

(2015) 12 SHI CK 0135
In the High Court Of Himachal Pradesh
Case No : CWP No. 4621 of 2011

Union of India and Others

APPELLANT

Vs

Shankar Lal Sharma

RESPONDENT

Date of Decision : 28-12-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 13, 14, 141, 15
Government of India Act, 1915 — Section 96-B(4)

Citation : (2016) LabIC 1057

Hon'ble Judges : Rajiv Sharma and Sureshwar Thakur, JJ.

Bench : Division Bench

Advocate : Angrez Kapoor, Advocate, vice Ashok Sharma, Assistant Solicitor General of India, for the Appellant; Ravinder N. Sharma and Pawan Gautam, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This petition is instituted against the judgment rendered by the learned Central Administrative Tribunal, Chandigarh Bench in Original Application No. 283-HP-2009, dated 02.06.2010.

2. Key facts necessary for the adjudication of this petition are that the respondent superannuated/retired from All India Radio, Shimla on 26.09.1992. He falls in the area not covered under the Central Government Health Scheme (hereinafter referred to as "CGHS" for the sake of brevity). He was given fixed medical allowance of Rs. 100/- per month. He remained under treatment from Indira Gandhi Medical College and Associated Hospitals, Shimla. He was advised to undergo surgical procedure for Coronary Artery Bypass Grafting (CABG). The doctors referred him to Prime Heart and Vascular Institute, Mohali. He remained admitted as an indoor patient from 03.06.2008 to 17.06.2008, i.e., for 15 days. He incurred an expenditure of Rs. 1,79,559/- on his treatment. He also incurred an additional sum of Rs. 20,000/- towards post operation follow up, medicines and transportation charges. He submitted medical bills for reimbursement of

medical expenses. However, the claim of the respondent was rejected on 23.12.2008 in view of letter, dated 20.08.2004. The letter, dated 23.12.2008, reads thus:

"...This has a reference to your notice dated 23.9.08 and this office regd. Letter of even No. SML-10(3)/2008-dated 20.11.08, regarding reimbursement of medical claims to Shri Shanker Lal Sharma, resident of Shanker Niwas, Middle Sangti, Summerhill, Shimla.

In this connection, it is intimated that the case was forwarded to competent authority in the Government of India i.e. Ministry of Health & Family Welfare New Delhi. The Ministry of Health & Family Welfare has sent a copy of their letter No. S. 14025/4/96-MS dt. 20Th August, 2004, which is self explanatory and relevant to the case of Shri Shanker Lal Sharma. A copy of the said letter is enclosed.

Keeping in view the instruction contained in the enclosed Ministry of Health & Family Welfare order, the medical claim of Shri Shanker Lal Sharma cannot be reimbursed.."

3. Feeling aggrieved, the respondent approached the learned Central Administrative Tribunal, Chandigarh Bench by way of an Original Application No. 283-HP-2009, seeking reimbursement of Rs. 1,79,559/- with interest @25% per annum. The Original Application was contested by the petitioner-Union of India. The petitioner-Union of India filed a detailed reply to the Original Application. According to the reply filed by the petitioner-Union of India, the matter was taken up with the Nodal Ministry, i.e., Ministry of Health & Family Welfare through their Headquarters, i.e., DG, AIR, New Delhi, so that the case of the respondent could be considered as per rules. However, the Ministry of Health & Family Welfare, New Delhi clarified the position and also made available a copy of OM, dated 20.08.2004, which clarified the entire issue about extension of CCS Medical Attendance Rules, 1944 to Central Government pensioners residing in non-CGHS areas. There is also a reference of letter, dated 25.02.2000 in the reply. It was specifically stated that the case of the respondent was not covered by the judgment, dated 13.03.2008, rendered by the Hon"ble High Court of Punjab & Haryana in CWP No. 6559 of 2006, titled as Mohinder Singh v. UOI. The learned Central Administrative Tribunal, Chandigarh Bench, relying upon the judgment of Hon"ble High Court of Punjab & Haryana in CWP No. 6559 of 2006, titled as Mohinder Singh v. UOI., allowed the Original Application on 02.06.2010 and ordered the Union of India to consider the claim of the respondent for reimbursement of medical expenditure incurred by him for his treatment in Prime Heart and Vascular institute, Mohali at the rates fixed by the Central Government under the rules or the actual expenditure, whichever was less and the claim of the respondent for follow-up treatment was ordered to be considered under the rules by the Union of India. Thereafter, a speaking order was passed by the Head of Office, All India Radio, Shimla on 07.12.2010 vide Annexure P-6. Respondent also filed a Contempt Petition for the implementation of judgment, dated 02.06.2010 and thereafter the present petition was filed assailing the judgment,

dated 02.06.2010, rendered by the learned Central Administrative Tribunal, Chandigarh Bench in Original Application No. 283-HP-2009, dated 02.06.2010.

4. The sum and substance of the grounds taken in the present petition is that O.M. dated 05.06.1998 was only a departmental communication during the process of consultation and was not meant to be a final order. It was also stated in Para-11 of the petition that a Special Leave to Appeal (Civil) CC 9939/2004 titled as Union of India and another v. Prabhakar Sridhar Bapat raising an identical issue was pending before the Hon"ble Supreme Court, wherein also the issue relating to the scope and effect of OM's dated 5.6.1998 and 20.8.2004 as well as the non-applicability of the CS(MA) Rules to pensioners in non-CGHS areas was in question. The copies of the orders passed by the Hon"ble Supreme Court have been placed on record staying the Contempt proceedings in identical matters. The relevant portion of the grounds taken in the writ petition reads thus:

"...It was only an intra departmental communication during the process of consultation, not meant to be a final order. During the process of examination of the proposal, Department of Expenditure did not agree to the proposal in view of huge financial implications. The CS(MA) Rules were never amended so as to include pensioners residing in non-CGHS areas within the ambit of the said Rules. The controversy in any event was set at rest by a subsequent OM dated 20.8.2004 issued by the Ministry of Health, wherein, it was clarified that the earlier OM dated 5.6.1998 did not have the effect of extending the CS(MA) Rules to pensioners residing in non-CGHS areas. Thus the judgment of the Punjab and Haryana High Court is also of no assistance in the matter and reliance placed by the Tribunal in that regard is misconceived. The facts and circumstances leading to the filing of the present petitioner are set out hereunder.

11. That instead of accepting the well reasoned speaking order passed by the petitioners, the respondent with a view to pressurize the petitioners filed a contempt petition before the Central Administrative Tribunal being C.P. NO. 55 of 2011, a copy whereof is annexed as Annexure P-7. The said contempt petition came up for hearing before the Tribunal on 28th April, 2011. During the course of hearing the factum of the passing of the speaking order was orally brought to the notice of the Tribunal. It was also pointed out to the Tribunal that SLP (c) NO.../2004 (CC No. 9939)---UOI & Anr v. Prabhakar Sridhar Bapat raising an identical issue was pending before the Supreme Court wherein also the issue relating to the scope and effect of Oms dated 5.6.1998 and 20.8.2004 as well as the non-applicability of the CS(MA) Rules to pensioners in non CGHS areas was in question. It was also pointed out that in the SLP the Supreme Court had stayed the contempt proceedings. A copy of the said stay order passed by the Supreme Court in SLP (c) No. .../2004 (CC No. 9939)---UOI & Anr. v. Prabhakar Sridhar Bapat is annexed as Annexure P-8..... "

5. In order to mitigate the hardships faced by the retired Government officials, the Central Government framed a Scheme called the Central Government Health Scheme (CGHS). It was started under the Ministry of Health and Family Welfare

in 1954 with the objective of providing comprehensive medical care facilities to Central Government employees, pensioners and their dependents residing in CGHS covered cities. CGHS currently covers 25 cities.

6. The Central Government took a conscious decision on the recommendations of the Fifth Central Pay Commission to grant fixed medical allowance @ Rs. 100/- per month to Central Government pensioners/family pensioners residing in areas not covered by Central Government Health Scheme administered by the Ministry of Health & Family Welfare and corresponding Health Schemes administered by other Ministries/Departments for their retired employees for meeting expenditure on day-to-day medical expenses that do not require hospitalization vide notification, dated 19.12.1997. The notification, dated 19.12.1997, reads as under:

"The undersigned is directed to state that in pursuance of Government's decision on the recommendations of the 5th Central Pay Commission announced in this Department's resolution No. 45/86/97-P & P.W. (A) dated 30.9.1977, sanction of the President is hereby accorded to the grant of fixed medical allowance @ Rs. 100 p.m. to Central Government pensioners/family pensioners/residing in areas not covered by Central Government Health Scheme administered by the Ministry of Health & Family Welfare and corresponding Health Schemes administered by other Ministries/Departments for their retired employees for meeting expenditure on day-to-day medial expenses that do not require hospitalization."

7. A pragmatic and holistic decision was taken on 05.06.1998 vide Annexure P-3 that the pensioners should not be deprived of medical facilities from the Government in their old age when they require them most and the Ministry had no objection to the extension of the CS(MA) Rules to the Central Government pensioners residing in non-CGHS areas as recommended by the Pay Commission. The O.M. dated 05.06.1998 reads as under:

"The undersigned is directed to refer to the Department of Pension and Pensioners' Welfare, O.M. No. 45/74/97-PP & PW(C), dated 15.04.1997 on the above subject and to say that it has been decided by this Ministry that the pensioners should not be deprived of medical facilities from the Government in their old age when they require them most. This Ministry has, therefore, no objection to the extension of the CS(MA) Rules to the Central Government pensioners residing in non-CGHS areas as recommended by the Pay Commission. However, the responsibility of administrating the CS(MA) Rules for pensioners cannot be handled by CGHS. It should be administered by the respective Ministries/Departments as in the case of serving employees covered under CS(MA) Rules, 1944. The Department of Pension and Pensioners Welfare would need to have the modalities worked out for the implementation of the rules in consultation with the Ministries/Department prior to the measure being introduced to avoid any hardship to the pensioners. The pensioners could be given a one-time option at the time of their retirement for medical coverage under CGHS or under the CS(MA) Rules, 1944. In case of a pensioner opting for

CGHS facilities, he/she would have to get himself/herself registered in the nearest CGHS city for availing of hospitalization facilities. In such cases, the reimbursement claims would be processed by the Additional Directors, CGHS of the concerned city. For those opting for medical facilities under the CS(MA) Rules, the scrutiny of the claims would have to be done by the parent office as in the case of serving employees and the payment would also have to be made by them. The list of AMAs to be appointed under CS(MA) Rules would be decided Ministry/Department-wise as provided under the rules. The beneficiaries of the CS(MA) Rules, 1944 would be entitled to avail of hospitalization facilities as provided under these rules.

The Departments of Pension and Pensioners' Welfare are requested to take further necessary action in the matter accordingly."

8. The Department of Pension and Pensioners' Welfare by making reference to O.M. dated 15.4.1997 in O.M. dated 05.06.1998 has decided that the pensioners should not be deprived of medical facilities from the Government in their old age when they require them most. Thus, the Ministry had no objection to the extension of the CS(MA) Rules to the Central Government pensioners residing in non-CGHS areas as recommended by the Pay Commission. However, the responsibility of administering the CS(MA) Rules for pensioners cannot be handled by CGHS. It was to be administered by the respective Ministries/Departments as in the case of serving employees covered under CS(MA) Rules, 1944. The Department of Pension and Pensioners Welfare was required to have the modalities worked out for the implementation of the rules in consultation with the Ministries/Department prior to the measure being introduced to avoid any hardship to the pensioners. The pensioners were required to be given one time option at the time of their retirement for medical coverage under CGHS or under the CS(MA) Rules, 1944. In case a pensioner opts for CGHS facilities, he/she would have to get himself/herself registered in the nearest CGHS city for availing of hospitalization facilities. In such cases, the reimbursement claims were to be processed by the Additional Directors, CGHS of the concerned city. Those opting for medical facilities under the CS(MA) Rules, the scrutiny of the claims was to be done by the parent office as in the case of serving employees and the payment was also to be made by them. The Department of pension and Pensioners' Welfare was required to take further necessary action in the matter accordingly.

9. One Sh. Prabhakar Sridhar Bapat, who retired from the service of Postal Department on 01.03.1991, suffered from Infero Postero Lateral Stemi. He was admitted in the nearest private hospital, namely, Dinanath Mangeshkar Hospital and Research Center. Angiography and Angioplasty was done on 28th and 30th September, 2002. He was discharged from the hospital on 02.10.2002. He submitted an application for reimbursement of medical expenses of Rs. 1,55,307.54/- to Post Master General, Vadodara vide letter, dated 11.02.2003. He was informed vide letter, dated 28.02.2003 that the Civil Servants (Medical

Attendance) Rules (in short CS(MA) Rules) do not apply to retired Government Officials. On this ground, the reimbursement was not allowed. He filed an Original Application No. 205 of 2003 before the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad, which was allowed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad on 10.11.2003. There is reference of O.M. dated 05.06.1998 in para No. 7 of the judgment. The learned Central Administrative Tribunal, Ahmedabad Bench has made observations in para-9 of the judgment that the decisions discussed above have consistently held that in view of Order dated 5.6.1998, the terms of CS(MA) Rules would be applicable to the retiree of the Postal Department, who were not residing in the areas covered under the Scheme or have not opted for Medical Allowance. The Union of India was directed to sanction the admissible amount in terms of CS(MA) Rules and pay the same within a period of three months to the applicant. Feeling aggrieved by the judgment, dated 10.11.2003, rendered by the learned Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad, the Union of India preferred SCA No. 3843/2004 before the High Court of Gujarat at Ahmedabad. The Division Bench of Gujarat High Court dismissed the same on 02.04.2004. The Union of India preferred Special Leave to Appeal (Civil) No. 10659/05 against the judgment, dated 02.04.2004. The Hon'ble Supreme Court intervened and stayed the Contempt proceedings on 02.05.2005. These copies are on the record of this case, though subsequently SLPs were dismissed and the stay orders were vacated, as discussed in para (supra).

10. It would be apt at this stage to reiterate that the Original Application filed by the respondent bearing Original Application No. 283-HP-2009 was allowed by the Central Administrative Tribunal, Chandigarh Bench by placing reliance on the judgment, dated 13.3.2008, rendered by the Punjab and Haryana High Court in CWP No. 6559 of 2006, titled as Mohinder Singh v. Union of India and others.

11. Now, we would advert to Office Memorandum, dated 20.08.2004, Annexure P-4, which reads as under:

"Office Memorandum

Sub:-- Clarification on the views of this Department on recommendation of the 5th Central Pay Commission on extension of CS(MA) Rules, 1944 to Central Government pensioners residing in areas not covered by CGHS.

The CS(MA) Rules, 1944 is not applicable to the Central Government pensioners. The 5th Central Pay Commission had recommended extension of CS(MA) Rules, 1944 to the Central Government pensioners residing in the areas not covered by CGHS. On a reference received from the Department of Pension and Pensioners Welfare on this subject, the response of the Department of Health had been conveyed through the O.M. No. S. 14025/4/96-MS dated 5.6.1998. The response of this Department was that it did not have any objections to the proposal of extension of CS(MA) Rules, 1944 to central government pensioners residing in non-CGHS areas as recommended by the 5th Pay Commission, subject to the

condition that the responsibility of administering the CS(MA) Rules, 1944 for pensioners would be of the Departments/Ministries concerned.

The said O.M. dated 5.6.1998 was in reply to a reference in O.M. No. 457497 PP & PW (c) dated 15.4.97 from the Department of Pensions and Pensioners' Welfare. After that also communication between these two departments had continues on this subject. In fact, in a subsequent O.M. of the same number dated 12.1.1999, the views of all the Ministries/Departments of the Government of India had been sought before a final decision could be taken. But unfortunately, the O.M. dated 5.6.1998 has been misinterpreted by some pensioners as the final order of the Government of India to extend CS(MA) Rules, 1944 to pensioners. A lot of avoidable litigation has already taken place, because some pensioners have obtained favourable orders from various courts/tribunals on the basis of the said O.M. dated 5.6.1998.

