

**(1996) 01 OHC CK 0023**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 3210 of 1995

Sri Rama Ballav Rath

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

**Date of Decision :** 10-01-1996

**Acts Referred:**

**Citation :** (1996) 81 CLT 841 : (1996) 1 OLR 225

**Hon'ble Judges :** P.C. Naik, J;A. Pasayat, J

**Bench :** Division Bench

**Advocate :** S.K. Purohit and Sd. H. Ali Rizwan, for the Appellant; A.G. and A.G.A. for opp. party Nos. 1 and 3 and Sr. Standing Counsel Central for opp. party No. 2, for the Respondent

## Judgement

A. Pasaayt, J.—Action of the State of Orissa and the Union of India in extending tenure of service of opp. party No. 3 after superannuation has been questioned by the petitioner alleging that such extension for the third time was actuated with mala fide, favouritism, nepotism and ulterior motives, and not on public ground which is sine qua non for such extension. Petitioner claims to have filed the petition in public interest as a Public Interest Litigation, It is urged that there was no semblance of public interest involved and there has been gross misuse of the power of extension. Prayer has been made to delineate the powers, so that in future there is no recurrence of the unsavoury and undesirable situation which has arisen in the case at hand.

2. A brief reference to the factual and the statutory provision holding the field would suffice.

Opp. party No. 3 while functioning-as the Chief Secretary of Orissa was given three extensions of six months" duration each under the first proviso to Sub-rule (1) of Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 (in short "the Rules"). On completion of 58th year opp. party No. 3 was to retire on 31-3-1994. By orders dated 16-3-1964, 28-9-1994 and 30-3-1995 he was granted extension of service purportedly to be on public ground.

Undisputedly such extension can be given in terms of the first proviso to Sub-rule (1) of Rule 16 of the Rules on public ground. The rule reads as follows :

"16. Superannuation gratuity or pension :

(1) A member of the Service shall be required compulsorily to retire from the service with effect from the afternoon of the last day of the month in which he attains the age of 58 years :

Provided that he may be retained in service after the last day of the month in which he attains the age of 58 years on public grounds which shall be recorded in writing -

(a) for an aggregate period not exceeding six months by the State Government; and

(b) for any period beyond six months, with the sanction of the Central Government :

Provided further that a member of the Service shall not be retained in service beyond the age of 60 years except in very special circumstances."

The petitioner asserts that such extension was not on any public ground whatsoever and opp. party No. 3, who enjoyed political clouts, managed to get the extensions from two different Governments headed by two political parties. This, according to the petitioner, shows that the opp. party No. 3 knows which side of the bread is to be buttered. It is submitted that whether in an imperialist Raj or in a democratic Raj, the Civil Service has been taught to act as a well-trained dog, and does so. Need is for snapping incestuous link between politicians and bureaucrats. Time has come to expose the boot-lickers who for their own perverse purpose change colours more frequently than the chameleon. It is more so in the case of those who make private gain at public cost. The Civil Servants enjoy a satisfactory partnership with those who inherited the mantle of Robert Clive and Warren Hastings. Petitioner prayed for permission to look into the records dealing with extension. We shall deal with the acceptability of aforesaid prayer of petitioner infra.

3. The opp. parties in their counter-affidavits and in submissions have questioned locus standi of the petitioner, and have stated that behind the mask of public interest litigation, private interest is writ large. Additionally it is submitted that an administrative decision taken by the authorities on public ground is not open to judicial scrutiny. A question of jurisdiction was raised, but it was abandoned stating that considering the complex questions involved and the absence of any precedent, we may decide the dispute untrammelled by the controversial issue of jurisdiction.

4. Before we grapple with the actual problem, we feel it necessary to keep the records straight so far as public interest aspects are concerned. Public interest litigation which has now come to occupy an important field in the administration

of law should not be public interest litigation or private interest litigation. There must be real and genuine public interest involved in the litigation, and it cannot be invoked by a person or a body of persons to further his or their personal causes or satisfy him or his personal grudge and enmity. The Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by the apex Court in *Janata Dal Vs. H.S. Chowdhary and Others*, , A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner, but also with a clean hand, clean mind and a clean objective.

Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest any ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of "public interest litigation" should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. Court must be careful to see that a member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold.

5. The Council for Public Interest, Law set up by the Ford Foundation in U. S. A. defined the Public Interest Litigation in its report of Public Interest Law, U. S. A., 1976 as follows :

"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and Interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper, environmentalists, consumers, racial and othnic minorities, and others."

The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness of nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests; (a) Nobody should be allowed to indulge in wild and reckless

allegations besmirching the character of others; and (b) avoidance of public mischief and to avoid publicly mischievous executive actions. In such cases, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with impostors and busy bodies, of meddlesome interlopers impersonating as public spirited holymen. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publics, though they have no interest of the public or even of their own to protect.

In "public Interest Law" edited by Jeromy Cooper and Rajeev Chavan (Page 58) about the jurisdiction of the Court what was said was :

"Moreover, the judiciary have fairly limited powers at common law to extend the areas of public interest generally and in legal proceedings in particular. The responsibility for such extension and expansion has become a matter of political argument and debate and has fallen on the legislative branch of government, so that what social, economic, financial or other activities should be regarded as coming within the parameters of the public interest, and if so to what extent and the method of their regulation, are largely matters that have to be enacted by Parliament and statutory instruments."

6. Test litigation, representative actions, Pro bone publics and like broadened forms of legal proceedings are in keeping with the current accent on justice to common man and a necessary disincentive to those who wish to by-pass the real issues on merits by suspect reliance on peripheral, procedural shortcomings. In the case at hand, petitioner has highlighted his social background to show his desire for better administration and observance of rule of Law. There is no material to show that he is masquerading as a crusader for justice or is art interloper, we are inclined to accept his locus standi to maintain the petition.

7. The scope for interference in administrative decisions is very limited. In recent times the distinction between administrative orders and judicial or quasi-Judicial orders has practically ceased to exist in view of primacy of the rule of law. The point that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-Judicial nature, it is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary ((See State of U.P. and Ors. v. Ranu Sugar Power Co. and Ors. : AIR 1983 SC 1737). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position In his own terse language that the

relevant principles formulated by the Courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; must not act under the dictates of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. There several principles can conveniently be grouped in two main categories : (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because, irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body in acts ultra vires.

The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those class of cases which relate to deployment of troops, entering into international treaties, etc. The distinctive features of some of those recent cases signify the willingness of the Courts to assert their power to scrutinise the factual bases upon which discretionary powers have been exercised. Judicial review has developed to a stage today when, without reiterating any analysis of the steps by which the development has come about. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality" and the third "procedural impropriety". Those principles were highlighted by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Services* : (1984) 3 ALLER 935. If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See *Commissioner of Income Tax, Bombay and Others Vs. Mahindra and Mahindra Limited and Others*, ). The effect of several decisions on the question of jurisdiction have been summed up by Grahame Alodous and John Aldor in their book. "Applications for Judicial Review, Law and Practice" thus :

"There is a general presumption against ousting the jurisdiction of the Courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the Courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the

Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service* this is doubtful. Lords Diplock, Scorman and Roskill appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest."

(Also See *Padfield v. Minister of Agriculture, Fisheries and Food* : (1968) AC 997; and *Council of Civil Service Unions and Ors. v. Minister for the Civil Service* : (1984) 3 AllER 985 (H. L.).

8. So far as the ground on which extension can be granted are concerned, the *sine qua non* is the existence of "public grounds." It is to be noted that the expression used is not "public interest" or "public purpose" but "public grounds". Instructions have been issued by the Ministry of Home Affairs (the Department of Personnel and Administrative Reforms) to indicate basis for grant of extension of service-re-employment to Central Government Employees beyond the age of superannuation. Relevant portions of the instructions dated 18-5-1978 need to be quoted, which read as follows :

"It would be appreciated that in each case of extension or re-employment, it is not only the next man who misses promotion but of ten several people miss consequential promotion all along the hierarchical strata. Thus one person getting re-employment/extension means deferment of promotion of six or seven persons. Too many cases of extension in service or re-employment are not to cause frustration and affect the morale of the staff in general. Keeping in view those circum-stances the following criteria and procedure have been evolved with a view to ensure that extension/re-employment of superannuated officers are resorted to only in really exceptional circumstances.

