BEFORE THE HONBLE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AND a) QUASH ORDER DATED 20.06.2023 PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BENGALURU IN REVIEW APPLICATION No. 33 TO 67 OF 2023 (UNDER ANNEXURE-A) AND ALLOW THE REVIEW APPLICATION No. 33-67 OF 2023 (UNDER ANNEXURE-B) AND GRANT ALL CONSEQUENTIAL RELIEFS.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.12.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, ***RAJESH RAI.K, J.,*** MADE THE FOLLOWING:

ORDER

"Strong competition is the essence of public employment there by allowing the state to select the best for public employment. Absence of competition means nothing but a disservice action"

These petitioners are calling-in-question the probity and legality of order dated 20-06-2023 passed by Karnataka State Administrative Tribunal (For short 'Tribunal') In Review Application No.33-67/2023 wherein, the Tribunal was pleased to dismiss the relief sought by these petitioners, who are third party litigants who sought for a reopen and rehear of O.A.No.952-1001/2022 which was partly allowed vide order dated 15.02.2023. Aggrieved, the petitioners, who were the applicants before tribunal, are before this court.

2. The facts that are apposite for consideration as borne out from the pleadings are as follows:

The Government of Karnataka vide order dated 25.05.2022 has framed Karnataka Animal Husbandry and Veterinary Services (Recruitment of Veterinary Officers) (Special) Rules, 2022 (for short 'Special Rules, 2022'). Pursuant to which, applications for the Group-A post of Veterinary Officers came to be notified vide Notification No:CAH/EST/A-5/E-14/2022 dated 08.03.2022 and CAH/EST/A-5/E-14/A/2022 dated 08.03.2022. It in this background, some of the aspirants to the post that was called by the State Government, approached the Tribunal vide Application Nos.952-1001/2022 challenging the notification dated 25.02.2022 contending that, these applicants were aspirants for the civil posts of Veterinary Officers in the Government of Karnataka who are all Post-Graduates i.e., holders of Masters Degree in Veterinary Science (MVSc). They contended before the Tribunal that the State had notified the draft Rules, 2022 dated 31.01.2022 and the same is depraved for the reason that-

i. It did not recognize or accord the status of desirable or preferred qualifications to MVSc;

ii. It did not accord 5% weightage to candidates possessing MVSc qualification;

iii. It postulated for special recruitment based on Overall Grade Point Average (OGPA) and no written examination is proposed to be held for the selection of candidates;

iv. Recruitment is envisaged for 400 vacancies out of which 342 are regular vacancies and 58 backlog unfilled vacancies in previous recruitment and that 1512 upgraded posts in

G.O dated 09-10-2017 have not been included in the recruitment;

v. There is no weightage of marks for past services.

3. Meanwhile document verification of originals were conducted from 20.05.2022 to 24.05.2022 and Kannada language test was conducted through KEA on 07.08.2022. Further, results were also announced on 29.10.2022.

4. Tribunal in pursuance to the direction given by this Court was pleased to quash the Special Rules 2022 *supra* in A.Nos.952-100/2022 vide dated 15.02.2023. Further in accordance with the order of the Tribunal, on 21.03.2023, a communication was addressed by the respondent-State to KPSC for recruitment of veterinary Doctors as per General Recruitment Rules. It is in this *scaenarium*, a Writ Petition No.7107/2023 came to be filed by the petitioners and the same was withdrawn with liberty to file Review Petition before the Tribunal on 19.04.2023. Accordingly, the Review Petition Nos.33-67/2023 was preferred and the same came to be dismissed by the Tribunal vide order dated 20.06.2023 wherein, the tribunal while dismissing the review application filed, opined that, rehearing these review applicants would tantamount to hearing on appeal of its earlier order which the tribunal is prohibited with. The challenge to which is the *lis* before this Court.

5. Primarily in address to the maintainability of the writ petition, learned Senior counsel for the petitionerss would contend that earlier W.P.No.7107/2023 was withdrawn in order to approach the Tribunal as a third party and though ***Rajeev Kumar vs. Hemraj Singh Chauhan*** reported in ***(2010) 4 SCC 554*** provided a mandate for a non-party to approach the Tribunal by filing a review petition, it only spoke about the person who was supposed to be a party to the proceeding. It did not make a mention about the person who is a third party to the proceeding. Learned Senior counsel in support of his submission would persuade this Court by relying on Rule 3(b) of Review Applications Regulations, 1994 which reads as follows:

> "(b) Any person, who is not a party to the proceedings before the Tribunal, but considers himself aggrieved by an order of the Tribunal passed in such proceedings may, with the permission of the Tribunal, on a petition made for this purpose, apply to the Tribunal for the review of an order made by the Tribunal."

On the above ground, he would submit that, the Tribunal erred in holding that the review jurisdiction is entertainable only when there is 'error apparent on the face of record'. He would further submit when this Court had already appreciated the above rule and allowed the petitioners to file a review, the Tribunal would not have opined that it is *functus officio*, once it has delivered the judgment. The Tribunal also erred in holding that these third

parties would have impleaded themselves during the hearing of original application as they had 'constructive knowledge' of the pendency of the same throughout the proceedings till disposal.

6. Countering the finding of the Tribunal, he would further submit that the reliance placed by the Tribunal i.e., the decision of the Co-ordinate Bench of this Court in ***M.G. Maheshwara Rao vs. State of Karnataka*** reported in ***ILR 2002 KAR 3848*** in deciding the maintainability of the review petition is misplaced for the reason that the Co-ordinate Bench of this Court while disposing of W.P.No.7107/2023, reserved the liberty for the petitioners to approach the Tribunal to file a review petition.

