Uttarakhand High Court

Rural Litigation And Entitlement ... vs State Of Uttarakhand And Others on 9 June, 2020

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 07 of 2020

Rural Litigation and Entitlement Kendra ...Petitioner

Versus

State of Uttarakhand and others ... Respondents

Mr. Kartikey Hari Gupta, learned counsel for the petitioner.
Mr. M.C. Pande, learned Additional Advocate General assisted by Mr. Anil Kumar Bisht, learned Standing Counsel for the State of Uttarakhand.
Mr. Rakesh Thapliyal, learned Senior Counsel assisted by Mr. Mukesh Kaparwan, Advocate for the third respondent.
Mr. Vikas Bahuguna, learned counsel for the fourth respondent.
Ms. Mamta Bisht, learned counsel for the fifth respondent.

Judgment Reserved : 23.03.2020
Judgment Delivered : 09.06.2020

Chronological list of cases referred:

1. (2016) 8 SCC 389
2. (1981) 1 SCC 568
3. (2018) 6 SCC 1
4. (2019) UKSC 41
5. 5 US (1 Cranch) 137 (1803)
6. (2003) 5 SCC 239
7. AIR 1973 SC 1643
8. (1996) 3 SCR 721
9. (1990) 1 SCC 12
10. (1955) 1 SCR 1071
11. (1908) 6 CLR 469
12. (1903) A.C. 124
13. AIR 1939 FC 1
14. (1961) 3 SCR 242
15. AIR 1967 SC 1801
16. (1969) 2 SCC 166
17. AIR 1962 SC 1044)
18. AIR 1955 SC 58
19. (1940) FCR 110).
20. 1955 (1) Supp SCC 596
21. (1936) AC 578
22. (2018) 4 SCC 743).
23. (1994) 5 SCC 314).
24. Order in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019
25. (1994) 3 SCC 1
26. (1992) 1 SCC 558
27. AIR 1952 SC 525
28. AIR 1958 SC 538
29. AIR 1960 SC 457
30. AIR 1989 SC 2105

31. (2010) 5 SCC 538
32. (2011) 5 SCC 29
33. (1996) 10 SCC 665
34. AIR 1965 SC 745
35. AIR 1969 Guj 74
36. (2013) 9 SCC 659
37. (1986) 2 SCC 68
38. AIR 1955 SC 549

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39. ILR 1975 Delhi 634
40. AIR 1957 SC 699
41. AIR 1958 SC 468
42. AIR 1955 SC 540
43. AIR 1958 SC 956
44. (2018) 6 SCC 363
45. (2003) 5 SCC 298
46. (2003) 4 SCC 399
47. 1993 Supp (1) 96 (II)
48. (1995) 5 SCC 96
49. (1987) 1 SCC 362
50. (1978) 2 SCC 50
51. (1970) 2 SCC 280
52. (1969) 2 SCC 283
53. (1992) 1 Kar LJ 1
54. (2004) 11 SCC 672
55. (2005) 11 SCC 45
56. (2005) 5 SCC 91
57. (2016) 11 SCC 356
58. 2003 5 SCC 568
59. (2012) 1 SCC 619
60. (2014) 12 SCC 696
61. (2014) 4 SCC 434
62. AIR 1961 SC 1457
63. (2004) 1 SCC 712)
64. AIR 1944 FC 86
65. 2 L. Ed. 276
66. (1997) 8 SCC 522
67. (2014) 4 SCC 583
68. AIR 1966 SC 1637
69. (1973) 1 SCR 515
70. (2013) SCC OnLine 622 (Bom HC DB)
71. (2003) ECR 783 (SC)
72. (2015) 4 SCC 400
73. AIR 1996 SC 188).
74. (1975) Supp SCC 1
75. AIR 1963 SC 1742
76. Criminal Appeal No. 75/69 decided on 10-9-1969
77. (1965) 2 Mys L J 40
78. 1992 Supp (1) SCC 304
79. 1992 Supp (1) SCC 391
80. (2006) 3 SCC 643

81. (1983) 4 SCC 508
82. (1970) 1 SCC 248
83. (1981) 4 SCC 675
84. AIR 1952 SC 75
85. AIR 1951 SC 41
86. (2003) 4 SCC 104 at 120
87. (2001) 1 SCC 442
88. (1997) 9 SCC 495
89. AIR 1959 SC 648
90. (2017) 7 SCC 59
91. (1979) 1 SCC 380
92. (2014) 8 SCC 682
93. (1992) 2 SCC 643
94. (1992) 1 SCC 558
95. (1974) 4 SCC 3
96. (1979) 3 SCC 489
97. (2002) 2 SCC 188
98. (2016) 6 SCC 1
99. AIR 1951 SC 318
100. (1981)1 SCC 246
101. (1955) 1 SCR 1045

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102. (1964) 6 SCR 903
103. 1952 CriLJ 805
104. 1952 CriLJ 1167
105. 1953 CriLJ 911
106. 1953 CriLJ 1158
107. (1997) 1 SCC 444
108. (1974) 4 SCC 656
109. (1975) 4 SCC 754
110. (1984) 3 SCC 127
111. (2011) 3 SCC 238
112. (2012) 6 SCC 312
113. (2017) 9 SCC 1
114. (2017) 10 SCC 800
115. (1995) 5 SCC 482
116. (2008) 4 SCC 720
117. 2003 (4) PLJR 44
118. (2008) 5 SCC 33
119. (2015) 10 SCC 681
120. (1989) Supp. (1) SCC 116
121. (2014) 16 SCC 72
122. (2013) 2 SCC 772
123. (2016) 10 SCC 165
124. (1983) 2 SCC 235
125. (2018) 10 SCC 1
126. (1989) 2 SCC 145
127. (1973) 1 SCC 500
128. (1897) 165 US 150
129. 1991 Supp (2) SCC 190
130. (1978) 2 SCC 1

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131.   AIR 2004 SC 361
132.   1964 [71] SCR 456
133.   AIR 1951 SC 41
134.    (2013) 1 SCC 745
135.    (1988) 2 SCC 602
136.   (1976) 2 SCC 310
137.    (1990) 4 SCC 366
138.   AIR 1956 SC 246
139.   AIR 1963 SC 1241
140.   AIR 1957 SC 397
141.    (1996) 1 SCC 1
142.    (2012) 3 SCC 1
143.    (2012) 10 SCC 1
144.    (1987) 2 SCC 295
145.    (2013) 12 SCC 631
146.    (1998) 1 SCC 226
147.    (1974) 1 SCC 549

Coram : Hon'ble Ramesh Ranganathan, C.J.
    Hon'ble R.C. Khulbe, J.
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Ramesh Ranganathan, C.J.

This Writ Petition is filed in public interest seeking a writ, order or direction declaring the Uttarakhand Former Chief Ministers Facility (Residential and other facilities) Act, 2019 (for short "Act 5 of 2020") as arbitrary, illegal and ultra vires the Constitution of India; and for a writ of mandamus directing the Government of Uttarakhand not to implement and follow the provisions of Act 5 of 2020.

2. The petitioner herein, an organisation espousing causes in public interest, had hitherto filed Writ Petition (PIL) No. 90 of 2010 before this Court seeking a writ of certiorari to quash various proceedings issued by the State Government extending certain facilities to Ex-Chief Ministers; a writ of mandamus directing the Government of Uttarakhand not to provide any facility, from the government exchequer, to respondents 2 to 6 as entitlement of the Ex- Chief Ministers; a writ of mandamus directing the State Government to get the government accommodation, occupied by respondents 2 to 6 respectively, vacated; and a writ of mandamus directing the State of Uttarakhand to recover the amount spent, on behalf of respondents 2 to 6, with respect to the facilities provided to them as Ex-Chief Ministers of the State.

3. The Division Bench disposed of Writ Petition (PIL) No. 90 of 2010, by its order dated 03.05.2019, directing respondents 3 to 6 therein to pay the market rent, as detailed in the affidavit of the Additional Secretary/Estates Officer dated 12.02.2019, for the buildings occupied by them as Ex-Chief Ministers, within six months from the date of the order, failing which the State Government was directed toforthwith initiate appropriate legal proceedings, including under the provisions of the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972, for recovery of the said amounts from them; the amounts already paid by respondents 3, 5 and 6 towards rent, for occupation of these premises, was directed to be given credit to; and the amount specified in the table referred to in the affidavit of the Additional Secretary/Estates Officer dated

12.02.2019, after deducting the amount paid by them as rent, was directed to be paid by respondents 3 to 6 within the aforesaid period of six months.

4. The Division Bench further directed the State Government to compute the amounts due and payable towards amenities such as electricity, water, petrol, oil, lubricants etc, provided by the State Government to respondents 3 to 6 as Ex-Chief Ministers, within four months from the date of the receipt of a copy of the order and to intimate the amounts so determined by them, along with documentary evidence of such expenditure incurred by the State Government, to respondents 3 to 6 who were in turn directed, within six months from the date of such intimation, to pay the said amounts to the State Government, failing which the State Government was directed to forthwith recover these amounts in accordance with law, including under the provisions of the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

5. Respondents 4 to 6, in Writ Petition (PIL) No. 90 of 2010, filed review applications against the order of the Division Bench dated 03.05.2019 contending that a copy of the affidavit of the Additional Secretary/Estates Officer dated 12.02.2019 was not served on them; the scope of interference, in a review petition filed against an order passed in a public interest litigation, was far wider; facts, not pleaded in the counter affidavit, could now be pleaded in the review petition; the private respondents should be given an opportunity of being heard even with regards use and occupation of the premises; and the provisions of the Public Premises Act were not application to the private respondents.

6. In its order in Review Application No. 499 of 2019 and batch dated 07.08.2019, the Division Bench observed that the contention, that the proceedings dated 12.02.2019 was not served on respondents 4 to 6, was an afterthought and did not merit acceptance; in the light of the law declared by the Supreme Court, in Lok Prahiri v. State of U.P. and Ors.[1], respondents 2 to 6 had no entitlement in law to occupy any accommodation, provided by the State Government free of cost, post their demitting office as Chief Ministers, since the initial orders of allotment, in the light of the law declared by the Supreme Court in Lok Prahiri- I[1], was itself illegal and void; the market rent due and payable, for the rent free accommodation provided to Ex-Chief Ministers, was computed by the State Government, and this information was in the knowledge of all the respondents, including the review applicants; respondents 4 and 6 could not, therefore, be heard to contend that they ought to have been given an opportunity to question the manner in which the market value (for use and occupation of the rent free accommodation) was determined by the State Government, since it was always open to them to do so during the course of hearing of the Writ Petition, which opportunity they failed to avail; since respondents 4 to 6 were required to pay the amounts as directed by this Court, no proceedings need be initiated against them for recovery, if they were to pay the said amounts on their own accord; respondents 4 to 6 cannot be heard to contend that, while they would not pay the amounts as directed to be paid by this Court, no action should be taken against them for recovery of the said amounts; if the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 does not apply, then the amounts due should be recovered by the State Government by initiating other appropriate legal proceedings; and as retired High Court Judges are also not entitled for rent free accommodation beyond one month after their retirement, or for any other facility like free electricity, water, petrol, diesel, lubricants, vehicles etc after they demit office, it mattered little

that the sixth respondent had earlier held the office of a Judge of the Bombay High Court. The review applications were, accordingly, dismissed. Both the orders of the Division Bench of this Court in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019, and in Review Application Nos. 499 of 2019 and batch, have attained finality as no appeal was preferred there-against either by the Government of Uttarakhand or respondents 2 to 6 (i.e. the Ex-Chief Ministers).

7. Thereafter the Governor of Uttarakhand promulgated the "Uttarakhand Former Chief Ministers Facility (Residential and other facilities) Act, 2019 (Ordinance 2 of 2019) which was subjected to challenge before this Court, by the petitioner herein, in Writ Petition (PIL) No. 145 of 2019. Another Division Bench, after hearing the submissions put forth by the learned counsel on either side in great detail, reserved Judgment. While matters stood thus, the Uttarakhand State Legislature enacted the "Uttarakhand Former Chief Ministers Facility (Residential and other facilities) Act, 2019 (i.e. Act 5 of 2020)on 15.01.2020 (repealing Ordinance 2 of 2019). Consequently, Writ Petition (PIL) No. 145 of 2019 was dismissed as infructuous by the order of this Court dated 17.02.2020.

8. The constitutional validity of Act 5 of 2020 has been subjected to challenge in this Writ Petition on grounds that the impugned Act suffers from lack of legislative competence; it has been made with the specific purpose of over-ruling the judgment of the Division Bench of this Court in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019, and is a measure of statutory over-ruling; the impugned Act is arbitrary, discriminatory, and in violation of Article 14 of the Constitution of India; by enacting this law, the legislature seeks to validate the illegal expenditure incurred, over the past 19 years, on the respondents-Ex-Chief Ministers; no expenditure can be incurred, in providing facilities to Ex-Chief Ministers, except in terms of an Appropriation Act passed by the State Legislature; no enactment can be made after the expenditure has been illegally incurred in favour of the respondents- Ex-Chief Ministers; and the impugned Act is also in violation of the Preamble and Article 39(b) of the Constitution of India.

9. In the affidavit filed in support of the Writ Petition, the petitioner states that the State Legislature lacks legislative competence to enact any law against a public purpose; neither in its object, nor in the Act itself, is any public purpose shown to be involved; the legislative power to enact the impugned Act,which has resultedin conferment of huge benefits and largesse on the Ex- Chief Ministers of the State, has been exercised in a non-transparent and arbitrary manner bereft of any public interest; the impugned legislation is ultra vires Articles 14 and 21 of the Constitution as it arbitrarily creates a separate and special class of citizens i.e. former Chief Ministers, and treats them differently from any other citizen of India without a reasonable basis, intelligible differentia or lawful consideration recognised by the Constitution; not taking market rent from the private respondents, after they have demitted their constitutional office of Chief Ministers, is discriminatory; the legislation is in violation of the economic justice principle,guaranteed by the Preamble, which is part of the basic structure of the Constitution;the impugned Act arbitrarily facilitates charging of appropriate rent in the form of "standard rent",though no such standard rent is provided for any other citizen of India; determination of standard rent, not being equal to market rent applicable to citizens for unauthorised and illegal occupation of Government property, is an arbitrary exercise of power merely to give undue benefit to the private respondents; as a result of the impugned Act, huge monetary loss would be caused to the State of Uttarakhand for a sum exceeding

Rs. 13.03 crores; even electricity, water and other facilities have been arbitrarily defined in the Act as "standard rent" to be determined by the Government of Uttarakhand in an arbitrary manner; while citizens are liable to pay electricity, water, sewerage charges etc at the market or service provider determined rates, the impugned Act enables the State Government to prescribe lesser rates for the Ex-Chief Ministers, which amounts to illegal discrimination; the impugned legislation seeks to nullify the mandamus issued in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019; Section 6 of the Act is unconstitutional as it validates retrospectively various illegal orders issued by the State Government for house allotment; a new provision has been retrospectively introduced to overrule/overturn the judgment of this Court which is in violation of the principle of separation of powers - a part of the basic structure; it is an impossibility in law to remove the basis of the judgment as the financial liabilities, relating to the financial years 2000-01 to 2018-19, are sought to be justified, and the expenditure incurred illegally in the previous years are sought to be validated; the special procedure prescribed for according legislative sanction, for the expenditure to be incurred, is impossible to comply in the year 2020, as the expenditure has already been incurred over the past 19 years; it is impossible to now pass a money bill to validate financial liability retrospectively; as no financial powers can be exercised or expenditure incurred if it is not in public interest, the impugned legislation is in violation of Article 282; as Sections 4 and 5 of the Act, which provides various facilities to the Ex-Chief Ministers free of cost, is a "law" within the meaning of Article 199, the special procedure prescribed in Articles 202 and 207 ought to have been followed; failure to do so is a colourable exercise of legislative power, and is unconstitutional; and as allotment of government property to the private respondents, on the basis of the 1997 Rules, was still born and void ab initio, such action cannot be given life by the impugned Act, that too retrospectively.

10. In the counter affidavit, filed on behalf of the State Government by its Joint Secretary Mr.Omkar Singh, it is stated thatthe power to make Act 5 of 2020 is traceable to Entry 40 of List II of the Seventh Schedule;the basis of the judgment of the High Court, that there was no legislative sanction or valid Government Orders for incurring expenditure for providing various facilities to former Chief Ministers, has been removed by this Act, and the judgment rendered ineffective; as there is a presumption regarding the constitutionality of Statutes, the burden is upon him who attacks it to show that there is a clear violation of the constitutional principles; the Legislature, without making any classification whatsoever, now intends to impose a fee on this class of Chief Ministers who have availed these facilities; the facilities already provided are not being provided any further either to former Chief Ministers, or to the present and future Chief Ministers, after they demit office; what is necessary, to pass the test of permissible classification under Article 14, is that the classification must not be arbitrary, artificial or evasive, but must be based on some real and substantial discrimination bearing a just and reasonable relation to the object sought to be achieved by the Legislature; Article 14 does not forbid reasonable classification of persons, objects and transaction by the Legislature for the purpose of attaining specific ends; in Lok Prahari-I[1], the Supreme Court made a distinction in realising market rent from institutions/organisations who were given public property, and "appropriate rent" from former Chief Ministers; it is apparent that the Supreme Court has not permitted the State to recover/realise market rent from former Chief Ministers; the impugned Act cannot be said to be an attempt to nullify the directions issued by this Court; the impugned Act must be deemed to have been promulgated with effect from 09.11.2000 i.e. when the State of Uttarakhand was created; payment of electricity, water and sewerage tax etc of the

government residence, allotted to the former Chief Ministers, is to be paid to the concerned department from the date of allotment;in terms of Section 4(a) of the Act and its Explanation, notices have been sent to the Ex-Chief Ministers on 07.02.2020; Mr. Vijay Bahuguna has paid the rent, and payment from the remaining Ex-Chief Ministers is awaited; Mr. Bhuwan Chand Khanduri has paid all dues (rent and electricity) as is stated in the notices; electricity dues of others have not been paid; water-tax has been paid by Mr. Bhagat Singh Koshiyari, Mr. Ramesh Pokhariyal and Mr. Vijay Bahuguna; no sewerage tax is due from them; there is no violation of Articles 14 and 21 of the Constitution of India; the Act does not also violate the Preamble of the Constitution; merely because the Act relates to former Chief Ministers, it cannot be said to have created a class; in view of the facilities to persons, who were earlier holding the constitutional post in the year 2000 after creation of the State of Uttarakhand, the former Chief Ministers were granted the facility of accommodation for life, and other facilities under certain Rules/Government Orders/Office Memorandums/Notifications; however by enacting Act 5 of 2020, the residential accommodation and other facilities,already provided to former Chief Ministers, has now been provided for a fixed period, as a one time measure, under the power given by the Constitution; even if the Act violates Article 14, the petitioner cannot maintain the present PIL; and the petitioner has not been able to prove how and in what manner the rights guaranteed under Article 14 has been violated by the Act.

11. It is also stated, in the counter-affidavit, that the impugned Act is not in violation of Article 282 of the Constitution; the contention that the impugned legislation attempts to nullify the mandamus issued to the State of Uttarakhand is fallacious;making a retrospective law is not to overturn/set-aside the judgment of this Court; there is no violation of the principle of separation of powers; the impugned Act covers issues which were not there in the earlier round of litigation; the Act in question cannot be termed as a money bill; the plea regarding Article 199(b) is misconceived; the special procedure, prescribed under Articles 202 and 207, is not applicable; it was also not required to be followed in enacting Act 5 of 2020; adoption of the special procedure cannot be pressed since the expenditure, already incurred from 09.11.2000 till 31.03.2019, has been correctly justified in the Act; and the legislature has made the impugned Act in the exercise of its powers under the Constitution, and by following due process of law.

12. Elaborate submissions were put forth by Dr. Kartikey Hari Gupta, learned counsel for the petitioner, and Mr. M.C. Pande, learned Additional Advocate General appearing on behalf of the State Government. Mr. Rakesh Thapliyal, learned Senior Counsel appearing on behalf of the third respondent, Mr. Vikas Bahuguna, learned counsel for the fourth respondent, and Ms. Mamta Bisht, learned counsel for the fifth respondent, have largely adopted the submissions made by the learned Additional Advocate General. Though notice was served on him, the second respondent chose not to enter appearance through counsel. It is convenient to examine the rival submissions, put forth by learned counsel on either side, under different heads.

I. LOCUS STANDI:

13. It is necessary, at the outset, to consider the contention, urged on behalf of the State Government, that the petitioner lacks locus-standi to file the present Writ Petition challenging the validity of Act 5 of 2020.

14. Relying on its earlier decision in Fertilizer Corporation Kamgar Union (Regd) Sindri and Ors. v. Union of India and Ors.[2], the Supreme Court, in Lok Prahari-I[1], held that the petitioner-Society therein had no malafide intention behind filing the writ petition; none of them had any personal grudge against any of the occupants of the government premises, or any of the former Chief Ministers; the petition was not filed with any oblique motive; it cannot be said that the petitioner lacked locus standi to file a writ petitionchallenging the validity of the 1997 Rules whereby government bungalows had been allotted to former Chief Ministers, especially when there was an acute shortage of government premises; the cause for which the petition had been filed was just and proper; and the petitioner had locus standi to file the petition.

15. The Uttar Pradesh State Legislature had, thereafter, introduced Section 4(3) in the U.P. Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981, in the year 2016, providing that a government residence shall be allotted to a former Chief Minister of the State of Uttar Pradesh, at his/her request, for his/her life time on payment of such rent as may be determined from time to time. Lok Prahari, the very same petitioner which had challenged the 1997 Rules whereby government accommodation was provided to former Chief Ministers for life, filed a Writ Petition, under Article 32 of the Constitution of India, before the Supreme Court which allowed the Writ Petition holding that Section 4(3) of the 1981 Act was ultra vires the Constitution of India as it transgressed the equality clause under Article 14.

16. In Lok Prahari v. State of Uttar Pradesh and others[3], the Supreme Court held that allocation of government bungalows to the constitutional functionaries enumerated in Section 4(3) of the 1981 Act, after such functionaries had demitted public office, would clearly be subject to judicial review on the touchstone of Article 14 of the Constitution of India; this was particularly so as such bungalows constituted public property which, by itself,was scarce and meant for the use of current holders of public offices; the questions relating to allocation of such property were questions of a public character; and the same was amenable for adjudication on the touchstone of reasonable classification as well as arbitrariness.