The procedure indicated in the following paragraphs should also be followed by the Ministry/Departments in regard to posts in statutory/autonomous bodies and Public Sector undertaking the initial appointments to which are required to be made by or with approval of the President/Central Government. Ministries/Departments of the Government of India should bring to the notice of the autonomous bodies the instructions mentioned herein and request them to consider whether similar principles should not be adopted by them for other appointment.

#### 1. Criteria for Extension/Re employment :

(1) No proposal for extension of service/re-employment beyond the age of superannuation should ordinarily be considered.

(2) Extension of service/re-employment can be justified only in every fare and exceptional circumstances. Even in such cases. 60 years of age should be the dead line for non-scientific/technical posts and 62 years in the case of scientific/technical personnel. This should not be construed to mean that extension of service/re-employment can be granted to non-scientific/non-technical personnel up to the age of 60 years and to scientific/technical personnel up to the age of 62 years more or less as a matter of course. The overriding consideration for the grant of extension of service/re-employment is that it must be clearly in the public interest and in addition satisfy one of the following conditions :

(i) that other officers are not ripe enough to take over the job; or

(ii) that the retiring officer is of outstanding merit.

Test (i) would be satisfied only if there is shortage in a particular specialisation, or if it is not possible to find a suitable successor or if the officer engaged on a work or project of vital importance which is likely to produce results in a year or two. If officers in the next lower post are not eligible for promotion on the ground that they have not put in the minimum service in the lower grade prescribed under the rules, no promotion can be made to the higher grade unless officers put in the requisite length of service. But officers who are eligible for promotion to the post against which extension/re-employment is recommended, should not be rejected solely on the ground that they do not have as much experience as the retiring officer. They should be considered for promotion according to the recruitment rules and if they are found suitable they should be promoted to the posts being vacated by the retiring officer.

Test (ii) would not be satisfied by the mere fact that the specialists, e. g., a scientific or technical officer, is fit in all respects or is otherwise able to discharge effectively the duties of the post held by him.

(3) No extension of service/re-employment should be considered on the ground that a suitable successor is not available unless it is established that action to select a successor had been taken well in advance, but the selection could not be finalised in time for justifiable reasons.

(4) A proposal for the grant of extension of service/re--employment based merely on the consideration that the officer's predecessor had been given extension/re-employment should obviously not be accepted.

(5) Honorary Appointment in Public Sector Undertakings in the case of honorary appointment, e g. appointment on the Board of Directors of Public Sector Undertakings the limit may be 65 years provided that the appointment is really honorary and does not carry any substantial remuneration.

(6) Appointment of retired officer even in honorary posts of Chairman and Members of the Board of Management including the Managing Directors and the Financial Advisors of the Financial Advisor as a member of the Board of Management of any State Government, owned Corporation, Company or

Enterprises of various Public Sector Undertakings should not as a general rule be proposed for the approval of the Appointment Committee of the Cabinet. However, where the Administrative Ministry/Shoke Department consider that there are exceptional circumstances which would justify the appointment of a retired officer, a detailed justification should be given for the consideration of the Appointment Committee.

(7) Criteria for higher officers--While making proposal for extension of Service/re-employment in higher posts, it is all the more necessary to apply higher standard of efficiency to person whose appointment to the higher posts are recommended for approval of the Appointment Committee of the Cabinet. The number of top posts is bound to be the very limited and a few persons should not have been there for long."

9. The extension should be an exception and not the rule, and should not be a matter of course. It can be culled out from the instructions that the overriding consideration for the grant of extension of service/re-employment is that it must be clearly in the public interest and in addition satisfy one of the following conditions:

- (i) the other officers are not ripe enough to take over the job; or
- (ii) that the retiring officer is of outstanding merit.