It is therefore considered necessary to clarify unequivocally that the O.M. dated 5.6.1998 was not intended to be a final order extending the applicability of CS(MA) Rules, 1944 to pensioners. In fact, it is not possible for any individual department to take such policy decisions without obtaining views of various departments, and particularly, the Department of Expenditure. Such being the case, in the process of examining the recommendation of the 5th Pay Commission on this issue, the Department of Expenditure has categorically said that in view of huge financial implications, it is not feasible to extend CS(MA) Rules, 1944 to pensioners.

Therefore, any interpretation based on the O.M. dated 5.6.1998 of this Department that the pensioners come within the purview of the CS(MA) Rules, 1944 is wholly misplaced."

12. The gist of O.M. dated 20.08.2004 is that in sequel to O.M. dated 12.1.1999, the views of all the Ministries/Departments of the Government of India were sought before a final decision could be taken. However, O.M. dated 5.6.1998 was misinterpreted by some pensioners as the final order of the Government of India to extend CS(MA) Rules, 1944 to pensioners. It is was clarified that O.M. dated 5.6.1998 was not intended to be a final order extending the applicability of CS(MA) Rules, 1944 to pensioners. In fact, according to O.M. dated 20.08.2004, it was not possible for any individual department to take such policy decisions without obtaining views of various departments and particularly the Department of Expenditure.

13. In order to mitigate the hardships faced by the retired employees, who were not covered under the CS(MA) Rules, 1944, the Central Government, as noticed above, has framed Central Government Health Scheme. However, the area covered under the Scheme was limited to 25 cities. A conscious decision was taken to give benefit to those retirees, who do not fall within the areas covered under the Scheme by giving them fixed medical allowance @ Rs. 100/- per month on 19.12.1997.

14. The decision, dated 5.6.1998 is in sequel to the recommendations made by the 5th Pay Commission of Central Government. The Pay Commission recommendations are made by taking into consideration all the pros and cons put before it by all the stake holders. The decision has been taken primarily to redress the grievance of all those retired Government Officials, who were not covered under CGHS and were also not covered under CS(MA) Rules, 1944. These pensioners as per O.M., dated 5.6.1998 were to be given one time option at the time of their retirement for medical coverage under CGHS or under the CS(MA) Rules, 1944. In case a of a pensioner opting for CGHS facilities, he/she was to get himself/herself registered in the nearest CGHS city for availing of hospitalization facilities and in such cases, the reimbursement claim was to be processed by the Additional Directors, CGHS of the concerned city and for those opting for medical facilities under the CS(MA) Rules, the scrutiny of the claims was to be done by the parent office as in the case of serving employees and the payment was to be made by them.

15. A specific ground has been taken in the petition that the Hon"ble Supreme Court was seized of the matter relating to the scope and effect of O.Ms. dated 05.06.1998 and 20.08.2004 as well as the non-applicability of the CS(MA) Rules to pensioners in non CGHS areas was in question.

16. We do not accept the plea taken in the petition that O.M. dated 5.6.1998 was intra departmental communication. The decision dated 5.6.1998 was a conscious decision. It was a final order. The respondent and similarly situated persons have changed their position by getting themselves treated from various institutes legitimately expecting that they are covered under CS(MA) Rules. According to Office Memorandum, dated 20.08.2004, the view of all the Ministries/ Departments of the Government of India were sought before a final decision could be taken. This Office Memorandum is dated 20.08.2004, but till date no material has been placed on record that O.M., dated 05.06.1998 was withdrawn, rescinded, superseded or any corrigendum was issued. The operation of O.M., dated 05.06.1998 has not been suspended. The only requirement as per O.M., dated 05.06.1998 was to work out the modalities in consultation with the Ministries/Department, that too, to avoid any hardship to the pensioners. It was to be followed by the Ministerial Act. The pensioners were to be given one time option at the time of their retirement either to opt for CGHS or under the CS(MA) Rules, 1944 for medical coverage. There was sufficient time for consultation with various Departments from 05.06.1998 to 20.08.2004. Though it is stated that the Department of Expenditure has categorically said that in view of huge financial implications, it is not feasible to extend CS(MA) Rules, 1944 to pensioners, but that decision has not been placed on record. The issue was with regard to the applicability of CGHS Scheme floated in 1954 and the applicability of CS(MA) Rules, 1944 to the retirees, who were not residing in the areas covered by CGHS Scheme. The O.M. dated 05.06.1998 cannot be stated to be a decision in isolation since it is based on the recommendations made by the 5th Pay Commission of the Central Government. The main objective underlined in the

issuance of O.M. dated 05.06.1998 was to mitigate the hardships faced by the retired Government officials.

17. The Central Government must act like a model employer. Ours is a socialist welfare State. The difficulties faced by the retired Government officials have rightly been redressed by O.M. dated 05.06.1998. Thus, O.M., dated 05.06.1998 supplements the CS(MA) Rules by extending the scope of health coverage to retired Government Officials as well.

18. The matter is required to be considered from another angle. There is a Scheme floated by the Central Government in 1954, whereby, the persons who have been enrolled under the Scheme can get themselves treated in 25 cities across the country. All the Government Officials who retired from the Central Government constitute a homogeneous class whether they are living in station "A" or "B" after their retirement. There is no reason assigned why the respondent and similarly situated person have been left out from the applicability of CGHS or CS(MA) Rules, 1944. It is a case of invidious discrimination. The CGHS facilities could not be restricted to specified places. The respondent and similarly situated person are to be treated at par with those persons who are residing at Delhi and other areas covered under CGHS. There is no intelligible differentia so as to differentiate the retired Government officials vis-?-vis some other retired persons only on the ground of residing in a particular place. The objective of the Scheme is to provide better health facilities to the retired Government officials. It is with this objective that O.M. dated 5.6.1998 was issued.

19. In Sant Ram Sharma Vs. State of Rajasthan and Another, , their Lordships of the Hon"ble Supreme Court have held that it cannot be said that till statutory rules governing promotion to selection grade posts are framed government cannot issue administrative instructions regarding principles to be followed. Their Lordships have held as under:

"7. We proceed to consider the next contention of Mr. N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory Rules by administrative instructions but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

8. In *B.N. Nagarajan and Others Vs. State of Mysore and Others*, , it was pointed out by this Court that it is not obligatory under the proviso to Art. 309 of the Constitution to make rules of recruitment etc., before a service can be constituted or a post created or filled, and secondly, the State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power, to make laws. It follows from this that the State Government will have executive power in respect of Sch. 7, List II Entry 41. State Public Services, and there is nothing in the terms of Art. 309 of the Constitution which abridges the power of the executive to act under Art. 162 of the Constitution without a law. A similar view was taken by this Court in *T. Cajee Vs. U. Jormanik Siem and Another*, where Wanchoo. J., as he then was, who delivered judgment on behalf of the majority, observed as follows at pp. 762-764 of the Report (SCR) = (at p. 281 of AIR) :

"The High Court has taken the view that the appointment and succession of a Siem was not an administrative function of the District Council and that the District Council could only act by making a law with the assent of the Governor so far as the appointment and removal of a Siem was concerned. In this connection, the High Court relied on para 3 (1)(g) of the Schedule, which lays down that the District Council shall have the power to make laws with respect to the appointment and succession of Chiefs and Headmen. The High Court seems to be of the view that until such a law is made there could be no power of appointment of a Chief or Siem like the respondent and in consequence there would be no power of removal either. With respect, it seems to us that the High Court has read far more into para 3(1)(g), than is justified by its language. Paragraph 3(1) is in fact something like a legislative list and enumerates the subjects on which the District Council is competent to make laws. Under Para 3(1) (g) it has power to make laws with respect to the appointment or succession of Chiefs or Headmen and this would naturally include the power to remove them. But it does not follow from this that the appointment or removal of a Chief is a legislative act or that no appointment or removal can be made without there being first a law to that effect..... Further once the power of appointment falls within the power of administration of the district the power of removal of officers and others so appointed would necessarily follow as a corollary. The Constitution could not have intended that all administration in the autonomous districts should come to a stop till the Governor made regulations under para 19(1)(b) or till the District Council passed laws under Para 3(1)(g). The Governor in the first instance and the District Councils thereafter were vested with the power to carry on the administration and that in our opinion included the power to appoint and remove the personnel for carrying on the administration. Doubtless when regulations are made under Para 19(1)(b) or laws are passed under Para 3(1) with respect to the appointment or removal of the personnel of the administration, the administration authorities would be bound to follow the regulations so made or the laws so passed. But from this it does not follow that till the regulations were made or the laws were passed,

there could be no appointment or dismissal of the personnel of the administration. In our opinion, the authorities concerned would at all relevant times have the power to appoint or remove administrative personnel under the general power of administration vested in them by the Sixth Schedule. The view therefore taken by the High Court that there could be no appointment or removal by the District Council without a law having been first passed in that behalf under Para 3(1)(g) cannot be sustained."

9. We pass on to consider the next contention of Mr. N.C. Chatterjee that if the executive Government is held to have power to make appointments and lay down conditions of service without making rules in that behalf under the proviso to Art. 309, there will be a violation of Arts. 14 and 16 because the appointments would be arbitrary and capricious. In our view, there is no substance in this contention of the petitioner. If the State of Rajasthan had considered the case of the petitioner alongwith the other eligible candidates before appointments to the selection posts there would be no breach of the provisions of Arts. 14 and 16 of the Constitution because everyone who was eligible in view of the conditions of service and was entitled to consideration was actually considered before promotion to those selection posts were actually made. It was said by Mr. C.B. Agarwala on behalf of the respondents that an objective evaluation of the merit of the officers is made each year and promotion is made on scrutiny of the record sheets dealing with the competence, efficiency and experience of the officers concerned. In the present case, there is no specific allegation by the petitioner in the writ petition that his case was not considered alongwith respondents 3 and 4 at the time of promotion to the posts of Deputy Inspector General of Police in 1955 or to the rank of Inspector General of Police or Additional Inspector General of Police in 1966. There was, however, a vague suggestion made by the petitioner in paragraph 68 of his rejoinder petition dated July 17, 1967 that "the State Government could not have possibly considered my case, as they considered and even in this counter-affidavit consider Shri Hanuman Sharma and Shri Sultan Singh senior to me by the new type of seniority they have invented for their benefit". Even though there is no specific allegation by the petitioner that there was no consideration of his case, respondent No. 1 has definitely asserted in paragraphs 23, 25, 40 and 44 of the counter-affidavit that at the time of promotion of respondents 3 and 4 to the selection posts of Deputy Inspector General of Police and of Inspector General of Police the case of the petitioner was considered. We are therefore of the opinion that the petitioner is unable to substantiate his argument that there was no consideration of his case at the time of promotion of respondents 3 and 4 to the selection posts. We must therefore proceed on the footing that respondent No. 1 had considered the case of the petitioner and taken into account the record, experience and merit of the petitioner at the time of the promotion of respondents 3 and 4 to the selection grade-posts. It is therefore not possible to accept the argument of Mr. N.C. Chatterjee that there was any violation of the constitutional guarantee under Arts. 14 and 16 of the Constitution in the present

case. Mr. N.C. Chatterjee argued that the introduction of the idea of merit into the procedure of promotion brings in an element of personal evaluation, and that personal evaluation, opens the door to the abuses of nepotism and favouritism, and so, there was a violation of the constitutional guarantee under Arts. 14 and 16 of the Constitution. We are unable to accept this argument as well founded. The question of a proper promotion policy depends on various conflicting factors. It is obvious that the only method in which absolute objectivity can be ensured is for all promotions to be made entirely on grounds of seniority. That means that if a post falls vacant it is filled by the person who has served longest in the post immediately below. But the trouble with the seniority system is that it is so objective that it fails to take any account of personal merit. As a system it is fair to every official except the best ones, an official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. But, though the system is fair to the officials concerned, it is a heavy burden on the public and a great strain on the efficient handling of public business. The problem, therefore is how to ensure reasonable prospect of advancement to all officials and at the same time to protect the public interest in having posts filled by the most able man? In other words, the question is how to find a correct balance between seniority and merit in a proper promotion-policy. In this connection Leonard D. White has stated as follows :

"The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole organization. The main interest to be served is the public interest, not the personal interest of members of the official group concerned the public interest is best secured when reasonable opportunities for promotion exist for all qualified employees, when really superior civil servants are enabled to move as rapidly up the promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of merit. For the merit system ought to apply as specifically in making promotions as in original recruitment..... Employees often prefer the rule of seniority, by which the eligible longest in service is automatically awarded the promotion within limits, seniority is entitled to consideration as one criterion of selection. It tends to eliminate favouritism or the suspicion thereof; and experience is certainly a factor in the making of a successful employee. Seniority is given most weight in promotions from the lowest to other subordinate positions. As employees move up the ladder of responsibility, it is entitled to less and less weight. When seniority is made the sole determining factor, at any level, it is a dangerous guide. It does not follow that the employee longest in service in a particular grade is best suited for promotion to a higher grade; the very opposite may be true."

(Introduction to the Study of Public Administration, 4th Edn., pp. 380, 383).

As a matter of long administrative practice promotion to selection grade posts in the Indian Police Service has been based on merit and seniority has been taken

into consideration only when merit of the candidates is otherwise equal and we are unable to accept the argument of Mr. N.C. Chatterjee that this procedure violates, in any way, the guarantee under Arts. 14 and 16 of the Constitution."

20. Their Lordships of the Hon'ble Supreme Court in *Excel Wear and Others Vs. Union of India (UOI) and Others*, have held that the difference pointed out by Supreme Court in *Akadasi Padhan Vs. State of Orissa*, between the doctrinaire approach to the problem of socialism and the pragmatic one is very apt and may enable the Courts to lean more and more in favour of nationalization and State ownership of an industry after the addition of the word "Socialist" in the Preamble of the Constitution. But so long as the private ownership of an industry is recognised and governs an overwhelmingly large proportion of our economic structure, it is possible to say that principles of socialism and social justice can be pushed to such an extreme so as to ignore completely or to a very large extent the interests of another section of the public namely the private owners of the undertakings? Their Lordships have held as under:

"24. We now proceed to deal with the rival contentions. But before we do so, we may make some general observations. Concept of socialism or a socialist state has undergone changes from time to time, from country to country and from thinkers to thinkers. But some basic concept still holds the field. In the case of *Akadasi Padhan Vs. State of Orissa*, the question for consideration was whether a law creating a State monopoly is valid under the latter part of Art. 19(6) which was introduced by the (First Amendment) Act, 1951. While considering that question, it was pointed out by Gajendragadkar J., as he then was, at page 704 (of SCR) : (at p. 1053 of AIR):--

"With the rise of the philosophy of Socialism, the doctrine of State ownership has been often discussed by political and economic thinkers. Broadly speaking, this discussion discloses a difference in approach. To the socialist, nationalisation or State ownership is a matter of principle and its justification is the general notion of social welfare. To the rationalist, nationalisation or State ownership is a matter of expediency dominated by considerations of economic efficiency and increased output of production. This latter view supported nationalisation only when it appeared clear that State ownership would be more efficient, more economical and more productive. The former approach was not very much influenced by these considerations, and treated it a matter of principle that all important and nation-building industries should come under State control. The first approach is doctrinaire, while the second is pragmatic. The first proceeds on the general ground that all national wealth and means of producing it should come under national control, whilst the second supports nationalisation only on grounds of efficiency and increased output."