17. Similar to Lok Prahari-II[3], the petitioner herein, ie Rural Litigation and Entitlement Kendra (for short 'RLEK'), had earlier filed Writ Petition (PIL) No. 90 of 2010 in which a Division Bench of this Court had, by its order dated 03.05.2019, directed the Ex-Chief Ministers (respondents in the said Writ Petition) to pay the market rent for the bungalows allotted to them by the State Government after they had demitted office as Chief Minister, as also to pay for the various amenities provided to them by the State Government at the cost of the public exchequer. It is to overcome this judgment, (either to overrule it as contended on behalf of the petitioner or to remove its basis as claimed on behalf of the respondents), that Act 5 of 2020 was enacted. In the present Writ Petition, the very same petitioner, ie RLEK, has challenged the constitutional validity of the said Act. In the light of the law declared by the Supreme Court, in Lok Prahari-I[1] and Lok Prahari-II[3], (referred to above), and as this Writ Petition is neither actuated by malice nor does the petitioner hold any personal grudge against the respondent-Ex-Chief Ministers, and they have invoked the jurisdiction of this Court in larger public interest, we see no reason to non-suit them on the ground of lack of standing to file the present Writ Petition. II. DOES THE IMPUGNED ACT SUFFER FROM LACK OF LEGISLATIVE COMPETENCE OF THE STATE LEGISLATURE?

18. Dr. Kartikey Hari Gupta, learned counsel for the petitioner, would submit that the source of power to make the impugned legislation is not referable to Entries 38 and 40 of List II of the Seventh Schedule to the Constitution of India; the benefits extended to respondents 2 to 5 were not because they were members of the Legislative Assembly or that they were Ministers of the State; on the other hand, the impugned legislation relates to extension of benefits to persons who were hitherto Chief Ministers of the State; and the specific plea, of lack of legislative competence, raised in the Writ Petition, has not been denied in the counter affidavit. Learned counsel would rely on R. v. Prime Minister[4]; Marbury v. Madison[5]; and Lok Prahari-II[3]in this regard.

19. Mr. M.C. Pande, learned Additional Advocate General for the State of Uttarakhand, would submit that the impugned enactment, i.e. Act 5 of 2020, has been made in compliance with the directions of the Division Bench in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019, and is not in contravention thereof; the judgment does not direct the State Government not to make any law providing facilities to Ex-Chief Ministers; the impugned enactment, i.e. Act 5 of 2020, is within the legislative competence of the State Legislature under Entries 38 and 40 of List II of the Seventh Schedule; the power of the State Legislature to make laws is referable to Article 246 read with the Entries in List II of the Seventh Schedule to the Constitution; and the Entries in the three lists of the Seventh Schedule must be widely construed.

(a) POWER OF LEGISLATION IS CONFERRED ON THE STATE LEGISLATURE BY ARTICLE 246 READ WITH THE ENTRIES IN LIST II AND III OF THE SEVENTH SCHEDULE:

20. It is true that, if a legislation is found to lack in legislative competence, or is found to be in contravention of any of the provisions of Part III or any other provision of the Constitution, the impugned legislation cannot escape the vice of unconstitutionality (State of West Bengal and Ors. v. E.I.T.A. India Ltd. and Ors.[6]; Keshavananda Bharti v. State of Kerala[7]; and State of Andhra Pradesh and Ors. v. McDowell & Co.[8]). The power to legislate is given to the appropriate Legislature by Article 246 of the Constitution. Clause (3) of Article 246 stipulates that, subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (called the State List). Entries in the three Lists, of the Seventh Schedule to the Constitution, are legislative heads or fields of legislation and demarcate the area over which the appropriate Legislature can operate. The three lists neither impose any implied restriction on the Legislative power conferred by Article 246 of the Constitution, nor prescribe any duty to exercise legislative power in any particular manner (India Cements Ltd. v. State of Tamil Nadu[9]; and Duni Chand Rataria v. Bhuwalka Brothers Ltd.[10]).

(b) ENTRIES IN THE THREE LISTS OF THE SEVENTH SCHEDULE SHOULD BE GIVEN WIDE AMPLITUDE :

21. A Constitution is the mechanism under which the laws are to be made, and is not merely an Act which provides what the law is to be. (India Cements Ltd.[9]; and Attorney General for the State of New South Wales v. The Brewery Employees Union of New South Wales[11]). The provisions of the Constitution should, therefore, not be cut down by a narrow and technical construction but,

considering the magnitude of the subjects which it purports to deal in very few words, should be given a large and liberal interpretation (Edwards v. Canada[12]; In re, Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938[13]), and the powers conferred should be given the widest scope. (Diamond Sugar Mills Ltd. v. The State of Uttar Pradesh[14]; New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Ors. v. Municipal Corporation of the City of Ahmedabad and Ors.[15]). The widest amplitude should be given to the language of the Entries. (Harakchand Ratanchand Banthia v. Union Of India And Ors.[16]; India Cements Ltd.[9]; and The Calcutta Gas Company v. The State of West Bengal[17]). None of the entries in the Lists should be read in a narrow or restricted sense, and each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. (Navin Chandra Mafatlal v. The Commissioner of Income Tax[18]; and The United Provinces v. Mst. Atiqa Begum and others[19]).

22. If there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible, in favour of the legislature putting the most liberal construction upon the Legislative Entry so that it may have the widest amplitude. A construction, which is beneficial to the amplitude of the legislative power, should be adopted. The broad and liberal spirit should inspire those whose duty it is to interpret the Constitution. (Jilubhai Nanbhai Khachar v. State of Gujarat[20]; India Cements Ltd.[9]; In re, Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938[13]; Fredrick Alexander James v. Commonwealth of Australia[21]; and Jayant Verma v. Union of India[22]). It is a fundamental principle, of the construction of a Constitution, that everything necessary for the exercise of the power is included in the grant of the power. Everything necessary for the effective execution of the power of legislation, must be taken to be conferred by the Constitution with that power. (State of T.N. v. G.N. Venkataswamy[23]).

(c) ENTRY 40 OF LIST II : ITS SCOPE :

23. Entry 40 of List II, in the Seventh Schedule to the Constitution, relates to "Salaries and Allowances of Ministers for the State". Article 163(1) of the Constitution of India provides that there shall be a Council of Ministers, with the Chief Minister as the head, to aid and advice the Governor of his functions. Though Entry 40 of List II only refers to Ministers, a Chief Minister (who, while heading the Council of Ministers, is also a Minister) would also fall within the ambit of the said Entry. Giving a wide and liberal meaning to the word "Ministers" in Entry 40 would require Chief Ministers also to be brought within its ambit, and consequently Ex-Chief Ministers also. Accepting the submission, urged on behalf of the petitioner, that Ex-Chief Ministers would not fall within the ambit of Entry 40, would completely denude the State Legislature of the power to make any law relating to Ex-Chief Ministers. In Lok Prahari-II[3], the Supreme Court has held that it is permissible to provide security to Chief Ministers after they demit office. The source of power for the State Legislature, to incur expenditure, for extending them such protection by way of a law, if construed as an allowance, can only be traceable to Entry 40 of List II of the Seventh Schedule.

24. Though this question did not directly arise for its consideration, the Division Bench, in Rural Litigation Entitlement Kendra (RLEK) v. State of Uttarakhand and others[24], had held that, as Entries in the three Lists of the Seventh Schedule to the Constitution of India must be widely

construed, it is possible to hold that a law, providing for allowances and other facilities to Ex- Chief Ministers, can be made under Entry 40 of List II of the Seventh Schedule to the Constitution of India.

25. Viewed from any angle, we are satisfied that the Uttarakhand State Legislature had the power to make Act 5 of 2020 under Article 246(3) read with Entry 40 of List II of the Seventh Schedule to the Constitution. The contention, urged on behalf of the petitioner, that the State Legislature lacked legislative competence to enact such a law, therefore, necessitates rejection. III. IS THE IMPUGNED ENACTMENT IN VIOLATION OF THE PREAMBLE OF THE CONSTITUTION AND THE DIRECTIVE PRINCIPLES OF THE STATE POLICY?

26. Dr. Kartikey Hari Gupta, learned counsel for the petitioner, would submit that Act 5 of 2020 is in violation of the first principle of the Preamble of the Constitution of India providing JUSTICE, social, economic and political; even if the provision for facilities is referable to an Entry in the State List of Schedule VII to the Constitution of India, the legislature is still incompetent to pass any law which is against public interest; by making a separate class called 'former Chief Ministers', five individuals have been given a special status and economic privilege which falls foul of the Preamble to the Constitution of India, more particularly to the need to provide social and economic justice and equality of status; and the legislation also falls foul of Article 39(b) in Part IV of the Constitution.

27. Besides referring to the Preamble and to Article 39(b) of the Constitution of India, learned counsel would also rely on the judgment of the Supreme Court in S.R. Bommai v. Union of India[25]; and Kesvananda Bharati[7] in support of his submission that the preamble to the Constitution also forms an integral part of the Constitution necessitating adherence thereto.

28. On the other hand Mr. M.C. Pande, learned Additional Advocate General for the State of Uttarakhand, would submit that the validity of the impugned legislation can only be tested on the anvil of the specific provisions of the Constitution, and not on its spirit; and the contention that this legislation is in violation of the preamble or the directive principles of State policy, even if presumed to be true, cannot be a ground to strike down the Legislation itself. He would rely on Coffee Board Employees Association v. A.C. Shiva Gowda[26]; State of Bihar v. Kamleshwar Singh[27]; Shri Ramkrishna Dalmia v. Justice S.R. Tendolkar[28]; Kangeshari Haldar v. State of West Bengal[29]; and Bank of Baroda v. Rednam Naga Chaya Devi[30].

29. The Constitution, apart from setting up a machinery for Government, has a noble and grand vision which is put in words in the preamble. (Kesavananda Bharati[7]). The Preamble outlines the objectives of, and is an integral part of, the Constitution. (Kesavananda Bharati[7]; and S.R. Bommai[25]). It is the function of the State to secure to its citizens "social, economic and political justice", to preserve "liberty of thought, expression, belief, faith and worship", and to ensure "equality of status and of opportunity", "the dignity of the individuals" and the "unity of the nation". This is what the Preamble of our Constitution says, and that is what is elaborated in the two vital Chapters of the Constitution on fundamental rights and directive principles of State policy. (Bhim Singh v. Union of India[31]). The Preamble is meant to embody, in a very few and well-defined words, the key to the understanding of the Constitution. (Kesavananda Bharati[7]).The Preamble to

the Constitution embodies the principle of equality and fraternity, and it is on the basis of these principles that the Constitution recognises only one single class of citizens subject to the provisions made for backward classes, women, children, SC/ST, minorities etc. (Lok Prahari-II[3]).

30. While the importance of the preamble cannot be ignored, it is also well settled that recourse cannot be had to the spirit of the Constitution when its provisions are explicit in respect of certain rights. When the fundamental law (ie the Constitution) has not limited, either in specific terms or by necessary implication, the general powers conferred on the legislature, it is not possible to deduce a limitation from something supposed to be inherent in the spirit of the Constitution. This elusive spirit is no guide in this matter. The spirit of the Constitution cannot prevail as against its letter. (Kameshwar Singh[27]). Further, the spirit of the Constitution should be inferred from some provision, express or implied, of the Constitution itself. (Kameshwar Singh[27]). Courts are not at liberty to declare an Act void because, in their opinion, it is opposed to the spirit supposed to pervade the Constitution, but not expressed in words. It is difficult upon, any general principle, to limit the omnipotence of the sovereign legislative power by judicial interposition except so far as the express words of a written constitution give that authority.(Kameshwar Singh[27]).

31. The broad concepts of justice, social, economic and political, equality and liberty, thrown large upon the canvas of the Preamble, are moral adjurations with only that content which each generation must pour into them anew in the light of its own experience. An independent judiciary cannot seek to fill them from its own bosom for, if it were to do so, in the end it would cease to be independent. It must be content to stand aside from these fateful battles "as to what these concepts mean", and leave it to the representative of the people. (Kesavananda Bharati[7]). We must, therefore, express our inability to agree with the submission of Dr. Kartikey Hari Gupta, learned counsel for the petitioner, that Act 5 of 2020 is liable to be struck down on the ground that it violates the spirit of the Constitution as referred to in the preamble.

32. The directive principles of State policy set forth the humanitarian socialist precepts that were the aims of the Indian social revolution and, along with the fundamental rights, are designed to be the chief instruments in bringing about the great reforms of the social revolution. (Kesavananda Bharati[7]; and Cornerstone of a Nation (Indian Constitution) by Granville Austin p-75). Article 39 specifies certain principles of policy which are required to be followed by the State. Clause (b) thereof provides that the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good. (Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and Ors.[32]). Socio-economic justice is the arch of the Constitution, and the public resources are to be distributed to achieve that objective. (Victorian Granites (P) Ltd. v. P. Rama Rao and Ors.[33]).

33. Even though the Directive Principles are "non-justiciable", in the sense that they cannot be enforced through a Court, they are declared, in Article 37, as "the principles fundamental in the governance of the country". The mandate of Article 37 is that it shall be the duty of the State to apply these principles in making laws. Primarily the mandate is addressed to the Parliament and the State Legislatures. (Kesavananda Bharati[7]). While the State Legislature is required to bear in mind Article 39(b) while making laws, it is not open to the Court to strike down a law, made by a

competent legislature, on the premise that it violates the directive principles of State policy, as Article 37 explicitly declares that the provisions of Part-IV are not enforceable by any Court.

34. Whenwe asked him whether there was any instance of a legislation being declared ultra vires either the preamble or the Directive Principles of the Constitution, Dr. Kartikey Hari Gupta, learned counsel for the petitioners, would fairly state that he had not come across any. The contentions, urged on behalf of the petitioners under this head, therefore necessitate rejection. IV. IS IT PERMISSIBLE FOR THE STATE LEGISLATURE TO MAKE A LAW APPROVING / RATIFYING THE ACTION OF THE STATE EXECUTIVE IN ILLEGALLY INCURRING EXPENDITURE, IN PROVIDING VARIOUS FACILITIES TO FORMER CHIEF MINISTERS, OVER THE PAST NINETEEN YEARS?

35. Dr. Kartikey Hari Gupta, learned counsel for the petitioner, would submit that the present law, passed retrospectively, is a special kind of legislation which has financial repercussions; among the reasons, why this Court had declared extending such facilities to the former Chief Ministers to be illegal, is that the procedure prescribed in Articles 202 to 207 of the Constitution had not been complied with, before providing free facilities to them; it is now impossible to comply with the procedure prescribed in Articles 202 to 207 with respect to the expenditure already incurred over the last 19 years; the impugned Act is, therefore, unconstitutional; expenditure can only be incurred by the State Executive through a demand for grants; there cannot be a post-expenditure demand for grants or its sanction; there is an element of impossibility in now seeking to enact a law ratifying the expenditure already incurred in extending undue benefits to the Ex-Chief Ministers; the only recourse is to now recover the money, incurred for their benefit, from the respondent Ex-Chief Ministers; the impugned Legislation is not an Appropriation Act; passing of an Appropriation Act is a pre-condition for expenditure to be incurred by the Executive; and it is not permissible for the Executive to first incur expenditure, and then for an Act to be passed ratifying such expenditure. Reliance is placed by him on Article 282 of the Constitution of India, and on the judgment of the Supreme Court in Bhim Singh[31].

36. In its order, in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019, the Division Bench had held that, if any money (except that which is charged on the Consolidated Fund) is to be withdrawn for any governmental purpose, then there must be an Appropriation Act; any expenditure which the Government incurs, in implementing its policies, should also be authorized by the Appropriation Act which is a "law" contemplated by Article 282; an Appropriation Bill is a Money Bill in terms of Article 199(1)(c) which should be introduced as per Article 196, and dealt with under Article 198; the "law" referred to in the Constitution, for sanctifying expenditure from and out of the Consolidated Fund of the State, was the Appropriation Act; and, in the absence of an Appropriation Act being passed by the State Legislature sanctioning such expenditure, no expenditure, in connection with the provision of facilities like water, electricity, vehicles, petrol, diesel etc to the Ex-Chief Ministers, could have been incurred by the State Legislature.

37. Though the question, whether or not expenditure could have been incurred in providing various amenities to the former Chief Ministers without an Appropriation Act being passed, was elaborately considered by the Division Bench of this Court in Rural Entitlement Litigation Kendra[24], it is

necessary to again refer to these aspects, albeit from a different angle, in examining the questions whether the State Legislature can ratify the expenditure illegally incurred by the Executive earlier, over a period of nineteen years (i.e. from 09.11.2000 to 31.03.2019), in providing various facilities to former Chief Ministers; and, if so, whether the procedure prescribed by the Constitution has been followed in enacting a law (i.e. Act 5 of 2020) to ratify such expenditure.

(i) PLENARY POWERS OF LEGISLATION IS SUBJECT TO CONSTITUTIONAL LIMITATIONS :

38. The successful working of the rule of law is the basic foundation of democracy. (Under Article 143 of the Constitution of India; In the matter of Special Reference No. 1 of 1964[34]). In a democratic Country governed by a written Constitution, it is the Constitution which is supreme and sovereign. (Under Article 143 of the Constitution of India; In the matter of Special Reference No. 1 of 1964[34]). The essential characteristic of federalism is "the distribution of limited executive, legislative and judicial authority among bodies which are co-ordinate with and independent of each other." The supremacy of the Constitution,which is fundamental to the existence of a federal State, is protected by the authority of an independent judicial body to act as the interpreter of the scheme of distribution of powers. (Under Article 143 of the Constitution of India; In the matter of Special Reference No. 1 of 1964[34]).

39. The Legislatures have plenary powers to make laws, but these powers are controlled by the basic concepts of the written Constitution itself. They, ie the Legislatures, discharge their legislative functions by virtue of the power conferred on them by the relevant provisions of the Constitution, and they function within the limits prescribed by the material and relevant provisions of the Constitution. The basis for such exercise of plenary powers is the Constitution itself. (Under Article 143 of the Constitution of India; In the matter of Special Reference No. 1 of 1964[34).

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(ii)  CONSTITUTIONAL     PROVISIONS                       RELATING          TO
      FINANCES: ITS SCOPE :
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40. The Constitution of India contemplates three funds (1) consolidated fund, (2) contingency fund, and (3) a fund, the amounts of which are to be credited to the public account. (S.M. Thakkar v. M.A. Baqui[35]). A Contingency Fund can be established, in terms of Article 267(2), only by enacting a law in that behalf, and not by an executive fiat. (Bhim Singh[31]; and S. Subramaniam Balaji v. State of Tamil Nadu and others[36]). Under Article 283(2) the operation of the Consolidated Fund of the State, the public account, and the Contingency Fund of the State can all be regulated by "law".

41. Part XII Chapter I of the Constitution of India relates to Finances. Article 266, thereunder, lays down that all monies received by the State Government, by way of taxes or otherwise, must be credited to the Consolidated Fund of the State. The said Article, which refers to Consolidated Funds and Public Accounts of India and of the States, explains what are all the components of the Consolidated Fund of a State. (Bhim Singh[31]). In terms of Article 266, the Consolidated Fund of the State is constituted of only three elements, namely, (1) revenues received by the Government of a State, (2) loans raised by that Government by the issue of treasury bills, loans or ways and means advances, and (3) all moneys received by that Government in repayment of the loans. In terms of

Article 266(3) no moneys, out of the Consolidated Fund of a State, shall be appropriated except in accordance with law, and for the purposes and the manner provided in the Constitution.

42. Article 196 contains provisions relating to introduction and passing of Bills. Article 199 is the definition of a "Money Bill" and under clause (1)(c), for the purposes of Part VI Chapter III of the Constitution (i.e. from Articles 168 to Article 212), a Bill shall be deemed to be a money bill if it contains only provisions dealing with the custody of the Consolidated Fund of the State, and the payment of money into or the withdrawal of money therefrom; and, under clause (1)(d), if the Bill contains only provisions dealing with the appropriation of moneys out of the Consolidated Fund of the State. Article 202 mandates that the Governor shall, in respect of every financial year, cause to be laid, before both the Houses of the State Legislature, a statement of the estimated receipts and expenditure of the Government of the State, for the year referred to, called the "Annual Financial Statement". Besides the expenditure charged upon the Consolidated Fund of the State, under Article 202(3), the demands for grants sought by the State Executive are also met from the Consolidated Fund of the State. Article 203 prescribes the procedure in the Legislature with respect to estimates. Article 203(2) stipulates that so much of the said estimates, as relates to other expenditure (ie expenditure other than those charged on the consolidated fund of the State), shall be submitted in the form of grants to the Legislative Assembly. Article 203 (3) provides that no demand for a grant shall be made except on the recommendation of the Governor.

43. Under our Constitutional set up, the demand by the Governor, in terms of Article 203 (3), must be made on the recommendation of the Council of Ministers. (State of Himachal Pradesh v. Umed Ram Sharma[37]). Nowhere, in the Constitution, is any reference made to the word "Budget", and the expression used therein is "Annual Financial Statement". The expression 'budget' is merely a term sanctified by usage. (Umed Ram Sharma[37]). The estimates of expenditure, embodied in the annual financial statement, should separately show the sum required, to meet the expenditure as charged upon the Consolidated Fund of the State as per Article 202(2)(a), and the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State as per Article 202(2)(b). (Bhim Singh[31]).

44. It is only the following expenditure which, in terms of Article 202(3) of the Constitution of India, are expenditure charged on the Consolidated Fund of each State (a) the emoluments and allowances of the Governor; (b) salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly, and the Chairman and Deputy Chairman of the Legislative Council; (c) debt charges for which the State is liable to pay interest etc, other expenses relating to the raising of loans, and the service and redemption of debt; (d) expenditure in respect of the salaries and allowances of Judges of the High Court; (e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; and (f) any other expenditure declared by the Constitution, or by the Legislature of the State by law, to be so charged. The expenditure, incurred towards the facilities extended to the Ex-Chief Ministers, is not a charge on the Consolidated Fund of the State. Such expenditure would fall within the ambit of Article 202(2)(b) which relates to the sums required to meet other expenditure proposed to be made from the consolidated fund of the State, and the estimate of such expenditure must be shown separately in the annual financial statement.

45. In terms of Article 203(2), the demands for grants are voted in the Legislative Assembly which has the plenary power either to assent, or to refuse to assent, to any demand or to subject the amounts specified therein to a reduction. The Legislative Assembly exercises final control over expenditure. After the grant has been voted and accepted by the Legislative Assembly, in terms of Article 203(2), a bill is introduced in terms of Article 204 to provide for appropriation of payments from out of the Consolidated Fund of the State. Such Bills are called Appropriation Bills, and is a Money Bill in terms of Article 199(1)(c), which should be introduced as per Article 196, and dealt with under Article 198. (Bhim Singh[31]).