Test (i) would be satisfied only if there is shortage in a particular specialisation, or if it is not possible to find a suitable successor or if the officer is engaged on a work or project of vital importance which is likely to produce results in a year or two. The officers who are eligible for promotion to the post against which extension/re-employment is recommended should not be rejected solely on the ground that they do not have as much experience as the retiring officer. Test (ii) would not be satisfied by the mere fact that the specialists, e. g., a scientific or technical officer is fit in all respects or is otherwise able to charge effectively the duties of the post held by him. No extension of service/re-employment should be considered on the ground that a suitable successor is not available unless it is established that action to select a successor had been taken well in advance, but the selection could not be finalised in time for justifiable reasons.

10. It is not the case as contended by the learned counsel for petitioner that no guidelines have been fixed in the matter of extension. The instruction dated 19-5-1978, copy of which has been annexed as Annexure-3 to the writ application, clearly indicates the basic features. The significant aspect is the question of applicability of guidelines to the facts of a particular case, and core question is whether it has been done in the present case.

11. The word "public" pertains to the people, State or community. It includes in its ordinary acceptation, any section of the public. (See Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others, ). As pointed out in Corpus Juris Secundum the word "public" is ordinarily used with reference to a

joint body of citizens. It means that it is shared in or participated in or enjoyed by people at large. Otherwise, it is common to all the people. The expression "public interest" means the act beneficial to general public. It means action necessarily taken for public purpose. Requirements of public interest vary from case to case. "Public ground" though not defined statutorily obviously means grounds for the benefit of the people concerning the public good and public interest. "Public policy" has been described as unruly horse. Mr. Justice Burrough in *Richardso v. Modish* : (1824) 2 Bing 22d described "public policy" as a very unruly horse, and when once you get astride it you never know where it will carry you. It is a vague and perhaps unsatisfactory term. Rules of public policy do not belong to a fixed or customary law; they are capable on proper occasions or expansion and modification. Public policy is a principle of judicial legislation or interpretation founded on the current needs of the community. The interest of the whole public must be taken into account. Public policy is always an unsafe and treacherous ground for legal decision. The expression "public purpose" as pointed out by Mahajan J. in *The State of Bihar Vs. Sir Kameshwar Singh*, is not capable of precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. Whatever furthers the general interest of the community as opposed to the particular interest of the individuals must be regarded as a public purpose. This test is by its very nature elastic and it is well that it should be so. So diverse and varied can be the activities, engagements and operations which may rebound to the general benefit of the public and in which the general interest of the public can be said to be really involved, it is impossible to expect a definition exclusive or inclusive which will aptly meet every particular objective within the matrix of public purpose and yet not fall in some circumstances. But the basic concept underlying the expression "public purpose" is the general interest of the community. With reference to the view of Lord Burrough that public policy is a very unruly horse, Lord Denning in *Enderby Town Football Club Ltd. v. Football Association Ltd.*: (1971) Ch. 591, observed that with a good man in the saddle, the usnruly horse can be kept in control; it can jump over an obstacle.

12. After setting out the parameters on the question of locus standi, interference in the administrative decisions, and nature of writ of quo warranto it is necessary to consider whether there is any scope for interference in the case at hand. It has to be seen whether the extension granted is supportable in the background of Rule 16 of the Rules and instructions dated 18-5-1978. it is not the personal whim, wish, view or opinion or the ispe dixit of the concerned authority de hors the material but a legitimate inference drawn from the material placed before it which is relevant for the purpose. Many of the parameters of judicial review developed in the field of administrative law are not antithetical to the field of constitutional law and they can equally apply to the domain covered by the constitutional law. The material, reason or the satisfaction of the concerned authority granting extension is justiciable. It would be open to challenge on the ground of mala fides or being based wholly on extraneous and/or irrelevant

grounds. Even if some of the materials on which the action is taken found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action. The truth or correctness of the material cannot be questioned by the Court nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the concerned authority. The ground of mala fides taken in inter alia situations would be where it is found that there is a clear case of abuse of power or what is sometimes called fraud on power. The Court will not lightly account abuse or misuse of power and will make allowance for the fact that the concerned authorities are the best Judge of the situation. These aspects were highlighted by the apex Court in *Barium Chemical Ltd. v. Company Law Board*: 1966 Supp SCR 311 though in somewhat different context.

