondent No. 3. The contents of the said affidavit dated 8.9.2015 which is on a Rs. 10/- non-judicial stamp paper is reproduced hereunder:--

51. The third document is the nomination order passed by the Chief Minister on 12.9.2015 which is extracted hereunder:--

52. The fourth document in the file is the impugned order and the fifth document is the file noting for execution of the said order that issues directions for the

compliance of the said nomination. The order sheet begins on 12.9.2015 upon the issuance of the nomination order and culminates having been presented before the Chief Minister again by the Officer on Special Duty on 15.9.2015. The follow up action has been carried out by the Secretary, Housing and Urban Development, Uttar Pradesh Sri Pandhari Yadav under whose signatures the nomination order was issued on 12.9.2015.

53. An application was filed in the shape of a question answer and information obtained on 1.10.2015 from the District Minority Welfare Officer, Etawah as to whether any certificate of the status of respondent No. 3 as belonging to the minority community of Buddhist was issued or not, to which the answer given by the said Officer on 14.10.2015 is clear that no certificate to that effect has been issued to the respondent No. 3. The said document is Annexure 4 to the writ petition. Thereupon, Sri Bodhi Ratan claiming himself to be a Bhikshu on 15.10.2015 made a representation before the Principal Secretary, Housing and Urban Development for cancelling the said nomination.

54. It is on the strength of the said facts that the petitioner has filed the present writ petition praying for setting aside the said nomination.

55. The respondent No. 3 in his counter affidavit has alleged that the person who has filed the representation, namely, Sri Bodhi Ratan and the petitioner are uncle and nephew and Bodhi Ratan is in reality Mr. Ram Niwas Yadav. It is also alleged that Sri Bodhi Ratan is facing criminal charges upon being charge sheeted in case crime No. 387 of 2012 for having acted unlawfully and assaulted an office bearer while residing in the Upwan Campus. He was also involved in forcibly trying to take over the management of the Society which was reported and which facts are evident from Annexures CA-1, CA-2 and CA-3 appended to the said counter affidavit.

56. The petitioner has urged that the nomination of the respondent No. 3 deserves to be annulled as the respondent No. 3 is neither a Buddhist nor a believer in Buddhism nor a worshiper of Buddhism and he is not even a follower of Buddhist religion.

57. The aforesaid allegations and submissions on behalf of the petitioner have been countered by the learned Additional Advocate General by placing reliance on the facts stated in the two affidavits filed on behalf of the State and the dictionary meaning of the word "follower" to urge that a follower is a person who follows the opinions or teachings of another and is either a supporter or a disciple. The word "follower" reflects on a certain belief pursued by an individual. The word follower does not entail that he should have necessarily renounced his original religion and it is sufficient if a person is following the principles of Buddhist religion and has declared himself to be so.

58. It is contended on behalf of the State that the recommendation by Mr. Mukesh Siddharth was taken into consideration for nomination by the Chief Minister and the affidavit filed by the respondent No. 3 did disclose his status,

and in the absence of any material to the contrary, this was sufficient material to exercise the power of nomination. It is also urged by the learned Additional Advocate General that this Court cannot go into the sufficiency of the material when such discretion has been exercised as this would amount to sitting in a judgment over the decision which the State Government is empowered to take and which cannot be faulted with in view of the records that have been placed before the Court. Reliance has also been placed on the judgments referred to hereinabove and consequently the contention is that the same does not call for any interference.

59. Learned counsel for the respondent No. 3 has also adopted the same arguments and has relied on some books that have been produced by the learned Additional Advocate General for understanding the tenets of Buddhist religion and also the concept of a follower as understood therein. The three books that have been placed before the Court include one by Dr. Ambedkar titled Buddha and Dhamma in The Future (printed and circulated by the corporate body of the Buddha Educational Foundation Taipei, Taiwan), Hindi Translation of Milinda Panha Pali by Swami Dwarikadas Shastri published by Bauddha Bharati, Varanasi (1990) and the third book titled as The Buddha and His Teachings by Narada, published by the Buddhist Missionary Society, Malaysia.

60. Learned counsel for the respondent No. 3 has invited the attention of the court to the affidavit filed by the respondent No. 3 and has urged that the respondent No. 3 is an ardent follower of Buddhism and no exception can be taken to it by the petitioner who has not placed any adverse material in this regard.

61. We may first deal with the status of the power of nomination under the bye-laws and its legal impact for being scrutinized by this Court under Article 226 of the Constitution of India. The bye-laws have been framed for the purpose of running the society which also provides for the power of nomination by the State Government. The question is how far the State's power of nomination can be subjected to judicial review under Article 226 of the Constitution of India. As noted above, the society is a State Government patronized society with financial support. It is controlled by an executive committee consisting of four Secretary rank government officials and with a Finance Officer from the department of Finance, Government of Uttar Pradesh to look after the entire financial functioning of the Society. This establishes a deep and pervasive control of the State Government through the said Executive Committee. Once this is the status of the Society and its Executive Committee, the decisions taken by the Society which clearly within the full reach of the Government, the power of nomination is exclusively vested in the State Government. This power is for the purpose of the society in order to foster its object. No doubt it is not a statutory power of nomination but is only under the bye-laws, yet the power to nominate is a state action. It is also to be remembered that it is a function which is being discharged by the State Government under the bye-laws which is not an executive function

as understood under Article 162 of the Constitution, as it is not an official duty. However, it is clearly an administrative action by the State for nominating a person as a Vice President, even though under the bye-laws. The State Government therefore does not lose its identity in its ex-officio capacity to nominate and this legal status, therefore, binds the State Government to act in a manner as provided under the bye-laws to nominate a person who is a "follower of Buddhist religion" to act as the Vice President.