46. The "law" referred to in the Constitution, for sanctifying expenditure from and out of the Consolidated Fund of the State, is the Appropriation Act as prescribed in Article 204(3). Article 204 relates to Appropriation Bills and, under clause (1)(a) thereof, as soon as may be after the grants under Article 203 have been made by the legislative assembly, there shall be introduced a bill to provide for the appropriation, out of the Consolidated fund of the State, of all monies required to meet the grants so made by the Assembly. Article 204(3) stipulates that, subject to the provisions of Articles 205 and 206, no money shall be withdrawn from the Consolidated Fund of the State, except under appropriation made by law passed in accordance with the provisions of Article 204.

47. After the estimates of expenditure, laid in the form of 'demands for grants', has been voted and accepted by the Legislative Assembly, a Bill is required to be introduced to provide for the appropriation, out of the Consolidated Fund of the State, of all monies required to meet the grants made by the Legislative Assembly. In other words withdrawal of money, from the consolidated fund of the State, can only be made if the demand for grants has been approved by the Legislative Assembly, and thereafter an Appropriation Bill is introduced, and an Appropriation Act is passed by the Legislative Assembly. It is only then is appropriation made by "law", in accordance with the provisions of Article 204. (Bhim Singh[31]). Article 207 of the Constitution contains special provisions as to financial bills. Under clause (1) thereof, a bill or amendment making provision for any of the matters specified, among others, in sub-clauses (c) and (d) of Article 199(1) shall not be introduced or moved except on the recommendation of the Governor. Article 207(3) stipulates that a Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of the State, shall not be passed by the Legislative Assembly unless the Governor has recommended to that House the consideration of the Bill. The provisions of clauses (1) and (3) of Article 207 have, admittedly, not been followed in enacting Act 5 of 2020.

48. As soon as the Appropriation Act is passed, the expenditure made, under the heads covered by it, is deemed to be properly authorised by law under Article 266(3) of the Constitution (Rai Sahib Ram Jawaya Kapur and others v. The State of Punjab[38]). It is only after the budget is voted upon and accepted by the State Legislature, and the annual Appropriation Act is passed thereafter, can the State Government spend money from out of the Consolidated Fund of the State (VashistBhargava v. Income Tax Officer, Salary Circle[39]) and not prior thereto.Any expenditure which the Government incurs, in implementing its policies, should be authorized by the Appropriation Act which is a law as contemplated by Article 282 (Bhim Singh[31]; S. Subramaniam Balaji[36] and Rai Sahib Ram Jawaya Kapur[38]) which stipulates that the Union or the States may make any grant for any public purpose, notwithstanding that the purpose is not one with respect to

which Parliament, or the Legislature of the State, as the case may be, may make laws.

(iii) PROCEDURE PRESCRIBED BY THE CONSTITUTION, FOR WITHDRAWAL OF MONEYS FROM THE CONSOLIDATED FUND OF THE STATE, IN ORDER TO INCUR EXPENDITURE IN PROVIDING VARIOUS FACILITIES TO THE FORMER CHIEF MINISTERS :

49. As the expenditure, for providing various facilities to the former Chief Ministers, could have been incurred only on appropriation by law from the Consolidated Fund of the State, and that too in the manner provided in the Constitution (refer Article 266(3)), it is necessary, at the cost of repetition, to summarize the procedure prescribed in the Constitution, for withdrawal of money from the consolidated fund of the State. Since this expenditure, incurred on the former Chief Ministers, is not an expenditure charged on the Consolidated Fund of the State under Article 202(3), the Governor, on the recommendations of the Council of Ministers, is, in turn, required to recommend a demand for grants to the Legislative Assembly (refer Article 203(3)). For every financial year, the Governor should cause to be laid before the Legislative Assembly, (the State of Uttarakhand does not have a legislative council), a statement of the estimated receipts and expenditure of the State for that year called the "annual financial statement", colloquially called the Budget (refer Article 202(1)). The annual financial statement is required to separately show the sum required to meet expenditure other than that charged on the Consolidated Fund of the State (refer Article 202(2)(b)). The estimate of the aforesaid expenditure must be submitted in the form of demand for grants to the Legislative Assembly. (Refer Article 203(2)).

50. Thereafter the State Legislative Assembly is required to consider the demand for grants. It may assent or refuse to assent to any such demand, or assent to such a demand subject to the reduction of the amount specified in the demand. (Refer Article 203(2)). After the demands for grants is voted, and accepted by the Legislative Assembly, an appropriation bill (which is a money bill under Article 199(1)(c)) is required to be introduced in the Legislative Assembly. (Refer Article 204(1)(a)). It is only after a law, i.e. the Appropriation Act, is made can money be withdrawn thereafter from the Consolidated Fund of the State. The Division Bench of this Court, in Rural Entitlement Litigation Kendra[24], has held that this procedure was not followed before incurring expenditure towards provision of accommodation and various other facilities to the former Chief Ministers.

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(iv) CAN THE EXPENDITURE ILLEGALLY INCURRED BY THE
     EXECUTIVE     BE SUBSEQUENTLY    RATIFIED  BY
     LEGISLATION :
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51. On the question whether the expenditure, illegally incurred by the Executive earlier, can be subsequently ratified by legislation, Courts should ascertain if there is anything in any other part of the Constitution which places any fetter on the exercise of such legislative powers by the Legislature. (State of Bombay v. R.M.D. Chamarbaugwala & another[40]). Unconstitutionality may arise because the provisions of a law offend some constitutional restrictions. Even if the law is on a topic within

the competence of the State Legislature, as for example an Entry in List II, it might nonetheless infringe upon the restrictions imposed by the Constitution on the character of the law to be passed. Here also, the law to the extent of the repugnancy will be void. A Legislation within the competence of the State Legislature, but violative of constitutional limitations, is unenforceable. (M.P.V. Sundararamier & Co. v. The State of Andhra Pradesh & another[41]). Consequently, if any of the provisions of Act 5 of 2020 are held to be in violation of the procedure in Financial matters, as prescribed in Articles 202 to 207 of Part VI Chapter III of the Constitution, then those provisions of Act 5 of 2020 would be void and unenforceable.

52. In this context, it is necessary to note that Legislative powersare conferred upon the State Legislatures by Articles 245 and 246 of the Constitution read with the entries in List II and III of the Seventh Schedule to the Constitution. Under Article 246, the State Legislature is invested with the power to legislate on the topics enumerated in Lists II & III of the Seventh Schedule to the Constitution and this power is, by virtue of Article 245(1), subject to the provisions of the Constitution.The fetter or limitation upon the legislative power of the State Legislature, which has plenary powers of legislation within the ambit of the legislative heads specified in the Lists II & III of the Seventh Schedule to the Constitution,can only be imposed by the Constitution itself. (Maharaj Umeg Singh & others v. State of Bombay & others[42]). The State Legislature has the power,under Article 246(3) read with Entry 40 of List II of the Seventh Schedule of the Constitution, to make a law, providing facilities to former Chief Ministers, both prospectively or with retrospective effect. This legislative power is, however, to be exercised under Article 245 "subject to the provisions of this Constitution". (In re : The Kerala Education Bill, 1957 (Special Ref. No. 1 of 1958)[43]).

53. Unless and until the Superior Courts come to the conclusion that the Constitution itself has expressly prohibited legislation on the subject, either absolutely or conditionally, the power of the State Legislature to enact legislation, within its legislative competence,is plenary.Once the topic of legislation is comprised within any of the entries in Lists II & III of the Seventh Schedule to the Constitution, the fetter or limitation on such legislative power has to be found within the Constitution itself and, if there is no such fetter or limitation to be found there, the State Legislature has full competence to enact a law.The Constitution has, in several of its provisions, laid down fetters or limitations on this power of the State Legislature to make laws (Maharaj Umeg Singh[42]).

54. The Constitution of India provides for an inbuilt system of checks and balances in financial matters. Financial control, over the expenditure incurred by the Executive, is exercised by the State Legislature to ensure fiscal discipline on the former's part. It is only after prior approval of the State Legislature is obtained, in the form of an Appropriation Act, can the Executive thereafter withdraw money from the consolidated fund of the State to incur expenditure. Since the power of the State Legislature to make laws is, in terms of Article 245, subject to the provisions of the Constitution, it is also subject to Article 266(3) which is a limitation on the plenary power of the State Legislature to make laws under Article 246 read with the Entries in Lists II and III of the Seventh Schedule. Articles 202 to 207, which prescribe the procedure in financial matters, stipulate the manner in which monies, to meet the expenditure which the Executive intends to incur, should be appropriated from the Consolidated Fund of the State. Articles 202 to 204 make it amply clear that prior approval, and not subsequent ratification, of the State Legislature is required, before the Executive

(i.e. the Government of Uttarakhand) can incur any expenditure, including for providing various facilities to the former Chief Ministers.

55. Let us now examine whether there are any other constitutional provisions which permit the expenditure incurred earlier by the State Government without prior approval of the State Legislature, that too over a period of nineteen years, to be ratified later by the State Legislature, and if so whether any procedure is prescribed in the Constitution to do so. As the expenditure, incurred on providing facilities to the former Chief Ministers, was not authorized by any law, prior to such expenditure being incurred, clause (1)(a) of Article 205 has no application as it relates to amounts, authorized by law to be expended for a particular service, being found insufficient. Article 205(1)(a) pre-supposes that the amount spent for a particular purpose was authorised by law, and relates to a situation where such amounts are found insufficient. As the amount spent earlier, in providing various facilities to former Chief Ministers, was not authorised by any law, Article 205(1)(a) has no application.

56. Article 205 (1)(b) requires the Governor, if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, to cause to be laid before the house of the legislature of the State, another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly a demand for such excess as the case may be. Clause (1)(b) of Article 205 relates to amounts spent in excess of the amounts granted for a service for the financial year, and since no such amount was granted earlier by way of a law made by the State Legislature, the aforesaid clause, which relates to the amount spent in excess of the grant, has also no application. Use of the words "estimated expenditure", in Articles 202 to 205, shows that legislative sanction must be sought and obtained at a stage prior to incurring expenditure, for, after such expenditure is incurred, it would cease to be estimated expenditure, and would reflect the actual expenditure incurred by the Executive. Act 5 of 2020 does not show that the actual expenditure incurred, in providing various facilities to former Chief Ministers, has been computed.

57. Even in cases where clauses (a) and (b) of Article 205(1) are attracted, Article 205 (2) stipulates that the provisions of Articles 202, 203 and 204 shall have effect in relation to any such statement and expenditure or demand, and also to any law to be made authorizing the appropriation of moneys out of the consolidated fund of the State to meet such expenditure or the grant in respect of such demand, as they have in effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant, and the law to be made for the authorization of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant. Even for supplementary, additional or excess grants, Article 205 of the Constitution necessitates compliance. This Constitutional provision, in a sense, provides that, if any fund is found insufficient for a particular purpose of the year, or need has arisen, then the Governor (ie the Government) must seek legislative sanction to another statement showing the estimated amount of the additional expenditure, and such would be the demand for excess grant which should be passed in accordance with the provisions contained in the other Articles of the Constitution (Umed Ram Sharma[37]) i.e. Articles 202 to 204. The very same procedure, as is constitutionally prescribed for Legislative sanction to be obtained for the Executive demand of grants, is required to

be followed even for supplementary, additional or excess grants. No such procedure has been followed in the present case, evidently because the provisions of Article 205 are inapplicable for an ex- post facto legislative sanction of the expenditure, illegally incurred by the State Government earlier, in providing various amenities to the former Chief Ministers.

58. Article 206, which relates to vote on account, votes of credit and exceptional grants, has also no application to legislative sanction being accorded, and the expenditure incurred over a period of nineteen years (ie from 09.01.2000 to 31.03.2019), on the former Chief Ministers, being ratified. Article 206(1)(c), which confers power on the Legislative Assembly to make an exceptional grant, which forms no part of the current service of any financial year, requires the State Legislature to authorize, by law, the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made. This provision also shows that legislative sanction should be obtained, for such exceptional grants, before withdrawal of money from the Consolidated Fund of the State, and that ratification of expenditure, illegally incurred earlier by the State Government, is impermissible. Further, Article 206(2) stipulates that the provisions of Articles 203 and 204 shall have effect in relation to the making of a grant under Article 206(1), and to any law to be made under the said clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement, and the law to be made for the authorization of moneys out of the Consolidated Fund of the State to meet such expenditure. The respondents admit, in their counter affidavit, that Act 5 of 2020 is not a money bill. This goes to show that the procedural requirements of Article 203 and 204 of the Constitution were not followed before enacting Act 5 of 2020.

59. Neither Article 205 nor Article 206 permit the State Legislature to ratify the expenditure illegally incurred by the Executive earlier, much less in the absence of an Appropriation Act being passed by the State Legislature according sanction for incurring such expenditure, and without adhering to the procedure prescribed under Articles 203 and 204. Therefore no expenditure, in connection with the provision of facilities like accommodation, water, electricity, vehicles, petrol, diesel etc, could have been incurred by the State Government for the benefit of the Ex-Chief Ministers. As prior approval of the State Legislature is required to be obtained before withdrawal of moneys from the Consolidated Fund of the State, legislative ratification of the expenditure, illegally incurred by the Executive earlier, is impermissible. As rightly contended by Dr.KartikeyHari Gupta, learned counsel for the petitioner, it is a constitutional impossibility for the expenditure, illegally incurred over a period of nineteen years, to now be ratified by the State Legislature. We are satisfied, therefore, that Act 5 of 2020 falls foul of Articles 202 to 207 and Article 266(3) of the Constitution of India. As the power of the State Legislature to make laws is, in terms of Article 245, subject to the provisions of the Constitution, Section 4(c) of Act 5 of 2020, (which extends to the former Chief Ministers the benefit of various facilities free of cost), is illegal and ultravires Articles 202 to 207 and Article 266(3) of the Constitution of India, and is liable to be declared void and unenforceable on this score.

V. DOES THE IMPUGNED ENACTMENT SEEK TO NULLIFY THE JUDGMENT OF THE DIVISION BENCH, IN "RURAL LITIGATION ENTITLEMENT KENDRA (RLEK) V. STATE OF UTTARAKHAND" (ORDER IN WRIT PETITION (PIL) No. 90 OF 2010 DATED 03.05.2019)?

60. Dr.KartikeyHari Gupta, learned counsel for the petitioner, would submit that Act 5 of 2020 is unconstitutional as it has been enacted for the specific purpose of over-ruling the judgment of this Court in Rural Litigation Entitlement Kendra[24]; the mandamus issued by this Court is (a) for the private respondents (Ex-Chief Ministers) to pay the market rent of the bungalows, as fixed by the State Government, failing which for the State Government to recover the amounts due from them under the provisions of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972; and (b) for the private respondents (Ex-Chief Ministers) to pay the amounts due towards amenities such as electricity, water, petrol etc, after the said amount is determined by the State Government; and, by the impugned legislation, the mandamus issued by this Court is sought to be negated, and the judgment overruled.

61. Learned counsel would refer in detail to the observations made, and the directions issued, by the Division Bench in Rural Litigation Entitlement Kendra[24]), to submit that Act 5 of 2020 was made to negate the said directions; by enacting this law, the Uttarakhand State Legislature has sought to sit in appeal over the order passed by this Court in the exercise of its powers of judicial review; the attempt to overrule a judicial pronouncement is an unconstitutional exercise of power by the State Legislature; the impugned law does not seek to remove the basis of the said judgment; by the impugned law the Legislature has sought to set at naught the judgment of this Court, by introducing a new provision, that too retrospectively, which is impermissible in law; and such an exercise undertaken by the State Legislature is in violation of the doctrine of separation of powers and the basic structure of the Constitution.

62. Learned counsel would rely on State of Karnataka v. Karnataka Pawn Brokers Assn.[44]; Bakhtawar Trust v. M.D. Narayan[45]; People's Union for Civil Liberties (PUCL) v. Union of India[46];In the matter of Cauvery Water Disputes Tribunal[47]; G.C. Kanungo v. State of Orissa[48]; P. Sambamurthy v. State of A.P.[49]; Madan Mohan Pathak v. Union of India[50]; Municipal Corporation of the City of Ahmedabad v. New Shrock Spinning and Weaving Co. Ltd.[51]; and Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality[52].

63. On the other hand Mr. M.C. Pande, learned Additional Advocate General appearing for the State of Uttarakhand, would submit that, in order to decide the question whether the impugned Act seeks to over-reach the judgment of this Court, in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019, or seeks only to remove its basis, it is necessary to first determine whether the impugned Act has passed the test of constitutionality by removing the very basis of the decision of the High Court, in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019; for that purpose it should first be determined what the basis of the earlier decision was, and second what, if any, may be said to be the removal of the basis (Bakhtawar Trust[45]);the said principle of law is now well settled by the judgments of the Supreme Court in Shri Prithvi Cotton Mills Ltd.[52]; the judgment in Karnataka Pawn Brokers Assn.[44] and Manakchand Motilal v. State of Karnataka[53]cannot be read out of context; a decision is only an authority for what it decides, and not what can be logically deduced therefrom (P.S. Satappan v. Andhra Bank[54]; M.P. Gopalakrishnan Nair v. State of Kerala[55]; Haryana State Coop. Land Development Bank v. Neelam[56];and Inderpreet Singh Kahlon v. State of Punjab[57]; Union of India v. Chajju Ram[58];and Air India Cabin Crew Association v. Union of India[59]); the basis of the judgment of the High Court, in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019, is

that there was neither any legislative sanction nor any valid Government Order for the expenditure incurred in providing various facilities to the former Chief Ministers; in the said case, it was specifically argued by the petitioner that there was no legislative sanction; issues were specifically framed by this Court, and it came to the conclusion that, without legislative sanction or approval of the Governor with regards the Government Orders, the expenses incurred on them was to be recovered from the former Chief Ministers; this basis of the judgment has been removed by the impugned legislation; and it cannot, therefore, be said that the impugned enactment is intended to over-reach the judgment of the High Court.

64. Learned Additional Advocate General would further state that the State Legislature is entitled to make laws on all topics within its legislative field; the judiciary may declare whether a law is valid or invalid; while the Legislature is entitled to make a law, it cannot encroach on the functions of the judiciary, nor does it have the power of judicial review; though it cannot overrule a judgment, the Legislature can remove the basis of the judgment which may make the judicial decision ineffective; the impugned legislation is made to remove the basis of the judgment in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019; and, under the circumstances, it cannot be said that the impugned Act has the effect of over-reaching the aforesaid judgment of the Division Bench of this Court.

65. Both Mr. Rakesh Thapliyal, learned Senior Counsel, and Ms. Mamta Bisht, learned counsel, would submit that the third and the fifth respondents have paid the rent as fixed by the State Government; and, in terms of the judgment of the Supreme Court in LokPrahari-I[1], the obligation of the third and fifth respondents is only to pay the appropriate rent and not the market rent.

(i) A LAW ENACTED TO OVERRULE A JUDICIAL DECISION VIOLATES THE DOCTRINE OF SEPARATION OF POWERS:

66. Any attempt by the State Legislature to enact a law only to overrule a judicial decision violates the doctrine of separation of powers which is an entrenched principle in the Constitution of India, even though there is no specific provision therein. Independence of Courts from the Executive and the Legislature is fundamental to the rule of law, and is one of the basic tenets of the Indian Constitution. The doctrine of separation of powers between the three organs of the State -- Legislature, Executive and the Judiciary is a consequence of the principles of equality enshrined in Article 14 of the Constitution of India. Consequently, a law can be set aside on the ground that it breaches this doctrine, since that would amount to negation of equality under Article 14 of the Constitution of India. The doctrine of separation of powers applies to the final judgments of the Courts.(State of Tamil Nadu v. State of Kerala[60]; and Karnataka Pawn Brokers Association[44]).

(ii) BINDING CHARACTER OF JUDGMENTS IS AN ESSENTIAL PART OF THE RULE OF LAW:

67. The power of judicial review is conferred on the judiciary by the Constitution to ensure that the law is observed, the rule of law is maintained, every organ of the State is kept within the limits of the law, and there is compliance with the requirement of law on the part of the executive and the Legislature. (P. Sambamurthy[49]; and People's Union for Civil Liberties (PUCL)[46]). The binding character of judgments, pronounced by Courts of competent jurisdiction, is an essential part of the

rule of law which is the basis of administration of justice in this country. (R. Unnikrishnan v. V.K. Mahanudevan[61]; and Daryao v. State of U.P.[62]). The concept of the rule of law, and the separation of powers doctrine, do not undermine the legislature. Rather, they ensure that all the branches of the State act within the framework of the Constitution, and the Statutes. (A Judge on Judging: The Role of a Supreme Court in Democracy -- President Aharon Barak, Harvard Law Review, Vol. 116, No. 1, November 2002, at p.135; and Dharam Dutt v. Union of India[63]).The rule of law would cease to have any meaning if it is open to the State Government to defy the law, and yet get away with it. (P. Sambamurthy[49]; and People's Union for Civil Liberties (PUCL)[46]).

(iii) THE POWER TO LEGALISE AN ILLEGAL ACTION IS WITHIN THE EXCLUSIVE PROVINCE OF THE LEGISLATURE:

68. Parliament and the State Legislatures have plenary powers of legislation within the fields assigned to them and, subject to certain constitutional limitations, can legislate prospectively as well as retrospectively. (Bakhtawar Trust[45]). To declare what the law shall be is a legislative power, and to declare what the law is or has been is a judicial power. It is within the exclusive domain of the judiciary to expound the law as it is, and not to speculate what is should be- which is the function of the Legislature. (Basanta Chandra Ghose v. Emperor[64]; Ogden v. Blackledge[65]; and S.S. Bola v. B.D. Sardana[66]).

69. Just as the legislatures are conferred legislative functions, and the functions and authority of the executive lie within the domain of executive authority, so the jurisdiction and authority of the Judicature in this country lie in the domain of adjudication. If the constitutional validity of any law is challenged before the Courts, adjudication of such a dispute is entrusted solely and exclusively to the Judicature of this country. (Under Article 143 of the Constitution of India; In the matter of Special Reference No. 1 of 1964[34]).

70. While adjudication of rights is essentially a judicial function, the power to validate an invalid law or to legalise an illegal action is within the exclusive province of the Legislature. Exercise of that power by the Legislature is not, therefore, an encroachment on the judicial power of the Court. (Amarendra Kumar Mohapatra v. State of Orissa[67]). Though it cannot directly override the judicial decision, the Legislature retains plenary power, under Articles 245, 246 and 248, to alter the law as settled or declared by judicial decisions, (S.S. Bola[66]; and Anwar Khan Mehboob Co. v. State of M.P.[68]), so long as it does not seek to overrule it. The power to make retrospective legislation enables the legislature to validate prior executive and legislative Acts retrospectively, after curing the defects that led to their invalidation, and thus make ineffective judgments of competent courts declaring the invalidity.(Bakhtawar Trust[45]).

