

(2019) 05 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition No. 90 Of 2010 (PIL), Miscellaneous Application No. 5717 Of 2016, 19081 Of 2018, 19082 Of 2018, Delay Condonation Application In Supp. Affidavit No. 1737 Of 2018, Miscellaneous Application With Supp. Counter No. 2284 Of 2019

Rural Litigation And Entitlement Kendra Rlek	APPELLANT
Vs	
State Of Uttarakhand & Others	RESPONDENT

Date of Decision : 03-05-2019

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 2(a), 2(f), 3, 86, 87, 88
Uttar Pradesh Ministers (Salaries, Allowances And Miscellaneous Provisions) Act, 1981 — Section 2(e), 3, 4, 4(1), 5, 5(1), 5(2), 6(1), 9, 10
Uttarakhand Ministers(Salary, Allowances And Miscellaneous Provisions) Act, 2010 — Section 4, 4(2), 14
Uttar Pradesh Ex-Chief Minister Residence Allocation Rules, 1997 — Rule 2(e), 3, 4, 5, 6, 18(A)
Business Of Uttar Pradesh (Allocation) Rules, 1975 — Rule 2, 2(1), 3, 3(1), 5
Constitution Of India, 1950 — Article 14, 19, 154, 154(1), 162, 163, 163(1), 164, 166, 166(1), 166(2), 166(3), 196, 199(1)(c), 198, 202, 202(2)(a), 202(2)(b), 202(3), 203(2), 204, 204(3), 208, 266, 266(3), 267(2), 282, 283(2), 300A

Citation : (2019) 05 UK CK 0003

Hon'ble Judges : Ramesh Ranganathan, CJ;R.C. Khulbe, J

Bench : Division Bench

Advocate : Kartikey Hari Gupta, Paresh Tripathi, Abhishek Joshi, Sandeep Tiwari, B.D. Upadhyaya, Mamta Bisht, Rakesh Thapliyal, Vikas Bahuguna

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. In this writ petition, filed in public interest, a writ of certiorari is sought to quash the impugned order dated 27.11.2001, the office memo dated 15.05.2002, the order dated 09.08.2004, the Government Order dated 15.09.2008, and the office memo dated 26.01.2010; a writ of mandamus directing the State of Uttarakhand not to provide any facility, from the government exchequer, to respondent nos.2 to 6 as entitlement of Ex-Chief

Ministers; a writ of mandamus directing the State of Uttarakhand to get the Government accommodation, occupied by respondent nos.2 to 6 respectively, vacated; and a writ of mandamus, directing the State of Uttarakhand to recover the amount spent on behalf of respondent nos.2 to 6, with respect to the facilities provided to them in pursuance of the impugned orders, as facilities for Ex-Chief Ministers of the State.

2. In the affidavit, filed in support of the writ petition, the petitioner stated that the State Government had spent a sum of Rs.9,28,69,973/- (Rupees Nine Crore Twenty-Eight Lakh Sixty-Nine Thousand Nine Hundred Seventy Three) in providing various facilities to all the Ex-Chief Ministers of the State unlawfully, i.e. without any legislative sanction; this amount, computed till March, 2010, was increasing day by day; no law was made by the State Legislature, nor was any valid government order passed, making provision for such facilities to be given to the Ex-Chief Ministers of the State; these facilities are being provided to these Ex-Chief Ministers merely on the basis of the order dated 27.11.2001, the Office Memo dated 15.05.2002 signed by the Secretary, the order dated 09.08.2004, the Government Order dated 15.09.2008, and the Uttar Pradesh Ex-Chief Minister Residence Allocation Rules, 1997 (hereinafter referred to as "the 1997 Rules"); these orders and rules have never received the sanction of the Council of Ministers in the State, nor were they passed in compliance with Article 166 of the Constitution of India; they are, therefore, not valid Government Orders; the 1997 Rules were never adopted or modified by the State of Uttarakhand; they have, therefore, no application in the State of Uttarakhand; on an RTI Application being made, the Secrecy Department of the Government of Uttarakhand acknowledged that they did not have any record with regards prior approval being granted, to the order dated 27.11.2001, either by the Council of Ministers or by the State Legislature; the impugned orders were illegally passed in utter disregard of the Legislative and the Executive power of the State as per Part VI of the Constitution of India; and they are, therefore, void ab initio.

3. The petitioner has arrived at a sum of Rs.9,28,69,973/- (Rupees Nine Crore Twenty-Eight Lakh Sixty Nine Thousand Nine Hundred Seventy Three) as due to be recovered from all Ex-Chief Ministers (i.e. respondent nos.2 to 6) for facilities extended to them till March 2010, based on various replies received from the various State agencies. It includes only the period from when respondent nos.2, 3 and 4 had demitted office of the Chief Minister of the State, and had enjoyed all these facilities as Ex-Chief Ministers. However expenses incurred for respondent nos. 5 and 6 are stated not to have been included. Thereafter, the petitioner has detailed the amounts spent by the State of Uttarakhand for providing facilities to Ex-Chief Ministers towards electricity, security and guard, staff, civil works, telephone etc.

4. The petitioner would further state that the fifth respondent was allotted a Government residence for his whole life, despite having his own house at Dehradun; the sixth respondent, when he was asked to resign by his party, not

only allotted to himself the Bizapur Guest House for his whole life, but had also sanctioned a few crores for its extension, renovation and furnishing; respondent nos.2, 3 and 4 had, in the last three years, spent Rs.6,01,44,420/- (Rupees Six Crore One Lakh Forty-Four Thousand Four Hundred Twenty) merely on petrol and maintenance of their vehicle at government cost, without any legal entitlement for this huge amount; apart from wastage of money in this regard, respondent nos.2 to 6 have been provided palatial bungalows, at prime localities, by the State Government; these huge bungalows have been allotted to these respondents for their entire life, only on the basis of the Office Memo dated 26.01.2010, by the State Estates Officer; and the maintenance work of these residential buildings are to be undertaken by the State Estate Department.

5. The writ affidavit, thereafter, details the total expenditure incurred towards electrical maintenance of the residence of respondent no.3, during the four year period 2010-11 to 2013-14, as Rs.7,10,529/-; the electricity maintenance expenditure, at the residence of the fourth respondent, for the seven year period 2007-08 to 2013-14, as Rs.1,22,590/-; the electricity maintenance, at the residence of the fifth respondent for the six year period 2008-09 to 2013-14, as Rs.8,71,223/-; and the expenditure towards electrical maintenance, at the residence of the second respondent for a six year period, as Rs.2,55,730/-. It is stated that the expenditure incurred towards electrical maintenance, at the residence of the sixth respondent, is not available.

6. It is further stated that the expenditure in this regard has put undue pressure on the public exchequer, more so in the State of Uttarakhand which has still not come to terms with the natural calamity which struck the State; such unwarranted expenditure is a needless waste of public money; as per the 2008-09 Annual Financial Description, the per capita income of the State was far below the average national income; the difference between the two has been increasing significantly day by day; when the State of Uttarakhand was formed in 2000-01, the per capita income of the State was almost similar to the national average; the gap is widening day by day; by the year 2010-11, the loan indulgence of the State had already touched Rs.20,000 crores; the 2009-10 budget estimated the revenue deficit to be Rs.213.44 crores; the State Government is functioning on the grant-in-aid provided by the Central Government; this huge expenditure, incurred towards providing facilities towards housing, telephone, vehicles, drivers, guards/shadow etc. to the Ex-Chief Ministers, is from the public exchequer, though the State is facing huge financial deficit; the fourth respondent, even during the period he was a member of parliament (Rajya Sabha), had occupied a huge government accommodation at 12, Ashoka Road, New Delhi and, at the same time, had illegally retained a huge government bungalow, provided by the State of Uttarakhand, at Cantonment Road, Dehradun; security was provided at the ancestral house, of the third and fourth respondents at Pauri and Pithoragarh respectively, at the cost of the Government exchequer, apart from security which was provided at their residence; and such needless expenditure should be prohibited from being

incurred.

7. The petitioner would submit that the post retirement benefits, of the former Presidents and Former Vice-Presidents, are provided under the President's (Emoluments) and Pension Act, 1951 and the Vice-President's Pension Act, 1997; Rules are framed thereunder called the President's Pension Rules, 1962 and the Vice-President's Pension, Housing and Other Facilities Rules, 1999; former Prime Ministers are provided facilities, such as Secretarial Assistance, Telephone facilities and travelling facilities, on the basis of the decision taken by the Committee of Secretaries dated 01.07.1996; after five years of their retirement the office expenses, of the former Prime Ministers, is reduced to Rs.6,000/- per months; such expenditure could only have been sanctioned by passing a money bill, and appropriation bills in the State Legislature, and only then could money have been disbursed; and grant of largesse from the public exchequer, to benefit a few individuals who had earlier held the office of the Chief Minister, is illegal and arbitrary.

8. In the counter affidavit dated 09.04.2015, filed on behalf of the State Government, it is stated that Government Order dated 22.01.2001 was issued making provision for granting the facility of a shadow/gunner; such facilities are being extended to Ex-Chief Ministers on the basis of the threat perception report received from the concerned department; the Government Order dated 27.11.2001 enables one personal assistant and two Class-IV employees to be provided to the Ex-Chief Ministers; by Government Order dated 08.05.2014, an Officer on Special Duty can be appointed, in the place of a Personal Assistant, within the ceiling limit of Rs. 85,000/- towards expenses on the personal staff of the Ex-Chief Ministers; by Government Order dated 15.09.2008 reimbursement of Rs. 10,000/- per month, subject to the actual expenses, is provided for sweepers, telephone attendants etc. for the Ex-Chief Ministers; residential accommodation is being allotted to the Ex-Chief Ministers in accordance with the 1997 Rules; the State Government issued Government Order dated 27.11.2001 and, pursuant thereto, Office Memorandum dated 15.05.2002 was issued providing the facility of two vehicles, including a Driver, to Ex-Chief Ministers; and, by Government Order dated 09.08.2004, the facility of petrol, oil and lubricants to the cars, attached to the Ex-Chief Ministers, was provided.

9. It is further stated that it is the prerogative of the State Government to provide facilities to the Ex-Chief Ministers of the State; the State Government is fully empowered to decide as to what facilities are to be provided to Ex-Chief Ministers of the State, and such a power of the Government cannot be curtailed; Article 162 of the Constitution of India empowers the State Government to take executive decisions, and to implement the same by issuance of Government Orders from time to time; the executive power of the State would, in the absence of legislation, extend to making rules or orders regulating the action of the executive; the executive orders issued, for extending benefits to Ex-Chief Ministers, cannot be held to be invalid on grounds of absence of approval from

the Council of Ministers or the State Legislature; it is the prerogative of the State Government to decide and grant facilities to Ex-Chief Ministers of the State; the State Government is fully empowered to decide what facilities should be granted to Ex-Chief Ministers; there has been no misuse of money; it is wrong to state that the State Government has been providing extravagant and lavish lifestyles to the Ex-Chief Ministers; it is also wrong to state that all financial expenditure should be sanctioned, by passing a Money Bill, in the State Legislature; and the State Government is empowered to decide as to what facilities are to be provided to Ex-Chief Ministers.

10. In the affidavit dated 05.01.2016, filed on behalf of the first respondent, it is stated that, on 30.07.2015, the Cabinet, after due deliberations, had decided that Ex-Chief Ministers be provided facilities as per the Rules promulgated in the State of U.P. which are applicable to the State of Uttarakhand; pursuant to the decision of the Cabinet, the order dated 07.09.2015 was issued whereby facilities of staff and vehicles were immediately cancelled to the Ex-Chief Ministers, and is presently not being provided to Ex-Chief Ministers except one (Sri N.D. Tiwari); as per the procedure prescribed by the Government of India, security to VVIPs is required to be reviewed, and the facility is to be granted considering the threat perception; the State Government has reviewed the threat perception and, in accordance with the letter dated 29.12.2015, 'Y' category security was provided to all Ex-Chief Ministers; the facility of "residence" is being granted to five Ex-Chief Ministers at Dehradun; considering the services and the portfolios held by him in the Central Government, and as a Governor, as an exception Sri N.D. Tiwari was provided with two vehicles with drivers, one Personal Assistant and two Class IV employees in addition to the facility of residence; the facility of residence, provided to Ex-Chief Ministers, are the official residence, and are not taken on rent by the State Government; the State Government does not have information regarding availability of accommodation with Ex-Chief Ministers at Dehradun or at any other place; on such information being sought, Mr. Bhagat Singh Koshyari had informed that he did not have any residence in Dehradun, but is having his parental house at Bageshwar with two rooms; the ground floor houses animals, and on the upper storey his brother resides; Sri Vijay Bahuguna also informed that he and his family do not hold any commercial or residential property in Dehradun, or at any other place in the State of Uttarakhand, but he and his wife are co-owners, along with his son, of a residential flat in South Delhi where his son lives with his wife, son and daughter; no response has been received from the office of the other Ex-Chief Ministers; and the 1997 Rules are non-statutory, but are applicable to the State of Uttarakhand under Section 86 of the U.P. Reorganisation Act, 2000.