62. This has also to be looked into from the point of view that the office of Vice President has a salary of Rs. 35,000/- and payment of D.A. at par with Government servants. This is coupled by perks and privileges that have been entailed hereinabove and which establishes full governmental control. The nomination, therefore, accompanied by salary and allowances coupled with the aforesaid facilities is an administrative action that has to conform to the bye-laws of nomination and the manner as provided under the bye-laws. The purpose is to install a person for fostering the cause of the society which in turn is the cause of an institution which has a dual character of patronization by the government and also for preserving the religious denomination of Buddhism. Such an institution, therefore, has to be understood in the light of Article 26 of the Constitution of India.

63. The activities of the society including the power of nomination, therefore, have to be transparent and free from any indication of a collateral purpose or for simply extending the benefit of nomination to a desired person. The nomination has to be of a follower of Buddhist religion as per the bye-laws. If the State Government in the exercise of such administrative function has nominated a person through a process which is not in conformity with the purpose and the object of nomination, then such a decision of nomination would be amenable to scrutiny on the principles of Article 14 of the Constitution of India if it is found that the action is whimsical, capricious and beyond the purpose for which the nomination is envisaged. The action of the State Government remains an administrative act and merely because it is under the bye-laws, the same cannot escape scrutiny of judicial review if such scrutiny is within the parameters prescribed under the law laid down by this Court and the Apex Court.

64. It is here that the argument of the learned Additional Government Advocate has to be understood in the light of the decisions cited at the bar. The first decision is of the division bench of the High Court in the case of Dr. G.C. Tripathi (supra). The same was a matter relating to the reconstitution of the General Body and the Executive Council of the Uttar Pradesh Sanskrit Academy. The dispute was in relation to the continuance of the nomination of the Chairman of the said academy and his right to hold the said post. The division bench ruled as under (para 4 of the judgment):--

"4. Suffice to say present one is a case of nomination and not appointment. There is difference between the nomination and appointment. In the matters of appointment, the appointee gets right to hold the office during the tenure for

which he is appointed but in the matters of nomination, position becomes different except in certain cases where the nomination is governed by the statutory provisions. In the instant case, the nomination is not governed by the statutory provisions, rather power of nomination vests in the Government and the Government exercises the same in its executive functions, therefore, doctrine of pleasure cannot be lost sight of. It is the pleasure of Authority to nominate and cancel the nomination but no right accrues to the nominee to hold the office for a particular period. The nominating authority is fully empowered to nominate one person, to rescind or cancel the same and again nominate any other person according to exigencies of situation, therefore, there is no infirmity in the order impugned in this petition."

65. A perusal of the said judgment would indicate that the power of nomination being an executive function, the doctrine of pleasure cannot be lost sight of. It is correct that the said decision also notices that the power of nomination was not under a statutory provision. In the instant case also the power of nomination is not under any statutory provision, but under the bye-laws itself.

66. The second judgment relied upon by the learned Additional Advocate General is in the case of State of Orissa (*supra*) which was a matter of allotment of quarters to armed personnels under a policy decision of the State Government. The challenge was to the system of allotment of the quarters by rotation on the ground that it was contrary to and inconsistent with the justness and fair play. The Supreme Court in paragraphs 5 to 8 ruled as follows:--

"5. While exercising the power of judicial review of administrative action, the Court is not the Appellate Authority and the Constitution does not permit the Court to direct or advise the executive in the matter of policy or to sermonise qua any matter which under the Constitution lies within the sphere of the legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere.

6. The correctness of the reasons which prompted the Government in decision-making taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the courts will have no occasion to interfere and the Court will not and should not

substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

8. The Court should constantly remind itself of what the Supreme Court of the United States said in *Metropolis Theater Co. v. City of Chicago*, 228 US 61 (1912):

"The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review."

67. The said judgment was, therefore, neither in relation to a statutory or a non-statutory nomination power being exercised by the State Government.

68. The third judgment is in the case of *Ekta Shakti Foundation (supra)* which in paragraph Nos. 12 and 13 has reiterated the same position of law as in the case of *State of Orissa* extracted hereinabove.