(iv) WHAT IS A VALIDATING ACT, AND WHEN CAN SUCH AN ACT BE VALIDLY MADE?

71. In examining the question whether or not Act 5 of 2020 is a Validating Act, we must first examine what a 'validating Act' is, and when can such an Act be validly made? Black's Law Dictionary (7th Edition Page No. 1421) defines "Validation Acts" as a "law that is amended to either remove errors or to add provisions to confirm to constitutional requirements". A "Validating Act" is

enacted to remove the causes for ineffectiveness or invalidating of actions or proceedings, which are validated by a legislative measure. (Hari Singh v. The Military Estate Officer[69]). A validation Act removes actual or possible voidness, disability or other defect by confirming the validity of anything which is or may be invalid (Bennion on Statutory Interpretation (Fifth Edition 189); Jindal Polyfilms Ltd. v. State of Maharashtra[70]; and ITW Singode India Ltd. v. Collector of Central Excise[71]).The essence of a validating enactment is a pre-existing act, proceedings or rule being found to be void or illegal with or without a judicial pronouncement of the Court. It is only when an act committed, or a rule in existence or a proceeding taken, is found to be invalid that a Validating Act may validate the same by removing the defect or illegality which is the basis of such invalidity. (Amarendra Kumar Mohapatra[67]).

72. A prior judicial pronouncement declaring an Act, proceedings or rule to be invalid is, however, not a condition precedent for the enactment of a Validation Act. Such a piece of legislation may be enacted to remove even a perceived invalidity which the Court has had no opportunity to adjudge. Absence of a judicial pronouncement is not, therefore, of much significance for determining whether or not the legislation is a validating law. (Amarendra Kumar Mohapatra[67]). Where statutory provisions are interpreted by Courts in a particular manner, and directions are issued for implementing the judgment in the light of the interpretation placed on the statutory provisions, the Legislature need not pass a Validating Act. In the exercise of its plenary powers, under Articles 245, 246 and 248, the Legislature can make a new Act altering fundamentally the provisions which were the basis of the judgment passed by the Court, and this can be done with retrospective effect. (S.S. Bola[66]). Existence of an illegal act, proceedings or rule or legislation is the sine qua non for any validating legislation to validate the same. There can be no validation of what has yet to be done, suffered or enacted. (Amarendra Kumar Mohapatra[67]).

73. The cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. (Shri Prithvi Cotton Mills Ltd.[52]). Where a Legislature validates any executive action declared illegal by a Court of law, what the Legislature is required to do is to first remove the basis of the invalidity, and then validate the executive action. In order to validate an executive action, or any provision of a Statute, it is not sufficient for the Legislature to declare that a judicial pronouncement given by a Court of law would not be binding, as the Legislature does not possess that power. A decision of a Court of law has a binding effect unless the very basis upon which it is given is so altered that the said decision would not have been given in the changed circumstances (Bakhtawar Trust[45]; and Jindal Polyfilms Ltd.[70]).

74. No Legislature in this country has the power to ask instrumentalities of the State to disobey or disregard the decisions given by courts. (People's Union of Civil Liberties (PUCL)[46]). The validity of a Validating Law, therefore, depends upon whether the Legislature, in making the validation, has removed the defect which the courts had found in the existing law. (Shri Prithvi Cotton Mills Ltd.[52]). Except by removing the defect which is the cause pointed out by the decision rendered by the Court, the legislature has no power to review the decision and set it at naught. If this is permitted it would sound the death knell of the rule of law. (People's Union for Civil Liberties (PUCL)[46]).

75. By changing the basis on which a decision is given by the Court, and thus changing the law in general which will affect a class of persons and events at large, the Legislature can render the earlier judgment ineffective. It cannot, however, set aside an individual decision inter-parties and affect their rights and liabilities alone, as that would amount to exercising the judicial power of the State, and to function as an appellate court. (In Re : Cauvery Water Disputes Tribunal[47]; Karnataka Pawn Brokers Assn.[44]; S.T. Sadiq v. State of Kerala[72]; and S.R. Bhagwat v. State of Mysore[73]). While a Legislature is entitled to change with retrospective effect the law which formed the basis of the judicial decision, it is not permissible for the Legislature to declare the judgment of the court to be void or not binding. (Indira Nehru Gandhi v. Raj Narain[74]).

76. The Legislature cannot set at naught judgments, which have been pronounced, by amending the law not for the purpose of making corrections or removing anomalies but to bring in new provisions which did not exist earlier, that too retrospectively. The Legislature is bound by the mandamus issued by the Court. (State of Tamil Nadu v. State of Kerala[60]; and Karnataka Pawn Brokers Association[44]).A judicial pronouncement is always binding unless the very fundamentals on which it is based are so altered that the decision could not have been given in the altered circumstances. (State of T.N. v. State of Kerala[60]; and Karnataka Pawn Brokers Association[44]).

(v) LAW DECLARED BY THE SUPREME COURT IN THE JUDGMENT RELIED UPON:

77. Let us now take note of the law declared by the Supreme Court in the judgment cited across the bar. In doing so, we must bear in mind the submission, urged on behalf of the respondents, that the observations made therein should be considered in the background facts of the case, and should not be read out of context. It is true that a decision is an authority for what it decides and not what can logically be deduced therefrom. The ratio of a case must be understood having regard to the fact situation obtaining therein. (Air India Cabin Crew Assn.[59]; and Inderpreet Singh Kahlon[57]). A little difference in facts or additional facts may lead to a different conclusion. (Chajju Ram[58]). Let us, therefore, refer to the judgments cited across the bar taking note of the facts therein.

78. In Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad[75], the appellant had filed a suit challenging imposition ofa rateby the respondent-Municipal Corporation, under Section 73 of the BombayMunicipal Boroughs Act, 1925, r/w Section 75 thereof, on vacant lands. The appellant contended that Rule 350-A read with Rule 243 was ultra vires the Act as it permitted fixation of the rate at a percentage of the capital value, which the Act did not. The trial court held that Rule 350-A read with Rule 243 was illegal and void, and beyond the authority of the Municipality under Section 73, as it amounted to taxing open lands as assets of individuals within the meaning of Item 55 of List I of the Seventh Schedule to the Government of India Act, 1935. The Trial Court decreed the Suit and granted the relief sought by the appellants.

79. The appeal preferred by the Municipal Corporation was allowed by the Bombay High Court holding that the method employed was only a mode of levying the rate and did not fall within Item No. 55; Rule 350-A read with Rule 243 was not ultra vires; by adopting this method, the Municipality had done in one step what could be done in two steps; it was a matter of fixing a reasonable rate on open land; and if the rate was otherwise reasonable, the Rule, levying the rate,

could not be held to be ultra vires Sections 73 and 75. In appeal the Supreme Court held that the word "rate" had been used in a special sense in which it was understood in the Legislative practice of India; and the word "rate" was a kind of imposition on the annual letting of the property if actually let out, and on the notional letting if the property was not let out. The appeal preferred by the plaintiff-assessee was dismissed, and no relief was granted to him.

80. Another company i.e. Shri Prithvi Cotton Mills Ltd. filed a Writ Petition before the Gujarat High Court questioning the assessment lists published by the Broach Borough Municipality, and in imposing tax according to the rates calculated on the basis of the capital value of the property of the company. During the pendency of this Writ Petition, the Gujarat State Legislature passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963 which was also questioned by the petitioner, ie Shri Prithvi Cotton Mills Ltd, by way of another writ petition. Both the Writ Petitions were dismissed by the Gujarat High Court.

81. In the appeal preferred there-against, the Supreme Court, in Shri Prithvi Cotton Mills Ltd.[52], held, with respect to validating Statutes, that, when a Legislature sets out to validate ataxdeclared by a Court to be illegally collected under an ineffective and invalid law, the cause for ineffectiveness orinvalidity must be removed, before validation can be said to take place effectively; granting legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of the judicial power which the legislature does not possess or exercise; a Court's decision must always bind unless the conditions on which itis based are so fundamentally altered that the decision could not have been given in the altered circumstances; validation, of a tax declared illegal, may be done only if the grounds of invalidity are capable of being removed and are in fact removed, and the tax is thus made legal; the validity of a Validating law, therefore, depends on whether, in making the validation, the Legislature has removed the defect which the Courts had foundin the existing law, andmakes adequate provisions in the validating law for a valid imposition of the tax.

82. The Supreme Court further observed that the Gujarat State Legislature had, by this enactment, retrospectively imposed tax on lands and buildings based on their capital valueand, as the tax had already been imposed, levied and collected on that basis, had made the imposition, levy, collection and recovery of the tax valid, notwithstanding the declaration by the Court that, as "rate", the levy was incompetent; the legislature had equated the tax collected to a "rate", giving a new meaning to the expression "rate"; while doing so, it put out of action the effect of the decisions of the Court to the contrary; and exercise of the power by the legislature was valid.

83. Neither was the appellant-company, ie Shri Prithvi Cotton Mills Ltd, a party to the earlier decision in Patel Gordhandas Hargovindas[75], nor, unlike in the present case, was a specific mandamus, issued by the Court earlier, sought to be negated.

84. In Mehal Chand Sethia v. State of West Bengal[76], it was contended on behalf of the appellant that, although it was open to the State Legislature by an Act to amend the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, it was incompetent for them to validate an order, of transfer of the case, which had already been quashed by the issue of a writ of certiorari by the High Court;

the order of transfer, being virtually dead, could not be resuscitated by the Governor or the Legislature; and the validating measures could not touch any adjudication by the Court. It is in this context that the Supreme Court held that the High Court had taken the correct view on the scope and effect of the Validating Act; a legislature of a State is competent to pass any measure which is within the legislative competence under the Constitution of India; this is subject to the provisions of Part III of the Constitution; laws can be enacted by the Legislature of a State in respect of the topics covered by the entries in the appropriate List in the Seventh Schedule to the Constitution; subject to the above limitations, laws can be prospective as also retrospective in operation; a Court of law can pronounce upon the validity of any law, and declare the same to be null and void, if it is beyond the legislative competence of the legislature or if it infringed the rights enshrined in Part III of the Constitution; it can strike down or declare invalid any Act or direction of a State Government which is not authorised by law; the position of a Legislature is however different; and it cannot declare any decision of a court of law to be void or of no effect.

85. In New Shrock Spinning &Weaving Co. Ltd.[51], the High Court as well as the Supreme Court had held that the property tax collected for certain years by the Ahmedabad Municipal Corporation was illegal. In order to nullify the effect of the decision, the State Government had introduced Section 152A by an amendment to the Bombay Provincial Municipal Corporation Act, 1949 (the '1949 Act' for short). Sub-Section (3) of Section 152-A of the 1949 Act provided that, notwithstanding anything contained in any judgment, decree or order of any court, it shall be lawful, and shall be deemed always to have been lawful, for the Municipal Corporation of the City of Ahmedabad to withhold refund of the amount already collected or recovered in respect of any of the property taxes to which Sub-section (1) applied till assessment or reassessment of such property taxes was made, and the amount of tax to be levied and collected was determined under sub-section (1). The proviso thereto required the Corporation to pay simple interest, at the rate of six percent per annum, on the amount of excess liable to be refunded under Sub-section (2), from the date of the decree or order of the Court referred to in Sub-section (1), till the date on which such excess is refunded. The effect of Section 152-A(3) was to command the Municipal Corporation, despite the orders of the Supreme Court and the High Court, to refuse to refund the amount illegally collected.

86. It is in this context that the Supreme Court held that the said provision made a direct inroad into the judicial power of the State; the legislatures under the Constitution had, within the prescribed limits, the power to make laws prospectively as well as retrospectively; by exercise of those powers, a legislature could remove the basis of a decision rendered by a competent Court, thereby rendering the decision ineffective; but no legislature had the power to ask instrumentalities of the State to disobey or disregard the decisions given by Courts. Consequently, Sub-section (3) of Section 152-A was held repugnant to the Constitution and was struck down.

87. In Madan Mohan Pathak[50], Parliament had enacted the Life Insurance Corporation (Modification of Settlement) Act, 1976 (for short the '1976 Act') to render ineffective a settlement, arrived at between the Life Insurance Corporation and four different associations of its employees, for payment of cash bonus. The said settlement, which was binding on the parties thereto under Section 18(1) of the Industrial Disputes Act, had been approved by the Board of the Life Insurance Corporation as also by the Central Government. Though bonus, in terms of the said settlement, was

paid for two years to Classes III and IV employees of the LIC, it was not paid thereafter. The Employees Association of the LIC approached the Calcutta High Court seeking a mandamus to the LIC to act in accordance with the terms of the settlement. A Single Judge of the Calcutta High Court allowed the Writ Petition, and issued a writ of mandamus as prayed for. The LIC preferred a Letters Patent Appeal there-against. As the 1976 Act had come into force, the LIC informed the Calcutta High Court Division Bench that there was no necessity to proceed with the appeal. The result was that the judgment of the Single Judge of the Calcutta High Court remained intact and attained finality.

88. The 1976 Act rendered without force and effect the provisions of the settlement in so far as they related to payment of annual cash bonus to Class III and Class IV employees of the LIC. The effect of the 1976 Act was that Class III and Class IV employees of the LIC were to be deprived of the annual cash bonus to which they were entitled to in terms of clause 8(1) of the settlement. There was no reference to the judgment of the learned Single Judge of the Calcutta High Court in the statement of objects and reasons nor in the non-obstante clause in Section 3 of the 1976 Act. The statement of objects and reasons disclosed that the purpose of the 1976 Act was to undo the settlements which had been arrived at between the Corporation and Class III and Class IV employees (the validity of which had been recognised by the order of the learned Single Judge of the Calcutta High Court).

89. It is in this context that the Supreme Court held that the question could well arise whether this was really the exercise of a legislative power or of a power comparable to that of an Appellate Authority considering the merits of what had passed into a right to property recognised by the courts; in Indira Nehru Gandhi[74], it was held that even a constitutional amendment cannot authorise the assumption of a judicial power by Parliament; it would be unfair to adopt a legislative procedure to undo such a settlement which had become the basis of a decision of the Calcutta High Court; the judgment, in Shri Prithvi Cotton Mills Ltd.[52], did not say that, whenever any factual or legal situation was altered by retrospective legislation, a judicial decision, rendered by a Court on the basis of such factual or legal situation prior to the alteration, would straightaway, without more, cease to be effective and binding on the parties; the judgment of the Calcutta High Court was a judgment giving effect to the right of the petitioners to annual cash bonus under the settlement by issuing a writ of mandamus directing the LIC to pay the amount of such bonus; if, by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review; the error committed by the LIC was that it had withdrawn the Letters Patent Appeal, and had allowed the judgment of the learned Single Judge to become final; by the time the Letters Patent Appeal came up for hearing, the impugned Act had already come into force and the LIC could, therefore, have successfully contended in the Letters Patent Appeal that since the Settlement, in so far as it provided for payment of annual cash bonus, was annihilated by the impugned Act, Class III and Class IV employees were not entitled to annual cash bonus and hence no writ of mandamus could issue directing the LIC to make payment of such bonus; if such a contention had been raised, there is little doubt, subject to any constitutional challenge to the validity of the impugned Act, that the judgment of the learned Single Judge would have been upturned, and the writ petition dismissed; on account of some inexplicable reason, which was difficult to appreciate, the LIC did not press the Letters Patent Appeal; the result was that the judgment of the learned Single Judge, granting a writ of mandamus, became final and binding on

the parties; the LIC could not claim to be absolved from the obligation imposed by the judgment, to carry out the writ of mandamus, by relying on the impugned Act; so long as the judgment stands, it cannot be disregarded or ignored, and it must be obeyed by the Life Insurance Corporation; and even if legislation can remove the basis of a decision, it had to do it by an alteration of the general rights of a class, but not by simply excluding two specific settlements between the Corporation and its employees from the purview of Section 18 of the Industrial Disputes Act, 1947, which had been held to be valid and enforceable by a Single Judge of the Calcutta High Court.

90. In Cauvery Water Disputes Tribunal : In Re[47], the State of Tamil Nadu had submitted a letter before the Cauvery Water Disputes Tribunal seeking interim relief, for the State of Karnataka to be directed not to impound or utilise water of the Cauvery river beyond the extent impounded or utilised by them as on May 31, 1972. It also sought passing of an order restraining the State of Karnataka from undertaking any new projects, dams, reservoirs, canals and/or from proceeding further with the construction of projects, dams, reservoirs, canals etc. in the Cauvery basin.The Tribunal held, among others, that the interim reliefs which had been sought, even if they were connected with or relevant to the water dispute already referred, could not be considered because the disputes in respect of the said matter had not been referred by the Central Government to the Tribunal. In appeal, the Supreme Court held that the Tribunal had the power to pass such consequential orders as were required to be made while deciding the dispute, and they also had incidental and ancillary powers which would make the decision on the reference effective; but these powers were to be exercised only to enable it to decide the reference effectively, but not to decide the disputes not referred, including a dispute in regard to the grant of interim relief/reliefs.

91. The Tribunal then proceeded to decide the applications on merits and held that its prime consideration should be to preserve as far as possible, pending final adjudication, the rights of the parties and also to ensure that, by the unilateral action of one party, the other party is not prejudiced from getting appropriate relief at the time of passing of the final orders. The Tribunal then directed the State of Karnataka to release water from its reservoirs in Karnataka so as to ensure that 205 TMC water was available in Tamil Nadu's Mettur reservoir in a year from June to May. The Tribunal further directed Karnataka to regulate the release of water every year in the manner stated in the order. In addition, the Tribunal directed Karnataka not to increase its area under irrigation, by the waters of Cauvery, beyond the existing 11.2 lakh acres, and observed that its order would remain operative till the final adjudication of the dispute referred to it.

92. Thereafter the Governor of Karnataka issued "the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991". Section 3 of the Ordinance related to the protection of irrigation in irrigable areas and, under sub-section (1) thereof, a duty was cast on the State Government to protect, preserve and maintain irrigation from the waters of the Cauvery river and its tributaries in the irrigable area under the various projects specified in the Schedule. Section 3(2) provided that, for the purpose of giving effect to sub-section (1), the State Government may abstract or cause to be abstracted, during every water year, such quantity of water as it may deem requisite, from the flows of the Cauvery river and its tributaries, in such manner and during such intervals as the State Government or any officer, not below the rank of an Engineer-in-Chief designated by it, may deem fit and proper. Section 4 gave overriding effect to the Ordinance and stipulated that the provisions of the

Ordinance, (and of any Rules and Orders made thereunder), shall have effect notwithstanding anything contained in any order, report or decision of any Court or Tribunal (whether made before or after the commencement of the Ordinance), save and except a final decision under the provisions of sub-section (2) of Section 5 read with Section 6 of the Inter-State Water Disputes Act, 1956.The Ordinance was later replaced by Act 27 of 1991. The provisions of the Act were a verbatim reproduction of the provisions of the Ordinance except that in Section 4 of the Act the words "any court or" were omitted.

93. It is in this context that the Supreme Court held that the purpose of the Ordinance was to nullify the effect of the interim order passed by the Tribunal; the State of Karnataka had arrogated to itself the power to decide unilaterally whether the Tribunal had jurisdiction to pass the interim order or not, and whether the order was binding on it or not; the State of Karnataka had assumed the role of a judge in its own cause; apart from the fact that the Ordinance directly nullified the decision of the Tribunal, it also challenged the decision of the Supreme Court which had ruled that the Tribunal had the power to consider the question of granting interim relief since it was specifically referred to it; to the extent that the Ordinance interfered with the decision of the Supreme Court, and of the Tribunal appointed under the Central legislation, it was clearly unconstitutional being in conflict with the judicial power of the State.

94. After relying on its earlier decisions in New Shrock Spinning and Weaving Co. Ltd.[51] and P. Sambamurthy[49], the Supreme Court held that the legislature could change the basis on which a decision was given by the Court and thus change the law in general, which would affect a class of persons and events at large; it could not, however, set aside an individual decision inter-parties, and affect their rights and liabilities alone; and such an act on the part of the legislature amounted to exercising the judicial power of the State, and to its functioning as an appellate court or tribunal.

95. In G.C. Kanungo[48], the Supreme Court was called upon to consider the validity of the Arbitration (Orissa Second Amendment) Act, 1991 which sought to nullify the awards made by the Special Arbitration Tribunals, constituted under the 1984 Amendment Act, in the exercise of the power conferred upon them by the Act itself. Striking down the provision as ultra vires and illegal, the Supreme Court held that the impugned 1991 Amendment Act sought to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act, in the exercise of the power conferred upon them by that Act itself; when the awards made under the 1984 Amendment Act by the Special Arbitration Tribunals, in the exercise of the State's judicial power conferred upon them, or judgments and decrees of Courts, are sought to be nullified by the 1991 Amendment Act, the legislative power of the State Legislature has been used, by enacting the impugned 1991 Amendment Act, to nullify or abrogate the awards of the Special Arbitration Tribunals by arrogating to itself a judicial power. (In Re: Cauvery Water Disputes Tribunal[47]); from this, it followed that the State Legislature, by enacting the 1991 Amendment Act, had encroached upon the judicial power entrusted to a judicial authority resulting in infringement of a basic feature of the Constitution - the Rule of Law; thus, when the 1991 Amendment Act nullified the awards of the Special Arbitration Tribunals, made in exercise of the judicial power conferred upon them under the 1984 Amendment Act, by encroaching upon the judicial power of the State, it must be declared unconstitutional as a legislature has no legislative power to render ineffective the earlier

judicial decisions by making a law which simply declares the earlier judicial decisions as invalid and not binding, for such powers, if exercised, would not be a legislative power exercised by it, but a judicial power exercised by it by encroaching upon the judicial power of the State vested in a judicial Tribunal as a Special Arbitration Tribunal under the 1984 Amendment Act; moreover where the arbitral awards, sought to be nullified under the 1991 Amendment Act, are those made by Special Arbitration Tribunals constituted by the State itself under the 1984 Amendment Act to decide arbitral disputes to which the State was a party, it cannot be permitted to undo such arbitral awards which have gone against it, by having recourse to its legislative power, for grant of such permission could result in allowing the State, if nothing else, to abuse its power of legislation.