13. Learned counsel for the petitioner fairly accepted that the prayer is for issuance of a writ of quo warranto. It is submitted that in case a writ of quo warranto is not available, an appropriate writ in the nature of mandamus can be issued. For issuance of writ of quo warranto, the office or the post held by a person against whom such a writ is claimed must be a public office and that it is held by a usurper contrary to the provisions of law. Quo warranto proceedings are a judicial enquiry in which any person holding an independent substantive public office, or franchise or liberty; if the enquiry leads to the finding that the holder of the office has no valid title to it, the issue of writ of quo warranto ousts him from that office. In other, words, the procedure of quo warranto confers jurisdiction and authority upon the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. Before a citizen can claim such a writ, the proceedings must tend to protect the public from usurpers of public office. Sometimes when the persons not entitled to public office are allowed to occupy them and to continue to hold them as a result of a connivance of the executive or with its active help, then in such cases if the jurisdiction of the Courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post can be allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto he must satisfy the Court, inter alia that the office in question is a public office and is held by an usurper without legal authority, which necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not. The classic case of *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, and Halsbury's Laws of England, 3rd Edition. Vol. II page 145 and Halsbury's Laws of England, 4th Edition, Vol. I, part 171. pages 164 and 165 throw beacon light on the question of the nature of the writ of quo warranto its purpose, procedure and use. The approach of the Court in respect of writ of mandamus is functional which is not generally relevant when the question of a writ of quo warranto arises where the emphasis is upon the status of the person against whom the writ is claimed viz., the nature of the office held by him. As observed in Prof. De Smith's *Judicial Review of Administrative Action*, Fourth Edition at page 464, an

information in the nature of quo warranto would lie in respect of public office created by the Act of Parliament provided that of a Deputy or Servant held at the will of others. Also See *Darley v. R.* (1846) 12 CLSF 520 (HL).

14. Another question that arises is whether the records containing the reasons can be gone into by this Court. The learned counsel for petitioner stated that the concerned file cannot be categorised as privileged documents and the petitioner or his counsel should be granted opportunity to see the file. We do not find substance in this plea. The plea that the petitioner has right of inspection is hardly acceptable in a case of the present nature. The relevant file was produced for our perusal. In *Council of Civil Service Union v. Minister for the Civil Service* 1985 (1) AC 374, some of the learned Judges indicated their views about inspection of records which need to be extracted below :

"Lord Fraser of Tullybelton said : "But if the decision is successfully challenged on the ground that it has been reached by a process which is unfair then the Government is under an obligation to produce evidence that the decision was, in fact, based on grounds of national security."

"According to Lord Scraman : "The point of principle in the appeal is as to the duty of the Court when in proceedings properly brought before it a question arises as to what is required in the interest of national security. The question may arise in ordinary litigation between private persons as to their private rights and obligations, and it can arise, as in this case, in proceedings for judicial review of a decision by a public authority." "But, however it arises, it is a matter to be considered by the Court in the circumstances and context of the case. Though there are limits dictated by law and common sense which the Court must observe in dealing with the question, the Court does not abdicate its judicial functions. If the question arises as a matter of fact, the Court requires evidence to be given, If it arises as a factor to be considered in reviewing the exercise of a discretionary power, evidence is also needed so that the Court may determine whether it should intervene to correct excess or abuse of the power.

Similarly Lord Roskill has said :

"The Courts have long shown themselves sensitive to the assertion by the executive that consideration of national security must preclude judicial investigation of a particular individual grievance. But even in that field the courts will not act on a mere assertion that questions of national security were involved. Evidence is required that the decision under challenge was in fact founded on those grounds. That principle exists, is, I think beyond doubt."