11. In the rejoinder affidavit dated 17.04.2016, the petitioner submitted that the bungalows, allotted to Ex-Chief Ministers, have been acquired/purchased from private individuals; several government offices, including constitutional commissions, are functioning from rented buildings for which huge sums are paid towards rent; no law has been made by the State Legislature, nor is there any

legal government order, which enables the State Government to provide such facilities to Ex-Chief Ministers; the orders and rules, relating to providing facilities to Ex-Chief Ministers, were not passed in compliance with Article 166 of the Constitution of India; the various orders, referred to by the respondents, are illegal; the facilities, extended by those orders, cast a needless burden on the state exchequer; any financial expenditure on the State could only have been sanctioned by passing a money bill, and an appropriate Bill, in the State Legislature; only thereafter could any money have been disbursed in furtherance of the facilities sought to be extended by means of the Government Orders; in the absence of any legislative sanction, the said orders cannot be given effect to; the second respondent is being provided a residence at Dehradun; the fifth respondent has a personal palatial house at Dehradun besides the residence provided by the State Government; and the fourth respondent owns a hotel in Pithoragarh.

12. In the counter affidavit dated 18.10.2016, filed on behalf of the second respondent, it is stated that, except for the ancestral house in Nainital district, the second respondent does not have any land or property in his name; the ancestral home is in a dilapidated condition, and is not fit for habitation; it is situated in a mountainous terrain, and is surrounded by a forest; and there is no facility in the vicinity, such as hospitals or nursing homes. The counter affidavit then details the career of the second respondent and his participation in the freedom struggle.

13. In his counter affidavit dated 30.11.2016, the fourth respondent has stated that, at the time of allotment, there was no condition that he would be liable to pay the rent of the house allotted to him; as the State Government has itself allotted the house, he cannot be held to be an unauthorized occupant; on receiving a notice from the State Government, cancelling the allotment, he had vacated the house allotted to him; as the State Government had provided certain facilities to Ex-Chief Ministers, it is for the State to withdraw those facilities; however it is not open to the State Government to recover the amount, spent by the State Government, on providing such facilities; he had availed the facilities provided by the State Government, which could always be withdrawn by them; these facilities were provided by the State Government without any condition that the allottee would be liable to pay charges for the facilities provided to him; and, had there been any such condition, he would not have availed these facilities because he is not in a position to bear the same.

14. In his counter affidavit dated 12.12.2016, the sixth respondent states that he had filed an undertaking, before the High Court on 05.12.2016, that he would vacate the house allotted to him on or before 15.02.2017; in compliance with his undertaking, he had vacated the house, popularly known as Bijapur House, before 15.02.2017; and he had deposited Rs. 39,440/-, vide cheque dated 12.12.2016, towards occupation charges from the day he was in possession of the Bijapur House.

15. In his affidavit dated 01.03.2017, the Secretary, Estate Department, Government of Uttarakhand, has stated that house rent has been paid by the Ex-Chief Ministers Sri Vijay Bahuguna and Sri Ramesh Pokhariyal Nishank; house rent is yet to be received from the other Ex-Chief Ministers; and the Court may direct the Ex-Chief Ministers to deposit the dues within a particular period.

16. In their affidavit dated 09.12.2018, the petitioner has computed the expenditure incurred by the State Government for providing various facilities to the Ex-Chief Ministers. The table, enclosed to the affidavit, contains details of various facilities, and the amounts spent for each such facility. It is stated that a total sum, in excess of Rupees thirteen crores, was spent towards vehicle maintenance, taxi hire, salary to drivers, honorarium to staff, electricity expenses, telephone expenses, gunners, security guards/home guards, staff at other places etc.

17. In his affidavit dated 20.02.2019, the Additional Secretary/Estate Officer, State Estates Department stated that the matter, regarding waiving the rent from Ex-Chief Ministers was put up before the State Cabinet; the State Cabinet was of the opinion that, keeping in mind the valuable services rendered by Ex-Chief Ministers, the rent payable by them may be waived and, since the matter is pending before this Court, an application be moved seeking permission of this Court for waiving the said rent; and the State Government itself is the applicant seeking permission of this Court for exemption of rent due from the five Ex-Chief Ministers as per the details submitted along with the previous counter affidavit/supplementary counter affidavit.

18. Mr. Kartikey Hari Gupta, learned counsel for the petitioner, would draw our attention to the letters of allotment, issued to respondent nos.2 to 6, to contend that these allotment letters do not accord with law. Learned counsel would submit that the Office Memo dated 23.07.1997 has not been adopted by the State of Uttarakhand under Section 86 of the U.P. Reorganization Act; the said Office Memo dated 23.07.1997 also falls foul of the Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981, more particularly Section 4 thereof; the said Office Memo dated 23.07.1997, or the various letters of allotment, are not even in the nature of executive instructions referable to Articles 162 and 166 of the Constitution of India; they have not been issued in the name of the Governor; there is no justification for the public exchequer to be needlessly burdened on such extravagant facilities being provided to Ex-Chief Ministers, even after they have demitted office as a Chief Minister, that too for their entire life; in their affidavit, filed in support of Misc. Application No.19081 of 2018, the petitioner has furnished details to show that a sum in excess of Rs.13.00 crores is due to be recovered, from respondent nos.2 to 6, for the illegal facilities provided to them; the 2004 Government order, on which reliance is placed by the State Government to justify charging a measly sum of Rs.1,000/-/1,200/- as monthly rent, for the period during which respondent nos. 2 to 6 had illegally occupied government buildings, has no application; the said

G.O. applies only to Government servants who overstay; the notices, issued to respondent nos.2 to 6, refer to the 1997 Rules which have already been struck down by the Supreme Court; the 1997 Rules refer only to "Lucknow" as the place for providing accommodation to Ex-Chief Ministers; reliance placed on the said Office Memo to provide palatial buildings as accommodation, to these Ex-Chief Ministers, at "Dehradun" is illegal; the 1997 Rules were not modified by the State of Uttarakhand; consequently, "Lucknow" cannot be read as "Dehradun"; the appropriate rent to be recovered, from these Ex-Chief Ministers, is, in the light of the law declared by the Supreme Court in *Lok Prahari vs. State of U.P. and Ors.* (2016) 8 SCC 389, the market rent; the request made to this Court to waive the amounts due from these Ex-Chief Ministers, towards rent of the premises occupied by them, is on the ground that they had rendered priceless services; no details have been furnished as to what priceless services respondent nos.2 to 6 had rendered post their retirement; and, while respondent nos.3, 5 and 6 had paid the rent in terms of the notice issued by the State Government, respondent nos.2 and 4 have not even paid this amount; and the amounts due towards rent can be recovered from respondent nos.2 to 6 under the provisions of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972, and in terms of Rule 18(A) of Chapter IV of the Financial Handbook. Learned counsel would place reliance on *State of Uttaranchal and Anr. vs. Sunil Kumar Vaish and Ors* (2011) 8 SCC 670 and *Gulf Goans Hotels Company Ltd. vs. Union of India* (2014) 10 SCC 673.

19. While fairly stating that the Office Memo dated 27.03.1997 has not been adopted by the State of Uttarakhand, Mr. Paresh Tripathi, learned Chief Standing Counsel for the State, would submit that the said O.M., issued by the erstwhile State of U.P., would nonetheless apply to the State of Uttarakhand in view of Sections 86 and 88 of the U.P. Reorganization Act; accommodation, for all these Ex-Chief Ministers, have been provided only at "Dehradun" which is the capital of the State of Uttarakhand; just as the O.M. dated 27.03.1997 provided for accommodation in the State capital of U.P. i.e. "Lucknow", the provision for accommodation, for Ex-Chief Ministers, at "Dehradun" does not fall foul of the Office Memo dated 27.03.1997; these Ex-Chief Ministers have been allotted separate Government bungalows, and are not occupying those buildings which were allotted to them when they were holding office as Chief Ministers; this benefit is extended only to Ex-Chief Ministers, and not to other ministers; as per the Government order dated 16.11.2004, the appropriate rent was fixed at Rs.1000/1200 per month; the Supreme Court, in *Lok Prahari* (2016) 8 SCC 389, has only directed that appropriate rent be recovered, and not the market rent; the petitioner's contention that market rent should be recovered is contrary to the law declared by the Supreme Court in the said judgment; authentication by the Governor is wholly unnecessary and, failure to do so, does not affect enforceability of the Office Memo; failure to refer to the name of the Governor would not denude these orders of the characteristics of a Government Order; the Government has fixed the appropriate rent in terms of the Government Order

dated 16.11.2004; respondent nos.3, 5 and 6 have already paid the arrears of rent in its entirety; the second respondent is no more; the rent, due in terms of the notice, is only required to be paid by the fourth respondent; in the light of the priceless services rendered by these Ex-Chief Ministers, the Council of Ministers have resolved to request this Court to waive arrears of rent; all the unofficial respondents have vacated the bungalows; and no government building is in the occupation of Ex-Chief Ministers of the State of Uttarakhand as on date. Learned Chief Standing Counsel would rely on *Indra Sawhney etc vs. Union of India and others* (1992) Supp. 3 SCC 217 in this regard.

20. Mr. Vikas Bahuguna, learned counsel for the sixth respondent, would submit that this Court had, by its order dated 05.12.2016, asked all the unofficial respondents to submit an undertaking to vacate the subject buildings; the sixth respondent had filed an affidavit of undertaking on 13.12.2016 that he would vacate the premises by 15.02.2017; well within the period, stated in the undertaking affidavit, the sixth respondent vacated the said building; the sixth respondent has no knowledge of the manner in which the State Government had computed the rent; and he had paid the entire amount as demanded by the State Government. Mr. Rakesh Thapliyal, learned counsel for the fifth respondent, would submit that a notice dated 17.10.2016 was issued asking the fifth respondent to vacate the subject premises by 16.12.2016; the fifth respondent vacated the subject premises by 13.12.2016 itself; and he has paid the arrears of rent till date. Mr. Abhishek Negi, learned counsel holding brief of Mr. Sandeep Tiwari, learned counsel for the third respondent, would submit that the third respondent had vacated the said building pursuant to the notice issued to him; and he had paid the entire rent as stipulate in the notice issued by the State Government.

21. It is convenient to examine the elaborate submissions, urged by learned Senior Counsel and learned counsel on either side, under different heads. The submission of Mr. Paresh Tripathi, learned Chief Standing Counsel, is that the source of power, to provide rent free accommodation to Ex Chief Ministers, is referable to the 1997 Rules; and the various facilities provided to them by the impugned orders, such as free electricity, water, attendants, vehicles, petrol, diesel etc, were proceedings issued under Article 162 of the Constitution of India. It is convenient to examine the issues regarding rent free accommodation provided to Ex Chief Ministers, and the other facilities provided to them, separately.

I. PROVISION OF RENT-FREE ACCOMMODATION:

22. The 1997 Rules were made, by the erstwhile State of Uttar Pradesh, even before the State of Uttarakhand was created on 09.11.2000. The salaries, allowances and other facilities provided to Chief Ministers and Ministers of the erstwhile State of Uttar Pradesh were governed by the Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981 (hereinafter referred to as the "1981 Act"). The 1981 Act is an Act to consolidate and amend

the law relating to the salaries, allowances and other facilities to Ministers of the State of Uttar Pradesh. Section 2(e) thereof defines "Minister" to mean a member of the Council of Ministers of the Government of Uttar Pradesh, and includes the Chief Minister, a Minister of State and a Deputy Minister of the State. Section 4(1) stipulates that each minister shall be entitled, without payment of any rent to the use throughout the term of his office and for a period of fifteen days thereafter, of a residence at Lucknow which shall be furnished and maintained at public expense at the prescribed scale.

23. Section 5(1) of the 1981 Act stipulates that each minister shall, throughout the term of this office, be provided with a chauffeur driven motor vehicle which shall be purchased and maintained at public expense in accordance with the rules made in that behalf. Section 5(2) provides that the terms and conditions for the use of the motor vehicle, referred to in sub-section (1), shall be such as may be prescribed. Section 9 stipulates that the date, on which any person became or ceased to be a Minister, shall be notified in the official Gazette, and any such notification shall be conclusive evidence of the fact that he became, or ceased to be, a Minister on that date. Section 10 stipulates that no minister shall, during the tenure of his office for which he draws his salary and allowance, practise any profession or engage in any trade or undertake for remuneration any employment other than his duties as a Minister.

24. Let us now take note of the 1997 Rules, in so far as they relate to provision of house rent accommodation to Ex Chief Ministers. The Office Memorandum dated 23.07.1997 states that the 1997 Rules were made by the Governor of Uttar Pradesh. These Rules are, therefore, not referable to any statutory provision, and the source of power to make these Rules is Article 162 of the Constitution. Rule 2(e) of the 1997 Rules defines an "Ex-Chief Minister" to mean one who worked in the Council of Ministers as the Chief Minister. Rule 3 required the Ex-Chief Minister, who was interested to apply for accommodation, to apply in the form prescribed under the Rules as was specified by the Estates Department. Rule 4 stipulated that, on falling vacant, a residence shall only be allotted by the Estate Officer to the Ex-Chief Minister, who had applied under Rule 3 for the residence, and there shall be no right for allotment of a house outside Lucknow under the Rules. Rule 5 stipulated that the rent shall be paid by the allottee, from the date of allotment, under the rent related provision prescribed by the State Government, and the charges of water tax, sewage tax and electricity connection shall be paid separately. Rule 6 related to the period for which the allotment was to subsist and, thereunder, the allotment shall be effective during the lifetime of the Ex-Chief Minister, the allotment shall be deemed to be automatically cancelled upon the death of the Ex-Chief Minister, and the members residing therein shall invariably hand over possession of the residence to the State Estates Officer within thirty days from the date of death; and, if the members residing in the residence do not hand over possession within thirty days, proceedings related to eviction, recovery of rent, damages etc. shall be taken under the provisions of the U.P. Public Premises (Eviction of

Unauthorized Occupants) Act, 1972.