96. In S.R. Bhagwat[73], the petitioners had joined service in the former State of Bombay and were in the category of Deputy Conservator of Forests. One of the petitioners was a Deputy Conservator of Forests in the former Hyderabad State. In the year 1957 the State Government made provisional equation whereby the posts of Senior Conservator of Forests, and Assistant Conservator of Forests, were equated with the post of Deputy Conservator of Forests coming from Hyderabad and Bombay. This was objected to by the petitioners and others. The State Government again published a list in 1960 with a slight modification. However the Central Advisory Committee, to whom the representations were forwarded as per the provisions of sub-section (5) of Section 115 of the ReorganisationAct, accepted the petitioners' contention. As a result, in Category III, only officials, namely the Deputy Conservator of Forests of Hyderabad and Bombay and Senior Assistant Conservator of Forests from Mysore, were included. The Government of India accepted the said equation and communicated it to the State Government.

97. Thereafter several writ petitions were filed, and were disposed of by the Mysore High Court in Shankariah v. Union of India[77]. The correctness of this decision was challenged before the Supreme Court, but the appeals were dismissed. Even thereafter, in accordance with the directions of the Central Advisory Committee, the Union Government again considered the matter and fresh notifications were issued. These notifications were on the same lines as the earlier notifications. A fresh batch of writ petitions were filed before the High Court of Mysore which dismissed them. Special leave petitions, filed against this decision, were also dismissed by the Supreme Court. Thus final adjudication was made regarding the claim of petitioners, and others similarly situated, for equation and seniority.

98. The petitioners claimed that, though they were senior in the final seniority list to many others, their juniors had been promoted in the meantime on the basis of their higher ranking in the provisional seniority list which was earlier operative till it was superseded by the aforesaid final seniority list. As their claim, for being granted deemed dates of promotions with all consequential benefits, was not accepted by the State of Karnataka, the petitioners filed writ petitions before the High Court of Karnataka.While allowing these Writ Petitions,the Division Bench of the Karnataka High Court granted relief to the petitioners directing that the case of each of them be considered for promotion to the post next above the cadre he was holding on 1-11-1956 or on the date on which any one of his juniors, according to the final inter-State Seniority List, was for the first time so promoted; and if he was found fit and promoted, he be given all the benefits consequential thereto including consideration for promotion to higher cadres and financial benefits.

99. Pursuant to the aforesaid directions of the Division Bench of the Karnataka High Court, the State Government considered the cases of all the petitioners and they were given such deemed dates of promotion. The aforesaid decision of the Division Bench became final between the parties. As consequential monetary benefits, on the grant of deemed promotions to the petitioners as directed by the aforesaid decision, were not made available, the petitioners filed contempt petitions in the High Court. In the meantime, the respondent-State resorted to its legislative powers and issued an Ordinance which ultimately culminated into an Act. By the provisions of the Ordinance, and the Act, the actual financial benefits directed to be made available to the petitioners, pursuant to the orders of the Division Bench of the Karnataka High Court which had become final, were sought to be taken away. Section 11(2) gave overriding effect to the Ordinance/Act and stipulated that, notwithstanding anything contained in any judgment, decree or order of any court or other competent authority, the rights to which a civil servant was entitled to in respect of matters to which the provisions of the Act were applicable, shall be determined in accordance with the provisions of the Act and, accordingly, any judgment, decree or order directing promotion or consideration for promotion of civil servants, and payment of salaries and allowances consequent upon such promotion, shall be reviewed and orders made in accordance with the provisions of the Act.

100. It is in these circumstances that the petitioners filed a petition, under Article 32, seeking a declaration that the impugned provisions, in so far as they tried to confiscate the financial benefits made available to them by the writs of mandamus issued by the High Court, were null and void as they amounted to legislative over-ruling of binding judicial decisions. The Supreme Court held that Section 11(2) of the Act was ultra vires the powers of the State Legislature as it encroached upon the judicial field, and tried to overrule the judicial decision binding between the parties; and, consequently, the sub-sections of Section 4 should be read down. The Supreme Court then observed that a binding judicial pronouncement between the parties could not be made ineffective with the aid of any legislative power by enacting a provision which in substance overruled such judgment, and was not in the realm of a legislative enactment which displaced the basis or foundation of the judgment, and uniformly applied to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect.

101. After referring to its earlier judgments, in In Re :Cauvery Water Disputes Tribunal[47] and G.C. Kanungo[48], the Supreme Court opined that, in the present case, the High Court had not struck down any legislation which was sought to be re-enacted after removing any defect retrospectively by the impugned provisions; this was a case where, on interpretation of the existing law, the High Court had given certain benefits to the petitioners; that order of mandamus was sought to be nullified by the enactment of the impugned provisions in a new statute; this was clearly an impermissible legislative exercise; and the petitioners had mounted a limited attack on the impugned provisions of the Act in so far as they deprived them of the monetary benefits flowing from the deemed promotion to be given to them pursuant to the orders of the Division Bench of the High Court which had become final between the parties.

102. The Supreme Court further observed that a mere look at Sub-Section (2) of Section 11 showed that the respondent State of Karnataka, which was a party to the decision of the Division Bench of the Karnataka High Court, had tried to get out of the binding effect of the decision by resorting to its

legislative power; judgments, decrees and orders of Courts or competent authorities, which had become final against the State, were sought to be done away with by enacting Sub-Section (2) of Section 11; such an attempt could not be said to be a permissible legislative exercise; Section 11(2) must, therefore, be held to be an attempt on the part of the State Legislature to legislatively overrule binding decisions of competent courts against the State; when such a decision had become final, as in the present case, when the High Court clearly directed the respondent- State to give, to the petitioners concerned, deemed dates of promotions if they were otherwise found fit, and in that eventuality to give all benefits consequential thereon including financial benefits, the State could not invoke its legislative power to displace such a judgment; once this decision had become final, and the State of Karnataka had not thought it fit to challenge it before the Supreme Court, it defied comprehension how the legislative power could be pressed into service to undo the binding effect of such a mandamus; not only did sub-section (2) of Section 11 seek to bypass and override the binding effect of the judgment, but also sought to empower the State to review such judgments and orders and pass fresh orders in accordance with the provisions of the impugned Act; the respondent-State, by enacting sub-section (2) of Section 11 of the impugned Act, had clearly sought to nullify or abrogate the binding decision of the High Court, and had encroached upon the judicial power entrusted to the various authorities functioning under the relevant statutes and the Constitution; and such an exercise of legislative power could not be countenanced.

103. The Supreme Court, thereafter, observed that the impugned portions of Section 4 sub-sections (2), (3) and (8) clearly conflicted with the binding direction issued by the Division Bench of the High Court against the respondent- State, and in favour of the petitioners; once the respondent-State had suffered a mandamus, to give consequential financial benefits to the allottees like the petitioners on the basis of the deemed promotions, such binding direction for payment of consequential monetary benefits could not be nullified by the impugned provisions of Section 4; therefore, the underlined portions of sub- sections (2), (3) and (8) of Section 4 would have to be read down in the light of orders of the Court which had become final against the respondent-State; in so far as these provisions were inconsistent, with the final orders containing such directions of judicial authorities and competent courts, the impugned provisions of Section 4 had to give way, and to the extent of such inconsistency must be treated to be inoperative and ineffective; and the statutory provisions contained in sub-sections (2), (3) and (8) of Section 4, providing that such persons who had been given deemed promotions shall not be entitled to any arrears for the period prior to the date of their actual promotion, shall not apply in cases where directions to the contrary of competent courts, against the respondent-State, had become final.

104. In S.S. Bola[66], the Supreme Court distinguished the earlier judgment, in Madan Mohan Pathak[50], holding that it was observed therein that the rights, which had passed into, embodied and became the basis of, the mandamus from the High Court, could not be taken away in an indirect fashion; in making the aforesaid observation the Court went by the theory that the mandamus issued by the Court, calling upon a party to confer certain benefits to the adversary, unless annulled by way of appeal or review, had to be obeyed; this principle had no application to the case before it, as the nature of mandamus issued in the judgment of the Supreme Court in A.N. Sehgal v. Raje Ram Sheoran and others[78] and S.L. Chopra v. State of Haryana[79], which had resulted in a validation Act being passed, was merely a declaration of the principle of seniority as per the 1961 Rules.

105. State of Tamil Nadu v. State of Kerala[60], related to the Mullaperiyar Dam which, though situated in the State of Kerala, was owned and operated by the Government of Tamil Nadu. At the request of the State of Kerala, the Chairman, CWC held two meetings. Pursuant to the first, it was recommended that the water level in the reservoir be kept at 136 feet. Pursuant to the second, it was opined that, after completion of emergency and medium term strengthening measures, the water level in the reservoir could be restored upto 145 feet. Though Tamil Nadu claimed to have undertaken the measures suggested by the CWC, no consensus could be reached between the two States. Several Writ Petitions were filed in both the Kerala and the Madras High Courts, and thereafter transfer petitions were filed in the Supreme Court which constituted an Expert Committee. In its report, the Expert Committee opined that the water level in the reservoir could be raised to 142 feet without endangering the safety of the dam. The Supreme Court, in its order in Mullaperiyar Environmental Protection Forum v. Union of India[80], permitted the water level in the dam to be raised to 142 ft and observed that, after strengthening work was completed to the satisfaction of the CWC, independent experts would examine the safety angle before the water level could be raised to 152 feet.

106. Thereafter the Kerala State Legislature amended the Kerala Irrigation and Conservation Act, 2003 (for short the "2003 Act") by the Kerala Irrigation and Water Conservation (Amendment) Act, 2006 (for short the "2006 Amendment Act"). The second schedule thereto included the Mullaperiyar Dam, and the height of its FRL was fixed at 136 feet. The State of Tamil Nadu instituted a Suit, under Article 131 of the Constitution of India, before the Supreme Court challenging, among others, the validity of the 2006 Amendment Act on the ground that it amounted to usurpation of the judicial power, it violated the doctrine of separation of powers, and sought to reverse the decision of the Supreme Court.

107. It is in this context that the Supreme Court observed that, in its earlier decision in Mullaperiyar Environmental Protection Forum[80], it had permitted increase of the water level in the dam to 142 feet after finding the objection of the State of Kerala, on the ground of safety, to be untenable; the said decision was a result of judicial investigation founded upon facts ascertained during the course of hearing; the judgment was given by it in contest between the two States; such a decision was binding on the parties and enforceable according to the decision; a judicial decision on facts cannot be altered by a legislative decision; the constitutional principle that the legislature can render a judicial decision ineffective by enacting a validating law, fundamentally altering or changing its character retrospectively, had no application when a judicial decision had been rendered by recording a finding of fact; a decision which disposes of the matter, by giving findings on facts, is not open to change by the legislature; and a final judgment, once rendered , operated and remained in force until altered by the Court in appropriate proceedings.

108. The Supreme Court thereafter held that, since the 2006 Amendment Act was not a validating enactment, it was not required to enquire whether, in making the validation, the legislature had removed the defect which the Court had found in the existing law; the 2006 amendment Act, in its application to and effect on the Mullaperiyar Dam, was a legislation other than substantially legislative, as it aimed at nullifying the prior and authoritative decision of the Supreme Court; the nub of the infringement consisted in the Kerala Legislature revising the final judgment of the

Supreme Court in utter disregard of the constitutional principle that revision of such a final judgment must remain exclusively within the discretion of the Court; the impugned law amounted to reversal of the judgment of the Supreme Court which determined directly the question of safety of the Mullaperiyar Dam for raising the water level to 142 feet, and whereunderTamilnadu's legal right had been determined; one of the tests for determining whether a judgment is nullified is to see whether the law and the judgment are inconsistent and irreconcilable so that both cannot stand together; the impugned law is a classic case of nullification of a judgment simplicitor as, in the judgment of the Supreme Court, the question of the safety of the dam was determined on the basis of material placed before the Court, and not on the interpretation of any existing law; there was no occasion for the legislature to amend the law, by altering the basis on which the judgment was founded; when the impugned law is not a validation law, there is no question of the legislature removing the defect, as the Court had not found any vice in the existing law and had not declared such a law to be bad; it is true that a legislation cannot be challenged on the principle of res judicata, as it binds a party and not the legislature; however, when a categorical finding has been recorded by the Court, and that judgment has become final and binding between the parties, the legislature must be held to have infringed the separation of powers doctrine in enacting such a law.

109. In Karnataka Pawn Brokers Association[44], the facts were that the State of Karnataka had enacted the Karnataka Money Lenders Act, 1961 (for short "the ML Act") with a view to regulate and control the transactions of money-lending in the State. Section 5 of the ML Act made it obligatory for any person, carrying on the business of money-lending, to procure a licence before carrying on such business.The State of Karnataka simultaneously enacted the Karnataka Pawnbrokers Act, 1961 (for short "the PB Act") to regulate and control the business of pawnbrokers. Section 3 of the PB Act made it obligatory for every person, desirous of carrying on business as a pawnbroker, to conduct his business only after he obtained a licence in accordance with the provisions of the Act. In the year 1985, amendments were brought to both the Acts. Sections 7-A and 7-B were introduced in the ML Act and, correspondingly, Sections 4-A and 4-B were introduced in the PB Act. These amendments provided that persons, desirous of obtaining a licence, had to deposit a security and the rate of security was fixed slab-wise in relation to the extent of business carried on by the licensee.

110. On these amendments being subjected to challenge,a Division Bench of the Karnataka High Court, in Manakchand Motilal[53], upheld the validity of Sections 7-A and 7-B of the ML Act and Sections 4-A and 4-B of the PB Act. One of the grounds, raised in challenge to the validity of the aforesaid provisions, was that there was no provision for payment of interest on the security amount. The Division Bench of the Karnataka High Court, relying upon the judgment of the Supreme Court in Jagdamba Paper Industries (P) Ltd. v. Haryana SEB[81], held that the moneylenders/pawnbrokers were entitled to interest on the security deposits at the prevailing rate of interest payable by the scheduled banks on a fixed deposit for a period of one year. The State Government was also directed to make proper rules in this behalf. No appeal was filed by the State of Karnataka against this judgment. However, the moneylenders and pawnbrokers filed an SLP which was dismissed.

111. Thereafter, the State of Karnataka enacted the Karnataka Moneylenders (Amendment) Act, 1998 and a similar amendment was also made to the PB Act. Sub-section (3) of Sections 7-A and 4-A

of the ML and the PB Acts were subjected to challenge. Section 7-A(3) stipulated that, for the purposes of sub-section (2), the amount of the security payable in a year by a licensee shall be determined on the basis of the amount invested by him in the business during the previous year, "and such security deposit shall not carry any interest". Section 4A (3) stipulated that, for the purposes of sub-section (2), the amount of the security payable by a licensee in a year shall be determined on the basis of the amount invested by him in the business during the previous year, "and such security deposit shall not carry any interest". The highlighted parts of the above Sections were introduced by the amendments of 1998, but were deemed to be inserted from 31-5-1985 making it retrospective in its application.

112. The Association of pawnbrokers and moneylenders filed writ petitions in the Karnataka High Court challenging the constitutional validity of these amendments. A learned Single Judge of the Karnataka High Court dismissed the writ petitions. However, the Division Bench allowed the writ petitions and held that, though all other amendments made to Sections 7-A and 7- B of the ML Act, and Sections 4-A and 4-B of the PB Act,were constitutionally valid, the provisions, providing for non-payment of interest on security deposits, were constitutionally bad. The Division Bench held that, in so far as interest was concerned, in the earlier judgment in Manakchand Motilal[53], the Karnataka High Court had held that the moneylenders and pawnbrokers were entitled to interest on the amount of deposit, and the said judgment had become final since the SLP against the same was dismissed; the High Court, in Manakchand Motilal[53], had clearly held that, in case there was a provision for non-payment of interest, then such a provision would be unconstitutional; and the State Government could not nullify the judgment of the High Court, in Manakchand Motilal[53], by way of a subsequent amendment.

113. On an appeal being preferred thereagainst by the State of Karnataka, the Supreme Court, in Karnataka Pawnbrokers Association[44], held that the legislature had the power to enact validating laws including the power to amend laws with retrospective effect to remove the cause of invalidity; when such a law is passed, the Legislature basically corrects the errors which have been pointed out in a judicial pronouncement; resultantly it amends the law by removing the mistakes committed in the earlier legislation, the effect of which is to remove the basis and foundation of the judgment; if this is done, the same does not amount to statutory overruling; however the Legislature cannot set at naught judgments which have been pronounced by amending the law, not for the purpose of making corrections or removing anomalies but to bring in new provisions which did not exist earlier; the Legislature may have the power to remove the basis or foundation of the judicial pronouncement, but the Legislature cannot overturn or set-aside the judgment, that too retrospectively by introducing a new provision; the Legislature is bound by the mandamus issued by the Court; a judicial pronouncement is always binding unless the very fundamentals on which it is based are altered, and the decision could not have been given in the altered circumstances; the Legislature cannot, by way of introducing an amendment, overturn a judicial pronouncement and declare it to be wrong or a nullity; and what the legislature can do is to amend the provisions of the statute to remove the basis of the judgment.

114. The Supreme Court, thereafter, held that when the decision was rendered by the Division Bench of the Karnataka High Court, in Manakchand Motilal[53], there was no provision for payment of

interest or prohibiting payment of interest; there was no error pointed out by the Court which could have been corrected by the State legislature; the incorporated provisions, prohibiting payment of interest, did not in any way alter the basis of the judgment; in so far as it had made the amended provisions retrospective, the State had attempted to nullity the writ of mandamus issued by the Court in favour of the respondents; this mandamus could not have been set at naught by making the provisions retrospective; this would be a direct breach of the doctrine of separation of powers as laid down in State of Tamil Nadu v. State of Kerala[60]; and the State Legislature could not have nullified the judgment passed (by the Division Bench of the Karnataka High Court) in Manakchand Motilal[53], by retrospectively amending the Acts. The Supreme Court held that the validating Acts, in so far as they were retrospective, were illegal.

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(vi) PRINCIPLES LAID DOWN IN THE                                            AFORESAID
     JUDGMENTS OF THE SUPREME COURT:
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115. The principles, culled out from the aforesaid judgments, are summarized as under:-

> 1. A Court of law can pronounce upon the validity of any law and declare it to be null and void if it is beyond the legislative competence of the legislature or if it infringes the rights enshrined in Part III of the Constitution. It can also strike down or declare invalid any act or direction of a State Government which is not authorised by law. The position of a Legislature is however different. It cannot declare any decision of a court of law to be void or of no effect. (Mehal Chand Sethia[76]).
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> 2. No legislature has the power to ask instrumentalities of the State to disobey or disregard the decisions given by Courts. (New Shrock Spinning and Weaving Co. Ltd.[51]).
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> 3. Instrumentalities of the State cannot claim to be absolved from the obligation imposed by the judgment, to carry out the writ of mandamus, by relying on subsequent legislation. So long as the judgment stands, it cannot be disregarded or ignored, and must be obeyed. (Madan Mohan Pathak[50]).

4. The legislature has the power to enact validating laws, including the power to amend laws with retrospective effect, to remove the cause of invalidity. When such a law is passed, the Legislature basically corrects the errors which have been pointed out in a judicial pronouncement. Resultantly it amends the law by removing the mistakes committed in the earlier legislation, the effect of which is to remove the basis and foundation of the judgment. If this is done, it does not amount to statutory overruling. (Karnataka Pawn Brokers Association[44]).

5. A legislative enactment can displace the basis or foundation of the judgment, and uniformly apply to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect.(S.R. Bhagwat[73]).

6. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision, could not have been given in the altered circumstances. The cause for ineffectiveness or invalidity must be removed, before validation can be said to take place effectively. (ShriPrithvi Cotton Mills Ltd.[52]).

7. A legislature has no legislative power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions invalid and not binding, for such powers, if exercised, would not be a legislative power exercised by it, but a judicial power exercised by it by encroaching upon the judicial power of the State.(G.C. Kanungo[48]; and Shri Prithvi Cotton Mills Ltd.[52]).

8. The legislature can change the basis on which a decision is given by the Court, and thus change the law in general, which would affect a class of persons and events at large. It cannot, however, set aside an individual decision inter-parties, and affect their rights and liabilities alone, for such an act on the part of the legislature would amount to exercising the judicial power of the State, and to its functioning as an appellate court or tribunal. (In Re : Cauvery Water Disputes Tribunal[47]).

9. In disputes to which the State is a party, it cannot be permitted to undo decisions which have gone against it by recourse to its legislative power, for grant of such power would result in allowing the State to abuse its power of legislation.(G.C. Kanungo[48]).

10. A final judgment, once rendered, operates and remains in force until altered by the Court in appropriate proceedings (State of Tamil Nadu v. State of Kerala[60]) i.e. appeal or review.

11. The constitutional principle that the legislature can render a judicial decision ineffective by enacting a validating law, fundamentally altering or changing its character retrospectively, has no application when a judicial decision had been rendered on recording a finding of fact. The legislature must be held to have infringed the separation of powers doctrine if it enacts a law to set at naught such a finding. (State of Tamil Nadu v. State of Kerala[60]).

12. One of the tests for determining whether a judgment is nullified is to see whether the law and the judgment are so inconsistent and irreconcilable that both cannot stand together. (State of Tamil Nadu v. State of Kerala[60]).

13. Any attempt to enact a provision, to do away with judgments, decrees and orders of Courts or competent authorities which have become final against the State, is not a permissible legislative exercise, and is an attempt on the part of the State Legislature to legislatively overrule binding decisions of competent courts against the State. (S.R. Bhagwat[73]).

14. The Legislature is bound by the mandamus issued by the Court. It cannot, by way of introducing an amendment (or enacting a new provision or law which did not exist earlier), overturn a judicial pronouncement and declare it to be wrong or a nullity. (Karnataka Pawn Brokers Association[44]).

15. Any attempt to nullify an order or mandamus issued by the Court, by the enactment of a provision in a new statute, is an impermissible legislative exercise. (S.R. Bhagwat[73]).

16. The theory that the mandamus issued by the Court, unless annulled by way of appeal or review, has to be obeyed does not apply to cases where the nature of mandamus issued is merely a declaration of a general principle. (S.S. Bola[66]).