The difference pointed out between the doctrinaire approach to the problem of socialism and the pragmatic one is very apt and may enable the courts to lean more and more in favour of nationalisation and State ownership of an industry after the addition of the word "Socialist" in the Preamble of the Constitution. But

so long as the private ownership of an industry is recognised and governs an overwhelmingly large proportion of our economic structure, is it possible to say that principles of socialism and social justice can be pushed to such an extreme so as to ignore completely or to a very large extent the interests of another section of the public namely the private owners of the undertakings? Most of the industries are owned by limited companies in which a number of shareholders, both big and small, holds the shares. There are creditors and depositors and various other persons connected with or having dealings with the undertaking. Does socialism go to the extent of not looking to the interests of all such persons? In a State owned undertaking the Government or the Government company is the owner. If they are compelled to close down, they, probably, may protect the labour by several other methods at their command, even, sometimes at the cost of the public exchequer. It may not be always advisable to do so but that is a different question. But in a private sector obviously the two matters involved in running it are not on the same footing. One part is the management of the business done by the owners or their representatives and the other is running the business for return to the owner not only for the purpose of meeting his livelihood or expenses but also for the purpose of the growth of the national economy by formation of more and more capital. Does it stand to reason that by such rigorous provisions like those contained in the impugned sections all these interests should be completely or substantially ignored? The questions posed are suggestive of the answers."

21. Their Lordships of the Hon"ble Supreme Court in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, have held that merely because the Directive Principles are non-justiciable, it does not follow that they are in any way subservient or inferior to the Fundamental Rights. The Directive Principles impose an obligation on the State to take positive action for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all, so that individual liberty will become a cherished value and the dignity of the individual a living reality, not only for a few privileged persons but for the entire people of the country. Their Lordships have held as under:

"112. Now it is interesting to note that although fundamental" rights and directive principles appear in the Constitution as distinct entities, there was no such demarcation made between them during the period prior to the framing of the Constitution. If we may quote the words of Granville Austin in his book.

Both types of rights had developed as a common demand, products of the national and social revolutions, of their almost inseparable intertwining, and of the character of Indian politics itself. They were both placed on the same pedestal and treated as falling within the same category compendiously described as "fundamental Rights". The Sapru Committee in its constitutional proposals made in 1945, recommended that the declaration of fundamental rights in its wider sense was absolutely necessary and envisaged these rights as

falling in two classes; one justiciable and the other non-justiciable the former being enforceable in courts of law and the latter, not. The committee however, felt difficulty in dividing the fundamental rights into these two classes and, left the whole issue to be settled by the Constitution-making body with the observation that though the task was difficult, it was by no means impossible. This suggestion of the Sapru Committee perhaps drew its inspiration from the Irish Constitution of 1937, which made a distinction between justiciable and non-justiciable rights and designated the former as Fundamental Rights and the latter as Directive Principles of Social Policy. Dr. Lauterpacht also made a similar distinction between justiciable and non-justiciable rights in his "international Bill of the Rights of Man". The substantial provisions of this Bill were in two parts; Part I dealt with personal or individual rights enforceable in courts of law while Part II set out social and economic rights incapable of or unsuitable for such enforcement. Sir B.N. Rau, who was the Constitutional Adviser to the government of India, was considerably impressed by these ideas and he suggested that the best way of giving effect to the objectives set out in the Objectives Resolution was to split up the objectives into Fundamental Rights and Fundamental Principles of State Policy, the former relating to personal and political rights enforceable in courts of law and the latter relating to social and economic rights and other matters, not so enforceable and proposed that the Ch. on fundamental rights may be split up into two parts; Part "a" dealing with the latter kind of rights under the heading "fundamental Principles of Social Policy" and Part "b" dealing with the former under the heading "fundamental Rights". The Fundamental Rights Sub-Committee also recommended that "the list of fundamental rights should be prepared in two parts, the first part consisting of rights enforceable by appropriate legal process and the second consisting of directive principles of social policy". A week later, while moving for consideration, the Interim Report on Fundamental Rights, Sardar Vallabhbhai Patel said:

This is a preliminary report or an interim report because the committee when it sat down to consider the question of fixing the fundamental rights and its incorporation into the Constitution, came to the conclusion that the fundamental rights should be divided into two parts the first part justiciable and the other non-justiciable. This position was reiterated by Sardar Vallabhbhai Patel when he said while presenting the Supplementary Report. There were two parts of the Report; one contained fundamental rights which were justiciable and the other part of the Report referred to fundamental rights which were not justiciable but were directives.. It will, therefore, be seen that from the point of view of importance and significance, no distinction was drawn between justiciable and non-justiciable rights and both were treated as forming part of the rubric of Fundamental Rights, the only difference being that whereas the former were to be enforceable in courts of law, the latter were not to be so enforceable. This proposal of dividing the fundamental rights into two parts, one part justiciable and the other non-justiciable, was however not easy of adoption because it was a difficult task to decide in which category a particular fundamental right should be included. The

difficulty may be illustrated by pointing out that at one time the right to primary education was included in the draft list of fundamental rights, while the equality clause figured in the draft list of fundamental principles of social policy. But ultimately a division of the fundamental rights into justiciable and non-justiciable rights was agreed upon by the Constituent Assembly and the former were designated as "fundamental Rights" and the latter as "directive Principles of State Policy". It has sometimes been said that the fundamental rights deal with negative obligations of the State not to encroach on individual freedom, while the directive principles impose positive obligations on the State to take certain kind of action. But, I find it difficult to subscribe to this proposition because, though the latter part may be true that the directive principles require positive action to be taken by the State, it is not wholly correct to say that the fundamental rights impose only negative obligations on the State. There are a few fundamental rights which have also a positive content and that has been, to some extent, unfolded by the recent decisions of this court in *Hussainara Khatoon (I) v. State of Bihar*, *Madhav Hayawadanrao Hoskot v. State of Maharashtra* and *Sunil Batra (I) v. Delhi Administration*. There are new dimensions of the fundamental rights which are being opened up by this court and the entire jurisprudence of fundamental rights is in a stage of resurgent evolution. Moreover, there are three Articles, namely, Article 15(2), Article 17 and Article 23 within the category of fundamental rights which are designed to protect the individual against the action of other private citizens and seen to impose positive obligations on the State to ensure this protection to the individual. I would not, therefore, limit the potential of the fundamental rights by subscribing to the theory that they are merely negative obligations requiring the State to abstain as distinct from taking positive action. The only distinguishing feature, to my mind, between fundamental rights and directive principles is that whereas the former are enforceable in a court of law, the latter, are not. And the reason for this is obvious. It has been expressed succinctly by the Planning Commission in the following words :

The non-justifiability clause only provides that the infant State shall not be immediately called upon to account for not fulfilling the new obligations laid upon it. A State just awakened to freedom with its many preoccupations might be crushed under the burden unless it was free to decide the order, the time, the place and the mode of fulfilling them. The social and economic rights and other matters dealt with in the directive principles are by their very nature incapable of judicial enforcement and moreover, the implementation of many of those rights would depend on the state of economic development in the country, the availability of necessary finances and the government's assessment of priority of objectives and values and that is why they are made non-justiciable. But merely because the directive principles are non-justiciable, it does not follow that they are in any way subservient or inferior to the fundamental rights.

113. The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the

socio-economic revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. Yet despite the permeation of the entire Constitution by the aim of national renaissance, says Granville Austin,

The core of the commitment to the social revolution lies.. in the fundamental rights and the directive principles of State policy. Those are the conscience of the Constitution and, according to Granville Austin, they are designed to be the chief instruments in bringing about the great reforms of the socio-economic revolution and realising the constitutional goals of social, economic and political justice for all. The fundamental rights undoubtedly provide for political justice by conferring various freedoms on the individual, and also make a significant contribution to the fostering of the social revolution by aiming at a society which will be egalitarian in texture and where the rights of minority groups will be protected. But it is in the directive principles that we find the clearest statement of the socioeconomic revolution. The directive principles aim at making the Indian masses free in the positive sense, free from the passivity engendered by centuries of coercion by society and by nature, free from the abject physical conditions that had prevented them from fulfilling their best selves. The fundamental rights are no doubt important and valuable in a democracy, but there can be no real democracy without social and economic justice to the common man and to create socio-economic conditions in which there can be social and economic justice to everyone, is the theme of the directive principles. It is the directive principles which nourish the roots of our democracy, provide strength and vigour to it and attempt to make it a real participatory democracy which does not remain merely a political democracy but also becomes social and economic democracy with fundamental rights available to all irrespective of their power, position or wealth. The dynamic provisions of the directive principles fertilise the static provisions of the fundamental rights. The object of the fundamental rights is to protect individual liberty, but can individual liberty be considered in isolation from the socio-economic structure in which it is to operate. There is a real connection between individual liberty and the shape and form of the social and economic structure of the society. Can there be any individual liberty at all for the large masses of people who are suffering from want and privation and who are cheated out of their individual rights by the exploitative economic system? Would their individual liberty not come in conflict with the liberty of the socially and economically more powerful class and in the process, get mutilated or destroyed? It is axiomatic that the real controversies in the present day society are not between power and freedom but between one form of liberty and another. Under the present socio-economic system, it is the liberty of the few which is in conflict with the liberty of the many. The directive principles therefore) impose an obligation on the State to take positive action for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all, so that individual liberty will become a cherished value and the dignity of the individual a living reality, not only for a few privileged persons but for the entire people of the country. It will

thus be seen that the directive principles enjoy a very high place in the constitutional scheme and it is only in the framework of the socio-economic structure envisaged in the directive principles that the fundamental rights are intended to operate, for it is only then they can become meaningful and significant for the millions of our poor and deprived people who do not have even the bare necessities of life and who are living below the poverty level.

117. Now on this question Article 37 is emphatic and makes the point in no uncertain terms. It says that the directive principles are "nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws". There could not have been more explicit language used by the Constitution-makers to make the directive principles binding on the State and there can be no doubt that the State is under a constitutional obligation to carry out this mandate contained in Article 37 . In fact, non-compliance with the directive principles would be unconstitutional on the part of the State and it would not only constitute a breach of faith with the people who imposed this constitutional obligation on the State but it would also render a vital part of the Constitution meaningless and futile. Now it is significant to note that for the purpose of the directive principles, the "state" has the same meaning as given to it under Article 13 for the purpose of the fundamental rights. This would mean that the same State which is injected from taking any action in infringement of the fundamental rights is told in no uncertain terms that it must regard the directive principles as fundamental in the governance of the country and is positively mandated to apply them in making laws. This gives rise to a paradoxical situation and its implications are far-reaching. The State is on the one hand, prohibited by the constitutional injunction in Article 13 from making any law or taking any executive action which would infringe any fundamental right and at the same time it is directed by the constitutional mandate in Article 37 to apply the directive principles in the governance of the country and to make laws for giving effect to the directive principles. Both are constitutional obligations of the State and the question is, as to which must prevail when there is a conflict between the two. When the State makes a law for giving effect to a directive principle, it is carrying out a constitutional obligation under Article 37 and if it were to be said that the State cannot make such a law because it comes into conflict with a fundamental right, it can only be on the basis that fundamental rights stand on a higher pedestal and have precedence over directive principles. But, as we have pointed out above, it is not correct to say that under our constitutional scheme, fundamental rights are superior to directive principles or that directive principles must yield to fundamental rights. Both are in fact equally fundamental and the courts have therefore in recent times tried to harmonise them by importing the directive principles in the construction of the fundamental rights. It has been laid down in recent decisions of this court that for the purpose of determining the reasonableness of the restrictions imposed on fundamental rights, the court may legitimately take into account the directive principles and where executive action is taken or legislation

enacted for the purpose of giving effect to a directive principle, the restriction imposed by it on a fundamental right may be presumed to be reasonable. I do not propose to burden this opinion with reference to all the decided cases where this principle has been followed by the court, but I may refer only to one decision which, I believe, is the latest on the point, namely, *Pathumma v. State of Kerala*, where Fazal Ali, J. summarised the law in the following words :

One of the tests laid down by this court is that, in judging the reasonableness of the restrictions imposed by clause (5) of Article 19, the court has to bear in mind the directive principles of State policy. So also in the *State of Bihar v. Kameshwar Singh*, this court relied upon the directive principle contained in Article 39 in arriving at its decision that the purpose for which the Bihar Zamindari Abolition legislation had been passed was a public purpose. The principle accepted by this court was that if a purpose is one falling within the directive principles, it would definitely be a public purpose. It may also be pointed out that in a recent decision given by this court in *Kasturi Lal Lakshmi Reddy v. State of J. and K.* it has been held that every executive action of the government, whether in pursuance of law or otherwise, must be reasonable and informed with public interest and the yardstick for determining both reasonableness and public interest is to be found in the directive principles and therefore, if any executive action is taken by the government for giving effect to a directive principle, it would *prima facie* be reasonable and in public interest. It will, therefore, be seen that if a law is enacted for the purpose of giving effect to a directive principle and it imposes a restriction on a fundamental right, it would be difficult to condemn such restriction as unreasonable or not in public interest. So also where a law is enacted for giving effect to a directive principle in furtherance of the constitutional goal of social and economic justice it may conflict with a formalistic and doctrinaire view of equality before the law, but it would almost always conform to the principle of equality before the law in its total magnitude and dimension, because the equality clause in the Constitution does not speak of mere formal equality before the law but embodies the concept of real and substantive equality which strikes at inequalities arising on account of vast social and economic differentials and is consequently an essential ingredient of social and economic justice. The dynamic principle of egalitarianism fertilizes the concept of social and economic justice; it is one of its essential elements and there can be no real social and economic justice where there is a breach of the egalitarian principle. If, therefore, there is a law enacted by the legislature which is really and genuinely for giving effect to a directive principle with a view to promoting social and economic justice, it would be difficult to say that such law violates the principle of egalitarianism and is not in accord with the principle of equality before the law as understood not in its strict and formalistic sense, but in its dynamic and activist magnitude. In the circumstances, the court would not be unjustified in making the presumption that a law enacted really and genuinely for giving effect to a directive principle in furtherance of the cause of social and economic justice, would not infringe any fundamental right under Article 14 or

Article 19 . Mr. G.H. Alexandrowick, an eminent jurist, in fact, says: "legislation implementing Part IV must be regarded as permitted restrictions on Part III". Dr. Ambedkar, one of the chief architects of the Constitution, also made it clear while intervening during the discussion on the Constitution (First Amendment) Bill in the Lok Sabha on 18/05/1951, that in his view,

So far as the doctrine of implied powers is concerned, there is ample authority in the Constitution itself, namely, in the directive principles "to permit Parliament to make legislation, although it will not be specifically covered by the provisions contained in the part on fundamental rights". If this be the correct interpretation of the constitutional provisions, as I think it is, the amended Article 31-G does no more than codify the existing position under the constitutional scheme by providing immunity to a law enacted really and genuinely for giving effect to a directive principle, so that needlessly futile and time-consuming controversy whether such law contravenes Article 14 or Article 19 is eliminated. The amended Article 31-C cannot in the circumstances be regarded as violative of the basic structure of the Constitution.