25. On the question whether the 1997 Rules, framed by the erstwhile State of Uttar Pradesh, would automatically apply to the State of Uttarakhand, it is useful to refer to certain provisions of the Uttar Pradesh Reorganisation Act, 2000 (hereinafter called the "2000 Act"). Section 2(a) of the 2000 Act defines "appointed day" to mean the day which the Central Government may, by notification in the Official Gazette, appoint. The appointed day, as notified, is 09.11.2000. Section 2(f) of the 2000 Act defines "law" to include any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the State of Uttar Pradesh. Part II of the 2000 Act relates to re-organisation of the State of Uttar Pradesh, and Section 3 thereunder relates to formation of Uttaranchal State (presently Uttarakhand). Section 4 relates to the State of Uttar Pradesh and its territorial divisions and stipulates that, on and from the appointed day, the State of Uttar Pradesh shall comprise the territories of the existing State of Uttar Pradesh other than those specified in Section 3. Section 5 relates to the amendment to the First Schedule to the Constitution.

26. Part X of the 2000 Act contains legal and miscellaneous provisions. Section 86 thereunder, which relates to the territorial extent of laws, stipulates that the provisions of Part II of the 2000 Act shall not be deemed to have affected any change in the territories to which any other law in force, immediately before the appointed day, extends or applies, and territorial references, in any such law, to the State of Uttar Pradesh shall, until otherwise provided by the competent Legislature, or other competent authority, be construed as meaning the territories within the existing State of Uttar Pradesh before the appointed day. Section 88 of the 2000 Act stipulates that, notwithstanding that no provision or insufficient provision has been made under Section 87 for the adaptation of a law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law, may, for the purpose of facilitating its application in relation to the State of Uttar Pradesh or Uttaranchal, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority.

27. It is because of Section 86 of the 2000 Act that the 1981 Act, enacted by the Uttar Pradesh State Legislature, continued to apply in the State of Uttarakhand till it was repealed by the Uttarakhand Ministers (Salary, Allowances and Miscellaneous Provisions) Act, 2010 (the "2010 Act" for short). Since the expression "law" has been widely defined in Section 2(f) of the 2000 Act, to include any order, bye-law, rule, scheme, notification or other instrument having the force of law, the 1997 Rules, which are referable to Article 162 of the Constitution of India, may possibly constitute "law" for the purposes of Section 86 of the 2000 Act.

28. The question, whether rent free accommodation to Ex-Chief Ministers post their demitting office, can be provided under the 1997 Rules is no longer res

integra. The very same 1997 Rules, which the Government of Uttarakhand claims is the source of their power to provide rent-free accommodation to Ex-Chief Ministers, fell for consideration in Lok Prahari (2016) 8 SCC 389, and the Supreme Court, while examining whether the 1997 Rules were valid or were contrary to the provisions of the 1981 Act, observed that the 1997 Rules were not statutory in character, and made a provision for Ex-Chief Ministers for providing government bungalow for life and upto their death; the State of Uttar Pradesh had framed "the Distinguished Personality Trust Allotment of Houses in Lucknow under the Control of State Estate Department Rules, 2003" (hereinafter referred to as "the 2003 Rules") relating to the grant of a lease of house for the use of any social service trust set up in the name of a distinguished person who was known as a national hero; and a policy decision was taken on 04.07.2005 regarding allotment of premises at Lucknow, under the administrative control of the Estates Department of the State of U.P, to certain NGOs/trusts, non-government persons and employees' union, who were not included under the 2003 Rules. The Supreme Court then took note of the submission of the petitioner that, in absence of any statutory provision, continued occupation of another house, after demitting the office of a Chief Minister, was illegal; such rules were discriminatory and violative of the provisions of Article 14 of the Constitution for the reason that other dignitaries, like the Chief Justice of the State or the Principal Chief Secretary or the Speaker of the Assembly etc, were not given such facilities; and giving residential bungalows to some of the persons holding a constitutional position in the State, by ignoring other similarly situated persons, was not proper.

29. While rejecting the objection of the respondents, to the locus standi of the petitioner, the Supreme Court observed that since the challenge was to the validity of the 1997 Rules, whereby Government bungalows were allotted to Ex-Chief Ministers, the petitioner had locus standi since there was acute shortage of Government bungalows. After taking note of Article 164 of the Constitution of India read with Entry 40 of List II of Schedule VII, Section 2(e) and 4 of the 1981 Act, and Rules 4 and 6 of the 1997 Rules, the Supreme Court observed that Section 4(1) of the 1981 Act permitted Ex-Chief Ministers to retain their residence for 15 days after he/she demits his/her office; and, since special provisions had been made in this regard, the Chief Ministers were not entitled to other privileges as were available to the President of India and the Vice-President of India, who were entitled to an official residence for life.

30. The claim that some of the respondents were given 'Z' plus security by the Union of India, and it was necessary to provide them accommodation, was rejected by the Supreme Court holding that security is to be provided by the Ministry of Home Affairs of the Union of India, and provision in this regard had been made as per Office Memorandum dated 17.11.1997 issued by the Government of India; the Government of India was obligated to provide accommodation to such persons in accordance with its own guidelines; the State Government was not obligated to provide any such accommodation; and the

1997 Rules gave largesse to Ex-Chief Ministers without any element of reasonableness.

31. After taking note of the fact that many of the Ex-Chief Ministers, who were in occupation of government bungalows, were either serving as Members of Parliament or Governors or Cabinet Ministers in the Central Government, and they had already been provided another accommodation, the Supreme Court observed that it would not be proper to allot permanent residence at two places to one individual; constitutional post holders like Governors, Chief Justices, Union Ministers and Speakers etc. could only hold one official residence during their tenure; the position of the Chief Minister, and the Cabinet Ministers of the State, cannot stand on a separate footing after they demit their office; no other dignitary, holding constitutional posts, was given such a facility; and the 1997 Rules were not fair. The Supreme Court, thereafter, observed:-

".....The 1997 Rules are not statutory rules. They are in the nature of administrative or executive instructions. They would not stand the test of legality if they are not in consonance with statutory provisions. The said Rules are definitely in contravention of the statutory provisions and therefore, the said Rules can be said to be bad in law so far as they are in contravention of the statutory provisions.

There cannot be any dispute that when the Rules and Regulations or executive institutions are contrary to any statutory provision, the statutory provision would prevail and the Rules or executive institutions, so far as they are contrary to the statutory provisions, would fail.

In view of the aforesaid clear and unambiguous position, in our opinion, the 1997 Rules, which permit the former Chief Ministers to occupy government bungalows for life cannot be said to be valid. In the circumstances, Respondent No. 1 cannot permit any former Chief Minister to occupy any government bungalow or any government accommodation after 15 days from the date on which his term comes to an end.

So far as allotment of bungalow to private trusts or societies are concerned, it is not in dispute that all those bungalows were allotted to the societies/trusts/organizations at the time when there was no provision with regard to allotment of government bungalows to them and therefore, in our opinion, the said allotment cannot be held to be justified. One should remember here that public property cannot be disposed of in favour of any one without adequate consideration. Allotment of government property to someone without adequate market rent, in absence of any special statutory provision, would also be bad in law because the State has no right to fritter away government property in favour of private persons or bodies without adequate consideration and therefore, all such allotments, which have been made in absence of any statutory provision cannot be upheld. If any allotment was not made in accordance with a statutory provision at the relevant time, it must be discontinued and must be treated as

cancelled and the State shall take possession of such premises as soon as possible and at the same time, the State should also recover appropriate rent in respect of such premises which had been allotted without any statutory provision.

In the circumstances, for the reasons stated hereinabove, the petition is allowed. Rule is made absolute with no order as to costs and it is held that the 1997 Rules so far as they are not in consonance with the provisions of the 1981 Act are bad in law. The government bungalows allotted to the Respondents is held to be bad in law and the concerned Respondents shall hand over possession of the bungalows occupied by them within two months from today and the Respondent-Government shall also recover appropriate rent from the occupants of the said bungalows for the period during which they were in unauthorized occupation of the said bungalows....." (emphasis supplied)

32. Since the Supreme Court, in *Lok Prahari* (2016) 8 SCC 389, had examine the validity of the 1997 Rules, among others, on the touchstone of the provisions of the 1981 Act, it is also necessary to examine whether a similar legislation operated in the State of Uttarakhand after its creation on 09.11.2000, and whether any such law is in force as on date. The 1981 Act continued as a law in force in the State of Uttarakhand, after its creation on 09.11.2000, in view of Section 86 of the 2000 Act. The 1981 Act was amended by Uttaranchal Act No.26 of 2005, which was notified in the Gazette on 07.11.2005, whereby Section 6(1) of the 1981 Act stood substituted by a new Section 6(1). The 1981 Act continued to remain in force till it was repealed, in so far as it applied to the State of Uttarakhand, by Section 14 of the 2010 Act which was published in the Gazette on 07.01.2010.

33. Section 4 of the 2010 Act is in pari materia with Section 4 of the 1981 Act and, under sub-section (1) thereof, each minister shall be entitled, without payment of any rent, to use, throughout the term of his office and for a period of fifteen days thereafter, of a residence at Dehradun, or the Capital of the State, which shall be furnished and maintained at public expense at the prescribed scale. Section 4(2) stipulates that each minister for whose use a residence, at Dehradun or the Capital of State, has been provided under sub-section (1) shall, immediately after the expiration of the period referred to in that sub-section, vacate such accommodation; and an officer, authorised by the State Government, may take possession of the accommodation and may, for the purpose, use such force as may be necessary in the circumstances. Section 5 relates to conveyance and, under sub-section (1) thereof, each minister shall, throughout the term of his office, be provided with a motor vehicle chauffeur (driver) which shall be purchased and maintained at public expense in accordance with the rules made in that behalf. Section 5(2) stipulates that the terms and conditions for the use of the motor vehicle, referred to in sub-section (1), shall be such as may be prescribed. Section 9 stipulates that the date, on which any person became or ceased to be a Minister, shall be notified in the official Gazette, and any such notification shall be conclusive evidence of the fact

that he became, or ceased to be, a Minister on that date.

34. The power of the executive, to act under Article 162 of the Constitution, is not abridged without a law. If, however, there is a statutory rule or an Act on the matter, the executive must abide by that Act or Rule and it cannot, in the exercise of the executive power under Article 162 of the Constitution, ignore or act contrary to that Rule or the Act. (B.N. Nagarajan Vs. State of Mysore AIR 1966 SC 1942; Ram Jawava Kapur V. State of Punjab (1952) 2 S.C.R. 225; Sant Ram Sharma v. State of Rajasthan AIR 1967 SC 1910). It is only in the absence of any Law or Rules made in relation thereto, can the State Government exercise its executive powers. (V. Balasubramaniam v. T.N. Housing Board (1987) 4 SCC 738).

35. The 2010 Act is in pari materia with the 1981 Act, and the 1997 Rules, which are executive orders issued under Article 162 of the Constitution, would govern only if there is no statutory provision (plenary or subordinate) to the contrary. As the Supreme Court, in Lok Prahari (2016) 8 SCC 389, has held that the 1997 Rules contravene the provisions of the 1981 Act, the 1997 Rules can have no application even in the State of Uttarakhand since it is in contravention of the provisions of the 1981 Act (which continued as a law in force in the State of Uttarakhand till it was repealed by the 2010 Act), as also the provisions of the 2010 Act. Consequently the very allotment of residential accommodation to the Ex Chief Ministers, under the 1997 Rules, is void. The 1997 Rules do not, therefore, confer any right on the respondents (Ex Chief Ministers) to claim that the rent free accommodation provided to them, in Dehradun, was in accordance with law.

36. The 1997 Rules, on which reliance is placed by the respondents to contend that, in terms thereof, rent free accommodation can be provided to Ex-Chief Ministers, itself required such accommodation to be provided only on payment of rent. Rule 5 of the 1997 Rules stipulated that the rent shall be paid by the allottee from the date of allotment, under the rent related provision prescribed by the State Government. The proceedings dated 26.01.2010, which related to the third respondent, also records that the monthly rent, of the allotted residence, would be paid according to the standards set out by the State Estates Department. It does appear that it was not even, originally, contemplated that accommodation should be provided to Ex-Chief Ministers free of rent.

37. It is unfortunate that representatives of people, and other high dignitaries, continue to occupy residential accommodation provided by the Government though they are no longer entitled to such accommodation. Many of such persons continue to occupy residential accommodation commensurate with the office(s) held by them earlier, and which are beyond their present entitlement. The unauthorized occupants must recollect that rights and duties are correlative, as the rights of one person entail the duties of another. Similarly the duty of one person entails the rights of another. The unauthorized occupants must appreciate that their act of overstaying in the premise infringes the right of another. No law

or directions can entirely control these acts of disobedience, but for the self realization among the unauthorized occupants. (S.D. Bandi v. Karnataka SRTC (2013) 12 SCC 631 and Lok Prahari (2016) 8 SCC 389).