(vii) CONCLUSIONS OF THE DIVISION BENCH IN ITS ORDER IN WRIT PETITION (PIL) NO.90 OF 2010 DATED 03.05.2019 :

116. When the validity of a validation Act is called in question, the Court should carefully examine the law and determine whether the vice of invalidity, that had rendered the Act, Rule, action or proceedings invalid, has been cured by the validating legislation. (Amarendra Kumar Mohapatra[67]). Bearing in mind the aforesaid principles, culled out from various judgments of the Supreme Court, let us now examine whether Act 5 of 2020 has removed the vice of invalidity ie the basis of the judgment of the Division Bench of this Court in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019, or whether it has sought to over-rule it. In this context, the conclusions of the Division Bench are summarized as under:-

> (i) The proceedings dated 16.11.2004 whereby the monthly rent, for the government accommodation provided to the former Chief Ministers, was fixed at Rs. 1000/1200, applied only to officers working under the State Government, the Government of India and State Government Corporations/undertaking/local bodies, and had no application even to retired government servants much less to Ex-Chief Ministers.
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> (ii) Since the very allotment of bungalows to them was illegal, the former Chief Ministers had received a benefit which they were not legally entitled to, and the public exchequer had been needlessly burdened thereby.
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> (iii) As bungalows, belonging to the State Government, were provided as rent free accommodation to Ex-Chief Ministers, instead of being utilized for the public purpose of accommodating Government offices, market rent should be collected from them for the period during which they occupied these buildings.
>
> (iv) The words "appropriate rent", in the judgment of the Supreme Court in Lok Prahiri-I[1],cannot be read out of context as the Supreme Court had observed, in the earlier part of the said judgment, that government property cannot be allotted without adequate market rent.
>
> (v) As market rent had already been computed by the State Government, and had been detailed in the affidavit dated 12.02.2019 filed before the Court, the said amount should be collected from the former Chief Ministers.

(vi) Several of the facilities provided by the State Government to former Chief Ministers, by proceedings issued from time to time, were neither in terms of a law made by the State Legislature nor were they Government Order(s) issued under Article 162 read with Article 166 of the Constitution of India.

(vii) It is only if an Appropriation Act had been passed, and prior sanction obtained from the State Legislature, could the executive have incurred the expenditure for providing various facilities to the former Chief Ministers. In the absence of an Appropriation Act being passed, no expenditure, in connection with providing various facilities, like electricity, water, vehicles etc, to the former Chief Ministers, could have been incurred by the State Government.

(viii) The request of the State Government, for waiver of the arrears of rent and other amounts due from former Chief Ministers for various other facilities provided to them, could not be accepted as the services rendered by them, during their tenure as Chief Ministers (even if taken to be priceless), did not justify conferring on them such largesse post their demitting the office of Chief Minister.

(ix) The State Government should not fritter away precious public resources, and needlessly burden the already overburdened public exchequer, in incurring such expenditure.

(x) A mandamus was issued by the Division Bench directingthe former Chief Ministers to pay the market rent for the bungalows hitherto occupied by them, as already determined by the State Government, within six months failing which the State Government was directed to recover these amounts from them in accordance with law.

(xi) A mandamus was also issued by the Division Bench directing the State Government to compute the amount incurred, in providing various facilities to the former Chief Ministers, within four months and communicate the same to them. The former Chief Ministers were directed to pay the amounts, determined by the State Government, within six months thereafter. The State Government was also directed, in case the former Chief Ministers did not pay the amounts due, to recover these amounts from them in accordance with law.

117. As noted hereinabove Section 4(a) of Act 5 of 2020 stipulates that the appropriate rent of the government residence, allotted to the former Chief Ministers of Uttarakhand State, shall be recovered from the allottee from the date of allotment. Under the Explanation thereto, appropriate rent,for the purposes of Section 4(a), shall be 25% increase in the standard rent, in addition to the standard rent as determined by the Government from time to time. In the counter- affidavit, filed on behalf of the State Government before this Court, it is stated that the accommodation, which the State Government provides for government servants, and the standard rent for the same, is fixed by the Government from time to time; the rent is realised from the allottee as per the standard rent

fixed by the Government; therefore the contention that rent at market rate should have been realised from the former Chief Ministers is not tenable; Section 4 of the Act provides that the appropriate rent would be 25% more in addition to the standard rent; appropriate rent is prescribed by the Government for its government servants; the appropriate rent so determined is applicable to all former Chief Ministers; the standard rent, to be collected from the former Chief Ministers, is the appropriate rent to be recovered from them; the petitioner's statement that rent at market rate should have been realised, from the former Chief Ministers, is unacceptable since Section 4(a) of Act 5 of 2020 provides only for recovery of 25% above the standard rent; in Lok Prahari-I[1], the Supreme Court had directed that appropriate rent be taken from the occupants (Ex-Chief Ministers); the standard rent, provided in the prevalent accommodation allotment policy and the impugned Act, is covered within the definition of "appropriate rent"; in Lok Prahari-I[1] the Supreme Court drew a distinction between realising market rent from institutions/organisations who were given public property, and "appropriate rent" from former Chief Ministers; it is apparent that the Supreme Court has not permitted the State to recover/realise market rent from former Chief Ministers; and the impugned Act must be deemed to have been promulgated with effect from 09.11.2000 i.e. when the State of Uttarakhand was created.

118. The mandamus and directions issued by the Division Bench, in its order in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019, was for recovery of market rent from the former Chief Ministers, and not the standard rent plus 25% in excess thereof, which, admittedly, is far less than the market rent due and payable by the former Chief Ministers. The aforesaid directions of the Division Bench, for the former Chief Ministers to pay market rent, was based on the judgment of the Supreme Court in Lok Prahari-I[1]. The Division Bench had held that the Supreme Court, in Lok Prahari-I[1], had opined that public property cannot be disposed in favour of anyone without adequate consideration; allotment of government property to someone without adequate market rent was bad in law, as the State had no right to fritter away government property, in favour of private persons or bodies, without adequate consideration; and the word "appropriate rent", used in LokPrahari-I[1], could not be read out of context as the Supreme Court had observed, in the earlier part of the said order, that government property cannot be allotted without adequate market rent. The Division Bench had also held that the proceedings dated 16.11.2004, whereby the monthly rent for government accommodation to the former Chief Ministers was fixed at Rs.1000- 1200/-, applied only to serving government officers, and was not applicable even to retired government servants, much less to the former Chief Ministers. It is not open to the respondents, therefore, to now contend that the appropriate rent, fixed by the Government for its government servants, is applicable to all former Chief Ministers or that the Supreme Court, in LokPrahari-I[1], had permitted recovery of appropriate rent far below the market rent for buildings similar to the residential accommodation provided to the former Chief Ministers.

119. The aforesaid findings recorded, and the conclusions arrived at, by the Division Bench, in its order in Writ Petition (PIL) No.90 of 2010 dated 03.05.2019, on the basis of which directions were issued for recovery of market rent for the buildings occupied by the former Chief Ministers, cannot, in the light of the law laid down by the Supreme Court in State of Tamil Nadu v. State of Kerala[60], be set at naught by the exercise of the legislative powers of the State. Section 4(a) of Act 5 of 2020, in permitting recovery of standard/appropriate rent plus 25% thereof (to be determined by the State

Government) from the former Chief Ministers (admittedly far less than the market rent), seeks to negate the findings recorded by the Division Bench and to overrule the judgment, in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019,whereby the former Chief Ministers were directed to pay market rent for the bungalows provided for their occupation post their demitting office as Chief Ministers.

120. With regards the other facilities provided to former Chief Ministers, the basis of the Division Bench judgment, in Writ Petition (PIL) No.90 of 2010 dated 03.05.2019, is that such expenditure had been incurred without either legislative sanction or the approval of the Governor. The proceedings issued by the State Government from time to time, extending such facilities, were held not to have been issued with the prior sanction of the Legislature or on the approval of the Governor. Section 4(c) of Act 5 of 2020 stipulates that the facilities provided by the State Government to the former Chief Ministers (ie vehicles along with driver, P.O.L. for vehicles and its maintenance, Personal Assistant / Officer on Special Duty/ Public Relations Officer, Fourth Class employee, watchman, gardener, telephone attendant, security guard etc.), as determined by the Government, shall be free of cost.

121. The State Legislature has now, by Section 4(c) of Act 5 of 2020, accorded legislative sanction for the various facilities hitherto provided to the former Chief Ministers free of cost. It has also, by Section 6 of Act 5 of 2020, validated the orders/office memoranda issued by the State Government earlier providing these facilities to the former Chief Ministers and has, by legal fiction, required these proceedings to be deemed to have been issued under Act 5 of 2020.By enacting Section 4(c) and 6 of Act 5 of 2020, the State Legislature has accorded legislative sanction, and has validated the earlier proceedings issued from time to time, for extending these facilities to former Chief Ministers free of cost. The respondents may, therefore, be justified in contending that, the basis of the judgment, in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019, to the extent it heldthat extending such facilities, by various proceedings, was without legislative sanction or approval of the Governor, has now been removed.

122. It cannot, however, be lost sight of that the Division Bench had, thereafter, issued a mandamus directing the former Chief Ministers to pay the amount computed by the State Government as due and payable towards the various amenities provided to them, such as electricity, water, petrol, oil, lubricants etc. The State Government was also directed, in case the former Chief Ministers failedto pay these amounts, to recover the said amounts in accordance with law. This specific direction issued by the Division Bench is now sought to be negated by Section 4(c) of Act 5 of 2020 in terms of which these facilities are provided free of cost.

123. As held by the Supreme Court, in Madan Mohan Pathak[50], the State Government could have, on Act 5 of 2020 being passed, preferred an appeal to the Supreme Court, against the order of the Division Bench, contending that the basis of the judgment in Writ Petition (PIL) No.90 of 2010 dated 03.05.2019, that these facilities were provided without legislative sanction, has since been removed and, in these altered circumstances, the mandamus and directions issued by the Division Bench should be set-aside in appeal by the Supreme Court. The State Government has, admittedly, not preferred any appeal against the judgment of the Division Bench. The Review Petition filed by

them was dismissed by the Division Bench on 07.08.2019, long before Act 5 of 2020 was enacted. Section 4(c) of Act 5 of 2020 seeks to negate the mandamus issued by the Division Bench, and as it violates the separation of powers doctrine and consequently the equality clause in Article 14 (Refer : State of Tamil Nadu v. State of Kerala[60]; and Karnataka Pawn Brokers Association[44]),it is also liable to be declared ultra vires Article 14 of the Constitution of India as it also seeks to overrule the judgment of the Division Bench.

124. The Supreme Court, in S.R. Bhagwat[73], had no doubt read down a statutory provision, and had held that the said provision should be read as to apply to persons, other than those who were parties to the earlier proceedings before the Mysore High Court, to save it from unconstitutionality. Section 3 of Act 5 of 2020 makes it clear that the said Act applies only to those former Chief-Ministers who had been allotted government residence by the State. In terms of the second proviso thereto, no other Chief-Minister is entitled, after 31.03.2019, for the facilities and benefits provided under Sections 4 and 5 of Act 5 of 2020,including Section 4(c) thereof. As Act 5 of 2020 applies only to those former Chief Ministers, who were respondents in Writ Petition (PIL) No.90 of 2010, Section 4(c) cannot even be read down to save it from being declared unconstitutional.

125. Unlike in S.S. Bola[66], where the mandamus was merely the declaration of a general principle, the mandamus issued in Writ Petition (PIL) No.90 of 2010 dated 03.05.019 is a specific direction to the respondents-former Chief Ministers to pay the amounts due towards the market rent for the accommodation illegally provided to them by the State Government, for the expenditure incurred by the State Government in providing various other facilities to them free of cost, and for the State Government to recover the said amounts from them if they failed to pay the same. Sections 4(a) and (c) of Act 5 of 2020, which seek to negate the mandamus issued by the Division Bench whereby the former Chief Ministers were directed to pay back the amounts, illegally incurred on them by the State Government towards rent free/concessional accommodation, and in extending them various other facilities such as petrol, diesel, vehicles etc, violate the separation of powers doctrine, and are liable to be declared ultravires Article 14 on this ground also.

126. The State of Uttarakhand was the first respondent in Writ Petition (PIL) No.90 of 2010, and the order of the Division Bench dated 03.05.2019, a judgment inter-parties, is therefore binding upon them. In disputes to which it is a party, the State cannot be permitted to undo the decisions which have gone against it by recourse to its legislative power, since grant of such power would only result in the State being permitted to abuse its power of legislation, and to legislatively overrule binding decisions rendered by competent courts against the State. (G.C. Kanungo[48]; andS.R. Bhagwat[73]).

127. Even otherwise the State Legislature, in enacting Section 4(c) of Act 5 of 2020, has not entirely removed the basis of the judgment of the Division Bench, in Writ Petition (PIL) No.90 of 2010 dated 03.05.2019, as Articles 202 to 207 of the Constitution have not been followed in making this law. In its order in Writ Petition (PIL) No.90 of 2010 dated 03.05.2019, the Division Bench had also held that the action of the State Government, in incurring expenditure for providing various facilities to former Chief Ministers, without an Appropriation Act being passed, was ultra vires the provisions of the Constitution. Act 5 of 2020 is not an Appropriation Act. In their counter-affidavit, the

respondents admit that Act 5 of 2020 cannot be termed as a money bill; the plea regarding Article 199(b) is misconceived; the special procedure, prescribed under Articles 202 and 207, is not applicable; it was also not required to be followed in enacting Act 5 of 2020; and the adoption of the special procedure cannot be pressed since the expenditure, already incurred from 09.11.2000 till 31.03.2019, has been correctly justified in the Act.

128. As held earlier in this judgment, the in-built checks and balances mechanism in the Constitution requires the Executive to obtain prior sanction of the State Legislature before withdrawing money, from the Consolidated Fund of the State, to incur expenditure for various public purposes. While we find considerable force in the submission, urged on behalf of the petitioner, that no public purpose is served in providing these facilities to the former Chief Ministers post their demitting office, even otherwise these constitutional provisions (i.e. Articles 202 to 207) disable the State legislature from ratifying the illegal expenditure incurred by the Executive earlier, that too over a period of 19 years,in providing various facilities to the former Chief Ministers. The expenditure incurred in providing these facilities has not even been computed so far by the State Government, as Act 5 of 2020 neither makes any reference thereto, nor have any such details been furnished in the counter affidavit filed before this Court. The defect pointed out in the judgment, in Writ Petition (PIL) No.90 of 2010 dated 03.05.2019, of the power to incur expenditure being required to be conferred only by an Appropriation Act, has not been removed; and the impugned enactment is not in compliance with, but in contravention of the judgment of this Court in Writ Petition (PIL) No.90 of 2010 dated 03.05.2019. Section 4(c) of Act 5 of 2020 is liable to be, and is accordingly, struck down on this ground also.

129. Among the tests, to determine whether the legislation has removed the basis of the judgment or has sought to over-rule it, is whether the law (Act 5 of 2020) and the judgment (order in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019) are so inconsistent and irreconcilable that both cannot stand together. (Refer: State of Tamil Nadu v. State of Kerala[60]). It is evident from what has been detailed hereinabove that both the law (ie Sections 4(a) and (c) of Act 5 of 2020) and the judgment (order in Writ Petition (PIL) No.90 of 2010 dated 03.05.2019) are incapable of standing together as they are inconsistent and irreconcilable with each other.

130. Section 3, and both its provisos, make it amply clear that Act 5 of 2020 is applicable only to those former Chief Ministers, who were the private respondents in Writ Petition (PIL) No. 90 of 2020 dated 03.05.2019, that too only till 31.03.2019 and not thereafter. The benefits under Act 5 of 2020 are also not available to the present incumbent or to any of the future Chief Ministers of the State. While the legislature can change the law in general so that it affects a class of persons and events at large, it cannot set aside an individual decision inter- parties, and affect their rights and liabilities, as that would amount to exercising the judicial power of the State and to function as an appellate Court. (Refer:In Re : Cauvery Water Disputes Tribunal[47]; S.R. Bhagwat[73]; andMadan Mohan Pathak[50]). By enacting Act 5 of 2020, the Uttarakhand State Legislature has not changed the law in general so that it affects even the entire class of Chief Ministers. It has, by conferring the benefits of the law only to those former Chief Ministers who were the respondents in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019, sought to affect their liabilities alone and protect them from having to comply with the judgment of the Division Bench in Writ Petition (PIL) No.90 of 2010

dated 03.05.2019. It has, in effect, sought to set aside an individual decision inter-parties.

131. Section 7 of Act 5 of 2020 provides that, notwithstanding anything contained in any other Act or judgment / decree /order or direction of any Court, the provisions of this Act shall be valid and effective. Section 7 is more or less identical to Section 11(2) of the Ordinance, the validity of which fell for consideration before the Supreme Court in S.R. Bhagwat[73]. Section 7 of Act 5 of 2020, like Section 11(2) of the Ordinance referred to in the said judgment, gives an overriding effect to Act 5 of 2020 over the judgment / order or direction of the Court. Since the basis of the judgment of the Division Bench in Writ Petition (PIL) No. 90 of 2020 dated 03.05.2019 has not been removed by Act 5 of 2020 in its entirety, Section 7 of the Act, whereby the aforesaid judgment of the Division Bench is sought to be overruled, must also be declared ultra vires the powers of the State Legislature as it encroaches upon the judicial field, seeks to overrule a judicial decision binding inter-parties, and is an impermissible legislative exercise.

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VI.    IS THE IMPUGNED LEGISLATION ARBITRARY AND IN
       VIOLATION OF ARTICLE 14 OF THE CONSTITUTION OF
       INDIA?
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132. Dr. Kartikey Hari Gupta, learned counsel for the petitioner, would submit that the State Legislature lacks legislative competence to enact any law against a public purpose; neither in its object, nor in Act 5 of 2020 itself, is any public purpose disclosed; the impugned Act results in conferment of huge benefits and largesse upon the Ex-Chief Ministers of the State; the legislative power has been exercised in a non-transparent and arbitrary manner, and the legislationis bereft of any public interest; the impugned enactment has been passed in violation of Article 14 of the Constitution of India; the Government has created an artificial class of persons without any intelligible differentia; Part VI of the Constitution of India, which relates to States, details the constitutional functionaries in each State; the present Act makes an unreasonable classification as only Ex-Chief Ministers of the State, and none of the other constitutional functionaries, have been provided such facilities post their demitting office; in Lok Prahiri-II[3], it has been held that, after demitting office, the Chief Minister stands at par with a common citizen; providing rent fee/concessional accommodation and other facilities to them, after they had demitted office, is arbitrary and in violation of Article 14 of the Constitution of India; Section 2(c) which provides that, for electricity, water and other facilities, fees and standard rent will be determined by the Uttarakhand Government gives arbitrary power to the State Government to determine fees and standard rent even below the charges paid by a common citizen; Section 4(a) & (b) are also arbitrary and illegal as they confer unguided power to the rent determining authority to fix the rent payable by these persons; the legislation does not disclose any object which the present Act seeks to achieve; it is not therefore possible to discern the purpose of the legislation, except that it is to give undue benefit to these private individuals who, by no reasonable standards, can form a separate class of persons deserving a special benefit; Act 5 of 2020, whereby Ex-Chief Ministers of the State have been singled out for conferment of undeserved State largesse, does not satisfy the twin tests of a reasonable classification; the legislation does not disclose any lawful object sought to be achieved in conferring such a benefit only on this particular class; and it does not also state why these Ex-Chief Ministers have been singled out for conferment of State largesse.

133. Learned counsel would rely on Lok Prahiri-I[1]; LokPrahiri-II[3]; Rustom Cavasjee Cooper v. Union of India[82]; R.K. Garg v. Union of India[83]; The State of West Bengal v. Anwar Ali Sarkar[84]; and Chiranjit Lal Chowdhri v. Union of India[85]in this regard.

134. On the other hand Mr. M.C. Pande, learned Additional Advocate General appearing for the State of Uttarakhand, would submit that, from the impugned Act, it is evident that allotment of Government quarters, after the Chief Ministers demit office, is no longer available to the former Chief Ministers; it is also not available to the present Chief Minister or to future Chief Ministers after they demit office; other facilities and benefits, provided earlier to the former Chief Ministers, will also not be available to them anymore; the issue, which remained to be addressed by the Legislature, was regarding the expenditure already incurred in providing such facilities to former Chief Ministers; and, in addressing this issue, the impugned Act provides as follows : (a) former Chief Ministers shall pay 25% above the standard rent determined by the Government from the date of allotment till they vacate the accommodation on or before 31st March, 2019; (b) former Chief Ministers are required to pay electricity, water and sewerage fee etc to the concerned department from the date of allotment; and (c) facilities like vehicles, along with driver, P.O.L. for the vehicles, maintenance of the vehicles, Personal Assistant/Officer on Special Duty/Public Relations Officer /Fourth Class employee/Watchman/Gardener/Telephone Attendant/Security Guard etc, as determined by the Government, shall be free of cost.

135. After analysing the judgments in Lok Prahiri-I[1]; Lok Prahiri-II[3]; and Rural Entitlement Litigation Kendra (RLEK)[24]), learned Additional Advocate General would submit that, from the aforesaid judicial pronouncements, the following principles are finally settled :- (a) a Chief Minister, once he/she demits office, stands at par with a common citizen though, by virtue of the office held, he/she may be entitled to security and other protocols; but allotment of government bungalows, to be occupied by him/her during his/her life time, would not be guided by the constitutional principle of equality; (b) under Entry 40 of List II, it is possible to enact a law providing for such facilities, and no such law has been made so far; (c) the orders, under which the facilities were provided to former Chief Ministers, cannot be said to be orders made under Article 162; and, keeping in view the aforesaid principles, the validity of the impugned Act is required to be examined.

136. Learned Additional Advocate General would further submit that in so far as the question, whether the impugned Act is unconstitutional and ultra vires Article 14 of the Constitution of India is concerned, the validity of an Act can be challenged only on grounds of lack of legislative competence or if it is in violation of any of the fundamental rights guaranteed in Part III of the Constitution or any other constitutional provision (Mcdowell and Co. [8]; Public Services Tribunal Bar Association v. State of Uttar Pradesh[86]; E.I.T.A. India Ltd[6]); while examining the validity of the impugned Act, with reference to Article 14 of the Constitution, it is necessary to bear in mind certain well established principles evolved by the Courts as rules of guidance in the discharge of its power of judicial review; the first is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him, who attacks it, to show that there is a clear violation of the constitutional principles; the presumption of constitutionality is so strong that, in order to sustain it, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times, and may assume every state of facts which can be

conceived as existing at the time when the legislation was made; the facts existing, when the impugned Act was passed, were that there was no legislative sanction for incurring expenses on various facilities provided to the former Chief Ministers; these expenses had already been incurred; the Legislature now intends to impose a fee on this class of former Chief Ministers who had availed these facilities; these facilities, which were hitherto provided, are no longer being provided either to the former Chief Ministers or to the present or future Chief Ministers after they demit office; it cannot therefore be said to be in violation of the equal protection clause in Article 14; Article 14 does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends; what is necessary, in order to pass the test of permissible classification under Article 14, is that the classification must not be arbitrary, artificial or evasive, but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation (Akhil Bharatiya Upbhokta Congress[32]; R.K. Garg[83]; Rustom Cavasjee Cooper[82]; K.R. Lakshman v. Karnataka Electricity Board[87]; Dharam Dutt[63]; and Krishnan Kakkanth v. Government of Kerala[88]); when facilities were initially granted to the Ex-Chief Ministers, they were all members of the Legislative Assembly; one of them i.e. the fifth respondent later became a member of the Rajya Sabha; Article 14 applies only to equals, and equals cannot be compared with unequals; the Ex-Chief Ministers constitute a class by themselves and cannot be equated with others; the impugned Act was made to give benefit to these five persons alone, in view of the circumstances prevailing at that time, and taking into consideration their contribution; the impugned law is not in violation of Article 14 of the Constitution of India; it is the prerogative of the State Legislature to confer certain benefits to certain individuals, as long as it does not cause any detriment to the public at large; fixation of rent can vary depending on various circumstances like the locality, the condition of the building etc; the judgment of the Supreme Court, in Lok Prahiri-I[1], only refers to appropriate rent being required to be collected, and not the market rent; the rent fixed by the State is the appropriate rent; the subject matter of the impugned Act is only to impose a fee on the former Chief Ministers who have already availed the facilities; no other class or persons have been provided such facilities; and it cannot be said that the impugned enactment is, in any way, unreasonable or arbitrary or to violate Article 14 of the Constitution.