69. We have considered the ratio of the aforesaid decisions and we have come across some other decisions of the Apex Court on the subject matter of nomination. The first decision is in the case of *Om Narain Agrawal and others v. Nagar Palika, Shahjahanpur & others*, (1993) 2 SCC Page 242 where the power of nomination by the State Government under a statutory provision was under scrutiny. The power was exercised by cancelling earlier nominations and substituting the same by the Government where also the doctrine of pleasure was invoked. It was held therein that the office of such a member by nomination was made on political considerations. The State Government was held to have the authority to nominate women members of its own choice and the doctrine of pleasure was approved which was a case of statutory nomination.

70. A Constitution Bench judgment was rendered in the case of *Pu Myllai Hlychho & others v. State of Mizoram and others*, (2005) 2 SCC Page 92. This related to the nomination of the members of an autonomous District/Regional Council. The dispute involved the termination of four members and nomination of new members in their place. There the Supreme Court again held that the doctrine of pleasure comes into play and there is a discretion vested in the matter of nomination.

71. The Apex Court, however, in a later decision which is another Constitution Bench judgment in the case of *B.P. Singhal v. Union of India and another*, (2010) 6 SCC Page 331 elaborately dealt with the doctrine of pleasure and its implicit limitations vis-à-vis the rule of law. The said judgment was in relation to the removal of Governors of the State of U.P., Gujarat, Haryana and Goa by His Excellency the President of India and it is here that the Apex Court further developed the law in paragraph 22 as follows:--

"22. There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by the rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no Government or authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for the public good."

72. The court further went on to explain the doctrine of pleasure and then held in paragraph 33 and 34 as follows:--

"33. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the "fundamentals of constitutionalism". Therefore in a constitutional setup, when an office is held during the pleasure of any authority, and if no limitations or restrictions are placed on the "at pleasure" doctrine, it means that the holder of the office can be removed by the authority at whose pleasure he holds office, at any time, without notice and without assigning any cause.

34. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, "at pleasure" doctrine enables the removal of a person holding office at the pleasure of an authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons."

73. The constituent assembly debates were then referred to in paragraphs 62 to 65 and then in paragraph 71 onwards, the scope of judicial review of the withdrawal of the pleasure of the President was discussed. On the issue relating to prerogative power being exercised in political and executive matters the court referred to the English Law on the subject. Paragraph 72 is extracted hereinunder for a ready reference:--

"72. The traditional English view was that prerogative powers of the Crown conferred unfettered discretion which could not be questioned in courts. Lord Ruskil attempted to enumerate such prerogative powers in *Council of Civil Service Unions v. Minister for Civil Service*, 1985 AC 374.

"..... Prerogative powers such as those relating to the making of treaties, the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of Parliament and the appointment of ministers as well as others are not, I think, susceptible to judicial review because their nature and subject-matter are such as not to be amenable to the judicial process. The courts are not the place wherein to determine whether a treaty should be concluded or the armed forces disposed in a particular manner or Parliament dissolved on one date rather than another."

However, the contemporary English view is that in principle even such "political questions" and exercise of prerogative power will be subject to judicial review on principles of legality, rationality or procedural impropriety.

"Judicial review has developed to the point where it is possible to say that no power -whether statutory or under the prerogative - is any longer inherently unreviewable. Courts are charged with the responsibility of adjudicating upon the manner of the exercise of public power, its scope and its substance. As we shall see, even when discretionary powers are engaged, they are not immune from judicial review."

74. In paragraph 75 the Court went on to refer to another decision of the Apex Court and observed as follows:--

"In *R.C. Paudyal v. Union of India* 1994 Supp (1) SCC 324, in the context of Article 371-F, it was contended on behalf of the Union of India that the terms and conditions of the admission of a new territory into the Union are eminently political questions which the Court should decline to decide as these questions lack adjudicative disposition. A Constitution Bench of this Court referred to various decisions of the American Supreme Court including *Baker v. Carr* 7 L ED 2d 663 : 369 US 186 (1961) and *Powell v. McCormack* 23 L Ed 2d 491 : 395 US 486 (1968) where the question whether the "political thickets" doctrine was a restraint on judicial power, was considered, and held that certain controversies previously immune from adjudication, were justiciable, apart from narrowing the operation of the doctrine in other areas. This Court held:

"101... The power to admit new States into the Union under Article 2 is, no doubt, in the very nature of the power, very wide and its exercise necessarily guided by political issues of considerable complexity many of which may not be judicially manageable. But for that reason, it cannot be predicated that Article 2 confers on Parliament an unreviewable and unfettered power immune from judicial scrutiny. The power is limited by the fundamentals of the Indian constitutionalism and those terms and conditions which Parliament may deem fit it impose, cannot be inconsistent and irreconcilable with the foundational

principles of the Constitution and cannot violate or subvert the constitutional scheme".