118. But I may in the alternative, for the purpose of argument, assume that there may be a few cases where it may be found by the court, perhaps on a narrow and doctrinaire view of the scope and applicability of a fundamental right as in *Karimbil Kunhikoman v. State of Kerala*, where a law awarding compensation at a lower rate to holders of larger blocks of land and at higher rate to holders of smaller blocks of land was struck down by this court" as violative of the equality clause, that a law enacted really and genuinely for giving effect to a directive principle is violative of a fundamental right under Article 14 or Article 19 . Would such a law enacted in discharge of the constitutional obligation laid upon the State under Article 37 be invalid, because it infringes a fundamental right? If the court takes the view that it is invalid, would it not be placing fundamental rights above directive principles, a position not supported at all by the history of their enactment as also by the constitutional scheme already discussed by me. The two constitutional obligations, one in regard to fundamental rights and the other in regard to directive principles, are of equal strength and merit and there is no reason why, in case of conflict, the former should be given precedence over the latter. I have already pointed out that whether or not a particular mandate of the Constitution is justiciable has no bearing at all on its importance and significance and justiciability by itself can never be a ground for placing one constitutional mandate on a higher pedestal than the other. The effect of giving greater weightage to the constitutional mandate in regard to fundamental rights would be to relegate the directive principles to a secondary position and emasculate the constitutional command that the directive principles shall be fundamental in the governance of the country and it shall be the duty of the State to apply them in making laws. It would amount to refusal to give effect to the words "fundamental in the governance of the country" and a constitutional command which has been declared by the Constitution to be fundamental would be rendered non-

fundamental. The result would be that a positive mandate of the Constitution commanding the State to make a law would be defeated by a negative constitutional obligation not to encroach upon a fundamental right and the law made by the legislature pursuant to a positive constitutional command would be delegitimised and declared unconstitutional. This plainly would be contrary to the constitutional scheme because, as already pointed out by me, the Constitution does not accord a higher place to the constitutional obligation in regard to fundamental rights over the constitutional obligation in regard to directive principles and does not say that the implementation of the directive principles shall only be within the permissible limits laid down in the Ch. on fundamental rights. The main thrust of the argument of Mr. Palkhivala was that by reason of the amendment of Article 31-G, the harmony and balance between fundamental rights and directive principles are disturbed, because fundamental rights which had, prior to the amendment, precedence over directive principles are now, as a result of the amendment, made subservient to directive principles. Mr. Palkhivala picturesquely described the position emerging as a result of the amendment by saying that the Constitution is now made to stand on its head instead of its legs. But in my view the entire premise on which this argument of Mr. Palkhivala is based is fallacious because it is not correct to say, and I have in the preceding portions of this opinion, given cogent reasons for this view, that prior to the amendments fundamental rights had a superior or higher position in the constitutional scheme than directive principles and there is accordingly no question at all of any subversion of the constitutional structure by the amendment. There can be no doubt that the intention of the Constitution-makers was that the fundamental rights should operate within the socio-economic structure or a wider continuum envisaged by the directive principles, for then only would the fundamental rights become exercisable by all and a proper balance and harmony between fundamental rights and directive principles secured. The Constitution-makers therefore never contemplated that a conflict would arise between the constitutional obligation in regard to fundamental rights and the constitutional mandates in regard to directive principles. But if a conflict does arise between these two constitutional mandates of equal fundamental character, how is the conflict to be resolved? The Constitution did not provide any answer because such a situation was not anticipated by the Constitution-makers and this problem had therefore to be solved by Parliament and some *modus operandi* had to be evolved in order to creminate the possibility of conflict howsoever remote it might be. The way was shown in no uncertain terms by Jawaharlal Nehru when he said in the Lok Sabha in the course of discussion on the Constitution (First Amendment) Bill:

The directive principles of State policy represent a dynamic move towards a certain objective. The fundamental rights represent something static, to preserve certain rights which exist. Both again are right. But somehow and sometime it might so happen that that dynamic movement and that static standstill do not quite fit into each other.

The dynamic movement towards a certain objective necessarily means certain changes taking place : that is the essence of movement. Now it may be that in the process of dynamic movement certain existing relationships are altered, varied or affected. In fact, they are meant to affect those settled relationships and yet if you come back to the fundamental rights they are meant to preserve, not indirectly, certain settled relationships. There is a certain conflict in the two approaches, not inherently, because that was not meant, I am quite sure. But there is that slight difficulty and naturally when the courts of the land have to consider these matters they have to lay stress more on the fundamental rights than on the directive principles. The result is that the whole purpose behind the Constitution, which was meant to be a dynamic Constitution leading to a certain goal step by step, is somewhat hampered and hindered by the static element being emphasised a little more than the dynamic element.. If in the protection of individual liberty you protect also individual or group inequality, then you come into conflict with that directive principle which wants, according to your own Constitution, a gradual advance, or let us put it in another way, not so gradual but more rapid advance) whenever possible to a State where there is less and less inequality and more and more equality. If any kind of an appeal to individual liberty and freedom is construed to mean as an appeal to the continuation of the existing inequality, then you get into difficulties. Then you become static, unprogressive and cannot change and you cannot realize the ideal of an egalitarian society which I hope most of us aim at. Parliament took the view that the constitutional obligation in regard to directive principles should have precedence over the constitutional obligation in regard to the fundamental rights in Articles 14 and 19 , because fundamental rights though precious and valuable for maintaining the democratic way of life, have absolutely no meaning for the poor, downtrodden and economically backward classes of people who unfortunately constitute the bulk of the people of India and the only way in which fundamental rights can be made meaningful for them is by implementing the directive principles, for the directive principles are intended to bring about a socioeconomic revolution and to create a new socio-economic order where there will be social and economic justice for all and everyone, not only a fortunate few but the teeming millions of India, would be able to participate in the fruits of freedom and development and exercise the fundamental rights. Parliament therefore amended Article 31-C with a view to providing that in case of conflict directive principles shall have precedence over the fundamental rights in Articles 14 and 19 and the latter shall yield place to the former. The positive constitutional command to make laws for giving effect to the directive principles shall prevail over the negative constitutional obligation not to encroach on the fundamental rights embodied in Articles 14 and 19 . Parliament in making this amendment was moved by the noble philosophy eloquently expressed in highly inspiring and evocative words, full of passion and feeling, by Chandrachud, J. (as he then was) in his judgment in *Kesavananda Bharati* case at page 991 of the Report. I may quote here what Chandrachud, J. (as he then was) said on that occasion, for it sets out admirably the philosophy which inspired Parliament in

enacting the amendment in Article 31-C . The learned Judge said:

I have stated in the earlier part of my judgment that the Constitution accords a place of pride to fundamental rights and a place of permanence to the directive principles. I stand by what I have said. The preamble of our Constitution recites that the aim of the Constitution is to constitute India into a sovereign democratic republic and to secure to "all its citizens", justice social, economic and political liberty and equality. Fundamental rights which are conferred and guaranteed by Part III of the Constitution undoubtedly constitute the ark of the Constitution and without them a man's reach will not exceed his grasp. But it cannot be overstressed that, the directive principles of State policy are fundamental in the governance of the country. What is fundamental in the governance of the country cannot surely be less significant than what is fundamental in the life of an individual. That one is justiciable and the other not may show the intrinsic difficulties in making the latter enforceable through legal processes but that distinction does not bear on their relative importance. An equal right of men and women to an adequate means of livelihood; the right to obtain humane conditions of work ensuring a decent standard of life and full enjoyment of leisure; and raising the level of health and nutrition are not matters for compliance with the writ of a court, As I look at the provisions of Parts III and IV, I feel no doubt that the basic object of conferring freedoms on individuals, is the ultimate achievement of the ideals set out in Part IV. A circumspect use of the freedoms guaranteed by Part III is bound to subserve the common good but voluntary submission to restraints is a philosopher's dream. Therefore, Article 37 enjoins the State to apply the directive principles in making laws. The freedom of a few have then to be abridged in order to ensure the freedom of all. It is in this sense that Parts III and IV, as said by Granville Austin together constitute "the conscience of the Constitution". The nation stands today at the crossroads of history and exchanging the time honoured place of the phrase, may I say that the directive principles of State policy should not be permitted to become "a mere rope of sand". If the State fails to create conditions in which the fundamental freedoms could be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish. In order, therefore, to preserve their freedom, the privileged few must part with a portion of it. This is precisely what Parliament achieved by amending Article 31-C . Parliament made the amendment in Article 31-C because it realised that "if the State fails to create conditions in which the fundamental freedoms could be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish" and "in order, therefore, to preserve their freedom, the privileged few must part with a portion of it". I find it difficult to understand how it can at all be said that the basic structure of the Constitution is affected when for evolving a modus vivendi for resolving a possible remote conflict between two constitutional mandates of equally fundamental character, Parliament decides by way of amendment of Article 31-G that in case of such conflict the constitutional mandate in regard to directive principles shall prevail over the constitutional

mandate in regard to the fundamental rights under Articles 14 and 19 . The amendment in Article 31-G far from damaging the basic structure of the Constitution strengthens and re-enforces it by giving fundamental importance to the rights of the members of the community as against the rights of a few individuals and furthering the objective of the Constitution to build an egalitarian social order where there will be social and economic justice for all, everyone including the low visibility areas of humanity in the country will be able to exercise fundamental rights and the dignity of the individual and the worth of the human person which are cherished values will not remain merely the exclusive privileges of a few but become a living reality for the many. Additionally, this question may also be looked at from another point of view so far as the protection against violation of Article 14 is concerned. The principle of egalitarianism, as I said before, is an essential element of social and economic justice and, therefore, where a law is enacted for giving effect to a directive principle with a view to promoting social and economic justice, it would not run counter to the egalitarian principle and would not therefore be violative of the basic structure, even if it infringes equality before the law in its narrow and formalistic sense. No law which is really and genuinely for giving effect to a directive principle can be inconsistent with the egalitarian principle and therefore the protection granted to it under the amended Article 31-C against violation of Article 14 cannot have the effect of damaging the basic structure. I do not therefore see how any violation of the basic structure is involved in the amendment of Article 31-C . In fact, once we accept the proposition laid down by the majority decision in Kesavananda Bharati case that the unamended Article 31-G was constitutionally valid, it could only be on the basis that it did not damage or destroy the basic structure of the Constitution and moreover in the Order made in Waman Rao case on 9/05/1980 this court expressly held that the unamended Article 31-C "does not damage any of the basic or essential features of the Constitution or its basic structure", and if that be so, it is difficult to appreciate how the amended Article 31-C can be said to be violative of the basic structure. If the exclusion of the fundamental rights embodied in Articles 14 and 19 could be legitimately made for giving effect to the directive principles set out in clauses (b) and (c) of Article 39 without affecting the basic structure, I fail to see why these fundamental rights cannot be excluded for giving effect to the other directive principles. If the constitutional obligation in regard to the directive principles set out in clauses (b) and (c) of Article 39 could be given precedence over the constitutional obligation in regard to the fundamental rights under Articles 14 and 19 , there is no reason in principle why such precedence cannot be given to the constitutional obligation in regard to the other directive principles which stand on the same footing. It would, to my mind, be incongruous to hold the amended Article 31-C invalid when the unamended Article 31-G has been held to be valid by the majority decision in Kesavananda Bharati case and by the Order made on 9/05/1980 in Waman Rao case.

123. I would therefore declare S. 55 of the Constitution (Forty second

Amendment) Act, 1976 which inserted Ss. (4) and (5) in Article 368 as unconstitutional and void on the ground that it damages the basic structure of the Constitution and goes beyond the amending power of Parliament. But so far as S. 4 of the Constitution (Forty-second Amendment) Act, 1976 is concerned, I hold that, on the interpretation placed on the amended Article 31-G by me, it does not damage or destroy the basic structure of the Constitution and is within the amending power of Parliament and I would therefore declare the amended Article 31-G to be constitutional and valid."

22. Their Lordships of the Hon''ble Supreme Court in S.P. Gupta Vs. President of India and Others, have held that the judiciary has therefore a socio economic destination and a creative function. It has to use the words of Glanville Austin, to become an arm of the socio-economic revolution and perform an active role calculated to bring social justice within the reach of the common man. Their Lordships have held as under:

"26. Having disposed of the preliminary objection in regard to locus standi of the petitioners, we may now proceed to consider the questions which arise for determination in these Writ Petition. The questions are of great constitutional significance affecting the principle of independence of the judiciary which is a basic feature of the Constitution and we would therefore prefer to begin the discussion by making a few prefatory remarks highlighting what the true function of the judiciary should be in a country like India which is marching along the road to social justice with the banner of democracy and the rule of law, for the principle of independence of the judiciary is not an abstract conception but it is a living faith which must derive its inspiration from the constitutional charter and its nourishment and sustenance from the constitutional values. It is necessary for every Judge to remember constantly and continually that our Constitution is not a non - aligned national charter. It is a document of social revolution which casts an obligation on every instrumentality including the judiciary, which is a separate but equal branch of the State, to transform the status quo ante into a new human order in which justice, social, economic and political will inform all institutions of national life and there will be equality of status and opportunity for all. The judiciary has therefore a socio economic destination and a creative function. It has to use the words of Glanville Austin, to become an arm of the socio - economic revolution and perform an active role calculated to bring social justice within the reach of the common man. It cannot remain content to act merely as an umpire but it must be functionally involved in the goal of socio - economic justice. The British concept of justicing, which to quote Justice Krishna iyer, is still "bugged by the heirs of our colonial legal culture and shared by many on the bench" is that "the business of a Judge is to hold his tongue until the last possible moment and to try to be as wise as he is paid to look" and in the same strain are the words quoted by Professor Gordon Reid from "a memorandum to the Victorian government by Irvin, C.J. in 1923 where the judicial function was idealized in the following words:

The duty of His Majesty's Judges is to hear and determine issues of fact and of law arising between the king and the subject or between a subject and a subject presented in a form enabling judgment to be passed upon them, and when passed, to be enforced by a process of law. There begins and ends the function of the judiciary. Now this approach to the judicial function may be alright for a stable and static society but not for a society pulsating with urges of gender justice, worker justice, minorities justice, dalit justice and equal justice, between chronic unequals. Where the contest is between those who are socially or economically unequal, the judicial process may prove disastrous from the point of view of social justice, if the Judge adopts a merely passive or negative role and does not adopt a positive and creative approach. The judiciary cannot remain a mere bystander or spectator but it must become an active participant in the judicial process ready to use law in the service of social justice through a proactive goal - oriented approach. But this cannot be achieved unless we have judicial cadres who share the fighting faith of the constitution and who are imbued with the constitutional values. The necessity of a judiciary which is in tune with the social philosophy of the constitution has nowhere been better emphasised than in the words of justice Krishna Iyer which we quote:

Appointment of Judges is a serious process where judicial expertise, legal learning, life's experience and high integrity are components, but above all are two indispensables - social philosophy in active unison with the socialistic articles of the Constitution, and second, but equally important, built - in resistance to pushes and pressures by class interests, private prejudices, government threats and blandishments, party loyalties and contrary economic and political ideologies projecting into pronouncements. Justice Krishna Iyer goes on to say in his inimitable style :

Justice Cardozo approvingly quoted President Theodore Roosevelt's stress on the social philosophy of the Judges, which shakes and shapes the course of a nation and, therefore, the choice of Judges for the higher courts which makes and declares the law of the land, must be in tune with the social philosophy of the Constitution. Not mastery of the law alone, but social vision and creative craftsmanship are important inputs in successful justicing. What is necessary is to have Judges who are prepared to fashion new tools, forge new methods, innovate new strategies and evolve a new jurisprudence, who are judicial statesmen with a social vision and a creative faculty and who have, above all, a deep sense of commitment to the Constitution with an activist approach and obligation for accountability, not to any party in power nor to the opposition nor to the classes which are vociferous but to the half - hungry millions of India who are continually denied their basic human rights. We need Judges who are alive to the socio - economic realities of indian life, who are anxious to wipe every tear from every eye, who have faith in the constitutional values and who are ready to use law as an instrument for achieving the constitutional objectives. This has to be the broad blueprint of the appointment project for the higher echelons of judicial service. It is only if appointments of Judges are made with these

considerations weighing predominantly with the appointing authority that we can have a truly independent judiciary committed only to the Constitution and to the people of India. The concept of independence of the judiciary is a noble concept which" inspires the constitutional scheme and constitutes the - foundation on which rests the edifice of our democratic polity. If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the state within the limits of the law and thereby making the rule of law meaningful and effective. It is to aid the judiciary in this task that the power of judicial review has been conferred upon the judiciary and it is by exercising this power which constitutes one of the most potent weapons in armory of the law, that the judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive and therefore it is absolutely essential that the judiciary must be free from executive pressure or influence and this has been secured by the Constitution - makers by making elaborate provisions in the Constitution to which detailed reference has been made in the judgments in Sankalchand Sheth case. But it is necessary to remind ourselves that the concept of independence of the judiciary is not limited only to independence from executive pressure or influence but it is a much wider concept which takes within its sweep independence from many other pressures and prejudices. It has many dimensions, namely, fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the Judges belong. If we may again quote the eloquent words of Justice Krishna Iyer :

Independence of the Judiciary is not genuflexion; nor is it opposition to every proposition of government. It is neither Judiciary made to opposition measure nor government's pleasure. The tycoon, the communalist, the parochialist, the faddist, the extremist and radical reactionary lying coiled up and subconsciously shaping judicial mentations are menaces to judicial independence when they are at variance with Parts III and IV of the Paramount Parchment. Judges should be of stern stuff and tough fibre, unbending before power, economic or political, and they must uphold the core principle of the rule of law which says, "be you ever so high, the law is above you." This is the principle of independence of the judiciary which is vital for the establishment of real participatory. democracy, maintenance of the rule of law as a dynamic concept and delivery of social justice to the vulnerable S. of the community. It is this principle of independence of the judiciary which we must keep in mind while interpreting the relevant provisions of the constitution."