While considering cases under Articles 74 and 311 of the Constitution, the Courts have perused the records. (See *Union of India and Another Vs. Tulsiram Patel and Others*, ; *Bakshi Sardari Lal (Dead) through Lrs and Others Vs. Union of India (UOI) and Another*, and *A. K. Kaul and Anr. v. Union of India and Anr.* : 1995 (3) SLJ 1. In *Jamaat-E-Islami Hind Vs. Union of India (UOI)*, , it was observed that where the material is of such a nature that it requires continued

confidentiality in public interest it would be permissible for the Court or tribunal to look into the same while permitting the non-disclosure to the other party to the adjudication, The Court can for the purpose of finding whether there was application of mind look into the record while denying that opportunity to the other party, it is to be noted that administrative authorities are not required to record reasons as elaborate as an order by the Court. That Is required is application of mind to the relevant facts involved. Short reasons in support of the conclusions would suffice. The High Court is not in the nature of an appellate authority, and it his only to see whether there has been application of mind.

15. At this juncture one of the vital aspects which is to be noticed is that In respect of the first extension and second extension there was no challenge earlier and after the third extension granted to opp. party No. 3, present writ application has been filed. Though in the writ application it has been stated and it has beers submitted by the learned counsel for the petitioner that the challenge is also to the first and second extensions, we find no scope for accepting such a plea. No" reason has bean indicated as to why there was no challenge in respect of the first and second extensions earlier. An attempt to challenge the legality of extension after the period of extension is over in reality would be an attempt to close a stable door after the horse has run away. Petitioner has to submit to fait-accompli. Though the petition has practically become of academic interest after the period of extenders is over, yet considering the fact that the petition was filed when the period of extension was in currency, we have looked into the file dealing, with extension. It is to be noted that the State Government is not the sole depository of power grant extension. In fact for the extension, the proposal for extension is to be approved by the Central Government. A member of the Service can be retained in service after last date of the month in which he attains 58 years, on public grounds which shall be recorded in writing for an aggregate period not exceeding six months by the State Government; and for any period beyond six months, with the sanction of the Central Government. Petition in service beyond 60 years is not permissible unless special reasons exist therefor. The necessity for recording reasons in writing is clearly indicative of the fact that the discretion to extend must be exercised judiciously. It must be exercised honestly and in the spirit of the statute. It is not to be arbitrary, vague and fanciful but legal and regular to be exercised not capriciously but on judicial grounds and for substantial reasons. It must be governed by rule, not by humour, it must not degenerate into arbitrariness and result in discrimination which is the negation and antithesis of the ideal of equality before law, and thereby violate Article 14 of the Constitution. It has a mandatory import when facts for its exercise are present, and is not unconfirmed and vagrant. It is canalised within banks that keep it from overflowing (Per Cardozo J. in *Panama Refining Co. v. Ryan* (Hot Gil Case) (1935) 235 V. S 368). The giving of reasons is one of the fundamentals of good administration, as observed by Lord Denning in *Green v. Amalgamated Engineering Union* : (1971) 1 ALLER1148. The requirement of furnishing reasons is a shackle on acting arbitrarily and

whimsically. The reasons disclose the processes of ratiocination, the way and in the manner the adjudicatory of the administrative process travelled. The reasons indicate that the administrative authority has bona fide or otherwise. Reasons if given substitute objectivity for subjectivity. Reasons are links between the materials on which certain conclusions are based and the actual conclusions.