75. The judgment then went on to indicate the extent of prerogative power and judicial review available after relying on another decision of the Apex Court in paragraph 77 as follows:--

"In *Epuru Sudhakar v. Govt. of A.P.* , (2006) 8 SCC 161 : (2006) 3 SCC (Cri) 438, one of us (Kapadia, J,) balanced the exercise of prerogative power and judicial review of such exercise thus: (SCC pp. 190-91, para 66)

"66..The controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but is subject-matter. It can no longer be said that prerogative power is ipso facto immune from judicial review.... Rule of Law is the basis for evaluation of all decisions. The Supreme quality of the Rule of Law is fairness and legal certainty. The principle of legality occupies a central plan in the Rule of Law. Every prerogative has to be subject to the Rule of Law. That rule cannot be compromised on the grounds of political expediency. To go by such consideration would be subversive of the fundamental principles of the Rule of Law and it would amount to setting a dangerous precedent. The Rule of law principle comprises a requirement of "Government according to law". The ethos of "Government according to law" requires the prerogative to be exercised in a manner which is consistent with the basis principle of fairness and certainty".

76. The court then in paragraph 80 referred to an English decision in the case of *R. Daly v. Secretary of State*, 2001 (2) AC Page 532 and referred to the observations of Lord Steyn that a judicial review of the withdrawal of pleasure is limited in the case of a Governor but was virtually nil in the case of Minister or an Attorney General and the intensity of review will depend on the subject matter of review.

77. The State has different roles to play but it still remains the state. It is state action which is under question, though not under a statute of legislature or law made by the executive, yet the bye-law in question and its purpose acknowledges the dominant presence of the state while acting under it in the interest of a society in the form of a public trust and for the benefit of public at large. The State's presence is on account of its sovereign status and predominant control over the society and it's management. It is direct state action which is involved herein and if that is so, then any arbitrariness in the decision making process can be tested on the constitutional anvil of Article 14 of the Constitution even if it is under a bye-law of the nature under scrutiny.

78. Applying the aforesaid principles as enunciated in the decision in the case of *B.P. Singhal* (supra) it appears that privilege exercised by the Government is not an unfettered discretion while exercising a power of nomination. Everything is not to be kept secret as it is not a matter of absolute privacy. A privilege is a special right or power conferred by a special law. The power to nominate can be

considered as a prerogative. It may have the widest of discretion, but it cannot be said that there is an unfettered discretion. Judicial review is the constitutional tool and method by which the law reads its decision. This path cannot be obstructed in the name of absolute privilege in a democracy where the rule of law prevails.

79. The privilege or pleasure exercised is not beyond challenge but the scope is limited keeping in view the subject matter. It is not the source of such discretion but the exercise of discretion for the purpose for which it is framed which may call for a legal scrutiny on judicially available grounds. It is thus not absolutely unreviewable particularly where the purpose is clearly reflected. It is correct that judicial review in a matter of policy or a choice, as in the case of nomination, may not be invoked merely because the policy or choice had some other or better options but at the same time the duty of a judge is to administer the law as the law stands, and not as some would like it to be.

80. The government or its functionaries cannot claim an absolute prerogative of undefined immunities from law on the pretext that the law does give exclusive unbridled power to do something in the name of sovereign pleasure. The doctrine of pleasure does not mean whatever one pleases or merely whatever is pleasing or pleasurable. If pleasure was all, the doctrine would lose its moral as well as legal authority. The lawfulness or unlawfulness of pleasure, therefore, within limited means can be matter of scrutiny without sitting in appeal over such discretion having been exercised properly. Pleasure is not doing what you cannot do and is not a bliss of the sovereign. The exercise of such discretion should be sincere to make such exercise sacrosanct and sacrilegious for the purpose for which it is to be exercised.

81. The nomination should be to safeguard the interest of the society and its purpose and function and not an act of extending benefit to those who are around the seat of power. Pleasure is something agreeable and not contrary to law as it should not result in disappointment to the extent that the exercise of such power appears to be counterfeit. In short, the privilege and discretion to be exercised should be without any excess and with moderation.

82. The aforesaid discussion leads us to the conclusion that if the exercise of power is whimsical, arbitrary, irrelevant or mala fide while processing and exercising the power of nomination then interference can be made to a limited extent, but the court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient.

83. The scrutiny in this writ petition is, therefore, limited to the decision making process as per the records that have been extracted hereinabove.

84. The present dispute relates to the nomination of a Vice President and his continuance as such on the Executive Committee of the Society. This can be termed as a dispute relating to the continuance of an office-bearer of a society as understood under Section 25 of the Societies Registration Act, 1860 and,

therefore, the issue of nomination can be argued to be within the ambit of the aforesaid provision. It can also be urged that in order to find out as to whether the respondent No. 3 is a follower of Buddhism or not, would be a question of fact that cannot be ordinarily gone into in a writ petition and for which a suit would be maintainable. The enquiry, therefore, would be about the status of the respondent No. 3, as to whether he is actually a follower of Buddhism or not. The power to decide such a dispute therefore may be also available to the Prescribed Authority under Section 25 of the 1860 Act.

85. We are conscious of such provisions but in the present case the power of nomination under the bye-laws is vested in the State Government as indicated hereinabove. It would therefore not be possible for the Prescribed Authority or even the Registrar under the Societies Registration Act, 1860 to question the action of the State Government under whose subordination they function. It would therefore be too much to expect an adjudication from the subordinate authority against the State itself in a matter relating to the power of nomination by the State Government.