38. The fact, however, remains that, during the pendency of this writ petition, and pursuant to certain directions issued by this Court on 05.12.2016, respondent nos.2 to 6 have vacated their respective bungalows and, as at present, no rent free accommodation is being provided to Ex Chief Ministers in the State of Uttarakhand. The petitioners would, however, contend that, for the period during which these Ex Chief Ministers continued to occupy the Government buildings rent free, they should be directed to pay market rent, as the public exchequer cannot be needlessly burdened for the illegal acts of the State Government in providing them rent-free accommodation at Dehradun.

39. The State Government had called upon the respondents to pay monthly rent of Rs. 1000/1200/-; and, while respondent nos.3, 5 and 6 are said to have paid these amounts, respondent no.4 has chosen not to do so. The second respondent died during the pendency of the writ petition, even before he could be called upon to pay this measly sum as monthly rent. When we asked Mr. Paresh Tripathi, learned Chief Standing Counsel, the justification for the State Government to charge a measly sum of Rs. 1000/1200/- as monthly rent, and why market rent was not charged, learned Chief Standing Counsel would place reliance on the proceedings dated 16.11.2004 in this regard.

40. By his proceedings dated 16.11.2004 the Secretary, Government of Uttarakhand informed all Heads of Department, the Chief Head of the Office etc. regarding fixation of rent of Government accommodation under the control/ owned by State Estate Department located at Dehradun. The said proceedings records that the Governor was pleased to allow fixation of rent of all government accommodation, under the control/owned by the State Estates Department, on a flat rate as per enclosure-1, on the basis of the living area as per the erstwhile State of Uttar Pradesh. Clause (2) thereof stipulates that such occupant, who does not fall in the category of government officer/employee, shall be charged at double the fixed flat rent rate. Clause (3) stipulates that, on being allotted a residence, officers of the Government of India or employees under the control of the State Government Corporations/undertaking/local bodies shall be charged at double the fixed flat rent rate as per the house category. Clause (4) stipulates that, in case of allotment of accommodation of a type of higher entitlement, double the flat rent of the occupied house shall be charged under special circumstances. Clause (5) stipulates that, as per Rules, the occupant is required to pay water tax, sewage tax and other related taxes in addition to the flat rent rate. Clause (6) stipulates that an unauthorized occupant shall be charged Rs.20/- per sq. mt. of living area per month in respect of types 1, 2 and 3 houses, and Rs.25/- per sq. mt. per month for the rest of the types of houses as per the provisions of sub-clause 18-A(5) of Basic Rule 45A-4 of the Financial Handbook against recovery of damages. Basic Rule 45-A(IV) of the Financial

Handbook relates to cases where government servants are supplied with a residence, leased or owned by the Government. In such cases, the conditions prescribed therein are required to be observed.

41. It is evident, therefore, that the said proceedings dated 16.11.2004 relate only to officers working under the State Government, besides officers working under the Government of India or other employees under the control of State Government Corporations/undertaking/local bodies. The proceedings dated 16.11.2004 has no application even to retired government servants much less to Ex-Chief Ministers. The respondents were, therefore, wholly unjustified in fixing the rent, for the accommodation occupied by the Ex-Chief Ministers, in terms of said proceedings dated 16.11.2004. What then should the rent payable by the Ex-Chief Ministers be?

42. The contention urged on behalf of the respondents, that the Supreme Court had permitted a lower rent, than the market rent, to be recovered from Ex-Chief Ministers is not tenable. The Supreme Court, in Lok Prahari (2016) 8 SCC 389, has held that public property cannot be disposed of in favour of anyone without adequate consideration; allotment of government property to someone without adequate market rent, in the absence of any special statutory provision, was bad in law as the State had no right to fritter away government property, in favour of private persons or bodies, without adequate consideration; and, therefore, all such allotments, which had been made in absence of any statutory provision could not be upheld. The Supreme Court also directed the State Government to recover rent, in respect of such premises, which had been allotted without any statutory provision. The word "appropriate rent" in the judgment cannot be read out of context as the Supreme Court has observed, in the earlier part of the said order, that government property cannot be allotted without adequate market rent.

43. Since the very allotment of bungalows to the Ex Chief Ministers is illegal, the unofficial respondents (all of whom are ex- Chief Ministers) have received a benefit which they were not legally entitled to, and the public exchequer has been needlessly burdened in view of the exorbitant expenditure incurred by the State Government in securing buildings on rent for its offices and establishments, which could have been avoided if the luxurious bungalows, provided to the Ex-Chief Ministers in the State capital of Dehradun, had been utilized for the purpose of accommodating State Government offices. As bungalows, belonging to the State Government, were provided as rent free accommodation to the Ex-Chief Ministers, instead of being utilized for the public purpose of accommodating Government offices, it is but appropriate that the market rent is collected from them for the period during which they occupied these buildings.

44. In his affidavit dated 12.02.2019, the Additional Secretary/Estate Officer has stated that this Court had passed an order on 16.02.2017 to calculate the market rent for use and occupation of the premises beyond the period of entitlement; and, in terms of the directions of the High Court, market rent had been calculated at a fixed market value. The market value of the rent due from the Ex-

Chief Ministers, even according to the Estates Department, is as under:-

45. The contents of the table, as detailed in the said affidavit dated 12.02.2019, has not been disputed by any of the respondent-Ex-Chief Ministers. Consequently, it is this amount which the Ex-Chief Ministers (respondent nos.2 to 6), who have enjoyed the said benefits, should be called upon to pay, after deducting the amounts already paid by them as rent for these premises. Since the second respondent died during the pendency of the writ petition, and no steps were taken by the petitioners to bring his legal representatives on record, no directions can be issued, in these writ proceedings, to his legal representatives regarding payment of rent. In so far as the other respondent nos.3 to 6 are concerned, they shall pay the market rent referred to hereinabove, after deducting the rent already paid by them, at the earliest and, in any event, within six months from today, failing which the State Government shall forthwith initiate appropriate legal proceedings, including proceedings under the Uttarakhand Public Premises (Eviction of Unauthorised Occupants) Act for recovery of the said amounts from them. Suffice it to make it clear that the order now passed by us shall also not disable the State Government from recovering the amount due towards market rent, from the legal representative of the second respondent, in accordance with law.

II. EXPENDITURE INCURRED BY THE STATE GOVERNMENT IN PROVIDING VARIOUS AMENITIES:

46. Rule 5 of the 1997 Rules also required charges of water tax, electricity, and sewage tax to be paid by the allottee separately. The Office Memo dated 26.01.2010, issued in favour of the third respondent, also stipulated that the electricity and water bills would be paid, as per the meter reading, by the allottee to the concerned department. Yet, these amounts appear to have been incurred by the State Government, and not by the allottee Ex-Chief Ministers.

47. The respondents contend that no legislative sanction is necessary for providing the aforesaid facility at State cost, and it would suffice for the Government to exercise its powers under Article 162 of the Constitution. They also claim that the various letters addressed by the officials, directing that these facilities be provided to Ex-Chief Ministers at State cost (which proceedings are impugned in this writ petition), are orders issued under Article 162 of the Constitution of India. It is necessary, therefore, to consider whether the proceedings, impugned in the Writ Petition have legislative sanction or whether these proceedings, constituted Government Orders under Article 162 of the Constitution of India, for it is only if provision of these facilities has legislative sanction-plenary or subordinate, or such proceedings are referable to Article 162, can the action of the State Government, in providing these amenities to the Ex-Chief Ministers, be justified.

48. The proceedings dated 22.01.2001 relates to providing a shadow/gunner to special persons and other persons. While Ministers, Member of Parliament

(M.P.'s)/ Member of the Legislative Assembly (M.L.A.), Judges of the High Court, Former Presidents, Former Vice-Presidents, Governors, Lieutenant Governors are required to be provided a shadow/gunner free of cost, others are required to be provided shadow/gunners for their protection only after carrying out an assessment of their safety requirements. A Committee was constituted to examine requests for providing shadow/gunner by the Government.

49. The proceedings No. 2025/AOSO-Secrecy/2001 dated 27.11.2001 is a letter addressed by the Additional Secretary, Secrecy, Government of Uttarakhand to the Secretary, State Estate, Government of Uttarakhand informing him that, till the time a policy decision is taken in Uttarakhand regarding the facilities to be provided to former Chief Ministers, the Chief Minister had taken a decision to provide two vehicles, one P.A. and two IVth Class employees to former Chief Ministers; and, in regard to two vehicles to be provided by the State Estate Department, a copy of the file noting, and the order of the proceedings made by the State Estate Department, were enclosed. Subsequently, by Office Memo dated 15.05.2002, the Secretary to the Chief Minister informed the Chief Secretary, Secretary, Finance Department, Staff Officer and the State Estate Officer that, with reference to the facilities provided to former Chief Ministers, till a decision is taken as per policy, the Secrecy Department, in its letter No. 2025/A.S. secret/2001 dated 27.11.2001, had made arrangements that former Chief Ministers should be given the facility of two vehicles, one Personal Assistant and two Class IV servants; he had been ordered to state that the facility of two vehicles (with drivers) and two Class IV servants was to be continued; personal servant/special officer would be appointed in the place of a personal servant; and the decision to appoint a personal servant or special officer depended on the former Chief Minister(s).

50. The Secretary, Government of Uttaranchal, vide letter No. 1172/XXXII/2004 dated 09.08.2004, informed all District Magistrates, Uttaranchal, and the State Estate Department that he had been directed to state that, in the staff cars given to former Chief Ministers, petrol, oil and lubricants supply should be done at the district level through the concerned district officials; and it was also decided that reimbursement of the same shall be done from the State Estates Department. All District Magistrates were directed to supply petrol, oil and lubricants to the staff cars, attached to former Chief Ministers, and take reimbursement, after verifying as per Rules, in one go from the State Estate Office.

51. On the subject, relating to arrangement of sweeper, gardener, security guard and telephone attendant at the official residence of former Chief Ministers, the Additional Secretary, State Estate Officer, by his letter No. 865/XXXII/2008 dated 15.09.2008, informed the Finance Officer, Government of Uttarakhand that, vide Government Order No. 23/ek-6/2002 dated 15.02.2002 of the State Estate Department, at the official residences of former Chief Ministers in the State of Uttarakhand, a limited sum of Rs. 5000/- per month was prescribed for reimbursement of the actual expenses incurred on a cleaner, security guard,

gardener, telephone attendant; and at the request of the former Chief Ministers, after giving due consideration, the Governor was pleased to enhance the limit of Rs. 5000/- to Rs. 10,000/- per month along with all prior conditions.

52. The Additional Secretary, State Estate Officer, informed the Special Officer to the third respondent and other officials, vide Office Memo No. 89/XXXII-5(3)/2010 dated 26.01.2010, that, from the date of possession of the allotted residence, the following restrictions were imposed on the third respondent, the former Chief Minister (i) the allotment of the residence would be effective for lifetime of the allottee or till an order was issued to this effect by the Government whichever was earlier; (ii) the allotted residences' decoration, development, and maintenance shall be borne by the State Estate Department; (iii) in relation to the allotted residence, the monthly rent would be paid to the State Estate Department, according to the standard set out by the department; the electricity and water bill would be paid, according to the meter reading, by the allottee to the concerned department; and (v) the allottee would be responsible for the damage caused to the furnishing objects etc in the allotted residence, and the damage would be paid to the State Estate Department by the allottee.

53. By proceedings dated 08.05.2014, the Chief Secretary informed the Secretary, Secretariat Administration Department that, by the earlier office memo dated 15.05.2002, the Ex-Chief Ministers were allowed one Personal Assistant/Special Officer and two peons; the Chief Minister had directed that the Ex-Chief Ministers shall be permitted to keep one Personal Secretary on fixed salary/honorarium of Rs.55,000/- per month, and two peons on fixed salary/honorarium of Rs.15,000/- per month; and the Ex-Chief Minister shall be allowed to keep the Personal Secretary/Personal Assistant/Special Executive Officer/Public Relation Officer/Peon with him to that extent, depending on his request, but the sanctioned fixed salary/ honorarium of personal staff shall not be more than Rs.85,000/- in any condition.

(a) EXPENDITURE INCURRED BY THE STATE GOVERNMENT, OTHER THAN THOSE CHARGED ON THE CONSOLIDATED FUND OF THE STATE, REQUIRES LEGISLATIVE SANCTION:

54. In examining the question whether the various facilities provided by the State Government to the Ex-Chief Ministers required legislative sanction, or whether they could have been provided by way of an executive order under Article 162 of the Constitution of India, the distinction between the activity (the amenities provided to the Ex-Chief Ministers), and the expenditure to be incurred in such activities, must be borne in mind. It is useful, in this context, to note the relevant provisions of the Constitution which relate to the expenditure to be incurred by the State Government with respect to such activities. While it may, possibly, be contended that each and every activity of the Executive does not need legislative sanction, before such activity is undertaken, the expenditure related to such activity can be incurred by the Executive only with the prior

approval of the State Legislature. The State Government can formulate policies in the exercise of its executive powers, but if such a policy entails expenditure, it is then required to be backed by law.