16. From the records produced before us, we find that some reasons have been indicated by the Chief Minister while seeking extension of opp. party No. 3. Requirement to record reasons applies both to the State Government and the Central Government. Unfortunately the Central Government has neither filed any counter-affidavit nor placed any material to show what weighed with it according to the proposal for extension. The only material placed by the State Government is a fax message from the Director of Department of Personnel and Training addressed to the Chief Minister of the State intimating approval of the Government of India under Rule 16 (1) for further extension. It goes without saying that the proposal is to be initiated by the State Government, but the final say is that of the Central Government, and therefore, it is obligated to place materials in support of its action; when its decision-making process is questioned. Unfortunately the Central Government has chosen to remain a silent spectator and has contributed very little to the adjudication of dispute by this Court. It may be that the Central Government found substance in the proposal of the State Government for granting extension. But it would have been appropriate had the materials, if any, which weighed with the Central Government to give its seal of approval, been placed before us. It should have placed materials to show that the instructions of the Department of Personnel and Training Administrative Reforms were kept "n view while acceding to the proposal for extension, particularly in view of the specific order passed by this Court on 3-7-1995 directing production of all relevant records to show as to how the proposal for extension of service of opp. party No. 3 has been approved. Direction was given to produce other relevant records, if any, besides the counter-affidavit filed by the State and opp. party No. 3. However, the matter having become really of academic interest, we do not think it necessary to go into the details, and close the matter expressing our displeasure over the silence and non-co-operation of the Central Government. Better conduct was expected from it, and not object non-compliance of a specific direction for production of records. The decision in the matter of extension is subject to judicial scrutiny and therefore when questioned, the authority deciding to grant extension is to justify his action, if called upon. Unfortunately Central Government has failed to do so. We record our appreciation of the efforts put in by Mr. S. K. Purohit, learned counsel for the petitioner and learned Advocate General for opp. parties 1 and 3 to present their respective stands and the fair manner in which they did it, unconcerned with the ultimate fate of the dispute at hand, and the concern for the broader issues involved.

The writ application is accordingly disposed of. No costs.

P.C. Naik, J.

In the present time, when there is a change of Government, say even the Chief Minister, it results in mass transfer and even change in insignificant things like managing committee of a school. Continuance and extension granted to Chief Secretary of a State at this juncture is bound to raise eyebrows. The petitioner is one such person whose eyebrows are raised. According to him, the extensions are attended with mala fide, favouritism, nepotism and ulterior motive. The State has filed a counter denying the allegations and quite naturally it has raised the question of locus standi. The Central Government has for reasons best known to it, decided not to file a counter rebutting the averments made in the petition. Under proviso (b) of Sub-rule (1) of Rule 16 of the All India Services (Death-cum-Retirement Benefit) Rules, 1958, any extension beyond the period of six months has to be with the "sanction" of the Central Government. The word "sanction" means, to assign, concur, confirm or ratify, which necessarily means some application of mind. But, in the absence of a counter by the Central Government, we are unable to know whether or not the "sanction" in the present case was with any application of mind. This was a question which also, in my opinion, required consideration. It is really unfortunate that the Central Government decided to keep mum thereby raising doubts about its conduct.

Under the relevant service conditions, retirement on attaining a particular age is the general rule and extension of service is an exception and, therefore, the rules contemplate that extension can only be on public grounds which have to be recorded in writing. This requirement has to be strictly complied with and in case of any dispute or challenge, it becomes necessary for the State to rebut the challenge by placing material before the Court to justify the extension. So also, it becomes necessary for the Central Government to show that the "sanction" to the extension was with due application of mind and not in the routine course. Fortunately, for all concerned, we are now not called upon to give a final adjudication on this issue because after September, 1995 extension has not been granted.

As regards the question of locus standi, prima facie I see no reason to doubt the bona fide of the petitioner. He is not a member of the Service- so as to raise a doubt that the challenge is with some personal motive or to benefit himself nor is there any material on record to indicate that he has been set up by some vested interest for their vested interest. Every citizen is and should be interested in seeing that actions are in accordance with rules and extension of a Chief Secretary is, in my opinion, an important matter and if the petitioner suspecting the bona fides of the Government in granting preference to a bureaucrat decides to challenge it, it cannot, in my opinion, be said that he has no locus standi.

On this subject, it may also be added that the feeling that a particular officer is indispensable and is to be continued time and again, in my opinion, is also a reflection on the efficiency and capability of others. It may, if I may say so, be an indirect way of saying that others in the line are neither fit nor capable of

shouldering the responsibilities attached to the post. It seems that the question faced by the Government was--After was, who?..... I will leave at this and not express anything further except to say that I concur with the view expressed by my learned Brother Papayat J.