86. Apart from this, the petitioner has raised an issue relating to the process of nomination by the State Government being not in accordance with the purpose of the bye-laws as also the involvement of the constitutional protection of such an institution under Article 26 of the Constitution and the arbitrariness in the nomination of the respondent No. 3 attracting Article 14 of the Constitution of India. On the other hand, the learned Additional Advocate General has also argued that the respondent No. 3 is entitled to profess and practice a religion of his choice and therefore his being a follower of Buddhism inspite of having been born a Hindu, is a matter of protection of his fundamental rights under Article 25 of the Constitution of India.

87. Thus the aforesaid constitutional issues and interplay of fundamental rights and their protection and enforceability are within the purview of Article 226 of the Constitution of India. The challenge to the decision making process of nomination therefore in view of what has been indicated above would in our opinion be amenable to scrutiny under Article 226 of the Constitution of India which power of judicial reviewability, being part of the basic structure of the Constitution, cannot be denied to the petitioner even though the scope of enquiry in a writ petition would be clearly limited to the said decision making process of the State Government. In this view of the matter and also for the reasons given hereinabove, we are not inclined to relegate the petitioner to any other remedy as we find that the matter can be dealt with within this limited scope for the reasons given hereinbefore and hereinafter.

88. We may mention that Lord Denning in his Book "What Next in The Law" and "The Discipline of Law" referred to Magna Carta, the law expounded by British Legal Luminaries like Henry Bracton and Sir Edward Coke who has opined that "the King is under no man, but under God and Law". He also advocated that the theory of absolute discretion had waned away and the discretion exercised by

Ministers of Crown, "If it appeared to him" or "If he thought fit" can be questioned for which he referred to several decisions in Chapter VII titled Ministers of Crown in Part-V of the aforesaid book. He concluded in the said chapter by quoting a passage in a case decided by him known as the Laker's case [1977] 2 All England Reports 182 in the following words:

".... These courts have the authority - and I would add the duty - in a proper case, when called upon, to inquire into the exercising of a discretionary power by a minister or his department. If it is found that this power has been exercised improperly or mistakenly so as to infringe unjustly on the legitimate rights and interests of the subject, then these courts must so declare. They stand, as ever, between the executive and the subject, as Lord Atkin said in a famous passage, alert to see that any coercive action is justified in law. To which I would add : alert to see that a discretionary power is not exceeded or misused."

89. In his book "The Discipline of Law" Lord Denning expressed similar views in Chapter VI of Part II of the said book and opined that if a minister while exercising discretion does not act in good faith or he acts on extraneous considerations which ought not to influence him or exercises it for reasons which are bad in law, the courts can interfere to avoid any such maladministration. He referred to another decision in the case of *Padfield v. Minister of Agriculture, Fisheries and Food* [1968] Appeal Cases 997.

90. While further explaining this aspect, Lord Denning in a matter of discretion by a minister on being satisfied to take action narrated the history of the phrase "if the minister is satisfied" and reviewed the law in *Secretary of State for Education and Science v. Tameside Metropolitan Borough Council* [1977] Appeal Cases 1014 and quote Lord Atkin in the case of *Liversidge v. Anderson* [1942] Appeal Cases 206 who opined that elementary rules of fairness require that the minister should direct himself properly in law and must call his own attention to the matters he is bound to consider. He must exclude from his consideration, matters which are irrelevant to that which he has to consider and the decision to which he comes should be a reasonable one which a reasonable person might reasonably reach. Administrative decisions were amenable to judicial scrutiny on such issues. Thus in a way it can be said that exercise of such discretion in the shape of the Henry VIII Clause that is regarded as the impersonation of executive autocracy is subject to scrutiny and judicial reviewability.

91. Unguided and unfettered power therefore in a matter of nomination which is part of State action cannot now remain outside the purview of judicial reviewability. The principle of rule of law that the power has to be exercised in a manner which is just, fair and reasonable and not capricious or arbitrary also takes within its fold such executive and administrative action as is presently involved in order to minimize the scope of any arbitrary use of power in all walks of life. These principles were also dealt with in a constitution bench judgment of the Apex Court in the case of *Delhi Transport Corporation v. DTC Mazdoor Congress and others*, , 1991 Suppl. (1) SCC 600.

92. The issue of appointment of a suitable person as a minister by a Prime Minister or a Chief Minister within the constitutional framework and the discretion exercised therein was elaborately dealt with and it was held in *Manoj Narula v. Union of India*, (2014) 9 SCC Pg. 1 that even though no direction could be issued to a Prime Minister or a Chief Minister not to appoint persons with criminal antecedents but at the same time a constitutional advice was given not to appoint such persons while exercising the writ jurisdiction under Article 32 of the Constitution of India. The same was also found to be available under Article 226 of the Constitution of India. The case noted by us hereinabove, *B.P. Singhal v. Union of India* (supra), was reiterated in paragraph 118 of the said constitution bench judgment as follows:

"118. Implied limitations to the Constitution were also read in *B.P. Singhal*. In that case, an implied limitation was read into the pleasure doctrine concerning the removal of the Governor of a State by the President in terms of Article 156 of the Constitution. It was held that the pleasure doctrine as originally envisaged in England gave unfettered power to the authority at whose pleasure a person held an office. However, where the rule of law prevails, the "fundamentals of constitutionalism" cannot be ignored, meaning thereby that the pleasure doctrine does not enable an unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure, which can only be for valid reasons."