55. Part XII Chapter I of the Constitution relates to Finances. Article 266, thereunder, lays down that all monies received by the State Government, by way of taxes or otherwise, must be credited to the Consolidated Fund of the State. The said Article, which refers to Consolidated Funds and Public Accounts of India, and of the States, explains what are all the components of the Consolidated Fund of a State. (*Bhim Singh vs. Union of India (UOI) and Ors* (2010) 5 SCC 538). In terms of Article 266, the Consolidated Fund of the State is constituted of only three elements, namely, (1) revenues received by the Government of a State (2) loans raised by that Government by the issue of treasury bills, loans or ways and means advances, and (3) all moneys received by that Government in repayment of the loans. Under Article 266(3) no moneys, out of the Consolidated Fund of a State, shall be appropriated except in accordance with law, and for the purposes and the manner provided in the Constitution. It is only after the budget is voted upon by the State Legislature, and the annual Appropriation Act is passed, can the State Government spend money from out of the Consolidated Fund of the State (*Vashist Bhargava vs. Income Tax Officer, Salary Circle* (1975) 99 ITR 148).

56. In other words, if the State Government intends to spend money from the Consolidated Fund of the State, it shall submit its request in the form of demands for grants, and obtain approval of the State Legislature. (*Bhim Singh* (2010) 5 SCC 538). If any money (except that which is charged on the Consolidated Fund) is to be withdrawn for any governmental purpose, then there must be an Appropriation Act under Article 266(3) read with Article 204 of the Constitution. Any expenditure which the Government incurs, in implementing its policies, should also be authorized by the Appropriation Act which is a law as contemplated by Article 282. (*Bhim Singh* (2010) 5 SCC 538; *S. Subramaniam Balaji vs. The Government of Tamil Nadu and Ors.* (2013) 9 SCC 659 and *Rai Sahib Ram Jawaya Kapur and Ors. vs. The State of Punjab* AIR 1955 SC 549).

57. Article 196 contains provisions relating to introduction and passing of Bills. Article 202 mandates that the Governor shall, in respect of every financial year, cause to be laid, before both the Houses of the State Legislature, a statement of the estimated receipts and expenditure of the Government of the State, for the year referred to, called the "Annual Financial Statement". Nowhere, in the Constitution, is any reference made to the word "Budget", and the expression used is "Annual Financial Statement". These Articles show that the estimates of expenditure must separately show the sum required, to meet the expenditure as charged upon the Consolidated Fund of the State, as per Article 202(2)(a), and the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State as per Article 202(2)(b). The expenditure, charged upon the Consolidated Fund of the State, are those set out in Article 202(3). (*Bhim Singh* (2010) 5 SCC 538).

58. It is only the following expenditure which, in terms of Article 202(3) of the Constitution of India, are expenditure charged on the Consolidated Fund of each State (a) the emoluments and allowances of the Governor; (b) salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly, and the Chairman and Deputy Chairman of the Legislative Council; (c) debt charges for which the State is liable to pay interest etc, other expenses relating to the raising of loans, and the service and redemption of debt; (d) expenditure in respect of the salaries and allowances of Judges of the High Court; (e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; and (f) any other expenditure declared by the Constitution, or by the Legislature of the State by law, to be so charged. The expenditure, incurred towards the facilities extended to the Ex-Chief Ministers, is not an expenditure charged on the Consolidate Fund of the State.

59. Besides the expenditure charged upon the Consolidated Fund of the State, under Article 202(3), the demands for grants sought by the State Executive are also met from the Consolidated Fund of the State. In terms of Article 203(2), the demands for grants are voted in the Legislative Assembly which has the plenary power either to assent, or to refuse to assent, to any demand or to subject the amounts specified therein to a reduction. The Legislative Assembly exercises final control over expenditure. After the grant has been voted and accepted by the Legislative Assembly, in terms of Article 203(2), a bill is introduced in terms of Article 204 to provide for appropriation of payments from out of the Consolidated Fund of the State. Such Bills are called Appropriation Bills. An Appropriation Bill is a Money Bill in terms of Article 199(1)(c) which should be introduced as per Article 196, and dealt with under Article 198. (Bhim Singh (2010) 5 SCC 538).

60. The "law" referred to in the Constitution, for sanctifying expenditure from and out of the Consolidated Fund of the State, is the Appropriation Act as prescribed in Article 204(3) which mandates that no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law in accordance with the provisions of this Article. It provides that, after the estimates of expenditure laid before the Legislative Assembly in the form of 'demands of grants' has been passed, a Bill should be introduced to provide for the appropriation out of the Consolidated Fund of the State of all monies required to meet the grants made by the Legislative Assembly. In other words, withdrawal of money is only by means of appropriation made by "law", in accordance with the provisions of Article 204. (Bhim Singh (2010) 5 SCC 538). As soon as the Appropriation Act is passed, the expenditure made, under the heads covered by it, is deemed to be properly authorised by law under Article 266(3) of the Constitution. (Rai Sahib Ram Jawaya Kapur AIR 1955 SC 549). In addition to legislative control by way of Appropriation Acts, the rules framed by the State Legislature, under Article 208 of the Constitution of India, also create a mechanism to keep a check on the expenditure incurred by the Government. (S. Subramaniam Balaji (2013) 9 SCC 659).

61. The Constitution contemplates three funds (1) consolidated fund, (2) contingency fund, and (3) a fund, the amounts of which are to be credited to the public account. (S.M. Thakkar vs. M.A. Baqui AIR 1969 Gujarat 74). A Contingency Fund can be established, in terms of Article 267(2), only by enacting a law in that behalf, and not by an executive fiat. The law creating the Contingency Fund authorizes the purposes for which the amount in it can be spent. (Bhim Singh (2010) 5 SCC 538 and S. Subramaniam Balaji (2013) 9 SCC 659). Under Article 283(2) the operation of the Consolidated Fund of the State, the public account, and the Contingency Fund of the State can all be regulated by law. This does not, however, mean that, like the Consolidated Fund and the Contingency Fund, the ownership of the moneys in the public account must only belong to the State Government. (Vashist Bhargava (1975) 99 ITR 148).

62. The expenditure, to be incurred in implementing various policies, can be separately provided by a law (or by way of an executive order). However, if the Government intends to spend money for a public purpose, an Appropriation Bill, which is a Money Bill, should be passed, and laid before the State Legislature. After approval of the State Legislature (the Legislative Assembly, in particular), it becomes law, and there cannot be any impediment in implementing a policy if it is for a public purpose. The expression "public purpose", under Article 282, should be widely construed as the said Article is not subject to any other Article in the Constitution. (Bhim Singh (2010) 5 SCC 538).

63. No objection, of their not being sanctioned by specific legislation, can be raised for activities carried on in pursuance of the policy formulated by the Executive Government. Objections can be raised only in regard to the expenditure of public funds for carrying on such activities, and to these the Appropriation Acts afford a complete answer (Rai Sahib Ram Jawaya Kapur AIR 1955 SC 549). The said Act is 'law', and the expenditure, incurred on such activity, also forms part and parcel of such an Act. (Bhim Singh (2010) 5 SCC 538).

64. Consequently, it is only if an Appropriation Act had been passed, and such expenditure had been sanctioned by the State Legislature, could the executive have incurred the expenditure for providing various facilities to respondent nos.2 to 6 (the Ex-Chief Ministers). In reply to the specific plea, of the petitioner in their writ affidavit, that the expenditure in this regard could only have been sanctioned by an Appropriation Bill being passed in the State Legislature, the counter affidavit of the State Government dated 09.04.2015 merely states that it was wrong to state that all financial expenditure should be incurred by passing a Money Bill in the State Legislature. It is evident, therefore, that sanction of the State Legislature has not been obtained, by the State Government, for incurring such expenditure on the Ex Chief Ministers. In the absence of an Appropriation Act being passed by the State Legislature, sanctioning such expenditure, no expenditure, in connection with the provision of facilities like water, electricity, vehicles, petrol, diesel etc to the Ex Chief Ministers could have been incurred by

the State Government.

(b) COULD THE VARIOUS AMENITIES PROVIDED BY THE STATE GOVERNMENT, TO THE EX-CHIEF MINISTERS, BE MADE BY AN ORDER UNDER ARTICLE 162?

65. The next question, which necessitates examination, is whether Legislative sanction is required to provide such amenities or whether they could have been provided by the State Government by way of orders made under Article 162 of the Constitution of India. The Appropriation Acts are not a substitute for specific legislation, and they only validate expenses incurred from out of the Consolidated Fund for the particular years for which they are passed. The Appropriation Acts cannot be said to give direct legislative sanction to the activity itself. (Rai Sahib Ram Jawaya Kapur AIR 1955 SC 549). Cases where the State Government is taking away the rights of anyone, or is acquiring any property, form an exception and require legislative sanction. For the purpose of imposing restrictions, on the rights conferred under Article 19 or Article 300A, an independent law is required, but not for the purposes of satisfying the requirement of Article 14. (Bhim Singh (2010) 5 SCC 538). Specific legislation may also be necessary if the Government requires certain powers, in addition to what they possess under the ordinary law. When it is necessary to encroach upon private rights, in order to enable the Government to carry on their activity, a specific legislation, sanctioning such a course, must be passed. (Bhim Singh (2010) 5 SCC 538).

66. Under the Constitution, the authority to make laws is vested in the State Legislature. Whatever legislative power the executive administration possesses must be derived directly from the delegation of the legislature and exercised validly only within the limits prescribed. The notion of inherent or autonomous law-making power in the executive administration is a notion that must be emphatically rejected. (Chief Settlement Commissioner, Rehabilitation Department, Punjab and Ors.vs. Om Prakash and Ors.AIR 1969 SC 33). Entry 40, List II of the Seventh Schedule to the Constitution of India, relates to salaries and allowances of the Ministers for the State. As Entries, in the three Lists of the Seventh Schedule, must be widely construed, it is possible to contend that a law, providing for allowances and other facilities to Ex-Chief Ministers, can also be made under Entry 40 of List II of the Seventh Schedule to the Constitution of India. Article 162 of the Constitution of India provides that the executive power of the State shall extend to matters with respect to which the Legislature of the State has the power to make laws.

67. In examining the question whether the proceedings, whereby various facilities were provided to Ex-Chief Ministers, are orders made under Article 162 of the Constitution, it must be borne in mind that the powers of the Governor, under the Constitution, are similar to the powers of the Crown under the British Parliamentary system. (Ram Jawaya Kapur (1952) 2 S.C.R. 225; A. Sanjeevi Naidu v. State of Madras (1970) 3 SCR 505 and V.N. Kao v. Indira Gandhi (1971) Supp. S.C.R. 46). It is a fundamental principle of English Constitutional Law that

Ministers must accept responsibility for every executive act. In England, the sovereign never acts on his own responsibility. The power of the sovereign is conditioned by the practical rule that the Crown must find advisers to bear responsibility for his action. Those advisers must have the confidence of the House of Commons. This rule of English Constitutional law is incorporated in our Constitution. The Indian Constitution envisages a parliamentary and responsible form of Government at the Centre and in the States. The powers of the Governor, as the Constitutional head, are not different from that of the British Crown. (Samsher Singh and Ors. vs. State of Punjab and Ors. (1974) 2 SCC 831).

68. Under Article 154(1) of the Constitution, the executive power of the State is vested in the Governor but, under Article 164, there must be a Council of Ministers, with the Chief Minister at the head, to aid and advise the Governor in the exercise of his functions. The Governor has thus been made the constitutional head of the State executive, and the real executive powers are vested in the ministers or the Cabinet. [Rai Sahib Ram Jawaya Kapur AIR 1955 SC 549. The Governor acts on the aid and advice of the Council of Ministers in all matters which vest in the executive, whether those functions are executive or legislative in character. The Governor is not to exercise the executive functions personally (Samsher Singh (1974) 2 SCC 831; State of Madhya Pradesh and Ors. vs. Yashwant Trimbak (1996) 2 SCC 305), save in spheres where he is required, by or under the Constitution, to exercise his functions in his discretion. (Samsher Singh (1974) 2 SCC 831; Yashwant Trimbak (1996) 2 SCC 305).

69. Whenever the Constitution requires the satisfaction of the Governor for any exercise by the Governor of any power or function, it is not the personal satisfaction of the Governor, but the satisfaction of the Governor in the Constitutional sense of a Cabinet system of Government, i.e. the satisfaction of his Council of Ministers on whose aid and advice the Governor generally exercises all his powers and functions. (Samsher Singh (1974) 2 SCC 831; Yashwant Trimbak (1996) 2 SCC 305). The Cabinet enjoying, as it does, a majority in the legislature concentrates, in itself, the virtual control of both legislative and executive functions; and as the Ministers constituting the Cabinet are presumably agreed on fundamentals, and act on the principle of collective responsibility, the most important questions of policy are all formulated by them. (Rai Sahib Ram Jawaya Kapur AIR 1955 SC 549).

70. The executive power of a modern State is not capable of precise definition. Article 162 neither contains any definition as to what the executive function is, nor does it give an exhaustive enumeration of the activities which would legitimately come within its scope. Ordinarily, the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. (Ram Jawaya Kapur (1952) 2 S.C.R. 225; Bishambhar Dayal Chandra Mohan and Ors. vs. State of Uttar Pradesh and Ors. AIR 1982 SC 33). So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot

be circumscribed. If there is no enactment covering a particular aspect, the Government can carry on administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. (Bishambhar Dayal Chandra Mohan AIR 1982 SC 33).