137. It is not in dispute that extension of the benefits, of concessional residential accommodation and other facilities free of cost to former Chief Ministers, must not violate Article 14 in Part III of the Constitution for, otherwise, the law, conferring such benefits on them, is liable to be struck down.

(a) LEGISLATION, IN VIOLATION OF PART-III OF THE CONSTITUTION, IS VOID AND UNENFORCEABLE:

138. The power of Parliament and the Legislature of States to make laws is subject to the limitations imposed by Part III of the Constitution. The general power of legislation, to that extent, is restricted. (Deep Chand & others vs. State of U.P. & others[89]). A Legislature has no power to make any law in derogation of the injunction contained in Article 13(2) which imposes a prohibition on the State in making laws taking away or abridging the rights conferred by Part III, and declares that laws made in contravention of this clause shall, to the extent of the contravention, be void. No post-Constitution law can be made contravening the provisions of Part III, and therefore such a law

to that extent, though made, is a nullity from its inception, and is still-born. (Deep Chand[89]). The Court does not annul or repeal the statute if it finds it in conflict with Part-III of the Constitution. It simply refuses to recognize it, and determines the rights of the parties just as if such a statute had no application. (Willoughby on Constitution of the United States", Second Edition, Volume I, page 10; Deep Chand[89]). A judicial declaration of unconstitutionality has the effect of ignoring or disregarding the legislation. The effect of an unconstitutional statute is as though it had never been passed. (Willis on Constitutional Law", at page 89; Deep Chand[89]).

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(b)    ARTICLE 14 REQUIRES STATE ACTION TO BE BASED ON
       VALID AND RELEVANT PRINCIPLES APPLICABLE ALIKE
       TO ALL SIMILARLY SITUATED:
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139. Article 14 of the Constitution gives the right to equal treatment in similar circumstances, both in privileges conferred and in the liabilities imposed. (Binoy Viswam v. Union of India[90]; Special Courts Bill, 1978, In re[91]; Subramanian Swamy v. Director, Central Bureau of Investigation and Another[92]; Sri Srinavasa Theatre v. Government of Tamil Nadu & others[93]). Equality means relative equality, namely the principle to treat equally what are equal, and unequally what are unequal. To treat unequals differently, according to their inequality, is not only permitted but is required. (St. Stephen's College and Ors. vs. The University of Delhi and Ors[94]).Equality is antithetic to arbitrariness, one belongs to the rule of law in a republic, while the other - to the whim and caprice of an absolute monarch. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must be based on valid and relevant principles applicable alike to all similarly situated, and must not be guided by any extraneous or irrelevant considerations, as that would result in denial of equality. Where the operative reason for State action is not legitimate and relevant, but is extraneous and outside the area of permissible considerations, it is hit by Article 14. (E.P. Royappa v. State of Tamil Nadu[95]; Ramanna Dayaram Shetty v. International Airport Authority of India[96]; Sharma Transport v. State of A.P. [97]; State of Punjab v. Brijender Singh Chahal[98]; Lok Prahiri-II[3]).

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(c)    ARTICLE 14 DOES                    NOT       FORBID         REASONABLE
       CLASSIFICATION:
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140. The principle of equality does not take away from the State, the power of classifying persons for legitimate purposes. (State of Bombay & others v. F.N. Balsara[99]; Chiranjit Lal Chowdhury[85]). The Legislature has the power of making laws to attain particular objects and, for that purpose, of distinguishing, selecting and classifying persons upon whom its laws are to operate. (Binoy Viswam[90]). The rule of parity is the equal treatment of equals in equal circumstances. The rule of differentiation is enacting laws differentiating between different persons or things in different circumstances. (Akhil Bhartiya Shoshit Karamchari Sangh (Railway) v. Union of India &others[100]).

141. Article 14 forbids class legislation, but not reasonable classification in making laws. The test of permissible classification under an Act lies in satisfying the two cumulative conditions: (i) classification under the Act must be founded on an intelligible differentia distinguishing persons, transactions or things grouped together from others left out of the group; and (ii) the differentia

should have a rational relation to the object sought to be achieved by the Act. There must be a nexus between the basis of the classification and the object of the Act.(Chiranjit Lal Choudhri[85]; F.N. Balsara[99]; Anwar Ali Sarkar[83]; Budhan Choudhry v. State of Bihar[101]; Sri Ram Krishna Dalmia[28]; State of Rajasthan v. Mukanchand[102]; Kathi Raning Rawat v. The State of Saurashtra[103]; Lachmandas Kewalaram Ahuja v. The State of Bombay[104]; Qasim Razvi v. The State of Hyderabad[105]; Habeeb Mohamad v. The State of Hyderabad[106]; and Rustom Cavasjee Cooper[82]).

142. On the question of the Government, providing government bungalows at concessional rent, the Supreme Court has drawn a distinction between the President, the Vice-President and the Prime Minister on the one hand, and other constitutional functionaries (including those in the States) on the other. In Shiv Sagar Tiwari v. Union of India[107], the Supreme Court held that, keeping in view the very high constitutional position occupied by the President, Vice-President and Prime Minister, they should be accommodated in government premises after demitting of office by them, so that the problem of suitable residence does not trouble them in the evening of their life; and what should be the terms of the same is a matter to be decided by the Government.

143. Part VI of the Constitution relates to the States. The Constitutional functionaries specified thereunder are: (i) the Governor of the State (Article 153);

(ii) Council of Ministers (which would include the Chief Minister) (Article 163);

(iii) the Advocate General for the State (Article 165); (iv) the Speaker and the Deputy Speaker of the Legislative Assembly (Article 178); (v) the Chairman and Deputy Chairman of the Legislative Council (Article 182); and (vi) Judges of the High Court including the Chief Justice (Article 217). In Lok Prahiri-I[1], the Supreme Court held that other constitutional post holders, like Governors, Chief Justices, Union Ministers, and Speaker etc, hold only one official residence during their tenure; the position of the Chief Minister of the State cannot stand on a separate footing after they demit their office; moreover no other dignitary, holding constitutional post, is given such a facility; and the Rules, extending such benefits to former Chief Ministers, were not fair.

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(d)    CAN EXTENSION OF THESE BENEFITS, TO FORMER
       CHIEF MINISTERS, BE JUSTIFIED AS A VALID UNDER-
       INCLUSIVE CLASSIFICATION:
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144. As noted by the Supreme Court, in Lok Prahari-I[1], rent free or concessional accommodation, (and for that matter provision of various other facilities free of cost), for their entire life (post their demitting office as Chief Ministers) has been extended only to the former Chief Ministers, and not to any of the other constitutional functionaries, post their demitting office. While the submission urged on behalf of the petitioner, that this results in discrimination, has considerable force, extending these benefits to former Chief Ministers is sought to be justified, by the State Government, as a valid under-classification. It is also contended that, while these facilities have been extended only to the former Chief Ministers for the present, that does not mean that it cannot be extended to other Constitutional functionaries, if need be, in the future; and these facilities are, in any case, not being extended even to the former Chief Ministers anymore.

145. A classification is under inclusive when the State benefits or burdens persons in a manner that furthers a legitimate purpose, but does not confer the same benefit or place the same burden on others who are similarly situated. (State of Gujarat v. Shri Ambica Mills Ltd.[108]; Amarendra Kumar Mohapatra[67]). In strict theory, under-classification involves an abandonment of the principle that a classification must include all those who are similarly situated with respect to the purpose. Under-inclusion does not, always, deny the equal protection of the laws as the legislature is free to remedy parts of a mischief or to recognize degrees of evil and strike at the harm where it thinks it most acute. (Superintendent and Remambrancer of Legal Affairs, West Bengal v. Girish Kumar Navalakha[109]; and Amarendra Kumar Mohapatra[67]).

146. The Legislature need not extend the regulation of a law to all cases it may possibly reach, and may make a classification founded on practical grounds of convenience. (Rustom Cavasjee Cooper[82]). There are two main considerations to justify an under-inclusive classification. First, administrative necessity. Second, the legislature may not be fully convinced that the particular policy which it adopts will be fully successful or wise. In fiscal and regulatory matters the Court entertains a greater presumption of constitutionality. (Superintendent and Remambrancer of Legal Affairs[109]; and Amarendra Kumar Mohapatra[67]). Article 14 does not prevent the Legislature from introducing a reform i.e. by applying the legislation to some institutions or objects or areas or persons only according to the exigency of the situation. Classification can also be sustained for historical reasons, or reasons of administrative exigency, or as a piecemeal method of introducing reforms. (Ajoy Kumar Banerjee v. Union of India[110]; and Amarendra Kumar Mohapatra[67]).

147. The law cannot be condemned as discriminatory, though due to some fortuitous circumstances, arising out of a peculiar situation, some included in the class get an advantage over others, so long as they are not singled out for special treatment. (Anwar Ali Sarkar[84]). A law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not to others, that single individual may be treated as a class by himself. (Ram Krishna Dalmia[28]). In determining the validity or otherwise of such a Statute, the Court should examine whether such a classification is or can be reasonably regarded as satisfying the twin tests of a valid classification, no matter whether the provisions of the Statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. (Ram Krishna Dalmia[28]).Even if it is held to be an under-inclusive classification, the benefits extended to former Chief Ministers must, nonetheless, satisfy the twin tests of a valid classification. An under-inclusive classificatory legislation may also be disturbed by the Court, if there is no fair reason for the law which would not require, with equal force, its extension to those whom it leaves untouched. (Shri Ambica Mills Ltd[108]; Amarendra Kumar Mohapatra[67]).

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(e)   A   VALID   CLASSIFICATION                      NEED        NOT
      BEMATHEMATICALLY PRESICE:
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148. On the question whether the twin tests of a valid classification are satisfied in the present case, it is possible to contend that,as the legislature can classify a single individual or a group of person as a class, the former Chief Ministers constitute a class distinct from others. The question which, however, necessitates examination is whether the second test of a valid classification, ie such a classification must have a rational nexus to the object sought to be achieved by the legislation, is

satisfied. A valid classification must disclose a rational nexus with the object sought to be achieved by the law which makes the classification (Rustom Cavasjee Cooper[82]).

149. It is true that the guarantee of the equal protection of the laws does not require perfect equality. A valid classification need not be mathematically st precise (Constitutional Law, by Prof. Willis, 1 Edition, Page 578; F.N. Balsara[99]) or be constituted by an exact or scientific exclusion or inclusion of persons or things. Delusive exactness cannot be insisted nor should doctrinaire tests be applied for determining the validity of the classification. (Special Courts Bill, 1978, In re[91]; National Council for Teacher Education and Ors. v. Shri Shyam Shiksha Prashikshan Sansthan and Ors[111]; and Subramanian Swamy[92]).

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(f)    COURTS WOULD NOT SIT IN JUDGMENT OVER THE
       WISDOM OF LEGISLATIVE POLICY:
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150. The Court would also not sit in judgment over the wisdom of the legislature (State of Madhya Pradesh v. Rakesh Kohli and Another[112]; Mcdowell and Co.[8]) as they do not substitute their views on what the Legislative policy should be. A legislation does not become unconstitutional merely because there is another view. (Subramanian Swamy[92]; ShayaraBano and others v. Union of India and others[113]). If two views are possible, one making the provision in the statute constitutional, and the other making it unconstitutional, the former should be preferred (Independent Thought v. Union of India and Another[114]; LIC of India v. Consumer Education and Research Centre[115]; Government of Andhra Pradesh and Ors. v. Smt. P. Laxmi Devi[116]; Kedar Nath Singh v. State of Bihar[117]). If it is necessary, to uphold the constitutionality of a statute, to construe its general words narrowly or widely, the court should do so (Independent Thought[114]; G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, p. 497). It is only when there is a clear violation of a constitutional provision, would the Court declare the provision unconstitutional. (Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat and Ors[118]; Smt. P. Laxmi Devi[116]; Consumer Education and Research Centre[115]).

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(g)    A VALID CLASSIFICATION MUST BE REASONABLE AND
       SHOULD BE BASED ON A JUST OBJECTIVE:
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151. Classification, having regard to microscopic differences, is however not good. To over-do classification is to undo equality. (Union of India v. N.S. Rathnam[119]; Roop Chand Adlakha v. DDA[120]; S. Seshachalam v. Bar Council of T.N.[121]). The differentia, which is the basis of the classification, and the object of the Act are distinct, and what is necessary is that there must be a nexus between the two. (Special Courts Bill, 1978, In re[91]; R.K. Garg[83]; Subramanian Swamy[92]). A valid classification is based on a just objective. (Kallakkurichi Taluk Retired Officials Assn.v. State of T.N[122]; Hiral P. Harsora and Ors. v. Kusum Narottamdas Harsora and Ors[123]). A classification violates Article 14 only when there is no reasonable basis. (BinoyViswam[90]; Col. D.D. Joshi and others v. Union of India and others[124]). For a reasonable classification, under Article 14 of the Constitution, there must be a causal connection between the basis of the classification and the object of the statute. If the object of the classification is illogical, unfair and unjust, the classification will be unreasonable. (Navtej Singh Johar and Ors. v. Union of India and

Ors[125]; Deepak Sibal v. Punjab University and another[126]). The object itself should be lawful. (Nagpur Improvement Trust and Anr. v. VithalRao and Ors.[127]; Subramanian Swamy[92]).

152. Classification postulates a rational basis, and does not mean herding together of certain persons and classes arbitrarily. (Gulf C &S. Fe Rly. Co. vs. W.H. Ellis[128]; Special Courts Bill, 1978, In re[91]; Shri Shyam Shiksha Prashikshan Sansthan and Ors[111]; Subramanian Swamy[92]; Anwal Ali Sarkar[84]). Validity of a classification will be upheld only if the test of a rational nexus is independently satisfied. (Rustom Cavasjee Cooper[82]). To attract violation of Article 14, it is necessary to show that the differentiation is unreasonable or arbitrary, and that it does not rest on any rational basis having regard to the object which the Legislature has in view. (Dhan Singh and Ors. v. State of Haryana and Ors[129]).

153. In Deepak Sibal[126]the constitutional validity of the rule, for admission into the evening classes of the three year LLB degree course conducted by the Department of Law of the Punjab University, was under challenge. The said Rule provided that admission to evening classes was open only to regular employees of government/ semi-government institutions/ affiliated colleges/ statutory corporations and government companies. The validity of the said Rule was challenged by the appellants, (one of whom was an employee of a public limited company and another who was a temporary employee), as they were both denied admission only on the ground that, though they were found more meritorious, they did not fall within the ambit of the aforesaid Rule.

154. It is in this context that the Supreme Court held that the question was whether the classification, for the purpose of admission to evening classes, was a reasonable classification within the meaning of Article 14; in order to consider the question as to the reasonableness of the classification, it was necessary to take into account the objective of such a classification; if the objective be illogical, unfair and unjust, the classification must be held to be unreasonable; the classification of employees of Government/Semi-Government institutions etc. by the impugned rule, for the purpose of admission in the evening classes of a three- year LL.B. degree course, to the exclusion of all other employees, was unreasonable and unjust, as it did not sub-serve any fair and logical objective; the classification of Government undertakings and companies may, in certain circumstances, be a reasonable classification satisfying the twin tests, but it was difficult to hold that employees of Government/Semi-Government institutions etc., would also constitute a valid classification for the purpose of admission to evening classes of a three-year LL. B. degree course.

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(h)    ONUS TO PROVE INVALIDITY OF A STATUTE IS ON THE
       PERSON WHO ASSAILS IT:
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155. In examining whether or not the object of Act 5 of 2020, in classifying former Chief Ministers separately for extension of the benefits of concessional rent for the accommodation provided to them, and in extending them various other facilities free of cost, is unreasonable, we must bear in mind that there is always a presumption in favour of the constitutionality of a statute, and the onus to prove its invalidity lies on the petitioner who has assailed the same. (Pathumma v. State of Kerala[130]; Independent Thought[114]; Ram Krishna Dalmia[28]; Saurabh Chaudri and Ors. v. Union of India[131]; Chiranjit Lal Chowdhury[85]). The person challenging the act of the State as violative of Article 14 has to show that there is no reasonable basis for the differentiation between

the two classes created by the State (N.S. Rathnam[119]; Rednam Nagachaya Devi[30]; Sri Venkata Seetaramanjaneya Rico & Oil Mills and Ors. v. State of Andhra Pradesh etc[132]; Rednam Nagachaya Devi[30]), for it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based on adequate grounds. The legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest. In order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived as existing at the time of legislation. Good faith and knowledge of the existing conditions, on the part of a legislature, are to be presumed. (Ram Krishna Dalmia[28]; R.K. Garg[83]). If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. (Constitutional Law by Prof. Willis, Page No.579; Charanjit Lal vs. Union of India[133]).

156. Let us now examine whether the petitioner has discharged this onus, and whether or not the object sought to be achieved by Act 5 of 2020 is lawful, just and reasonable. It is contended, on behalf of the petitioner, that the only object, which Act 5 of 2020 seeks to achieve, is to confer undue benefits and extend undeserved largesse on these class of persons ie the former Chief Ministers, and there is no other lawful object sought to be achieved by enacting this law. In the affidavit filed in support of the writ petition, the petitioner states that the impugned legislation arbitrarily creates a separate and special class of citizens i.e. former Chief Ministers, and treats them differently from any other citizen of India without a reasonable basis, intelligible differentia or lawful consideration recognised by the Constitution; the impugned Act arbitrarily facilitates charging of appropriate rent in the form of "standard rent"; no such standard rent is provided for any other citizen of India; determination of standard rent, not being equal to market rent applicable to citizens for unauthorised and illegal occupation of Government property, is an arbitrary exercise of power merely to give undue benefit to the private respondents; it is hence in violation of Article 14 of the Constitution;and not taking market rent from the private respondents, after they have demitted their constitutional office of Chief Ministers, is discriminatory. As the petitioner claims that the only object which the legislation seeks to achieve is to confer undeserved largesse on the respondent-former Chief Ministers and nothing else, they must be presumed to have discharged the initial onus, as they cannot be called upon to prove the negative.

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(i)    ON THE INITIAL BURDEN, TO ESTABLISH THAT THE
       CLASSIFICATION     IS    UNREASONABLE,  BEING
       DISCHARGED, THE ONUS THEN SHIFTS TO THE STATE
       TO SUSTAIN ITS VALIDITY:
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157. The doctrine of classification is a subsidiary rule evolved by courts to give practical content to the doctrine of equality and Courts must, therefore, be wary of carrying the presumption of constitutionality too far. Anxious or a sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. (Namit Sharma v. Union of India[134]).

158. The presumption regarding constitutionality may be rebutted by showing that, on the face of the statute/rule, there is no classification at all, and there is no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law benefits only a particular individual or a class. (F.N. Balsara[99]; Chiranjit Lal Chowdhury[85]). If there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reason for extending certain individuals the benefit of discriminating legislation. (Ram Krishna Dalmia[28]; Subramanian Swamy[92]; Saurabh Chaudri[131]; Deepak Sibal[126]). Care must be taken to ensure that the classification is not pushed to such an extreme as to make the fundamental right to equality cave in and collapse. (State of J&K vs. Triloki Nath Khosa[135]; State of Kerala vs. N.M. Thomas[136];Akhil Bhartiya Shoshit Karamchari Sangh (Railway) [100]).

159. Even though the onus lies on the petitioner, who challenges the validity, to establish that the classification is unreasonable and arbitrary, on the petitioner discharging the initial burden, the onus then shifts to the State. If the State, then, fails to support its action of classification, on the touchstone of the classification being reasonable, having an intelligible differentia and a rational basis germane to the purpose, the classification should then be held to be arbitrary and discriminatory. (N.S. Rathnam[119]).

160. The Preamble of the Uttarakhand Former Chief Ministers Facility (Residential and other facilities) Act, 2019(Act 5 of 2020) states that, keeping in view the facilities provided to former constitutional functionaries, after formation of the State in the year 2000, former Chief Ministers were provided residential accommodation for their life time in accordance with certain Rules/Government Orders/Office Memorandum/Notification; and now, therefore, to validate the residential accommodation and other facilities already provided to former Chief Ministers, for a fixed period as a one time measure, and to provide residential and other facilities, the Uttarakhand State Legislature had enacted Act 5 of 2020. The preamble, like the statement of objects and reasons (as shall be elaborated later in this order), is based on the erroneous premise that these facilities were provided to constitutional functionaries, other than the former Chief Ministers, also. Apart from this, neither the preamble nor the provisions of Act 5 of 2020 disclose any object which is sought to be achieved by extending the benefit of providing accommodation at concessional rates, and in extending various other facilities free of cost, to the former Chief Ministers during the nineteen year period from 09.11.2000 to 31.03.2019. These benefits are conferred by Act 5 of 2020 only on such of those former Chief Ministers who held office during this nineteen year period and were the recipients of such benefits. In view of the second proviso to Section 3 of Act 5 of 2020, neither the present incumbent, nor those who would succeed him as Chief Ministers, will be entitled to these benefits. Section 4(c) of Act 5 of 2020 only seeks to waive recovery of the amounts payable by the private respondents for the various facilities which were extended to them earlier free of cost, and which they are now required to pay in view of the directions issued by the Division Bench in its order in Writ Petition (PIL) No. 90 of 2020 dated 03.05.2019. Similarly the obligation placed on the private respondents by the aforesaid order of the Division Bench, whereby they are required to pay market rent for the buildings occupied by them, is sought to be relaxed by Section 4(a) of Act 5 of 2020 in now requiring them only to pay standard rent which is far less than the market rent. As the

internal aids for construction of statutes such as the preamble, as also the provisions of Act 5 of 2020, do not show what object is sought to be achieved in providing these facilities to former Chief Ministers (much less an object which is lawful, fair and just), let us apply external aids, for statutory interpretation, to ascertain whether the object, which Act 5 of 2020 seeks to achieve, is reasonable.