93. Thus judicial reviewability in the light of the above would be available but of-course to the limited position of the decision making process on relevant considerations without trenching upon the power of discretion to the extent it is available and indicated hereinabove.

94. On the aforesaid principles, we would therefore not sit in appeal over the merits of the candidature of any individual and his eligibility but we find as would evident from the discussion hereafter that this enquiry by us is available on the facts of the present case for the reasons stated by us on the decision making process as disclosed by the State.

95. It is here that we may now deal with the decision in Writ Petition No. 1689 (M/S) of 2012 and the pendency of Special Appeal No. 19 of 2014 and the interim order passed therein. The said writ petition had been filed by nine persons including the then nominated President and Vice President of this Society who had been earlier nominated by the erstwhile Government in 2011 or even prior to that. Their nominations were cancelled by the present Government on 19th March, 2012 and the same was challenged in the aforesaid writ petition in which one Bhikkhu Devendra who was the then nominated Vice President was also the petitioner No. 2 therein as his nomination had also been cancelled alongwith the others.

96. After exchange of affidavits the writ petition was ultimately dismissed vide judgment dated 10th January, 2014. The learned Single Judge referred to some

of the judgments to which we have referred to hereinabove including the decision in the case of Om Narain Agrawal (supra) and the judgment in the case of B.P. Singhal (supra).

97. We with respect to the learned Single Judge do not find reference and consideration to those paragraphs of the decision in the case of B.P. Singhal (supra) that have been extracted hereinabove, nor do we find any discussion of the law relating to the exercise of discretion in such matters as enumerated hereinabove. The learned Single Judge only referred to Paragraph 67 of the judgment in the case of B.P. Singhal (supra) and arrived at the conclusion on the strength of only one paragraph of the said judgment which in our opinion does not appear to be a consideration of the entire ratio of the case. To us, it appears that the ratio of the case of B.P. Singhal (supra) has been discussed in detail in the paragraphs which we have extracted hereinabove which appears to have escaped the notice of the learned Single Judge in the aforesaid writ petition.

98. Apart from this the said judgment of the learned Single Judge has been stayed by a reasoned interim order dated 17th January, 2014 in Special Appeal No. 19 of 2014 and which according to the ordersheet thereof does not appear to have been vacated so far. It is however to be noted that the period of nomination in the said dispute might have come to an end but the fact remains that the said appeal is still pending before this Court. Consequently, we are unable to adopt the reasoning given by the learned Single Judge in the aforesaid writ petition for the purpose of the present dispute relating to the exercise of power of nomination for the reasons already given hereinabove.

99. We now therefore turn to the manner in which the decision has been taken to nominate the respondent No. 3. It is evident on record that the process began with a recommendation of one Sri Mukesh Siddharth, the Vice Chairman of the U.P. Scheduled Caste and Schedule Tribe Commission. There is nothing on record that the said Vice Chairman had got anything to do with identifying a person as a follower of Buddhism or having any authority to certify the status of a person as a follower of Buddhist religion or to make a recommendation. The bye-laws also do not indicate the power of nomination to be exercised on any such recommendation. The file indicates the letter addressed to the Chief Minister on 8th September, 2015, and the presence of the said letter alongwith the nomination order. The said recommendation recites that Sri Umesh Dixit the respondent No. 3 is a resident of Etawah and is a very old associate of the "party". The same obviously refers to the political party to which the Chief Minister of the State belongs and also indicates the association of the respondent No. 3. This association amounts to the respondent No. 3 being a follower of a political party. In paragraph 22 of the supplementary-counter affidavit of the State it has been categorically stated that the name of the respondent No. 3 was considered upon a recommendation received and it was on consideration of such recommendation that the respondent No. 3 has been nominated. It is for this reason that we are referring to the said recommendatory letter, which without

being aware of the bye-laws, makes a recommendation to nominate the respondent No. 3 as a President or a Vice President. It appears that the recommendation overlooks the fact that the President of the Society can only be a Bhikshu and therefore the respondent No. 3 who does not claim himself to be a Bhikshu could not have been recommended for the post of the President of the Society. The same reflects unawareness of the byelaws. The said recommendatory letter therefore is clearly on pure political lines on account of the respondent No. 3 being a person belonging to Etawah and having clear party line affiliations to the political party that is in power in the State. It has to be remembered that the nomination is not on any political body and is therefore not a political nomination. It is a research institute for fostering the religious ideals of Buddhism.