71. The term 'executive', in Part VI Chapter II of the Constitution, is used in the broader sense as including both a decision as to action and the carrying out of the decision. (The State of Bihar vs. Sonabati Kumari AIR 1961 SC 221; King Emperor v. Sibnath Banerji (1945) L.R. 72 IndAp 241). The executive has the primary responsibility for the formulation of governmental policy, and its transmission into law, though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. (Rai Sahib Ram Jawaya Kapur AIR 1955 SC 549). The executive function comprises both the determination of the policy as well as carrying it into execution. This includes, among others, initiation of legislation and the carrying on or supervision of the general administration of the State. (Rai Sahib Ram Jawaya Kapur AIR 1955 SC 549).

72. It is not necessary that, in order to enable the executive to function, there must be a law already in existence, or that the powers of the executive are limited merely to the carrying out of these laws. (Rai Sahib Ram Jawaya Kapur AIR 1955 SC 549). The executive power of the State under Article 162 of the Constitution is co-extensive with its legislative power (S.Subramaniam Balaji (2013) 9 SCC 659), and extends to matters with respect to which the State Legislature has the power to make laws. (Bhim Singh (2010) 5 SCC 538). The State Government has undoubted competence to make a scheme in the exercise of its executive power under Article 162 of the Constitution. (Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Ors. vs. State of Madhya Pradesh and Ors. AIR 1981 SC 2030). If the State Legislature has the power to make laws under Entry 40 of List II of the Seventh Schedule, to provide facilities to Ex-Chief Ministers, then, in terms of Article 162 of the Constitution of India, the Executive would also have such a power to provide these facilities, subject, of course, to the provisions of the Constitution.

(c) ARE THE PROCEEDINGS, IMPUGNED IN THE WRIT PETITION, ORDERS MADE UNDER ARTICLE 162 READ WITH ARTICLE 166 OF THE CONSTITUTION?

73. That does not, however, mean that every letter addressed by a government official, or a noting in a file by an officer or a Minister, or for that matter even the Chief Minister, is an order made under Article 162, for all executive actions of the State Government is required, in view of Article 166 of the Constitution of India, to be expressed to be taken in the name of the Governor. The expression, "executive action" in Article 166 is comprehensive enough to include even orders which emerge after, and embody the results of a judicial or quasi-judicial disposal by the Government. The Governor is the head and symbol of the executive administration, and it is an order issued by or under his authority that constitutes an order of the Government. The legal requirements of an "order of Government"

have undergone little modification from what it was before the Constitution. The constitutional changes have not eliminated the Governor from being the constitutional head and the apex of the State Government, and the requirement of his association in what could be termed a formal act of the Government. (*Pioneer Motors Ltd., Tirunelveli and Ors. vs. O.M.A. Majeed and Ors.* AIR 1957 Madras 48).

74. All executive actions of the Government of a State are required to be taken in the name of the Governor of the State concerned. [Article 166(1)]. Orders and other instruments made and executed in the name of the Governor of a State are required to be authenticated in the manner specified in the rules made by the Governor.[Article 166(2)]. In other words, unless an order is expressed in the name of the Governor, and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government. (*Sunil Kumar Vaish* (2011) 8 SCC 670; *Gulf Goans Hotels* (2014) 10 SCC 673). The process of making an order precedes, and is different from, the expression of it; and, while Article 166(1) merely prescribes how orders are to be made, the authentication referred to in Article 166(2) indicates the manner in which a previously made order should be embodied. (*Sonabati Kumari*21).

75. The business of the State is complicated, and has necessarily to be conducted through the agency of a large number of officials and authorities. Before an action is taken by the authority concerned in the name of the Governor, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities on third parties. An opinion becomes a decision of the Government only when it is communicated to the person concerned. [*Bachhittar Singh v. The State of Punjab* AIR 1963 SC 395; *Sethi Auto Service Station v. Delhi Development Authority* 2009 (1) SCC 180 and *Securities and Exchange Board of India vs. Prebon Yamane (I) Ltd.* (2015) 16 SCC 89).

76. Notings in a departmental file, not only of officers but even of a Minister, do not have the sanction of law to be an effective order, and will not constitute an order to affect others unless it is done in accordance with Article 166(1) and (2), and is communicated to the person concerned. (*State of Bihar and Ors. vs. Kripalu Shankar and Ors.* (1987) 3 SCC 34). It is no more than an opinion by an officer for internal use and consideration of the other officials of the department, and for the benefit of the final decision-making authority. Internal notings are not meant for outside exposure. (*Sethi Auto Service Station* 2009 (1) SCC 180; *Prebon Yamane (I) Ltd.* (2015) 16 SCC 89). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for the exercise of the power of judicial review. (*State of Punjab v. Sodhi Sukhdev Singh* AIR 1961 SC 493; *Bachhittar Singh* AIR 1963 SC 395; *Kripalu Shankar* (1987) 3 SCC 34; *Rajasthan Housing Board v. Shri Kishan* (1993) 2 SCC 84, *Sethi Auto Service Station* 2009 (1) SCC 180; *Shanti Sports Club v. Union of India* (2009) 15 SCC

705; Sunil Kumar Vaish (2011) 8 SCC 670 and Gulf Goans Hotels (2014) 10 SCC 673).

77. Even if the competent authority records its opinion in the file, on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Article 166(1) and (2). (Sunil Kumar Vaish (2011) 8 SCC 670; Gulf Goans Hotels (2014) 10 SCC 673). Such notings culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority, gets his approval, and the final order is communicated to the person concerned. [Sethi Auto Service Station 2009 (1) SCC 180; Prebon Yamane (I) Ltd. (2015) 16 SCC 89).

78. While the Governor has to act with the aid and advice of the Council of Ministers as required by Article 163(1), whatever the Council of Ministers may say, in regard to a particular matter, does not become the action of the State Government till the advice of the Council of Ministers is accepted or is deemed to have been accepted by the Head of the State. Before an advice of the Council of Ministers amounts to an order of the State Government, there are two requirements to be fulfilled, namely: (1) The order of the State Government should be expressed in the name of the Governor as required by Article 166(1), and (2). It must also be communicated to the person concerned. (Sodhi Sukhdev Singh AIR 1961 SC 493 and Bachhittar Singh AIR 1963 SC 395). It must therefore follow that, unless and until the decision taken by the Council of Ministers is translated into action by the issue of a notification expressed in the name of the Governor, as required by Article 166(1), it cannot be said to be an order of the State Government. Until then, the earlier decision is merely tentative (Sodhi Sukhdev Singh AIR 1961 SC 493; Bachhittar Singh AIR 1963 SC 395 and State of Kerala vs. A. Lakshmikutty and Ors. (1986) 4 SCC 632).

79. The Constitution requires that action must be taken by the authority concerned in the name of the Governor. It is not till this formality is observed that the action can be regarded as that of the State. Constitutionally speaking, the Council of Ministers are advisors and, as the head of the State, the Governor is to act with their aid or advice. Till the advice is accepted by the Governor, the views of the Council of Ministers do not get crystalised into the action of the State. (Sodhi Sukhdev Singh AIR 1961 SC 493; Bachhittar Singh AIR 1963 SC 395; J.P. Bansal vs. State of Rajasthan and Ors. (2003) 5 SCC 134). Every executive decision need not adhere to Article 166(1), but when it takes the form of an order it has to comply with Article 166(1). (State of Bihar and Ors. vs. Kripalu Shankar (1987) 3 SCC 34).

80. An order would not amount to an order by the State Government unless it is expressed in the name of the Governor as required by Article 166 (1), and is then communicated to the party concerned. (Bachhittar Singh AIR 1963 SC 395; Sethi Auto Service Station 2009 (1) SCC 180; Prebon Yamane (I) Ltd. (2015) 16 SCC 89 and Kedar Nath Bahl vs. The State of Punjab and Ors. (1978) 4 SCC

336). In the absence of due authentication and promulgation, the contents of a proceeding cannot be treated as an order of the Government, and would really represent an expression of opinion. By issuing an order, in accordance with Article 166(1) and (2), a decision gets culminated into an order affecting the rights of parties. A decision recorded in the file can always be reviewed/reversed/overruled or overturned. (*Gulf Goans Hotels* (2014) 10 SCC 673).

81. The validity of an order or instrument which is authenticated, in terms of Article 166(2), shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. (*E.G. Barsay Vs. The State of Bombay* AIR 1961 SC 1762; *R. Chitralekha and Ors. vs. State of Mysore and Ors.* AIR 1964 SC 1823). There is neither any particular formula of the words required for compliance with Article 166(1) (*Bannari Amman Sugars Ltd. vs. Commercial Tax Officer and Ors.* (2005) 1 SCC 625; *J.P. Bansal* (2003) 5 SCC 134), nor does the said Article prescribe how the executive action of the Government is to be performed. It only prescribes the mode in which such act is to be expressed. What the Court has to see is whether the substance of its requirement has been complied with. Whether there is any Government order, in terms of Article 166, should be adjudicated from the factual background of each case. (*R. Chitralekha* AIR 1964 SC 1823; *Bannari Amman Sugars* (2005) 1 SCC 625).

82. There is a distinction between the taking of an executive decision, and giving formal expression to the decision so taken. Every executive decision, taken on the office files by way of notings or endorsements, need not be formally expressed, and this is particularly so when one superior officer directs his subordinate to act or forbear from acting in a particular way, but when the executive decision affects an outsider (in that it creates a right or casts an obligation on him), or is required to be officially notified or to be communicated, it should, normally, be expressed in the form mentioned in Article 166(1), i.e., in the name of the Governor. (*Dattatreya Moreshwar v. State of Bombay & others* AIR 1952 SC 181; *Pioneer Motors Ltd.* AIR 1957 Madras 48).

83. If an order is issued in the name of the Governor, and is duly authenticated in the manner prescribed in Article 166(2), there is an irrebuttable presumption that the order or instrument is made or executed by the Governor. Strict compliance with the requirements of Article 166 gives immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State. Non-compliance with the provisions of the said rule precludes the drawing of any such irrebuttable presumption. (*Dattatreya Moreshwar* AIR 1952 SC 181; *E.G. Barsay* AIR 1961 SC 1762; *R. Chitralekha* AIR 1964 SC 1823; *Pioneer Motors Ltd.* AIR 1957 Madras 48), or (*J. K. Gas Plant Manufacturing Co. (Rampur) Ltd. and others vs. The King-Emperor* (1947) F.C.R. 141; *Dattatreya Moreshwar* AIR 1952 SC 181).

84. It is not necessary that there must be a recital on the face of the order

before it can be held to be legal. The presumption as to the regularity of public acts would apply in such a case; but as soon as the order is challenged, and it is said that it was passed without the conditions precedent being satisfied, the burden would be on the authority to satisfy by other means (in the absence of a recital in the order itself) that the conditions precedent had been complied with. The difference between a case where a general order contains a recital on the face of it, and one where it does not contain such a recital is that, in the latter case, the burden is thrown on the authority making the order to satisfy the Court, by other means, that the conditions precedent were fulfilled. However, in the former case, the Court will presume the regularity of the order including the fulfillment of the conditions precedent; and then it will be for the party challenging the legality of the order to show that the recital was not correct, and that the conditions precedent were not in fact complied with by the authority (*Spens C.J. in King Emperor v. Sibnath Banerjee* (1944) F.C.R. 1; *King Emperor v. Sibnath Banerjee* (1945) F.C.R. 195; *The Swadeshi Cotton Mills Co. Limited vs. The State of U.P. and Ors.* AIR 1961 SC 1381).

85. In cases where the order does not comply with the provisions of Article 166(2) of the Constitution, the validity of the order can be questioned on the ground that it was not an order made by the Governor. (*E.G. Barsay* AIR 1961 SC 1762). As the provisions of Article 166 of the Constitution are only directory and not mandatory (*Indra Sawhney* (1992) Supp. 3 SCC 217), any defect of form, in the order, would not, necessarily, vitiate the order or render the executive action a nullity or illegal, and the only consequence of the order, not being in the proper form as required by Article 166, is that the burden is thrown on the Government to show that the order was in fact passed by it. (*State of Rajasthan and Ors. vs. Sripal Jain* AIR 1963 SC 1323). Other evidence can be adduced to prove that, as a matter of fact, the order has been made by the appropriate authority (*E.G. Barsay* AIR 1961 SC 1762; *J.P. Bansal* (2003) 5 SCC 134; *R. Chitralekha* AIR 1964 SC 1823); and that the order was issued by the State Government or the Governor. (*R. Chitralekha* AIR 1964 SC 1823; *L.G. Chaudhari vs. Secretary, L.S.G. Department, Government of Bihar and Ors.* AIR 1980 SC 383).

86. Though the order is defective in form, it is open to the State Government to prove by other means that such an order had been validly made. (*The State of Bombay v. Purshottam Jog Naik* 1952 CriLJ 1269; *R. Chitralekha* AIR 1964 SC 1823; *Ghaio Mall and Sons v. The State of Delhi* (1959) S.C.R. 1424). Once an order is unable to prove itself, and has to be proved by other means, it is not possible to lay down any rule regarding either the quantum of evidence necessary to satisfy the Court which is called upon to decide the question or the nature of the evidence required. This is a question of fact which would differ from one case to another. (*Purushottam Jog Naik* 1952 CriLJ 1269).