23. Their Lordships of the Hon"ble Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), have held that Article 41 obligates the State within the limits of its economic capacity and development, to make effective provision for

securing the right to work, to education and to provide assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 43(3) requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities. Their Lordships have held as under:

"32. Having succinctly focussed our attention on the conspectus of elements and incidents of pension the main question may now be tackled. But, the approach of Court while considering such measure, is of paramount importance. Since the advent of the Constitution, the State action must be directed towards attaining the goals set out in Part IV of the Constitution which, when achieved, would permit us to claim that we have set up a welfare State. Article 38 (1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice social, economic and political shall inform all institutions of the national life. In particular the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Article 39 (d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgment of this Court in *Randhir Singh Vs. Union of India (UOI) and Others*, . Revealing the scope and content of this facet of equality, Chinnappa Reddy, J. speaking for the Court observed as under (para 1) :

"Now, thanks to the rising social and political consciousness and the expectations roused as a consequence and the forward looking posture of this Court, the underprivileged also are clamouring for their rights and are seeking the intervention of the Court with touching faith and confidence in the Court. The Judges of the Court have a duty to redeem their constitutional oath and do justice no less to the pavement dweller than to the guest of the Five Star hotel."

Proceeding further, this Court observed that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement ? Expanding this principle, one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. Article 39 (e) requires the State to secure that the health and strength of workers, men and women, and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 41 obligates the state within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to provide assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want. Article 43(3) requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities.

33. Recall at this stage the Preamble, the floodlight illuminating the path to be pursued by the State to set up a Sovereign Socialist Secular Democratic Republic. Expression "socialist" was intentionally introduced in the Preamble by the Constitution (Forty-Second Amendment) Act, 1976. In the Objects and Reasons for amendment amongst other things, ushering in of socio-economic revolution was promised. The clarion call may be extracted:

"The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of Government and the public for some time.....

It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism.....to make the directive principles more comprehensive....."

What does a Socialist Republic imply? Socialism is a much misunderstood word. Values determine contemporary socialism pure and simple. But it is not necessary at this stage to go into all its ramifications. The principal aim of a socialist State is to eliminate inequality in income and status and standards of life. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhian socialism. During the formative years, socialism aims at providing all opportunities for pursuing the educational activity. For want of wherewithal or financial equipment the opportunity to be fully educated shall not be denied. Ordinarily, therefore, a socialist State provides for free education from primary to Ph. D. but the pursuit must be by those who have the necessary intelligent quotient and not as in our society where a brainy young man coming from a poor family will not be able to prosecute the education for want of wherewithal while the ill equipped son or daughter of a well to do father will enter the portals of higher education and contribute to national wastage. After the education is completed, socialism aims at equality in pursuit of excellence in the chosen avocation without let or hindrance of caste, colour, sex or religion and with full opportunity to reach the top not thwarted by any considerations of status, social or otherwise. But even here the less equipped person shall be assured a decent minimum standard of life and exploitation in any form shall be eschewed. There will be equitable distribution of national cake and the worst off shall be treated in such a manner as to push them up the ladder. Then comes the old age in the life of everyone, be he a monarch or a mahatma, a worker or a pariah. The old age overtakes each one, death being the fulfilment of life providing freedom from bondage. But here socialism aims at providing an economic security to those who have rendered unto society what they were capable of doing when they were fully equipped with their mental and physical prowess. In the fall of life the State shall ensure to the citizens a reasonably

decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure, relieving the boredom and the humility of dependence in old age. This is what Article 41 aims when it enjoins the State to secure public assistance in old age, sickness and disablement. It was such a socialist State which the Preamble directs the centres of power Legislative, Executive and Judiciary to strive to set up. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society is a long march but during this journey to the fulfilment of goal every State action (illegible) taken must be directed, and must be so interpreted, as to take the society one step towards the goal."

24. Their Lordships of the Hon"ble Supreme Court in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, have held that the broad egalitarian principle of social and economic justice for all was implicit in every Directive Principle and, therefore, a law designed to promote a Directive Principle, even if it came into conflict with the formalistic and doctrinaire view of equality before the law, would most certainly advance the broader egalitarian principle and the desirable constitutional goal of social and economic justice for all. Their Lordships have held as under:

"16. While we broadly agree with much that has been said by Bhagwati J. in the extracts above quoted, we do not think that those observations really advance, Mr. Sen's contention. To accept the submission of Shri Sen that a law founded on discrimination is not entitled to the protection of Article 31-C , as such a law can never be said to be to further the directive principle affirmed in Article 39 (b) , would indeed be, to use a hackneyed phrase, to put the cart before the horse. If the law made to further the directive principle is necessarily non-discriminatory or is based on a reasonable classification, then such law does not need any protection such as that afforded by Art. 31-C . Such law would be valid on its own strength, with no aid from Art. 31-C . To make it 2 condition precedent that a law seeking the haven of Art. 31-C must be non-discriminatory or based on reasonable classification, is to make Article 31-C meaningless. If Article 14 is not offended, no one need give any immunity from an attack based on Art. 14 . Bhagwati J. did not say anything to the contrary. On the other hand, it appears to us, he was, at great pains to point out that the broad egalitarian principle of social and economic justice for all was implicit in every Directive Principle and, therefore, a law designed to promote a Directive Principle, even if it came into conflict with the formalistic and doctrinaire view of equality before the law, would most certainly advance the broader egalitarian principle and the desirable constitutional goal of social and economic justice for all. If the law was aimed. at the broader egalitarianism of the Directive Principles, Article 31-C protected the law from needless, unending and rancorous debate on the question whether the law contravened Article 14 's concept of equality before the law. That is how we understand Bhagwati J.'s observations. Never for a moment did Bhagwati, J. let in by another door the very controversy which was shut out by Article 31-C . Of course, the law seeking the immunity afforded by Art. 31-C must be a law

directing the policy of the State towards securing a Directive Principle. Here, we are content to use the very words of Article 31-C . While we agree with Bhagwati, J. that the object of the law must be to give effect to the Directive Principle and that the connection with the Directive Principle must not be "some remote or tenuous connection", we deliberately refrain from the use of the words "real and substantial", "dominant", "basically and essentially necessary" and "closely and integrally connected", lest anyone chase after the meaning of these expressions, forgetting for the moment the words of the statute, as happened once when the words "substantial and compelling reasons" were used in connection with appeals against orders of acquittal and a whole body of literature grew up on what were "substantial and compelling reasons". As We have already said, we agree with much that has been said by Bhagwati J. and what we have now said about the qualifying words is only to caution ourselves against adjectives getting the better of the noun. Adjectives are attractive forensic aids but in matters of interpretation they are diverting intruders. These observations have the full concurrence of Bhagwati, J."

25. Their Lordships of the Hon"ble Supreme Court in *Atam Prakash Vs. State of Haryana and Others*, have held that the implication of introduction of the word "socialist" into the Preamble of the Constitution is clearly to set up a vibrant throbbing socialist welfare society". Court must strive to give such an interpretation as will promote the march and progress towards a Socialistic Democratic State. Their Lordships have held as under:

"12. A scrutiny of the list of persons in whose favour the right of pre-emption is vested under S.. 15 reveals certain glaring facts which appear to detract from the theory of preservation of the integrity of the family and the theory of agnatic fight of succession. First we notice that neither the father nor the mother, figures in the list though the father's brother does. The son's daughter and the daughter's daughter do not appear though the son's son and the daughter's son do.. The sister and the sister's son are excluded though the brother and the brother's son are included. Thus relatives of the same degree are excluded either because they are women or because they are related through women. It is not as if women and those related through women are altogether excluded because the daughter and daughter's son are included. If the daughter is to be treated on a par with the son. and the daughter's son is treated on a par with the son's son it does not appear logical why the father's son (brother) should be included and not the father's daughter (sister). These are but a few of the intrinsic contradictions that appear in the list of relatives mentioned in S. 15 as entitled to the right of pre-emption. It is understandable why a son's daughter, a daughter's daughter, a sister or a sister's son should have no right of pre-emption whereas a father's brother's son has that right. As S. 15 stands, if the sole owner of a property sells it to his own father, mother, sister, sister's son, daughter's daughter or son's daughter, the sale can be defeated by the vendor's father's brother's son claiming a right of pre-emption."

26. Their Lordships of the Hon^{ble} Supreme Court in *Sodan Singh and Others Vs. New Delhi Municipal Committee and Others*, have held that though in view of the inclusion of the word "socialist" in the Preamble of the Constitution by the 42nd Amendment greater concern must be shown to improve the condition of the poor population in the country, and every effort should be made to allow them as much benefit as may be possible, but that by itself cannot remedy all the problems arising from poverty. Even the Constitution as it stood originally was committed to economic justice and welfare of the needy, but for that reason either then or now the other provisions of the Constitution and the laws cannot be ignored. Their Lordships have held as under:

"22. On behalf of some of the petitioners it was contended that in view of the inclusion of the word "socialist" "in the Preamble of the Constitution by the 42nd Amendment greater concern must be shown to improve " the condition of the poor population in the country, and every effort should be made to allow them as much benefit as may be possible. There cannot be any quarrel with this proposition, but that by itself cannot remedy all the problems arising from poverty. Even the Constitution as it stood originally was committed to economic justice and welfare of the needy. But for that reason either then or now the other provisions of the Constitution and the laws cannot be ignored. It is therefore, not possible to interpret the decision in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, in the manner suggested on behalf of the petitioners to bolster their case with the aid of Art. 21 ."

27. Their Lordships of the Hon^{ble} Supreme Court in *D.V. Kapoor Vs. Union of India and others*, have held that the measure of deprivation of pension therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution. Their Lordships have held as under:

"6. As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs. 60/-.

7. Rule 9 of the rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the

evening of his life as assured under Art. 41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction."

28. Their Lordships of the Hon"ble Supreme Court in Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others, have held that the expression "socialist" was intentionally introduced in the Preamble by the Constitution (Forty-second Amendment) Act, 1976 with the principal aim of eliminating inequality in income and status and standards of life. The emphasis on economic equality in our socialist welfare society has to pervade all interpretations made in the context of any challenge based on hostile discrimination. Their Lordships have held as under:

"5. The preamble to the Constitution contains the solemn resolve to secure to all its citizens, inter alia, economic and social justice along with equality of status and opportunity. The expression "socialist" was intentionally introduced in the preamble by the Constitution (Forty-Second Amendment) Act, 1976 with the principal aim of eliminating inequality in income and status and standards of life. The emphasis on economic equality in our socialist welfare society has to pervade all interpretations made in the context of any challenge based on hostile discrimination. It is on the altar of this vibrant concept in our dynamic constitution that the attack based on hostile discrimination in the present case must be tested when the legislature intended to rest content with placing the tax burden only on the haves excluding the have-nots from the tax net for satisfying the tax need from this source. The reasonableness of classification must be examined on this basis when the object of the taxing provision is not to tax sale of all cooked food and thereby tax everyone but to be satisfied with the revenue raised by taxing only the sale of costlier food consumed by those who can bear the tax burden."

29. Their Lordships of the Hon"ble Supreme Court in Narendra Kumar Maheshwari Vs. Union of India (UOI) and Others, have held that self made rule can become enforceable on the application of persons if it was shown that it had created legitimate expectation in their minds that the authority would abide by such a policy/guideline. Where such guidelines are intended to clarify or implement the conditions and requirements precedent to the exercise of certain rights conferred in favour of citizens or persons and a deviation therefrom directly affects the rights so vested the persons whose rights are affected have a clear right to approach the Court for relief. Sometimes guidelines control the choice of persons competing with one another for the grant of benefits, largesses

or favours and, if the guidelines are departed from without rhyme or reason, an arbitrary discrimination may result which may call for judicial review. Their Lordships have held as under:

"69. Shri Ganesh submitted that the CCI is duty bound to act in accordance with the guidelines which lay down the principles regulating the sanction of capital issues. This is especially so because the guidelines had been published. It was submitted that the investing public is, therefore, entitled to proceed on the basis that the CCI would act in conformity with the guidelines and would enforce them while sanctioning a particular capital issue. It was submitted that it is not permissible to deviate from the guidelines. In this connection, reliance was placed by him as well as by Shri Haksar, appearing for the petitioner in T.C. No. 161/88, upon the observations of this Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , where this Court observed that it must be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licence or granting other forms of largess, the government could not act arbitrarily at its sweet will and, like a private individual, deal with any persons it please, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. We accept the position that the power of discretion of the government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc. must be confirmed and structured by rational, relevant and nondiscriminatory standard or norm and if the government departed from such standard or norm in any particular case or cases, the action of the government would be liable to be struck down, unless it could not be shown by the government that the departure was not arbitrary but was based on some valid principle which in itself was not irrational, irrelevant, unreasonable or discriminatory. Mr. Haksar drew our attention to the observations of this Court in the case of *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , where this Court reiterated that claim of change of policy would not be sufficient to exonerate the government from the liability; the government would have to show what precisely was the changed policy and also its reason and justification so that the Court could judge for itself which way the public interest lay and what the equity of the case demanded. It was contended by Shri Haksar that there were departures from the guidelines and there was no indication as to why such departures had been made.

106. It may, however, be stated that being not statutory in character, these guidelines are not enforceable. See the observations of this Court in *G.J. Fernandez Vs. State of Mysore and Others*, : Also see *R. Abdulla Rowther Vs. The State Transport Appellate Tribunal, Madras and Others*, ; *The Deputy Assistant Iron and Steel Controller and Another Vs. L. Manickchand, Proprietor, Katrella Metal Corporation, Madras*, ; *Andhra Industrial Works Vs. Chief Controller of Imports and Others*, ; *K.M. Shanmugam Vs. The S.R.V.S. (P) Ltd. and Others*, . A policy is not law. A statement of policy is not a prescription of binding criterion. In this connection, reference may be made to the observations

of *Sagnata investments Ltd. v. Norwich Corpn.*, [1971] 2 QB 614 and p. 626. Also the observations in *British Oxygen Co. v. Board of Trade*, [1971] AC 610. See also Foulkes' *Administrative Law*, 6th Ed. at page 181-184. In *Ex. P. Khan*, [1981] 1 All E.R. page 40, the court held that a circular or self made rule can become enforceable on the application of persons if it was shown that it had created legitimate expectation in their minds that the authority would abide by such a policy/guideline. However, the doctrine of legitimate expectation applies only when a person had been given reason to believe that the State will abide by the certain policy or guideline on the basis of which such applicant might have been led to take certain actions. This doctrine is akin to the doctrine of promissory estoppel. See also the observations of Lord Wilberforce in *IRC v. National Federation*, [1982] AC 617). However, it has to be borne in mind that the guidelines on which the petitioners have relied are not statutory in character. These guidelines are not judicially enforceable. The competent authority might depart from these guidelines where the proper exercise of his discretion so warrants. In the present case, the statute provided that rules can be made by the Central Government only. Further- more, according to Section 6(2) of the Act, the competent authority has the power and jurisdiction to condone any deviation from even the statutory requirements prescribed under Sections 3 and 4 of the Act. In *Regina v. Preston Supplementary*, [1975] 1 WLR p. 624 at p. 631, it had been held that the Act should be administered with as little technicality as possible. Judicial review of these matters, though can always be made where there was arbitrariness and mala fide and where the purpose of an authority in exercising its statutory power and that of legislature in confer- ring the powers are demonstrably at variance, should be exercised cautiously and soberly.