100. We have been unable to find any authority in the Vice Chairman of Scheduled Caste and Scheduled Tribe Commission to make any recommendation nor we have been able to find out any authority in the State Government to act upon and consider nomination on such a recommendation. The Scheduled Caste and Scheduled Tribe Commission or its authority has no role to play in the Institute or the nomination of its office-bearers. It also does not have any such authority to declare the status of a person or certify his being a follower of a Buddhist religion. Thus this recommendation was clearly a camouflage for the purpose of installing the respondent No. 3 to enable him to receive the salaried benefits and perks of the office of a Vice President inspite of the fact that he is a professional lawyer and now allegedly professes to be a follower of Buddhism. The said recommendation therefore by itself could not be the foundation of a nomination unless there was anything else to establish that the respondent No. 3 was in reality a follower of Buddhism.

101. The other document which has been placed on record is an affidavit by the respondent No. 3. In this affidavit it is admitted to the respondent No. 3 that he was born in a Hindu Family but during his student life he came into contact with the teachings of Buddhist religion and he was influenced by this whereafter he started following the Eight fold Path of Buddhism as expounded by Lord Buddha and practiced the Panchsheel (Five abstinences). He also alleges to involve himself in propagation of Buddhist religion and has also been initiated into the fold of Buddhism. He has also declared his willingness to participate in any activity for fostering and spreading the Buddhist religion in future.

102. We may put on record that the said affidavit admits that the respondent No. 3 was born as a Hindu. The respondent No. 3 has also filed an affidavit before this Court in response to the writ petition. According to Rule 9 of Chapter IV of the Allahabad High Court Rules, 1952 the person making an affidavit has also to disclose his religious denomination. The respondent No. 3 in the description mentions his name, age, place of residence but he does not disclose his religion. To the contrary, in paragraph 1 of the affidavit he says that he belongs to Buddhism. In paragraph 2(iv) he says that he is an ardent follower of Buddhism

and has faith in the teachings of Lord Buddha. In paragraph 4 again he describes himself as the follower of Buddhism and worshiper of Lord Buddha and in paragraph 8 he states that he is involved in organizing several such activities for propagation of the said religion.

103. We may put on record that the Notary Affidavit that is on record of the State Government nowhere indicates as to when and through whom the petitioner was initiated into Buddhism so as to become a follower of Buddhist religion. No material was there before the State Government to substantiate the said claim of the respondent No. 3 that he was involved in the activities of propagating Buddhist religion nor there is any material in the affidavit filed before this Court to demonstrate that the respondent No. 3 was even remotely involved in a single activity worth the name so as to foster Buddhism. These statements made by the respondent No. 3 are absolutely bald and unsubstantiated with absolutely no material to support the same.

104. We are conscious of this that insufficiency of material may not be a subject of scrutiny by us, but a total lack or absence of any material before the nominating authority is the situation in the present case. A self declaration by the respondent No. 3 which is in the shape of a bald statement of fact, that too even by a professional lawyer holding a law degree, does not inspire any confidence and it is not understood as to what was the satisfaction that could have reasonably led to believe that the respondent No. 3 was a follower of Buddhist religion. A follower has to be a true follower for which something of substance should be available. A political party follower cannot ipso-facto become a follower of a religion as in the present case where the respondent No. 3 has made statements in the affidavit about his status without there being any indication of his having adopted Buddhist religion as an ardent follower. The respondent No. 3 has nowhere indicated either in the Notary Affidavit or before this Court about his current social status and the status of his family members, kith and kin, so as to construe that he is a follower of Buddhist religion.

105. What we find is that the recommendation which has been made the basis of nomination as admitted in the counter affidavit of the State is nowhere able to correlate any cogent material establishing that the respondent No. 3 was a true actual follower of Buddhist religion in fact. To this we may also add that the petitioner has placed on record the question-answer received from the District Minority Welfare Officer, Etawah that the respondent No. 3 has not been issued any certificate about his belonging to or being a follower of minority Buddhist religion. The respondent No. 3 has not been able to counter it with any material alongwith his counter affidavit before this Court except for levelling mala-fides against the petitioner.

106. It is also necessary to note the arguments of the learned Additional Advocate General as to the understanding of the words follower of Buddhism.

107. On what has been submitted before us, it is not necessary for us to enter

into the tenets of Buddhism as there are a large number of authorities, texts and sufficient material available throughout in order to understand the principles of Buddhist religion.

108. We may mention a few authorities apart from what has been relied upon by the learned Additional Advocate General for the benefit of the State and its authorities and which may also be available with the Institute about which the litigation is going on.

"(i) Buddhist records of the Western World by S. Beal, Kegan Paul, 1906.

(ii) Buddhism by Mrs. Rhys, Davids (William & Norgate, Home University Library Series)

(iii) Buddh Charitra of Ashvghosh translated by Prof. E.B. Cowell

(iv) Buddhism primitive and present by R.S. Copleston

(v) The Doctrine of Buddh; the Religion of Reason by George Grimm (Leipzig, W. Drugulin, 1926)

(vi) Buddhism as a Religion by H. Hackmann

(vii) Buddh, his life, his doctrine, his order by Dr. Hermann Oldenberg translated by William Hoey

(viii) Dr. S. Radhakrishnan, Indian Philosophy, Vol. 1

(ix) Life of Buddh, W.W. Rockhill

(x) Buddhist Praying by W.M. Simpson

(xi) Esoteric Buddhism by A.P. Sinnett.