87. The rules of business, and allocation of business among Ministers, are relatable to the provisions contained in Article 154 in the case of the Governor. The executive power is exercised by the Governor directly or through officers

subordinate. The provisions contained in Article 163, that there shall be a Council of Ministers to aid and advise the Governor, are the source of the rules of business. These provisions are for the discharge of the executive powers and functions of the Government in the name of the Governor. Where functions entrusted to a Minister are performed by an official employed in the Minister's Department there is in law no delegation because Constitutionally the act or decision of the official is that of the Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister. (Halsubry's laws of England 4th Ed. Vol.I Halsubry's laws of England 4th Ed. Vol. I paragraph 748 at p. 170; *Carltona Ltd. v. Works Commissioners* (1943) 2 All.E.R. 560; *Samsher Singh* (1974) 2 SCC 831).

88. In all cases in which the Governor exercises the functions, conferred on him by or under the Constitution, with the aid and advice of his Council of Ministers, he does so by making rules for convenient transaction of the business of the Government of the State or by allocation among his Ministers of the said business, in accordance with Article 166(3). (*Samsher Singh* (1974) 2 SCC 831). Article 166(3) does not provide for any delegation of power. The rules of business and the allocation among the Ministers of the said business all indicate that the decision of any Minister or officer under the rules of business made under Article 166(3), in the case of a Governor of the State, is the decision of the Governor. (*Samsher Singh* (1974) 2 SCC 831). Clause (2) or Clause (3) of Article 166 is not limited in its operation to the executive action of the Government of the State under Clause (1) of Article 166. The expression "Business of the Government of the State" in Clause (3) of Article 166 includes all executive business. (*Samsher Singh* (1974) 2 SCC 831).

89. In the exercise of the power conferred under clause (3) of Article 166 of the Constitution of India, the Governor of U.P., in supersession of the earlier notification dated 26.06.1958, made the Business of Uttar Pradesh (Allocation) Rules, 1975 which were notified on 11.08.1975. Rule 2-(1) of the said Rules provided that the business of the Government shall be transacted in the Sections or departments of the Uttar Pradesh Secretariat as may be specified by general or special orders of the Governor, issued from time to time, in that behalf. Rule 3 of the said Rules stipulated that the Governor shall, on the advice of the Chief Minister, allot, among the Ministers, the business of the Government by assigning one or more departments to the charge of a Minister.

90. Likewise, in the exercise of the powers, conferred under clause (3) of Article 166 of the Constitution of India, the Governor of Uttaranchal (now Uttarakhand) made the Business of Uttaranchal (Allocation) Rules, 2003 which were notified on 14.10.2003. Rule 5 thereof repealed the Business of Uttar Pradesh (Allocation) Rules, 1975, in so far as they were applicable to the State of Uttaranchal, under Section 86 of the Uttar Pradesh Reorganisation Act with immediate effect. Under the proviso thereto, Appendix-1 and 2, made under Rule 2 of the 1975 Rules, was to remain in force, notwithstanding such repeal till these appendices were

made under the 2003 Rules. Rule 2(1) of the said Rules stipulates that the business of the Government shall be transacted in the Sections or departments of the Uttaranchal Secretariat as may be specified by general or special orders of Governor, issued from time to time, in that behalf. Rule 3(1) stipulates that the Governor shall, on the advice of the Chief Minister, allot, among the Ministers, the business of the Government by assigning one or more departments to the charge of a Minister. The Business rules, aforementioned, do not confer any power, on a government officer or a Minister, to make an order on behalf of the Governor without the latter's consent with regards facilities to be provided to Ex-Chief Ministers.

91. Further, an order does not become operative until it is made known to the public. Unlike Acts of the Parliament which are publicly enacted, orders of the Government or an authority are not. There must, therefore, be promulgation and publication in such cases. The mode of publication can vary, but reasonable publication of some sort there must be. (*Gulf Goans Hotels* (2014) 10 SCC 673; *Harla v. State of Rajasthan* AIR 1951 SC 467). A right created under an order must be communicated to the person concerned so as to confer an enforceable right. (*Laxminarayan R. Bhattad and Ors. v. State of Maharashtra and Anr.* 2003 (3) SCR 409; *Sethi Auto Service Station* 2009 (1) SCC 180 and *Prebon Yamane (I) Ltd.* (2015) 16 SCC 89). When an executive decision affects an outsider (in that a right is created, or an obligation is cast, thereby), or is required to be officially notified or to be communicated, it should normally be expressed in the form mentioned in Article 166(1) i.e. in the name of the Governor. (*J. K. Gas Plant Manufacturing Co.* (1947) F.C.R. 141; *Dattatreya Moreshwar* AIR 1952 SC 181). As the various amenities provided to the respondents-Ex-Chief Ministers was for their benefit, the proceedings, extending them the said benefits, should have been expressed in the name of the Governor as required under Article 166 (1) & (2) of the Constitution of India.

92. Since none of the impugned letters fulfilled the conditions stipulated in Article 166(1) & (2) of the Constitution of India, the burden lay on the respondent-State Government to adduce evidence to show that the said proceedings were approved by the Governor, or were made in terms of the Rules made by the Governor under Article 166(3) of the Constitution of India. Except for a vague and bald statement that the source of power is referable to Article 162 of the Constitution of India, no evidence has been adduced, by the respondent-State Government, to show that the letters, impugned in the writ petition, are orders referable to Article 162 of the Constitution of India, and approval of the Governor was obtained thereto in terms of Article 166(1) & (2) of the Constitution of India. There is also no denial to the specific assertion, made on behalf of the petitioner, that the various proceedings, impugned in the Writ Petition, were not issued with the consent of the Governor.

93. The Government Order dated 27.11.2011, providing one Personal Assistant and two Class-IV employees to Ex-Chief Ministers; an officer on special duty

being provided, in the place of Personal Assistant, by the Government Order dated 08.05.2014; and the facilities of vehicles and drivers being provided by Office Memo dated 15.05.2002, do not also have legislative sanction, nor has the approval of the Governor been obtained thereto; and, consequently, provision of these facilities is also illegal.

94. Except for the proceedings dated 15.09.2008, whereby the limits, for the expenses of sweeper, security guard, gardener, telephone attendant etc, were enhanced from Rs. 5000/- per month to Rs. 10,000/- per month, vide proceedings dated 15.09.2008 (which specifically refers to the Governor having sanctioned the enhanced limit), none of the other proceedings appear to have been issued after obtaining the approval of the Governor. These letters cannot, therefore, be said to be orders passed under Article 162 of the Constitution of India.

95. In the counter affidavit dated 09.04.2015, filed on behalf of the State Government, it is stated that the Government Order dated 22.01.2001 was issued, making provision for granting the facility of a shadow/gunner; and such facilities are being extended to Ex-Chief Ministers on the basis of the threat perception report received from the concerned department. While providing a gunner to the Ex Chief Ministers, consequent on their being provided 'Y' category security, may be justified, and reimbursement of expenses of upto Rs. 10,000/- per month appears to have been sanctioned by the Governor, none of the other expenditure incurred towards electricity, water, petrol, fuel and diesel etc are authorized either by law, or by an order made under Article 162 of the Constitution of India.

96. As these amounts were spent without the sanction of the legislature or the approval of the Governor, such expenditure incurred for the benefit of respondent nos. 2 to 6, is bound to be recovered from them. In the affidavit filed in support of the Writ Petition, the petitioner stated that a sum of Rs.9.28 crores was due to be recovered from all the Ex-Chief Ministers for the facilities extended to them till March, 2010. In their affidavit dated 09.12.2018, the petitioner stated that an amount in excess of Rs.13.00 crores was incurred in providing various facilities to the Ex-Chief Ministers. Instead of undertaking the task of determining the amount due to be recovered from respondent nos.3 to 6 in this regard, suffice it to direct the first respondent to compute the amounts payable by respondent nos. 3 to 6 towards electricity and water charges provided to the Bungalows which they had occupied, and for the petrol, oil and lubricants expenses etc incurred on their behalf, within four months from the date of receipt of a copy of this order. These respondents shall be intimated of the amounts so determined by the first respondent, along with documentary evidence of such expenditure having been incurred. On receipt of intimation from the first respondent, respondent nos. 3 to 6 shall, within six months thereafter, pay the said amounts to the State Government. While no direction can be issued to the legal heirs of the second respondent as they are not parties to these writ proceedings, suffice

it to make it clear that the order now passed by us shall not disable the first respondent from initiating action for recovery of these amounts, from the legal heirs of the second respondent, in accordance with law.

III. WOULD ESTOPPEL BAR RECOVERY OF THESE AMOUNTS FROM THE EX-CHIEF MINISTERS?

97. Mr. B.D. Upadhyaya, learned Senior Counsel appearing on behalf of the fourth respondent, would submit that, since the Government had allotted the Government quarters to him, the fourth respondent cannot be said to have been in unauthorized occupation; the respondents can only be said to be in unauthorized occupation from the date of the order of the Supreme Court; the earlier permission granted by the State Government is not rendered illegal prior thereto; in Lok Prahari (2016) 8 SCC 389, the Supreme Court has not considered the question of estoppel; having provided government accommodation to the fourth respondent, the State Government is estopped from now seeking to recover rent, as the allotment to the fourth respondent was a rent free accommodation; the fourth respondent was issued a notice to vacate the premises on 16.10.2016, and he vacated the same on 22.11.2016; even after his tenure as the Chief Minister, the fourth respondent was the leader of the opposition from 13.03.2002 to 17.12.2003; he was a Member of the Rajya Sabha from 26.11.2008 till 26.11.2014; even before his tenure, as a Member of Rajya Sabha, was to come to an end, the fourth respondent became a Member of the Lok Sabha in May, 2014; the Government accommodation provided to him in New Delhi is in his capacity as a Member of Parliament; and simultaneous retention, of the Government accommodation at Dehradun, is by virtue of his having earlier held the office of the Chief Minister of the State.

98. On the other hand Mr. Kartikey Hari Gupta, learned counsel for the petitioner, would submit that the fourth respondent has committed perjury; he has stated, in his counter-affidavit, that he is not in a position to pay the rent; the details furnished by the petitioner, in his rejoinder affidavit dated April, 2016, disclose properties which the fourth respondent had, himself, declared in 2007; and the averment, in his counter affidavit, that he does not have the capacity to pay the rent is false, for which action should be taken against the fourth respondent for perjury.

99. It is true that the plea of estoppels does not appear to have been taken before the Supreme Court in Lok Prahari (2016) 8 SCC 389. The question which would, therefore, necessitate examination is whether the fourth respondent, having secured the benefit of rent free accommodation and various other facilities from the State Government, can now turn around and contend that, if he had known that he would be required to pay for such amenities, he would not have availed such facilities extended to him by the State Government.

100. The rule of estoppel has been authoritatively stated as follows: "Where one by his words or conduct willfully causes another to believe the existence of a

certain state of things, and induces him to act on that belief so as to alter his own previous position, the former is prevented from averring against the latter a different state of things as existing at the same time. And whatever a man's real intention may be, he is deemed to act willfully "if he so conducts himself that a reasonable man would take the representation to be true and believe that it was meant that he should act upon it. [Freeman v. Cooke 1848 (2) Ex. 654; Pickard v. Sears (1837) 6 A.&E. 469; Phipson on Evidence (Fourteenth Edn.) Phipson on Evidence (Fourteenth Edn.) and Tata Iron & Steel Co. Ltd. vs. Union of India & Ors. (2001) 2 SCC 41].

101. Where the conduct is negligent or consists wholly of omission, there must be a duty to the person misled. (Mercantile Bank v. Central Bank 1938 AC 287; National Westminster Bank Ltd. vs. Barclays Bank International Ltd. 1975 Q.B. 654; Tata Iron and Steel Co. Ltd. (2001) 2 SCC 41; Phipson on Evidence Phipson on Evidence (Fourteenth Edn.) and Moorgate Mercantile Co. Ltd. vs. Twitchings (1977) AC 890). The party asserting the estoppel must have been induced to act to his detriment. So long as the assumption is adhered to, the party who altered the situation upon the faith of it cannot complain. (Tata Iron and Steel Co. Ltd. (2001) 2 SCC 41; Grundt vs. Great Boulder Proprietary Gold Mines Ltd. 1939 59 C.L.R. 641). It is only when the represented wishes to disavow the assumption contained in his representation that an estoppel arises, and the question of detriment is considered, accordingly, in the light of the position which the represented would be in if the representor were allowed to disavow the truth of the representation. (Grundt 1939 59 C.L.R. 641; Tata Iron and Steel Co. Ltd. (2001) 2 SCC 41; Spencer Bower and Turner: Estoppel by Representation 3rd Ed. Spencer Bower and Turner: Estoppel by Representation 3rd Ed and Central Newbury Car Auctions Ltd. vs. Unity Finance Ltd. 1956 (3) All ER 905). In estoppel the actual intent to abandon or surrender the right is immaterial. The necessary condition is the detriment to the other party by the conduct of the one estopped. An estoppel may result though the party estopped did not intend to lose any existing right. (Provash Chandra Dalui & another vs. Biswanath Banerjee & another 1989 Supp (1) SCC 487).