107. We would also like to refer to one more aspect of the enforceability of the guidelines by persons in the position of the petitioners in these cases. Guidelines are issued by Governments and statutory authorities in various types of situations. Where such guidelines are intended to clarify or implement the conditions and requirements precedent to the exercise of certain rights conferred in favour of citizens or persons and a deviation therefrom directly affects the rights so vested the persons whose rights are affected have a clear right to approach the court for relief. Sometimes guidelines control the choice of persons competing with one another for the grant of benefits largesses or favours and, if the guidelines are departed from without rhyme or reason, an arbitrary discrimination may result which may call for judicial review. In some other instances (as in the *Ramanna Shetty*, case), the guidelines may prescribe certain standards or norms for the grant of certain benefits and a relaxation of, or departure from, the norms may affect persons, not directly but indirectly, in the sense that though they did not seek the benefit or privilege as they were not eligible for it on the basis of the announced norms, they might also have entered the fray had the relaxed guidelines been made known. In other words, they would have been potential competitors in case any relaxation or departure were

to be made. In a case of the present type, however, the guidelines operate in a totally different field. The guidelines do not affect or regulate the right of any person other than the company applying for consent. The manner of application of these guidelines, whether strict or lax, does not either directly or indirectly, affect the rights or potential rights of any others or deprive them, directly or indirectly, of any advantages or benefits to which they were or would have been entitled. In this context, there is only a very limited scope for judicial review on the ground that the guidelines have not been followed or have been deviated from. Any member of the public can perhaps claim that such of the guidelines as impose controls intended to safeguard the interests of members of the public investing in such public issues should be strictly enforced and not departed from departure therefrom will take away the protection provided to them. The scope for such challenge will necessarily be very narrow and restricted and will depend to a considerable extent on the nature and extent of the deviation. For instance, if debentures were issued which provide no security at all or if the debt-equity ratio is 6000:1 (as alleged) as against the permissible 2:1 (or thereabouts) a Court may be persuaded to interfere. A Court, however, would be reluctant to interfere simply because one or more of the guidelines have not been adhered to even where there are substantial deviations, unless such deviations are, by nature and extent such as to prejudice the interests of the public which it is their avowed object to protect. Per contra, the Court would be inclined to perhaps overlook or ignore such deviations, if the object of the statute or public interest warrant, justify or necessitate such deviations in a particular case. This is because guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose which the guidelines and the statute under which they are issued are intended to achieve."

30. Their Lordships of the Hon^{ble} Supreme Court in Commissioner of Income Tax, Bangalore Vs. Vasudeo V. Dempo, have held that circulars issued by department (Wealth Tax) normally meant to be followed and accepted by the authorities. Their Lordships have held as under:

"5. We have heard learned Counsel for the parties at length. We do not propose to express any considered opinion as learned Counsel appearing for the Department fairly accepted that the Act had been amended on April 1, 1989, and what was provided in the circular has now been incorporated in the Schedule itself. That lends support to the view taken by the High Court. Further, the Department; as is clear from the circular, at all points of time, intended that the spouses in Goa should be treated as individuals and granted exemption accordingly. We, however, consider it necessary to observe that the circulars issued by the Department are normally meant to be followed and accepted by

the authorities. We do not find any justification for the officers not following it nor was the Department justified in pursuing the matter further in this Court."

31. Their Lordships of the Hon^{ble} Supreme Court in *Consumer Education and Research center and others Vs. Union of India and others*, have held that the jurisprudence of personhood or philosophy of the right to life envisaged under Article 21, envisages its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality. Their Lordships have further held that right to health and medical care to protect his health and vigour while in service or post retirement is a fundamental right of a worker under Article 21, read with Articles 39(e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person. Their Lordships have held as under:

"21. Article 38(1) lays down the foundation for human rights and enjoins the State to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Art 46 directs the State to protect the poor from social injustice and all forms of exploitation. Article 39(e) charges that the policy of the State shall be to secure "the health and strength of the workers". Article 42 mandates that the States shall make provision, statutory or executive "to secure just and humane conditions of work". Article 43 directs that the State shall "endeavour to secure to all workers, by suitable legislation or economic organisation or any other way to ensure decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workers". Article 48-A enjoins the State to protect and improve the environment. As human resources are valuable national assets for peace, industrial or material production, national wealth, progress, social stability, decent standard of life of worker is an input. Art 25(2) of the universal declaration of human rights ensures right to standard of adequate living for health and well being of the individual including medical care, sickness and disability. Article 2(b) of the International Convention on Political, Social and Cultural Rights protects the right of worker to enjoy just and favourable conditions of work ensuring safe and healthy working conditions.

22. The expression "life" assured in Art.21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in work place and leisure. In *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , this Court held that no person can live without the means of living i.e. means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the

life of its effective content of meaningfulness but it would make life impossible to live, leave aside what makes life livable . The right to life with human dignity encompasses within its fold, some of the finer facets of human civilisation which makes life worth living. The expanded connotation of life would mean the tradition and cultural heritage of the persons concerned. In *State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others*, , this Court held that the right to life includes the quality of life as understood in its richness and fullness by the ambit of the Constitution. Access to road was held to be an access to life itself in that State."

32. Their Lordships of the Hon"ble Supreme Court in *Surjit Singh Vs. State of Punjab and Others*, have held as under:

"It is otherwise important to bear in mind that self preservation of one"s life is the necessary con-comitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self defence in criminal law. Centuries ago thinkers of this Great land conceived of such right had recognised it. Attention can usefully be drawn to verses 17, 18, 20 and 22 in Chapter 16 of the Garuda Purana (A Dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine."

"5."

33. Their Lordships of the Hon"ble Supreme Court in *Director General of Posts and Others Vs. B. Ravindran and Another*, have held that the intention behind the orders issued in 1963, 1964, 1978 and 1983 was to give some more benefit to the re-employed pensioners/ex-servicemen. The effect of the benefit was to be given at a stage prior to the consideration of hardship. Their Lordships have further held that under these circumstances, the Government could not have, under the guise of a clarificatory order, taken away the right which had accrued to such re-employed pensioners with retrospective effect by declaring that while considering hardship the last pay drawn at the time of retirement was to be compared with the initial pay plus pension whether ignorable or not. The 1985 clarificatory instructions were not only inconsistent with the relevant provisions of the Civil Service Regulations and the 1978 and 1983 orders but its effect was to supersede the said provision and the orders. Their Lordships have held as under:

"15. However it was submitted by the learned counsel for the appellants that the orders which were issued in 1963, 1964, 1978 and 1983 did not deal with the aspect of hardship and were not intended to replace or change the basic policy contained in the 1958 instructions. They were intended as relaxations and, therefore, they cannot be said to have the effect of altering or modifying the 1958 policy. When the entire pension was made ignorable in the case of personnel below Commissioned Officers rank the position substantially changed and therefore the Government was obliged to clarify that as contemplated by the

1958 instructions hardship is to be seen from the point whether pay plus pension plus pension equivalent of gratuity (whether ignorable or not) was less than the time of retirement. What the Government thereby did was to reiterate that there was no hardship no advance increment should be granted. What is overlooked by the learned counsel is that the intention behind the orders issued in 1963, 1964, 1978 and 1983 was to give some more benefit to the re-employed pensioner/ex-servicemen. The effect of the benefit was to be given at a stage prior to the consideration of hardship. The ignorable part of the pension was to be ignored while totalling up the initial pay plus the pension in order to find out whether the retired pensioner thereby was likely to get more or less than what he was getting at the time of the retirement. To that the 1958 policy stood altered or modified. Though the said four orders did not directly deal with the aspect of hardship they did by widening the gap between the initial pay plus the non-ignorable part of the pension and the pay he drew before his retirement and thereby further necessitated giving of advance increments to alleviate hardship. It is, therefore, not correct to say that those orders had no concern with the aspect of hardship. What the contention raised on behalf of the appellants further overlooks is that pursuant to the orders issued in 1963 and 1964 corresponding amendments were made in Articles 521 and 526 of Civil Service Regulations. The said Regulations were some time prior to 1914 and had acquired statutory authority under Section 96-B(4) of the Government of India Act, 1919 and have been continued in force by virtue of Article 313 of the Constitution. They are, therefore, statutory in nature. After its amendment in 1964 it read as under:--

"526 (a).....

(b).....

(c) In case of service personnel who retire from the Forces before attaining the age of 55 and are re-employed in civil posts on or after 16th January 1964 the pension shown below shall be ignored in fixing their pay on re-employment-

(i) in the case of pensions not exceeding Rs. 50 Per mensem, the actual pension;

(ii) In other case the first Rs. 50 of the pension.

16. The subsequent orders issued in 1978 and 1983 were supplementary in nature and did have a binding force. Under these circumstances, the Government could not have, under the guise of a clarificatory order, taken away the right which had accrued to such re-employed pensioners with retrospective effect by declaring that while considering hardship the last pay drawn at the time of retirement was to be compared with the initial pay plus pension whether ignorable or not. The 1985 clarificatory instructions were not only in consistent with the relevant provisions of the Civil Service Regulations and the 1978 and 1983 orders but its effect was to supersede the said provision and the orders. The Tribunal was, therefore, right in holding the said instructions in so far as it directed to take into consideration the ignorable part of the pension also while considering hardship invalid and without any authority of law. These appeals are,

therefore, dismissed with no order as to costs."

34. Their Lordships of the Hon^{ble} Supreme Court in *Samatha Vs. State of A.P. and Others*, have held that it is an established rule of interpretation that to establish Socialist Secular Democratic Republic, the basic structure under the rule of law, pragmatic, broad and wide interpretation of the Constitution makes social and economic democracy with liberty, equality of opportunity, equality of status and fraternity a reality to "we, the people of India", who would include the Scheduled Tribes. All State actions should be to reach the above goal with this march under rule of law. Their Lordships have further held that it is necessary to consider at this juncture the meaning of the word "socialism" envisaged in the Preamble of the Constitution. Establishment of the egalitarian social order through rule of law is the basic structure of the Constitution. The Fundamental Rights and the Directive Principles are the means, as two wheels of the chariot, to achieve the above object of democratic socialism. The word "socialist" used in the Preamble must be read from the goals Articles 14 , 15 , 16 , 17 ,21 , 23 , 38 , 39 , 46 and all other cognate articles seek to establish, i.e., to reduce inequalities in income and status and to provide equality of opportunity and facilities. Their Lordships have held as under:

"52. The word "person" in the interplay of juristic thought is either natural or artificial. Natural persons are human beings while artificial persons are Corporations. Corporations are either Corporation aggregate or Corporation sole. In "English Law" by Kenneth Smith and Denis Keenan (Seventh Edition) at page 127, it is stated that "(L)egal personality is not restricted to human beings. In fact various bodies and associations of persons can, by forming a corporation to carry out their functions, create an organisation with a range of rights and duties not dissimilar to many of those possessed by human beings. In English law such corporations are formed either by charter, statute or registration under the Companies Acts; there is also the common law concept of the Corporation Sole". At page 163, it is further stated that "(T)he Crown is the executive head in the United Kingdom and Commonwealth, and government departments and civil servants act on behalf of the Crown", In "Salmond on Jurisprudence" by P.J. Fitzgerald (Twelfth Edition), at page 66, it is stated that "(A) legal person is any subject- matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human beings is one of the most noteworthy feats of the legal imagination....". At page 72, it is further amplified that "(T)he King himself, however, is in law no mere mortal man. He has a double capacity, being not only a natural person, but a body politic, that is to say, a corporation sole. The visible wearer of the crown is merely the living representative and agent for the time being of this invisible and underlying persona ficta, in whom by law the powers and prerogatives of the government of this realm are vested". In "Jurisprudence" by R.W.M. Dias (Fifth Edition), at page 265, it is stated that".... the value of personifying group activities is further reduced by the fact that courts have evolved ways of dealing with such activities without resorting to

the device of persona".

79. It is necessary to consider at this juncture the meaning of the "socialism" envisaged in the Preamble of the Constitution. Establishment of the egalitarian social order through rule of law is the basic structure of the Constitution. The Fundamental Rights and the Directive Principles are the means, as two wheels of the chariot, to achieve the above object of democratic socialism. The word "socialist" used in the Preamble must be read from the goals Articles 14 , 15 , 16 , 17 , 21 , 23 , 38 , 39 , 46 and all other cognate Articles seek to establish, i.e., to reduce inequalities in income and status and to provide equality of opportunity and facilities. Social justice sn joins the Court to uphold government's endeavour to remove economic inequalities, to provide decent standard of living to the poor and to protect the interest of the weaker sections of the society so as to assimilate all the sections of the society in the secular integrated socialist Bharat with dignity of person and equality of status to all.

107. It is an established rule of interpretation that to establish Socialist Secular Democratic Republic, the basic structure under the rule of law, pragmatic broad and wide interpretation of the Constitution makes social and economic democracy with liberty, equality of opportunity, equality of status and fraternity a reality to "we, the people of india", who would include the Scheduled Tribes. All State actions should be to reach the above goal with this march under rule of law. The interpretation of the words "person" "regulation" and "distribution" require to be broached broadly to elongate socio-economic justice to the tribals. The word "regulates" in para (2)(b) of the Fifth Schedule to the Constitution and the title of the Regulation would not only control allotment of land to the Tribes in Scheduled area but also prohibits transfer of private or Government's land in such areas to the non-tribals. While later clause (a) achieves the object of prohibiting transfer inter vivos pay tribals to the non-tribals or non-tribals inter se, the first clauses includes the State Government or being an juristic person integral scheme of para 5(2) of Schedule, The Regulation seeks to further achieve the object of declaring with a presumptive evidence that the land in the Scheduled Areas belongs to the Scheduled Tribes and any transfer made to a non-tribal shall always be deemed to have been made by a tribal unless the transferee establish the contra. It also prohibits transfer of the land in any form known to law and declared such transfer as void except by way of testamentary disposition by a tribal to his kith and kin/tribal or by partition among them. The regulation and its predecessor law in operation in the respective areas regulate transfer between a tribal and non-tribal with prior permission of the designated officer as a condition precedent to prevent exploitation of the tribals. If a tribal is unwilling to purchase land from a non-tribal, the State Government is enjoined to purchase the land from a non-tribal as per the principles set down in the regulations and to distribute the same to a tribal or a cooperative society composed solely of tribals."

35. Their Lordships of the Hon''ble Supreme Court in Air India Statutory

Corporation, etc. Vs. United Labour Union and others [overruled], have held that Preamble of the Constitution, as its integral part, is designed to realize socio-economic justice to all people including workmen, harmoniously blending the details enumerated in the Fundamental Rights and the Directive Principles. The Act is a social welfare measure to further the general interest of the community of workmen as opposed to the particular interest of the individual entrepreneur. Their Lordships have held as under:

"14. As noted, the appellant, to start with, was a statutory authority but pending appeal in this Court, due to change in law and in order to be in tune with open economy, it became a company registered under the Companies Act. To consider its sweep on the effect of Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, on the interpretation of the phrase "appropriate Government", it would be necessary to recapitulate the Preamble, Fundamental Rights (Part III) and Directive Principles (Part IV) - trinity setting out the conscience of the Constitution deriving from the source "We, the people", a charter to establish an egalitarian social order in which social and economic justice with dignity of person and equality of status and opportunity, are assured to every citizen in a socialist democratic Bharat Republic. The Constitution, the Supreme law heralds to achieve the above goals under the rule of law. Life of law is not logic but is one of experience. Constitution provides an enduring instrument, designed to meet the changing needs of each succeeding generation altering and adjusting the unequal conditions to pave way for social and economic democracy within the spirit drawn from the Constitution. So too, the legal redressal within the said parameters. The words in the Constitution or in an Act are but a frame work of the concept which may change more than the words themselves consistent with the march of law. Constitutional issues require interpretation broadly not by play of words or without the acceptance of the line of their growth. Preamble of the Constitution, as its integral part, is designed to realise socio-economic justice to all people including workmen, harmoniously Wending the details enumerated in the Fundamental Rights and the Directive Principles. The Act is social welfare measure to further the general interest of the community of workmen as opposed to the particular interest of the individual entrepreneurs. It seeks to achieve a public purpose, i.e., regulated conditions of contract labour and to abolish it when it is found to be of perennial nature etc. The individual interest can, therefore, no longer stem the forward flowing tide and must, of necessity give way to the broader public purpose of establishing social and economic democracy in which every workman realises socio-economic justice assured in the Preamble, Arts. 14 , 15 and 21 and the Directive Principles of the Constitution."