(xii) The Spirit of Buddhism by Sir Hari Singh Gour (1929)"

109. A reference to these texts is necessary to understand the different type of followers and members of the brotherhood of Buddhism.

110. These words in alphabetical order are referred to hereinafter with their meanings as understood in the above mentioned texts.

111. The aforesaid definitions as extracted from various authorities referred to hereinabove would indicate different types of followers who form the brotherhood of the Buddhist community.

112. The petitioner has been unable to explain as to what form of a follower he is and how did he become so and further any material to substantiate the same is available or not. The respondent State has also not brought anything on record except the documents aforesaid which have been discussed earlier and prior to nomination there is no enquiry or any material other than the alleged recommendation and the affidavit of the petitioner to satisfy the test of a follower. The decision making process by the State Government therefore does

not appear to have been bonafidely carried out to ascertain the correctness or otherwise of the self declaration of the respondent No. 3 to be a follower of Buddhism. No authority either local or district level or any person connected with Buddhism appears to have been consulted to find out the genuineness of the claim of the petitioner that he is a follower of Buddhism or Buddhist religion.

113. The nomination was not preceded by any enquiry about the antecedents of the respondent No. 3 and his credentials. The only material bearing which appears to have prevailed at the time of nomination was his status as a lawyer belonging to Etawah and his affiliation with the party. The basic enquiry of his being a follower of Buddhism or any material relating thereto was assessed in the manner indicated above without any independent exercise to ascertain as to whether the respondent No. 3 was a follower to fulfill the purpose for which the nomination power is to be exercised.

114. In our opinion, even a subjective satisfaction to that extent was not attempted and his party affiliation was made the foundation of his nomination. The connectivity of spiritualism, and any research pursuit in the studies of Buddhist religion does not appear to be the basis of his assessment for nomination. The purpose appears to have been eclipsed under the cloud of his party affiliation. This Court would not substitute its opinion by making any assessment on its own as this is not the scope of enquiry which can be undertaken in the writ petition and has to be left to the wisdom of the nominating authority to verify the credentials of the respondent No. 3 to ascertain as to whether the purpose of nomination in order to foster the object of the society would be fulfilled if such nomination is to be sustained.

115. The assessment by the State Government would also be necessary as now the entire finances provided to the society appear to be almost funded by the State Government and thus it is a charge on public exchequer. This being so a scrutiny for installing such a person as a Vice President is necessary.

116. When the State is involving itself in advancing the cause of the philosophical and religious pursuit of a particular sect then the purpose for which the nomination is sought to be made has to conform to it and which exercise has to be undertaken in that light without any disadvantage being caused to the institution for which the person is being nominated in his representative capacity to function as Vice President.

117. Before we issue final directions, we may also put on record that the purpose for which the society was formed in the year 1985 was on the strength of recommendations that shaped the initial bye-laws where persons eminent in the field of scholarship of Buddhism with responsible officials were placed on the Executive Committee. This went on a total sea change with the amendment in the bye-laws after the society was shifted at Lucknow and all material facilities were made available with the substitution of persons belonging to the Buddhist Religious denomination. Thus academics, research and propagation of human

values based on the principles of Buddhism saw a shifting of command into the hands of people of religious denomination. It is after this change that all material facilities like salary, perks and cars with security and State patronage found its way in the amended bye-laws. Thus an academic setup was virtually transformed as a religious denomination outfit even though the purpose and object remained the same. Public revenue was therefore grossly involved and this resulted in the power of political nominations that have seen litigation including the present writ petition as a result of the interference of State administrative power which is more in the nature of a political decision to choose people of religious denomination that pretends to foster, the objects and ideals for which the society has been setup. What we find is that the society with all its material facilities lost its detachment with materialism, basically departing from what Lord Buddha himself might have thought about such an institution. The State Government, in our opinion, would be well advised to keep the high ideals and values in mind at the time of making nominations.

118. For all the reasons aforesaid, we find that the manner in which the decision has been taken does not appear to be in absolute conformity with the purpose of nomination under the bye-laws and therefore the exercise of power by the State Government even though administrative in nature may require a review at its own end.

119. We therefore direct the State Government to revisit the exercise undertaken by it for nominating the respondent No. 3 as we find it expedient to be done in the background aforesaid. It shall be open to the State Government to satisfy itself after making an appropriate enquiry as to whether the respondent No. 3 is a true follower of Buddhism so as to occupy the said office for which he has to be nominated or not, and it shall also be open to the State Government to make such enquiries through the District Level Authorities or any discreet enquiry in any manner to ascertain the credentials of the respondent No. 3 as observed above.

120. Since the exercise is still wanting, we also provide that the respondent No. 3 in future would be entitled to his salary, perks and facilities, only after an appropriate assessment and decision is taken by the State Government in the light of the observations made hereinabove within a period of two months. The nomination of the respondent No. 3 shall therefore be subject to the outcome of such a decision.

121. The writ petition stands disposed of with the aforesaid directions and observations.