102. This doctrine has certain limitations. The Government or public authority cannot be debarred by estoppel from enforcing a statutory prohibition. This doctrine cannot be used to compel the Government or a public authority to carry out a representation which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. (Union of India & others vs. Godfrey Philips India Ltd. AIR 1986 SC 806; Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh & others AIR 1979 SC 621). There can be no estoppel against the law or public policy. The State and statutory authorities are not bound by their previous erroneous understanding or interpretation of law. The Government cannot be asked to act in contravention of the law. (The Rajasthan State Industrial Development and Ors. vs. Subhash Sindhi Cooperative Housing Society Jaipur and Ors. (2013) 5 SCC 427). No authority/officer can be bound by estoppel to do something beyond its powers, or

to refrain from doing what is its duty to do. (Subhash Sindhi Cooperative Housing Society (2013) 5 SCC 427). Even a concession made by the public authority can always be withdrawn in public interest. (State of Madras and anr. vs. K.M. Rajagopalan AIR 1955 SC 817; Badri Prasad and Ors. v. Nagarmal and Ors. AIR 1959 SC 559 and Dr. H.S. Rikhy etc. v. The New Delhi Municipal Committee AIR 1962 SC 554 and Subhash Sindhi Cooperative Housing Society (2013) 5 SCC 427).

103. In public law, the most obvious limitation on the doctrine of estoppel is that it cannot be evoked to give an overriding power which the authority does not in law possess. In other words, no estoppel can legitimate an action which is ultra vires. Another limitation is that the principle of estoppel does not operate at the level of Government policy. (Wade, Administrative law, 5th edition, pp. 233-34; Wade, Administrative law, 5th edition, pp. 233-34; Express Newspapers Pvt. Ltd. v. Union of India AIR 1986 SC 872). This doctrine, being equitable, must yield when equity so requires. If it can be shown, by the Government or public authority, that, having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the representation is made, and enforce the representation against the Government or public authority. The doctrine of estoppel would be displaced in such a case because, on facts, equity would not require that the Government or public authority should be held bound by the representation made by it. (Godfrey Philips India Ltd. AIR 1986 SC 806; Motilal Padampat Sugar Mills Co. AIR 1979 SC 621). Estoppel being an extension of the principle of equity, the basic purpose of which is to promote justice founded on fairness, is incapable of being enforced in a court of law if the promise which furnishes the cause of action or the agreement, express or implied, giving rise to a binding contract, is statutorily prohibited or is against public policy. (Amrit Banaspati Co. Ltd. and another vs. State of Punjab & another AIR 1992 SC 1075). As the estoppel stems from an equitable doctrine, it requires that he, who seeks equity, must do equity. The doctrine cannot be invoked if it is found to be inequitable or unjust in its enforcement. (Delhi Cloth and General Mills Ltd. vs. Union of India AIR 1987 SC 2414).

104. As noted hereinabove there can be no estoppel against the law or public policy. No estoppel can legitimate an action which is ultra vires, and no authority can be bound by an estoppel to do something beyond its powers. In the present case, allotment of residential accommodation to Ex Chief Ministers, and the various other facilities extended to them, was beyond the powers of the officers and, in as much as approval of the Governor was not obtained, such facilities could not have been extended to the Ex-Chief Ministers concerned. It is not open to the fourth respondent, therefore, to contend that the State Government is barred from recovering the said amounts on ground of estoppel. In any event, it is not the State Government, which is seeking to recover the said amounts, but this Court, following the law declared by the Supreme Court in Lok Prahari

(2016) 8 SCC 389, is directing them to do so. The plea of estoppel has, therefore, no application.

105. In the affidavit filed by him before the Election Commission of India on 29.01.2007, the fourth respondent had declared that he owned half of Hotel Uttaranchal Deep at Pithoragarh; and he had a house in Gram Namtichera Bagad, Khemila. Yet the fourth respondent, in his counter affidavit filed before this Court, claims that he is not in a position to pay the rent. While Mr. Kartikey Hari Gupta, learned counsel for the petitioner, would request this Court to prosecute the fourth respondent for perjury, suffice it to record our displeasure of the stand taken by the fourth respondent in his counter affidavit filed before this Court, as it runs contrary to his own affidavit dated 29.01.2007 filed before the Election Commission of India.

IV. IS THE ACTION OF THE STATE GOVERNMENT IN PROVIDING VARIOUS FACILITIES TO EX-CHIEF MINISTERS, RENDERED ILLEGAL ONLY FROM THE DATE OF THE JUDGMENT OF THE SUPREME COURT IN LOK PRAHARI?

106. The contention, urged on behalf of the fourth respondent, that the earlier permission granted by the State Government is rendered illegal only from the date of the order of the Supreme Court in Lok Prahari (2016) 8 SCC 389, is only to be noted to be rejected. The law declared by the Supreme Court is presumed to be the law at all times. The decision of a Court, enunciating a principle of law, is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Court is, in fact, the law from the inception. (M.A. Murthy v. State of Karnataka (2003) 7 SCC 517). A judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood. (Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Limited (2008) 14 SCC 171). The declaration of law by the Supreme Court in Lok Prahari (2016) 8 SCC 389, would operate from the date on which the 1997 Rules were issued i.e. 23.07.1997 and not from 01.08.2016 when the judgment was delivered.

107. The fourth respondent, during his tenure as a Member of the Rajya Sabha from 26.11.2008 till 26.11.2014 and thereafter as a Member of the Lok Sabha from May, 2014 till date, has been provided accommodation at New Delhi in his capacity as a Member of Parliament. His retention of a house, simultaneously, at Dehradun falls foul of the dicta of the Supreme Court, in Lok Prahari (2016) 8 SCC 389, that it would not be proper to allot residence at two places to one

individual; constitutional post holders could only hold one official residence during their tenure; and the position of a Chief Minister cannot stand on a different footing after they demit their office.

V. IS THE GOVERNMENT JUSTIFIED IN REQUESTING THAT THE ARREARS OF THE RENT AND OTHER AMOUNTS DUE FROM EX-CHIEF MINISTERS BE WAIVED?

108. When the writ petition was being finally heard, an affidavit dated 20.02.2019 was filed by the Additional Secretary stating that the Council of Ministers had resolved to request this Court to waive arrears of rent due towards the rent free accommodation occupied by the Ex-Chief Ministers, as they had rendered priceless service. Neither the resolution of the Council of Ministers, nor the counter-affidavit of the Additional Secretary disclose the nature of services (which is claimed to be priceless) rendered by respondents 2 to 6, post their demitting office of the Chief Minister. Those of respondent nos. 2 to 6, who held any other office post their demitting office of the Chief Minister, were provided the facilities to which they were entitled to with respect to the office which they held. That does not, however, mean that the State Government should fritter away precious public resources and needlessly burden, the already overburdened public exchequer, with this unauthorized expenditure on the specious plea that priceless services were rendered by respondent nos.2 to 6. Services rendered by respondent nos.2 to 6 during their tenure as Chief Ministers (even if taken to be priceless) does not justify conferring on them such largesse.

VI. IS THE ACTION OF THE STATE GOVERNMENT, IN PROVIDING THESE FACILITIES TO THE EX-CHIEF MINISTERS, VIOLATIVE OF PART-III OF THE CONSTITUTION?

109. Mr. Kartikey Hari Gupta, learned counsel for the petitioner, would submit, placing reliance on the judgment of the Supreme Court in Lok Prahari (2016) 8 SCC 389, that provision of these facilities to Ex-Chief Ministers is unreasonable, and is also discriminatory since such facilities were not extended to other constitutional functionaries.

110. It is true that the Supreme Court in Lok Prahari (2016) 8 SCC 389, held that the 1997 Rules (whereby rent free accommodation was provided to Ex-Chief Ministers) gave largesse to Ex-Chief Ministers without any element of reasonableness; no other dignitary holding constitutional posts was given such a facility; and the 1997 Rules were not fair.

111. On the limitations of the Executive, in exercising its powers, it must be borne in mind that, with all its defects, delays and inconveniences, men have discovered no technique, for long preserving free government, except that the Executive be under the law, and that the law be made by the competent Legislature. (Youngstown Sheet & Tube Co. v. Sawyer (1952) 343 U.S. S. 579; Om Prakash AIR 1969 SC 33). In our constitutional system, the central and most characteristic feature is the concept of the rule of law. The rule of law rejects the concept of a Dual State in which governmental action is placed in a privileged

position of immunity from control by law. Such a notion is foreign to our basic constitutional concept. (Om Prakash AIR 1969 SC 33).

112. The executive Government is bound to conform to the provisions of the Constitution, and to the law of the land. Even the legislature cannot override the fundamental rights guaranteed by the Constitution to the citizens. Consequently, even such acts of the executive, which are sanctioned by the legislature, can be declared void and inoperative if they infringe any of the fundamental rights guaranteed under Part III of the Constitution. (Rai Sahib Ram Jawaya Kapur AIR 1955 SC 549). Article 162, as is clear from the opening words, is subject to the other provisions of the Constitution. (Bishambhar Dayal Chandra Mohan AIR 1982 SC 33). The executive can, therefore, never go against the provisions of the Constitution or of any law. (Rai Sahib Ram Jawaya Kapur AIR 1955 SC 549).

113. Even public policy decisions of the Executive can be tested in the context of illegality and unconstitutionality. A policy decision of the Government, which is demonstrably capricious or is arbitrary and not informed by reason or which suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, can be struck down. (Krishnan Kakkanth v. Govt. of Kerala (1997) 9 SCC 495). What is imperative, and implicit in terms of Article 14, is that a policy is made fairly, and not arbitrarily. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness, in essence and substance, is the heart beat of fair play. Actions are amenable, in the panorama of judicial review, to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. (Union of India v. International Trading Co. (2003) 5 SCC 437). The exercise of discretion is impeachable on well accepted grounds such as 'ultra vires' or 'unreasonableness'. (Shri Sitaram Sugar Co. Ltd. v. Union of India (1990) 3 SCC 223). If the policy of the Government fails to satisfy the test of reasonableness, it would be unconstitutional. The ultimate test is whether, on the touchstone of reasonableness, the policy decision comes out unscathed. (International Trading Co. (2003) 5 SCC 437).

114. While the submission of Mr. Kartikey Hari Gupta, learned counsel for the petitioner, in this regard has considerable force, it is unnecessary for us to examine the validity of the action of the State Government on the touchstone of Part-III of the Constitution, as we have already held that the impugned proceedings, whereby these facilities were provided to Ex-Chief Ministers, neither has legislative sanction nor was it issued with the approval of the Governor, and is, therefore, ultra vires and illegal. Suffice it, therefore, to leave this question open for examination, if need be, later.

VII. CONCLUSION:

115. The petitioner's contention, that the fifth respondent has a palacial bungalow at Dehradun, and yet he occupied the rent free building provided to him by the State Government, has not been denied by the fifth respondent in his counter affidavit. In the affidavit dated 05.01.2016, filed on behalf of the first

respondent, it is stated that the State Government does not have information regarding availability of accommodation of the Ex Chief Ministers at Dehradun and at other places; and, while the fourth and the sixth respondents had submitted information that they did not have any residence at Dehradun, no response had been received from the other Ex Chief Ministers. It is disconcerting that the fifth respondent, despite having his own Bungalow at Dehradun, should take advantage of his previous office of Chief Minister, and occupy a government Bungalow free of cost even after he demitted office of the Chief Minister.

116. The specific contention urged on behalf of the petitioner that the sixth respondent, when he was asked to resign from his party, not only allotted to himself the Bijapur Guest House for his whole life, but had also sanctioned a few crores for its renovation, extension etc, has also not been denied by the sixth respondent in his counter affidavit. This does not reflect favourably on the manner in which the executive functioned, for not only did the sixth respondent confer on himself a benefit which he was not legally entitled to, the State Government also did not choose to cancel such allotment even after he demitted office. This act of the sixth respondent, in conferring a post retirement benefit on himself, when he held office of the Chief Minister, does show the State Executive in poor light. That such acts have been permitted to prevail, and have gone unchecked, is undoubtedly a matter of grave concern.

117. The Writ Petition is disposed of directing respondent nos.3 to 6 to pay the market rent as detailed in the affidavit of the Additional Secretary/Estates Officer dated 12.02.2019, for the buildings occupied by them as Ex-Chief Ministers, within six months from today, failing which the State Government shall, forthwith, initiate appropriate legal proceedings, including under the provisions of the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972, for recovery of the said amounts from them. The amounts already paid by respondent nos.3, 5 and 6 towards rent, for occupation of these premises, shall be given credit to. The amount specified in the table referred to in the affidavit of the Additional Secretary/ Estates Officer dated 12.02.2019, after deducting the amount paid by them as rent, shall be paid by the respondent nos.3 to 6 within the aforesaid period of six months.

118. The amount due and payable towards amenities such as electricity, water, petrol, oil and lubricants etc provided by the State Government, to respondent nos.3 to 6 as Ex-Chief Ministers, shall be computed by the first respondent within four months from the date of the receipt of a copy of this order. Within this period of four months, the first respondent shall intimate the amount, so determined by them, along with documentary evidence of such expenditure incurred by the State Government, to respondent nos.3 to 6 who shall, within six months from the date of such intimation, pay the said amounts to the State Government, failing which these amounts shall also be recovered forthwith by the State Government in accordance with law, including under the provisions of the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act,

1972. No costs.