36. Their Lordships of the Hon"ble Supreme Court in Naga People"s Movement of Human Rights Vs. Union of India (UOI), have held that executive instructions issued to fill up the gaps in statutory provisions have binding force. Their Lordships have held as under:

"56. In State of Uttar Pradesh Vs. Chandra Mohan Nigam and Others, , this Court, while considering the validity of Rule 16(3) of the All India Services (Death- Cum-Retirement Benefits) rules, 1958, which empowered the Central Government to compulsorily retire a member of the All India Service, took note of the instructions issued by the Government and observed:--

"Since rule 16(3) itself does not contain any guidelines, directions or criteria, the instructions issued by the Government furnish an essential and salutary procedure for the purpose of securing uniformity in application of the rule. These instructions really fill up the yawning gaps in the provisions and are embedded in the conditions of service. These are binding on the Government and cannot be violated to the prejudice of the Government servant." [p. 531]

57. In Supreme Court Advocates-on-Record Association and another Vs. Union of India, , one of us, Verma j., as the learned Chief Justice then was, speaking for the majority, after pointing out that in actual practice, the real accountability in the matter of appointments of superior Judges is of the Chief Justice of India and the Chief Justice of the High Courts and not of the executive, has said:--

"If that is the position in actual practice of the constitutional provisions relating to the appointments of the superior judges, wherein the executive itself holds out that it gives primacy to the opinion of the Chief Justice of India, and in the matter of accountability also it indicates the primary responsibility of the Chief Justice of India, it stands to reason that the actual practice being in conformity with the constitutional scheme, should also be accorded legal sanction by permissible constitutional interpretation."

In the present case, the so called clarification vide O.M. dated 20.08.2004 cannot be termed as amendment or supersession of the earlier O.M. dated 05.06.1998. The real nature of O.M. dated 05.06.1998 is that the statutory benefits have been made applicable to the retired Government officials not residing in CGHS areas. Rights have accrued to the retired Government officials on the basis of O.M. dated 5.6.1998 and the same could not be taken away on the basis of notification dated 20.08.2004.

37. Their Lordships of the Hon'ble Supreme Court in Secretary, H.S.E.B Vs. Suresh and Others etc. etc., have held that the democratic policy ought to survive with full vigour: socialist status as enshrined in the Constitution ought to be given its full play and it is in this perspective the question arises-is it permissible in the new millennium to decry the cry of the labour force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning of Article 12 of the Constitution. The answer cannot possibly be in the affirmative. The law courts exist for the society and in the event the law courts feel the requirement in accordance with principles of justice, equity and good conscience, the law courts ought to rise up to the occasion to meet and redress the expectation of the people. Their Lordships have further held that socialism ought

not to be treated as a mere concept or an ideal, but the same ought to be practiced in every sphere of life. India is a Socialist State as the Preamble depicts and the aim of socialism, therefore, ought to be to distribute the common richness and the wealth of the country in such a way so as to subserve the need and the requirement of the common man. Their Lordships have held as under:

"3. Ours is a socialist State as the Preamble depicts and the aim of socialism, therefore, ought to be to distribute the common richness and the wealth of the country in such a way so as to sub-serve the need and the requirement of the common man. Article 39 is a pointer in that direction. Each clause under the Article specifically fixes certain social and economic goal so as to expand the horizon of benefits to be accrued to the general public at large. In particular reference to Article 39(a) it is seen that the State ought to direct its policies in such a manner so that the citizens - men and women equally, have the right of an adequate means of livelihood and it is in this perspective again that the enactment in the statute book as noticed above (The Contract Labour (Regulation and Abolition) Act 1970) ought to be read and interpreted so that social and economic justice may be achieved and the constitutional directive be given a full play.

10. Turning attention, however, on to the legislative intent in the matter of enactment of the Act of 1970, at the first blush itself, it appears that in expression of its intent, the legislature very aptly coined the enactment, as such, for regulation and abolition of contract labour. Conceptually, engagement of contract labour by itself lends to various abuses and in accordance with devout objective as enshrined in the Constitution and as noticed herein before, this enactment has been introduced in the statute book in the year 1970, to regulate contract labour and to provide for its abolition in certain circumstances since prior to such, the factum of engagement of contract labour stood be set with exploiting tendencies and resulted in unwholesome labour practice.

18. As noticed above Draconian concept of law is no longer available for the purpose of interpreting a social and beneficial piece of legislation specially on the wake of the new millennium. The democratic polity ought to survive with full vigour: socialist status as enshrined in the Constitution ought to be given its full play and it is in this perspective the question arises - is it permissible in the new millennium to decry the cry of the labour force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning of Article 12 of the Constitution - the answer cannot possibly be in the affirmative - the law Courts exist for the society and in the event law Courts feel the requirement in accordance with principles of justice, equity and good conscience, the law Courts ought rise up to the occasion to meet and redress the expectation of the people. The expression "regulation" cannot possibly be read as contra public interest but in the interest of public."

38. Their Lordships of the Hon"ble Supreme Court in G.B. Pant University of

Agriculture and Technology, Pantnagar, Nainital Vs. State of Uttar Pradesh and Others, have held that socialistic concept of the society as laid down in Part III and IV of the Constitution ought to be implemented in the true spirit of the Constitution. Their Lordships have held as under:

"3. There cannot possibly be any doubt that socialistic concept of the society as laid down in Part III and IV of the Constitution ought to be implemented in the true spirit of the Constitution. Decisions are there of this Court galore wherein this Court on more occasions than one stated that democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity. In D.S. Nakara and Others Vs. Union of India (UOI), , as also lately in Secretary, H.S.E.B Vs. Suresh and Others etc. etc., , the same has been well pronounced and we need not dilate on that score any further."

In this case, the plea of financial implication was rejected by the Hon''ble Supreme Court.

39. Their Lordships of the Hon''ble Supreme Court in Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and Another, have held that a just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. These observations have been made by their Lordships of the Hon''ble Supreme Court while interpreting Maternity Benefit Act, 1961 vis-?-vis Article 42 of the Constitution of India. Their Lordships have held as under:

"33. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. When who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or postnatal period."

40. Their Lordships of the Hon''ble Supreme Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., have held the Preamble to the Constitution is the lodestar and guides those who find themselves in a grey area while dealing with its provisions. It is now well settled that in interpreting a beneficial legislation enacted to give effect to the Directive Principles of State Policy which is otherwise constitutionally valid,

the consideration of the Court cannot be divorced from those objectives. Their Lordships have held as under:

"9. After the advent of the Constitution of India, the State is under an obligation to improve the lot of the workforce. Article 23 prohibits, inter alia, begar and other similar forms of forced labour. The Directive Principle of State Policy incorporated in Art. 38 mandates the State to secure a social order for promotion of welfare of the people and to establish an egalitarian society. Art. 39 enumerates the principles of policy of the State which include welfare measures for the workers. The State policy embodied in Art. 43 mandates the State to endeavour to secure, by a suitable legislation or economic organisation or in any other way for all workers, agricultural, industrial or otherwise, work a living wage conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Art. 43A enjoins on the State to take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertaking, establishment, or other organizations engaged in any industry. The fundamental rights enshrined in Arts. 14 and 16 guarantee equality before law and equality of opportunity in public employment. Of course, the preamble to the Constitution is the lodestar and guides those who find themselves in a grey area while dealing with its provisions. It is now well settled that in interpreting a beneficial legislation enacted to give effect to directive principles of the state policy which is otherwise constitutionally valid, the consideration of the Court cannot be divorced from those objectives. In a case of ambiguity in the language of a beneficial labour legislation, the Courts have to resolve the quandary in favour of conferment of, rather than denial of, a benefit on the labour by the legislature but without rewriting and/or doing violence to the provisions of the enactment."

41. Their Lordships of the Hon^{ble} Supreme Court in State of Uttaranchal and Others Vs. Sidharth Srivastava and Others, have held that administrative order exists unless it is quashed or it ceases to operate for any other reason. Their Lordships have held as under:

"21. In terms of Section 86 of the Act, it was argued that the reservation policy of the State of U.P. is embodied in the Uttar Pradesh Service (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, the executive decision dated 29.8.2001 cannot override the U.P. act of 1994 (supra) because the State Act continues to remain in force in Uttaranchal by virtue of the Section 86 of the Act. Assuming that be the position, as and when Uttaranchal State Public Service Commission proceeds to make selection, the policy contained in the U.P. Act of 1994 is to be followed unless it is amended by the Legislature of the State of Uttaranchal. It cannot also be contended that the State of Uttaranchal has no right to have its own reservation policy to meet the requirements of the new State having due regard to various factors. Moreover, when the selection made by the UPPSC itself, as already stated above, is not for the State of Uttaranchal and it has no legal or binding effect to compel the State

of Uttaranchal to appoint the selected candidates, the question of applying reservation policy as embodied in U.P. Act of 1994 does not arise. Consequently, this contention also fails."

42. Their Lordships of the Hon"ble Supreme Court in *M. Nagaraj and Others Vs. Union of India (UOI) and Others*, have held that principles of federalism, secularism, reasonableness and socialism, etc. are beyond the words of a particular provision. They are systematic and structural principles underlying and connecting various provisions of the Constitution. They give coherence to the Constitution. They make the Constitution an organic whole. Their Lordships have further held that social justice is one of the subdivisions of the concept of justice. It is concerned with distribution of benefits and burdens throughout a society as it results from social institutions. Their Lordships have held as under:

"19. Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an expanding future and is intended to endure for ages to come and consequently to be adapted to the various crisis of human affairs. Therefore, a purposive rather than a strict literal approach to the interpretation should be adopted. A Constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that constitutional provision does not get fossilized but remains flexible enough to meet the newly emerging problems and challenges.

20. This principle of interpretation is particularly apposite to the interpretation of fundamental rights. It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any constitution by reason of basic fact that they are members of the human race. These fundamental rights are important as they possess intrinsic value. Part-III of the Constitution does not confer fundamental rights. It confirms their existence and gives them protection. Its purpose is to withdraw certain subjects from the area of political controversy to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. Every right has a content. Every foundational value is put in Part-III as fundamental right as it has intrinsic value. The converse does not apply. A right becomes a fundamental right because it has foundational value. Apart from the principles, one has also to see the structure of the Article in which the fundamental value is incorporated. Fundamental right is a limitation on the power of the State. A Constitution, and in particular that of it which protects and which entrenches fundamental rights and freedoms to which all persons in the State are to be entitled is to be given a generous and purposive construction. In the case of *Sakal Papers (P) Ltd. & Others v. Union of India and others* this Court has held that while considering the nature and content of fundamental rights, the Court must not be too astute to interpret the language in a literal sense so as to whittle them down. The Court must interpret the Constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest

measure. An instance of literal and narrow interpretation of a vital fundamental right in the Indian Constitution is the early decision of the Supreme Court in the case of *A.K. Gopalan v. State of Madras*. Article 21 of the Constitution provides that no person shall be deprived of his life and personal liberty except according to procedure established by law. The Supreme Court by a majority held that "procedure established by law" means any procedure established by law made by the Parliament or the legislatures of the State. The Supreme Court refused to infuse the procedure with principles of natural justice. It concentrated solely upon the existence of enacted law. After three decades, the Supreme Court overruled its previous decision in *A.K. Gopalan* and held in its landmark judgment in *Maneka Gandhi v. Union of India* and another that the procedure contemplated by Article 21 must answer the test of reasonableness. The Court further held that the procedure should also be in conformity with the principles of natural justice. This example is given to demonstrate an instance of expansive interpretation of a fundamental right. The expression "life" in Article 21 does not connote merely physical or animal existence. The right to life includes right to live with human dignity. This Court has in numerous cases deduced fundamental features which are not specifically mentioned in Part-III on the principle that certain unarticulated rights are implicit in the enumerated guarantees. For example, freedom of information has been held to be implicit in the guarantee of freedom of speech and expression. In India, till recently, there is no legislation securing freedom of information. However, this Court by a liberal interpretation deduced the right to know and right to access information on the reasoning that the concept of an open government is the direct result from the right to know which is implicit in the right of free speech and expression guaranteed under Article 19(1)(a) .

24. The point which is important to be noted is that principles of federalism, secularism, reasonableness and socialism etc. are beyond the words of a particular provision. They are systematic and structural principles underlying and connecting various provisions of the Constitution. They give coherence to the Constitution. They make the Constitution an organic whole. They are part of constitutional law even if they are not expressly stated in the form of rules.

27. Under the Indian Constitution, the word "federalism" does not exist in the preamble. However, its principle (not in the strict sense as in U.S.A.) is delineated over various provisions of the Constitution. In particular, one finds this concept in separation of powers under Articles 245 and 246 read with the three lists in the seventh schedule to the Constitution.

33. From these observations, which are binding on us, the principle which emerges is that "equality" is the essence of democracy and, accordingly a basic feature of the Constitution. This test is very important. Free and fair elections per se may not constitute a basic feature of the Constitution. On their own, they do not constitute basic feature. However, free and fair election as a part of representative democracy is an essential feature as held in the *Indira Nehru*

Gandhi v. Raj Narain (Election case). Similarly, federalism is an important principle of constitutional law. The word "federalism" is not in the preamble. However, as stated above, its features are delineated over various provisions of the Constitution like Articles 245 , 246 and 301 and the three lists in the seventh schedule to the Constitution.

34. However, there is a difference between formal equality and egalitarian equality which will be discussed later on.

50. Social justice is one of the sub-divisions of the concept of justice. It is concerned with the distribution of benefits and burdens throughout a society as it results from social institutions property systems, public organizations etc.

51. The problem is what should be the basis of distribution? Writers like Raphael, Mill and Hume define "social justice" in terms of rights. Other writers like Hayek and Spencer define "social justice" in terms of deserts. Socialist writers define "social justice" in terms of need. Therefore, there are three criteria to judge the basis of distribution, namely, rights, deserts or need. These three criteria can be put under two concepts of equality "formal equality" and "proportional equality". "Formal equality" means that law treats everyone equal and does not favour anyone either because he belongs to the advantaged section of the society or to the disadvantaged section of the society. Concept of "proportional equality" expects the States to take affirmative action in favour of disadvantaged sections of the society within the framework of liberal democracy.