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(j)    EXTERNAL AIDS CAN BE RELIED UPON TO SATISFY THE
       PRESUMPTION OF CONSTITUTIONALITY:
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161. In order to satisfy the presumption of constitutionality, and for the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, the Court may also rely on external aids such as the Statement of Objects And Reasons for introduction of the Bill which resulted in the legislation, and even the contents of the counter-affidavit, filed before it by the State Government, furnishing reasons in support of its claim that the classification satisfies the test of Article 14 of the Constitution of India. (Hiral P. Harsora and Ors[123]; Shashikant Laxman Kale v. Union of India[137]; A. Thangal Kunju Musaliar v. M. Venkitachalam Potti[138]; State of West Bengal v. Union of India[139]; Pannalal Binjraj v. Union of India[140]; and Harbilas Rai Bansal v. State of Punjab[141]).

162. The statement of objects and reasons, for introducing the Bill which led to the enactment of Act 5 of 2020, merely states that, keeping in view the facilities provided to former constitutional functionaries, the former Chief Ministers of the State of Uttarakhand were provided residential accommodation and other facilities for life without any legislative sanction; in the context of the above, the Uttarakhand Former Chief Minister Facility (Residential and other facilities) Ordinance, 2019 had been promulgated; and the proposed Bill is the replacing bill of the Uttarakhand Former Chief Minister Facility (Residential and other facilities) Ordinance, 2019, and fulfils the above said objectives.

163. While this statement of objects and reasons indicates that residential accommodation and various other facilities were provided, to the former Chief Ministers for life, keeping in view the facilities provided to former constitutional functionaries, it is not in dispute that no such facilities were ever provided to any of the other former constitutional functionaries. The Statement of Objects and Reasons, as also the preamble of Act 5 of 2020, are, evidently, based on the erroneous premise that such facilities were provided to other former constitutional functionaries also. No other object which Act 5 of 2020 seeks to achieve, in providing such facilities to the former Chief Ministers, is indicated therein.

164. In the counter-affidavit filed on behalf of the State Government, it is stated that the Legislature, without making any classification whatsoever, now intends to impose a fee on this class of Chief Ministers who have availed these facilities; in view of the facilities to persons, who were earlier holding the constitutional post in the year 2000, the former Chief Ministers were granted the facility of accommodation for life, and other facilities under certain Rules/Government Orders/Office Memorandums/Notifications,after creation of the State of Uttarakhand; however by enacting Act 5 of 2020, the residential accommodation and other facilities, already provided to the former Chief Ministers, has now been provided for a fixed period, as a one-time measure, under the power given by the Constitution; once the Legislature of the State is satisfied that circumstances exist which

render it necessary, the legislature may promulgate the Act; and merely because the Act relates to Chief Ministers, it cannot be said to have created a class. Neither the statement of objects and reasons for introducing the bill which resulted in enactment of Act 5 of 2020, nor the counter-affidavit filed before this Court, disclose the object which Act 5 of 2020 seeks to achieve in extending to the former Chief Ministers such benefits apart from the fact that they are sought to be protected from having to discharge such liabilities imposed on them by the directions of the Division Bench in its order in Writ Petition (PIL) No.90 of 2010 dated 03.05.2019.

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(k)    A CLASSIFICATION WHICH IS MANIFESTLY ARBITRARY
       VIOLATES ARTICLE 14:
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165. The object of any legislation must be lawful, and no law conferring largesse on a few can be upheld on the touchstone of Article 14 without the object, sought to be achieved by conferment of such benefits upon the former Chief Ministers, being disclosed. As the object, which Act 5 of 2020 seeks to achieve, is not disclosed, we asked Mr. M.C. Pande, learned Addl. Advocate General, what object the law seeks to achieve in providing such benefits to the former Chief Ministers. The justification put forth by him is that the former Chief Ministers had rendered priceless service as Chief Ministers and, taking into consideration their contribution and as a reward for the services rendered by them, they have been extended these benefits after they demitted office. He would further state that they held other offices as Members of the Legislative Assembly and the Rajya Sabha after they demitted office of the Chief Minister.

166. Apart from the fact that these contentions were specifically raised before, and negatived by, the Division Bench in its order in Writ Petition (PIL) No.90 of 2010 dated 03.05.2019, the Supreme Court, in Lok Prahari-II[3], has, in the context of providing accommodation to the Chief Ministers for life, held that the services rendered as Chief Ministers is history; on their demitting office, the former Chief Ministers stand on par with the common man; and they cannot be extended the benefit of rent free accommodation much less for life. While the Supreme Court, in Lok Prahari-II[3], had examined the validity of the legislation, whereby free accommodation was provided to the former Chief Ministers for life, the Division Bench had, in its order in Writ Petition (PIL) No.90 of 2010 dated 03.05.2019, considered the consequences of extending illegal benefits for life, ie rent free/concessional accommodation, and various other facilities to former Chief Ministers free of cost, and had held that such expenditure, illegally incurred for their benefit earlier, was liable to be recovered from them. If these individuals held other offices, post their demitting office as Chief Ministers, they would be entitled for accommodation commensurate to such offices, and not the accommodation provided to them as former Chief Ministers, that too for life.

167. The Constitution recognises only one single class of citizens with one singular voice (vote) in the democratic process subject to provisions made for backward classes, women, children, SC/ST, minorities, etc. (Lok Prahari-II[3]). Laws, whereby residential plots or parcels of agricultural land are provided to the poor, marginalized and backward sections of society, such as the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes, have been upheld on the touchstone of Article 14 as extension of such benefits to these categories of persons is in the larger public interest of providing them adequate means of livelihood, and thereby ameliorate them. Aspecial class of citizens, subject to the exception noted above, is abhorrent to the constitutional ethos (Lok

Prahari- II[3]). The endeavour of the Legislature to waive payment of the amounts, which the Division Bench had directed recovery of, does not seek to achieve any object other than conferring undeserved largesse on the former Chief Ministers.

168. As Article 14 strikes at arbitrariness in State action, (Shayara Bano[113]; E.P. Royappa[95]), a classification should not be artificial or evasive. (Special Courts Bill, 1978, In re[91]; Shri Shyam Shiksha Prashikshan Sansthan and Ors[11]; Akhil Bhartiya Shoshit Karamchari Sangh (Railway)[100]). What is manifestly arbitrary is obviously unreasonable and, being contrary to the Rule of law, would violate Article 14. (Shayara Bano[113]). Manifest arbitrariness is something done by the legislature capriciously, irrationally and/or without any adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. Arbitrariness, in the sense of manifest arbitrariness, would apply to negate legislation under Article 14. (Shayara Bano[113]; Independent Thought[114]). Where no reasonable basis of classification appears on the face of the law, or is deducible from surrounding circumstances or matters of common knowledge, the Court will strike down the law as an instance of naked discrimination. (Ram Krishna Dalmia[28]; and Subramanian Swamy[92]). Conferment of the benefits, of concessional accommodation, and various other facilities being provided free of cost, on the former Chief Ministers is without any adequate determining principle, excessive and grossly disproportionate, and must, therefore, be held to suffer from manifest arbitrariness and to fall foul of Article 14 of the Constitution.

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(l)    PUBLIC INTEREST IS THE PARAMOUNT CONSIDERATION
       IN DEALING WITH PUBLIC PROPERTY:
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169. Government bungalows, allotted to the former Chief Ministers after they had demitted public office(s), constitute public property that belongs to the people of the country, and is meant for use of the current holders of public office. (Lok Prahari-I[1]). Itmust be distributed to sub-serve the common good. (M/s Victorian Granites (P) Ltd.[33]; and Lok Prahiri-II[3]). The State, as the legal owner of natural resources and the trustee of the people, is empowered to distribute the same. The process of distribution must, however, be guided by constitutional principles including the doctrine of equality and larger public good. (Centre for Public Interest Litigation v. Union of India[142]; Lok Prahiri-II[3]). This doctrine of equality, which emerges from the concept of justice and fairness, must guide the State in determining the actual mechanism for distribution of natural resources. (Natural Resources Allocation, In re, Special Reference No. 1 of 2012[143]; Lok Prahiri-II[3]). State owned or public property is not to be dealt with at the absolute discretion of the Executive. Certain principles and precepts should be observed. Public interest is the paramount consideration. Nothing should be done which gives an appearance of bias, jobbery or nepotism. (Sachidananda Pandey v. State of West Bengal[144];Lok Prahiri-II[3]).

170. The State and/or its agencies/ instrumentalities cannot extend largesse to any person at the sweet will and whim of political entities and/ or officers of the State. Every action/ decision of the State and/ or its agencies/ instrumentalities, to give largesse or confer benefit, must be founded on a sound, transparent, discernible and well defined policy. (Akhil Bhartiya Upbhokta Congress[32]). Such distribution of largesse, by the State and its agencies/instrumentalities, must always be done

in a fair and equitable manner; and the element of favoritism or nepotism should not influence the exercise of such discretion. (Akhil Bhartiya Upbhokta Congress[32]; Lok Prahiri-II[3]). Grant of undeserved largesse, by the State or its agencies/instrumentalities, is arbitrary, discriminatory and an act of favoritism and nepotism violating the equality clause embodied in Article 14 of the Constitution. (Akhil Bhartiya Upbhokta Congress[32]). Except where larger public interest so requires, allotment of government bungalows for a consideration lesser than the market rentis illegal, as the State has no right to fritter away government property in favour of private persons, (which the former Chief Ministers are, after they demit office), without adequate consideration(Lok Prahiri-I[1])ie the market rent.The doctrine of equality, which emerges from the concepts of justice and fairness, must guide the State in the allocation of public resources. Allotment of government bungalows, to be occupied by a Chief Minister during his life time post his demitting office, is not guided by the constitutional principle of equality. The legislative exercise, recognising former Chief Ministers as a special class of citizens, is based on irrelevant and legally unacceptable considerations, unsupported by any constitutional sanctity. (Lok Prahiri-II[3]).Except in cases where it serves a public purpose, or is in furtherance of any of the provisions of Part IV of the Constitution, public property can only be alienated, leased or otherwise transferred by following a fair and transparent mode, and that too at the market value. Extension of the benefit of concessional accommodation, and providing various other facilities free of cost, to the former Chief Ministers neither serves any public purpose nor is it in furtherance of the directive principles of state policy.

171. Section 4 of Act 5 of 2020 relates to facilities and, under Sub- Section (a) thereof, the appropriate rent of the government residence, allotted to the former Chief Minister of Uttarakhand, shall be recovered from the allottee from the date of allotment. Under the Explanation thereto, appropriate rent, for the purpose of this Sub-Section, shall be 25% increase of the standard rent, in addition to the standard rent as determined by the Government from time to time.

172. In the counter-affidavit, filed on behalf of the State Government, it is stated that the accommodation which the State Government provides for government servants, and the standard rent for the same, is fixed by the Government from time to time; the rent is realised from the allottee as per the standard rent fixed by the Government; therefore the contention that rent at market rate should have been realised from the former Chief Ministers is not tenable; Section 4 of the Act provides that the appropriate rent would be 25% more in addition to the standard rent; the scheme of standard rent is applicable to all allottees who are in possession of government accommodation; appropriate rent is prescribed by the Government for its government servants, and the appropriate rent determined is applicable to all former Chief Ministers; the Act categorically states that appropriate rent will be recovered; former Chief Ministers are not unauthorised and illegal occupants in government property; they have been granted accommodation in the said premises by the Government; the legislature has exercised its power in a fair and proper manner; and the plea regarding huge monetary loss to the Government is imaginary.

173. The standard rent fixed by the State Government is for serving government servants, and is not applicable to those who have retired from service. The question of applying the same yardstick to former Chief Ministers, and in permitting them to pay rent far less than the market rent, is arbitrary and illegal. As extension of rent free (or concessional) accommodation to former Chief Ministers, by

Section 4(a) of Act 5 of 2020, does not disclose any reasonable object sought to be achieved thereby, apart from conferring undue benefit to the former Chief Ministers, it is ex-facie arbitrary and illegal. These former Chief Ministers are liable to pay the market rent for such accommodation, for that would have been the rent which the Government would have received if it had let it out to any other person. Permitting the former Chief Ministers to pay rent far less than the market rent, without seeking to achieve any lawful purpose or object, falls foul of the equality clause in Article 14 of the Constitution.

174. Section 4(b) of the Act stipulates that payment of electricity, water and sewage fee etc of the government residences allotted to the former Chief Ministers, shall be made to the concerned department from the date of allotment by the allottee himself. Dr. Kartikey Hari Gupta, learned counsel for the petitioner, would submit that, since Section 2(c) defines "fees and standard rent" to mean the fees and rent determined by the State Government for electricity, water and other facilities also, it is evident that the former Chief Ministers are not even called upon to pay electricity, water and sewage charges at the market rate or the service provider rate, which is what the common citizen is required to pay. We, however, see no reason to examine the constitutional validity of Section 4(b), in view of the submission of Sri M.C. Pande, learned Additional Advocate General, that what the former Chief Ministers have been asked to pay is the electricity, water and sewage charges at the prevailing market rate, and they have not been extended any concession in this regard.

175. Section 4(c) stipulates that the facilities provided to the former Chief Ministers by the State Government (vehicle along with the driver, P.O.L. for the vehicles, maintenance of vehicles, personal assistant/Officer on Special Duty/public relation officer, fourth class employee, watchman, gardener, telephone attendant, security guard etc), as determined by the Government, shall be free of cost. Enacting this provision is justified by the State Government, in its counter-affidavit, stating that they have sought to impose a fee on the former Chief Ministers when, in fact, the legislative power of the State has been exercised to protect them from the financial liabilities imposed upon them by the Division Bench in its order in Writ Petition (PIL) No.90 of 2010 dated 03.05.2019. As no lawful or discernible object is sought to be achieved by enacting Section 4(c) of Act 5 of 2020 extending to the former Chief Ministers various other facilities free of cost, and as these amounts were illegally spent from the public exchequer for their benefit, the said provision [ie Section 4(c)] is also ultra vires Article 14, and is void and unenforceable.

176. Section 4(d) prescribes that all the facilities, provided to the former Chief Ministers, shall be permissible (except security guard) till his occupancy in the government residence. As the facilities provided in terms of Section 4(a) and

(c) are ultra vires Article 14 of the Constitution of India, and are void and unenforceable, Section 4(d), which permits such facilities to be granted till occupancy in government residences, is redundant and is also struck down. Under Section 4(e), the former Chief Ministers are entitled to security and protocol services as the State Government may determine from time to time.Since the Supreme Court, in Lok Prahari-II[3], has held that the former Chief Ministers may be entitled to security and protocol services, the challenge to the validity of this provision (i.e. Section 4(e)), on the touchstone of Article 14, must fail.

177. Section 5 relates to maintenance of Government residence and, thereunder, the cost incurred from time to time on repair/maintenance related works in the government residence allotted to former Chief Ministers shall be borne by the State Government. As the Division Bench, in its order in Writ Petition (PIL) No. 90 of 2010 dated 03.05.2019, has held that the respondents- Chief Ministers were liable to pay market rent for the government residence occupied by them, they cannot also be asked to bear the expenditure incurred in maintenance of such buildings. The challenge to the validity of Section 5 of Act 5 of 2020 must, therefore, fail.

178. Section 8 stipulates that, notwithstanding anything contained in Act 5 of 2020, the former Chief Ministers shall also be entitled to avail facilities of any pension/allowance/facilities permissible under any other Act or any order. It is not known whether any other facilities/benefits have been provided to the former Chief Ministers under any other Act, as the validity of such an enactment, if any, has not been subjected to challenge in these writ proceedings. It is, therefore, unnecessary for us to express any opinion thereupon. Suffice it to hold that the words "or any order" in Section 8 of Act 5 of 2020, in so far as it relates to the facilities provided in terms of Sections 4(a) and (c) of Act 5 of 2020, would also violate Article 14 of the Constitution of India, and would be void and unenforceable.

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(m)    ON HIS DEMITTING OFFICE, THERE IS NOTHING TO
       DISTINGUISH   A    FORMER     CONSTITUTIONAL
       FUNCTIONARY FROM THE COMMON MAN:
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179. The Constitution does not recognize any arbitrary sovereign power and domination of citizens by the State. (Lok Prahiri-II[3]). In a democratic republican government, public servants, entrusted with duties of a public nature, must act in a manner that reflects that ultimate authority is vested in the citizens, and it is to the citizens that holders of all public offices are accountable. Such a situation would be possible only within a framework of equality, and when all privileges, rights and benefits, conferred on holders of public office, are reasonable, rational and proportionate. (Lok Prahiri-II[3]). A Chief Minister, once he demits office, is on par with the common man, though, (by virtue of the office he held earlier), he may be entitled to security and other protocols.Once such persons demit the public officeearlier held by them, there is nothing to distinguish them from the common man. The public office held by them earlier is a matter of history, and cannot form the basis of a reasonable classification to categorise previous holders of public office as a special category of persons entitled to the benefit of special privileges. (Lok Prahiri-II[3]).

180. In S.D. Bandi v. Karnataka SRTC[145], the Supreme Court held that it was unfortunate that representatives of people and other high dignitaries continued to stay in the residential accommodation provided by the Government though they were no longer entitled to such accommodation; many of such persons continued to occupy residential accommodation commensurate with the office(s) held by them earlier, and which was beyond their present entitlement; rights and duties were correlative as the rights of one person entailed the duties of another; similarly the duty of one person entailed the rights of another person; and the

unauthorised occupants must appreciate that their act of overstaying in the premise directly infringed the right of another.

(n) PERSONS HOLDING HIGH PUBLIC OFFICE SHOULD NOT TAKE DECISIONS TO GAIN MATERIAL BENEFITS FOR THEMSELVES, THEIR FAMILY AND FRIENDS:

181. All privileges, rights and benefits conferred on holders of public office, should be reasonable, rational and proportionate. (Lok Prahari-II[3]). "The Seven Principles of Public Life Report" by Lord Nolan, (Volume I of the report of the Committee headed by Lord Nolan on "Standards in Public Life (1995)" referred with approval in Vineet Narain v. Union of India[146] includes that (i) holders of a public office should take decisions solely in terms of public interest, and they should not do so in order to gain financial or other material benefits for themselves, their family or their friends; and (ii) holders of public office are accountable for their decisions and actions to the public, and must submit themselves to whatever scrutiny is appropriate to their office. These principles are of general application in every democracy, and should be borne in mind while scrutinizing the conduct of every holder of a public office. (Lok Prahiri-II[3]; and Vineet Narain[146]).Acts of constitutional functionaries, and persons holding high offices, which are tainted bynepotism, jobbery, or self- aggrandizement at the cost of the public exchequer, (when millions of Indian citizens hardly have adequate means of survival, and find it extremely difficult to eke out their livelihood each day), should not be disregarded. Legislative support, to such acts of theirs, violates the doctrine of equality laid down in Article 14 and must, unhesitatingly, be declared void and unenforceable.

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(o)    CONSTITUTION COURTS SHOULD NOT HESITATE TO
       DECLARE AN UNCONSTITUTIONAL LAW VOID AND
       UNENFORCEABLE:
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182. Constitutional Courts must constantly remind themselves of their duty, under the Constitution, to declare a law, enacted by Parliament or the State Legislature, unconstitutional when the Parliament or the State Legislature have assumed to enact a law which is void. (Public Services Tribunal Bar Association[86]). As the Constitution has assigned to the Courts the function of determining whether the laws, made by the legislature, are in conformity with the provisions of the Constitution, Courts cannot shut its eyes to the violation of fundamental rights of citizens. (Independent Thought[114]).Courts would be shirking their responsibility if they hesitate to declare the provisions of a Statute unconstitutional, where the provisions are found to be in violation of any Articles of Part III or any other provision of the Constitution. (State of Punjab v. Khan Chand[147]; Subramanian Swamy[92]; Independent Thought[114]; Pathumma[130]).

183. When Courts strike down laws they are only doing their duty. No element of judicial arrogance can be attributed to Courts when they decide whether or not the law made by the legislature is in conformity with the provisions of the Constitution. (Khan Chand[147]; Subramanian Swamy[92]; Independent Thought[114]). Hesitation or refusal to declare the provisions of an enactment unconstitutional, where it is found to infringe the provisions of the Constitution, on misconceived notions of judicial humility, would erode the remedy provided by Article 226 of the Constitution. Abnegation in a matter where power is conferred to protect the interest of others, against measures

which are violative of the Constitution, is fraught with serious consequences. (Khan Chand[147]; Subramanian Swamy[92]; Independent Thought[114]).

184. As both Section 4(a) which permits recovery of a lesser amount, than the market rent, as rent for the accommodation provided to former Chief Ministers, and Section 4(c) whereby various facilities were extended to them free of cost, suffer from manifest arbitrariness, they are ultra vires Article 14 of the Constitution, and are declared void and unenforceable. Consequently, on Sections 4(a) and (c) being struck down, Section 4(d) becomes redundant and ceases to have any effect. The words "or any order" in Section 8 of Act 5 of 2020 are also liable to be struck down to the extent any facility provided by any such order falls within the ambit of Sections 4(a) and (c) of Act 5 of 2020.

VII. CONCLUSION

185. For the reasons stated hereinabove, Section 4(a) and its Explanation, Section 4(c) and Section 7 of Act 5 of 2020 are ultra vires the powers of the State Legislature, the separation of powers doctrine, and they violate Article 14 of the Constitution, as the judicial decision of a Court of competent jurisdiction is sought to be overruled thereby. Section 4(a) and its Explanation and Section 4(c) are also ultra vires Article 14 of the Constitution of India as they suffer from manifest arbitrariness. Consequent on Section 4(a) and its Explanation and Section 4(c) being struck down as such, Section 4(d) is rendered redundant, and is therefore declared as not to have any effect. The words "or any order", in Section 8 of Act 5 of 2020, are liable to be declared ultra vires Article 14 of the Constitution to the extent any facility, provided by any such order, falls within the ambit of Sections 4(a) and (c) of Act 5 of 2020. Section 4(c) of Act 5 of 2020 is also ultra vires Article 202 to 207 and Article 266(3) of the Constitution. Consequently, these provisions, (ie Section 4(a) and its Explanation, Sections 4(c), 4(d), Section 7 and the words "or any order" in Section 8 of Act 5 of 2020), are declared void and unenforceable.

186. The Writ Petition is allowed. However, in the circumstances, without costs.

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          (Ramesh Chandra Khulbe, J.)         (Ramesh Ranganathan, C.J.)
             09.06.2020                            09.06.2020
    NISHANT
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