102. In the matter of application of the principle of basic structure, twin tests have to be satisfied, namely, the "width test" and the test of "identity". As stated hereinabove, the concept of the "catch-up" rule and "consequential seniority" are not constitutional requirements. They are not implicit in clauses (1) and (4) of Article 16 . They are not constitutional limitations. They are concepts derived from service jurisprudence. They are not constitutional principles. They are not axioms like, secularism, federalism etc. Obliteration of these concepts or insertion of these concepts do not change the equality code indicated by Articles 14 , 15 and 16 of the Constitution. Clause (1) of Article 16 cannot prevent the State from taking cognizance of the compelling interests of backward classes in the society. Clauses (1) and (4) of Article 16 are restatements of the principle of equality under Article 14 . Clause (4) of Article 16 refers to affirmative action by way of reservation. Clause (4) of Article 16 , however, states that the appropriate Government is free to provide for reservation in cases where it is satisfied on the basis of quantifiable data that backward class is inadequately represented in the services. Therefore, in every case where the State decides to provide for reservation there must exist two circumstances, namely, "backwardness" and "inadequacy of representation". As stated above equity, justice and efficiency are variable factors. These factors are context-specific. There is no fixed yardstick to identify and measure these three factors, it will depend on the facts and circumstances of each case. These are the limitations on the mode of the exercise of power by the State. None of these limitations have been removed by

the impugned amendments. If the concerned State fails to identify and measure backwardness, inadequacy and overall administrative efficiency then in that event the provision for reservation would be invalid. These amendments do not alter the structure of Articles 14 , 15 and 16 (equity code). The parameters mentioned in Article 16(4) are retained. Clause (4A) is derived from clause (4) of Article 16 . Clause (4A) is confined to SCs and STs alone. Therefore, the present case does not change the identity of the Constitution. The word "amendment" connotes change. The question is whether the impugned amendments discard the original constitution. It was vehemently urged on behalf of the petitioners that the Statement of Objects and Reasons indicate that the impugned amendments have been promulgated by the Parliament to overrule the decision of this court. We do not find any merit in this argument. Under Article 141 of the Constitution the pronouncement of this court is the law of the land. The judgments of this court in Virpal Singh, Ajit Singh (I), Ajit Singh (II) and Indra Sawhney, were judgments delivered by this court which enunciated the law of the land. It is that law which is sought to be changed by the impugned constitutional amendments. The impugned constitutional amendments are enabling in nature. They leave it to the States to provide for reservation. It is well- settled that the Parliament while enacting a law does not provide content to the "right". The content is provided by the judgments of the Supreme Court. If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335 then this court will certainly set aside and strike down such legislation. Applying the "width test", we do not find obliteration of any of the constitutional limitations. Applying the test of "identity", we do not find any alteration in the existing structure of the equality code. As stated above, none of the axioms like secularism, federalism etc. which are overarching principles have been violated by the impugned constitutional amendments. Equality has two facets "formal equality" and "proportional equality". Proportional equality is equality "in fact" whereas formal equality is equality "in law". Formal equality exists in the Rule of Law. In the case of proportional equality the State is expected to take affirmative steps in favour of disadvantaged sections of the society within the framework of liberal democracy. Egalitarian equality is proportional equality.

103. The criterion for determining the validity of a law is the competence of the law-making authority. The competence of the law-making authority would depend on the ambit of the legislative power, and the limitations imposed thereon as also the limitations on mode of exercise of the power. Though the amending power in Constitution is in the nature of a constituent power and differs in content from the legislative power, the limitations imposed on the constituent power may be substantive as well as procedural. Substantive limitations are those which restrict the field of the exercise of the amending power. Procedural limitations on the other hand are those which impose restrictions with regard to the mode of exercise of the amending power. Both these limitations touch and affect the constituent power itself, disregard of which

invalidates its exercise. [See: Kihoto Hollohan v. Zachillhu & Others.]

43. Their Lordships of the Hon^{ble} Supreme Court in Nandi Infrastructure Corr. Ent. Ltd. and Others Vs. Election Commission of India and Another, have explained the difference between terms "Cancel" and "Suspend". Their Lordships have held as under:

"4. It is surprising that by jugglery of words the use of the expression "cancel" in paragraph 2 of the order dated 8/5/2008 has been tried to be justified. If that was the intention, the same should have been conveyed to the State Government after the order of cancellation was passed. The expressions "cancel" and "suspend" are conceptually different. At the same time there could not have been cancellation and suspension. "Cancel" means to destroy the force, effectiveness or validity of an order, a decision, to bring to nothingness. "Suspend" means to debar temporarily a privilege or make temporarily ineffective. To "suspend" is to take a temporary measure while to "cancel" has an element of permanency."

44. Their Lordships of the Hon^{ble} Supreme Court in G.M. (Operations) S.B.I. Vs. R. Periyasamy, have held that Presumption is that the decision or executive order is properly and validly made and the initial onus of proof rests upon party alleging invalidity of order validly made. Their Lordships have held as under:

"14. In administrative law, it is a settled principle that the onus of proof rests upon the party alleging the invalidity of an order. In other words, there is a presumption that the decision or executive order is properly and validly made, a presumption expressed in the maxim omnia praesumuntur rite esse acta which means "all things are presumed to be done in due form.

15. The Division Bench, in appeal, apparently found it to rely on an additional affidavit filed for the first time by the respondent in his Writ Petition, referring to the letter dated 30.12.1987 by which the respondent is purported to have sought the production of certain documents. It is not disputed that the respondent had not at any stage earlier made any grievance that he had written a letter dated 30.12.1987 calling upon the bank to produce certain documents for his perusal and which was denied. It is further not in dispute that there is no record of the bank having received the letter and there is no proof for it. The bank has denied receiving the letter and according to the bank they had received a letter dated 28.12.1987 and they had replied by their letter dated 14.01.1988. In their reply, there was no reference to the letter dated 30.12.1987 because they had not received it. We find that in the absence of proof that any such letter demanding certain documents was received by the bank, it was not permissible for the High Court to proceed to draw an inference that there was a failure of natural justice in the bank having denied certain documents. Thus it may be said, that an administrative authority such as the Appellant, cannot be put to proof of the facts or conditions on which the validity of its order must depend, unless the Respondent can produce evidence which will shift the burden of proof on the

shoulders of the Appellant. How much evidence is required for this purpose will always depend on the nature of that particular case. In *Potato Marketing Board v. Merricks*, it was held that if an order has an apparent fault on the face of it, the burden is easily transferred. However, if the grounds of attack are bad-faith or unreasonableness, the Plaintiff's task is heavier."

45. In view of the definitive law laid down by their Lordships of the Hon^{ble} Supreme Court as discussed hereinabove, it is held that a "socialist State", as the Preamble depicts, is the basic structure of the Constitution of India read with other cognate Articles of Part-III and Part-IV of the Constitution of India. Similarly, the "welfare State" is the basic feature of the Constitution of India. There is a difference between "basic structure" and "basic features" of the Constitution. Their lordships of the Hon^{ble} Supreme Court of India in *Supreme Court Advocates-on-Record-Association and another v. Union of India*, JT 2015 (10) SC1 have held that the expressions ""basic structure" and "basic features" of the Constitution convey different ideas though some of the learned Judges used those expressions interchangeably. The basic structure of the Constitution is the sum total of the basic features of the Constitution. Some of the basic features identified so far by this Court are democracy, secularism, equality of status, independence of judiciary, judicial review and some of the fundamental rights. Most of the basic features identified so far in the various cases referred to earlier are not emanations of any single Article of the Constitution. They are concepts emanating from a combination of a number of Articles each of them creating certain rights or obligations or both. Their Lordships have held as under:

"497. An analysis of the judgments of the above mentioned cases commencing from *Bharati* case yields the following propositions: (I) Article 368 enables the Parliament to amend any provision of the Constitution; (ii) The power under Article 368 however does not enable the Parliament to destroy the basic structure of the Constitution; (iii) None of the cases referred to above specified or declared what is the basic structure of the Constitution; (iv) The expressions "basic structure" and "basic features" convey different ideas though some of the learned Judges used those expressions interchangeably. (v) The basic structure of the Constitution is the sum total of the basic features of the Constitution; (vi) Some of the basic features identified so far by this Court are democracy, secularism, equality of status, independence of judiciary, judicial review and some of the fundamental rights; (vii) The abrogation of any one of the basic features results normally in the destruction of the basic structure of the Constitution subject to some exceptions; (viii) As to when the abrogation of a particular basic feature can be said to destroy the basic structure of the Constitution depends upon the nature of the basic feature sought to be amended and the context of the amendment. There is no universally applicable test vis-?-vis all the basic features.

498. Most of the basic features identified so far in the various cases referred to earlier are not emanations of any single Article of the Constitution. They are

concepts emanating from a combination of a number of Articles each of them creating certain rights or obligations or both (for the sake of easy reference I call them "ELEMENTS"). For example, (a) when it is said that democracy is a basic feature of our Constitution, such a feature, in my opinion, emerges from the various articles of the Constitution which provide for the establishment of the legislative bodies (Parliament and the State Legislatures) and the Articles which prescribe a periodic election to these bodies based on adult franchise; the role assigned to these bodies, that is, to make laws for the governance of this Country in their respective spheres; and the establishment of an independent machinery for conducting the periodic elections etc.;

(b) the concept of secularism emanates from various Articles 15 and 16 which prohibits the State from practicing any kind of discrimination on the ground of religion and Articles 25 to 30 which guarantee certain fundamental rights regarding the freedom of religion to every person and the specific mention of such rights with reference to minorities.

499. The abrogation of a basic feature may ensue as a consequence of the amendment of a single Article in the cluster of Articles constituting the basic feature as it happened in Minerva Mills case and Indira Nehru Gandhi case."

46. The legislation and the policies of the State must be pro-poor, pro-scheduled caste, scheduled tribes and other weaker sections of the society including the pensioners. The system must give due respect and maintain the dignity of the retired personnel by providing them sufficient means including good health care in their twilight years.

47. In the instant case, O.M. dated 05.06.1998 was neither suspended nor cancelled. According to O.M. dated 20.08.2004, the matter was required to be discussed, but the Court can take judicial notice of the fact that since till date, no decision has been taken, the Union of India has accepted the applicability of O.M. dated 05.06.1998, otherwise some decision was bound to have been taken either to suspend or cancel O.M. dated 05.06.1998 for 17 years. In view of the language employed in O.M. dated 20.08.2004, the principle of contemporanea expositio would not be attracted. It is wrong on the part of the petitioners to contend that O.M. dated 05.06.1998 was superseded. Word "supersession" has not been mentioned at all in O.M. dated 20.08.2004. O.M. dated 05.06.1998 also supplemented the CS(MA) Rules, 1944.

48. O.M. dated 5.6.1998 was discussed by the learned Central Administrative Tribunal in its various judgments including O.A. No. 205 of 2003 titled as Mr. Prabhakar Sridhar Bapat v. Union of India and another, decided on 10.11.2003. It was also discussed by the Division Bench of Gujarat High Court in SCA No. 3843/2004, whereby the petition filed by the Union of India was dismissed on 02.04.2004 and also by the Punjab and Haryana High Court in CWP No. 6559 of 2006, decided on 13.03.2008. In this petition also, a specific ground has been taken that identical issues raised in O.A. No. 205/2003, titled as Mr. Prabhakar

Sridhar Bapat v. Union of India and Another was pending before the Hon'ble Supreme Court including the applicability of O.Ms. dated 5.6.1998 and 20.08.2004. The Hon'ble Supreme Court has dismissed the SLPs. on 03.04.2012. The Review Petition was also dismissed by the Hon'ble Supreme Court on 30.10.2013. Thus, the judgment rendered by the learned Central Administrative Tribunal Ahmedabad Bench in O.A. No. 205 of 2003 on 10.11.2003, which has merged in the judgment rendered by the Division Bench of Gujarat High Court in Special Civil Application No. 3843/2004 decided on 02.04.2004, were upheld by the Hon'ble Supreme Court on 03.04.2012.

49. The Union of India should have taken a common sense view to address the serious issue of welfare of its retired employees. We can take judicial notice of the fact that a retired person needs more medical care vis-?-vis a young employee. A serving employee, who enjoys benefits under the CS(MA) Rules, 1944, cannot be left high and dry immediately after retirement for want of medical care. His medical issues are required to be looked into with more sensitivity, compassion and sympathy. His genuine requirements for medical treatment cannot be permitted to be buried in the labyrinth of red tapism. The recommendations of the Pay Commission, though recommendatory, have to be given highest regard, since the Central Government has planned to improve the conditions of service of Central Government employees by examining, reviewing, evolving and recommending changes including pension and other retiral benefits.

50. The Seventh Central Pay Commission constituted vide notification, dated 28.02.2014, has also strongly recommended the introduction of Health Insurance Scheme for Central Government employees and pensioners. In the interregnum, for the benefit of pensioners residing outside the CGHS areas, the Commission recommended that CGHS should empanel those hospitals which are already empanelled under CS(MA)ECHS for catering to the medical requirements of these pensioners on a cashless basis. The Commission has also recommended that the remaining 33 postal dispensaries should be merged with CGHS and all postal pensioners, irrespective of their participation in CGHS while in service, should be covered under CGHS after making requisite subscription.

51. The legal maxim "salus populi suprema lex esto" can usefully be called in aid in the present case also. It means "Let the good (or safety) of the people be the Supreme (or highest) law". Salus is a latin word, which means health/prosperity, safety as per Black's Law Dictionary. Thus, health of the people should be the supreme law.

52. It is the prime responsibility of the State Government to protect health and vigour of retired Government officials, this being their fundamental right under Article 21, read with Articles 39(3), 41, 43, 48-A of the Constitution of India. The steps should be taken by the State to protect health, strength and vigour of the workmen. Non-providing of post-retirement medical care to retired Government official in a city not covered by CGHS at par with in service employee would result in violation of Article 21 of the Constitution of India.

Moreover, employees need medical care most after their retirement. The State cannot call its own actions as wrong. We have clarified and explained O.M. dated 20.08.2004 and it is made clear that all the Central Government pensioners residing in non-CGHS areas would be covered either under the CS(MS) Rules, 1944 or CGHS as per their option to be sought for by the Central Government. In order to avoid litigation, this judgment shall apply to all the retired Government officials residing in non-CGHS areas. There should be equality of health benefits to retirees as well in their evenings of life. There cannot be any discrimination while extending the social benefits to in service and retirees. It is the prime responsibility of the State to protect the health of its workers. In view of the phraseology employed in O.M. dated 05.06.1998, Note 2 appended to Rule 1 is read down to extend the benefit of CS(MA) Rules, 1944 to retired Government officials residing in non-CGHS areas to save it from unconstitutionality and to make it workable. The higher Courts have to evolve new interpretive tools in changing times. The neo capitalism may concentrate wealth in the hands of few persons which would be contrary to the philosophy of the Constitution of India. Right to health is a human right. The action of the petitioner-Union of India not to reimburse the medical bills to the respondent and also not giving option to him and similarly situate persons residing in a city not covered under CGHS as per O.M. dated 5.6.1998 to either opt for CGHS Scheme or CS(MA) Rules, 1944, is illegal, arbitrary, capricious, discriminatory, thus, violative of Articles 14, 16 and 21 of the Constitution of India. The decision in matters pertaining to the health of the employee should be taken with utmost humane approach.

53. Ordinarily we would have ordered the retired Government officials to refund the amount already received by them, but taking into consideration that this would be oppressive and cause undue hardship to them, we order the Union of India not to make recoveries from the respondent and similarly situate persons residing in non-CGHS areas in the event of their opting for CS(MA) Rules or CGHS.

54. Accordingly, the writ petition is dismissed. However, the Union of India is directed to seek the option from the respondent and similarly situated retired employees residing in non-CGHS areas for medical coverage either under CGHS Scheme or under CS(MA) Rules, 1994 as per Office Memorandum, dated 05.06.1998 within a period of six months. Henceforth, the pensioners should be given one time option at the time of their retirement for medical coverage under the CGHS Scheme or CS(MA) Rules, 1994. The Union of India is also directed to release a sum of Rs. 1,79,559/- incurred by the respondent on his treatment and a sum of Rs. 20,000/- incurred by the respondent towards post operation follow up, medicines and transportation charges within a period of three months from today, failing which, the respondent shall be entitled to interest @12% per annum. The miscellaneous application(s), if any, also stand(s) disposed of. No costs.

"Salus populi suprema lex esto - The health of the people should be supreme

law".