7. He would further submit when Tribunal being the power house of all the service matters of public sector, be it review or original jurisdiction, would have entertained the review application filed by the petitioners and would have given an opportunity for these petitioners to put-forth their defense in Application Nos.952-1001/2022. Relying on the judgment of ***Kiran Devi vs. Bihar State Sunni Wakf Board*** reported in ***(2021) 15 SCC 1,*** he would submit that, it is immaterial to ponder upon the maintainability of review application when this Court is already deciding the case on hand with respect to the merit of the case. Further relying on ***Jananrdhan Reddy vs. State of Hyderabad*** reported in ***1951 SCC 217,*** he would submit that, even though the Courts/Tribunals

acts without jurisdiction, its decision can be challenged in the same manner as it would have been challenged if it had acted with jurisdiction.

8. Learned Senior counsel would also further submit that, these petitioners are also aggrieved persons as they were the beneficiaries of Special Rules, 2022 and the Tribunal holding it to be *ultra vires* the Constitution, withers the right of these petitioners from getting recruited to the post for which they are very much eligible for. Such being the case, Tribunal would not have come to a conclusion that these petitioners are not the 'aggrieved persons' who are supposed to be heard before the rules being held *ultra vires*. On the above grounds, learned Senior counsel would plead before this Court that petitioners being aggrieved their grievance cannot be left unheard and the finding of the Tribunal that the petitioners are not the 'aggrieved persons' is perverse and contrary to laws above stated.

9. Learned Senior counsel would submit that the petitioners had filed an I.A. for permission along with review applications wherein they had explained why these petitioners are aggrieved persons to the order of the Tribunal in Original Application. The Tribunal without properly scrutinizing the application has erred in concluding that the petitioners had constructive knowledge of the proceedings before the Tribunal and

it also failed to appreciate that setting aside the Special Rules would effect the rights of these petitioners to participate in the recruitment process and be considered for employment. On these grounds, he buttresses his stand on maintainability of the petition.

10. Arguing on the merits of the case, learned Senior counsel would submit that the Tribunal has erred in holding the Special Rules, 2022 is violative of Transaction of Business Rules, 1977. In support his contention, he would rely upon ***Narmada Bachao Andolan vs. State of M.P.,*** reported in ***(2011) 12 SCC 333*** and the relevant portion of which is extracted hereunder for ready reference:

> *"23. As the issue raised is of great public importance and Ms Palit was not able to render proper legal assistance, we requested MrGourabBanerji, learned Additional Solicitor General who was present in Court to assist the Court on two issues, namely:*
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> > *(1) Whether the State Council of Ministers is, as a matter of law, permitted to delegate its power to a subordinate authority to amend its own decision?*
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> > *(2) Whether such amendment is to be consistent with the Rules of Business framedunder Article 166 of the Constitution of India?*
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> *27. The decision of any Minister or officer under the Rules of Business made under Articles 77(3) and 166(3) of the Constitution is the decision of the President or the Governor respectively and these articles do not provide for "delegation".*

That is to say, that decisions made and actions taken by the Minister or officer under the Rules of Business cannot be treated as exercise of delegated power in real sense, but are deemed to be the actions of the President or Governor, as the case may be, that are taken or done by them on the aid and advice of the Council of Ministers.

28. In State of U.P. v. PradhanSanghKshettraSamiti [1995 Supp (2) SCC 305 AIR 1995 SC 1512] this Court relied on the decision of the seven-Judge Bench in Samsher Singh v. State of Punjab [(1974) 2SCC 831: 1974 SCC (L&S) 550: AIR 1974 SC 2192] and held as under: (PradhanSangh case [1995 Supp (2) SCC 305: AIR 1995 SC 1512], SCC p. 326, para 36)

> *"36. … Any action taken in the exercise of the executive power of the State vested in the Governor under Article 154(1) is taken by the Government of the State in the name of the Governor as will appear in Article 166(1). There are two significant features in regard to the executive action taken in the name of the Governor. First, Article 300 states, among other things, that the Governor may sue or be sued in the name of the State. Second, Article 361 states that proceedings may be brought against the Government of the State but not against the Governor. The reason is that the Governor does not exercise the executive functions individually or personally. Executive action taken in the name of the Governor is the executive action of the State. Para 48 of the said judgment explains the position of law in that behalf succinctly as follows: (Samsher Singh case[(1974) 2 SCC 831: 1974 SCC (L&S) 550: AIR 1974 SC 2192], SCC p. 847)*

'48. The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under Rules of Business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of a Minister or officer under the Rules of Business is the decision of the President or the Governor."

29. Whether there can be further delegation by the Minister to the officer subordinate to him depends on the provisions of the Rules of Business.

32.Earlier cases of this Court suggest that the Rules of Business are to be construed as directory so that substantial compliance with them would suffice to uphold the validity of the relevant order of the Government. (See State of

U.P. v. OmPrakash Gupta [(1969) 3 SCC 775: AIR 1970 SC 679].)

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35. However, in the recent decision in MRF Ltd. v. ManoharParrikar [(2010) 11 SCC 374], a two-Judge Bench of this Court has sought to distinguish the above mentioned judgments and taken the view that in case there is non-compliance with the Business Rules framed under Article 166(3) of the Constitution, the notification issued in violation of the Business Rules is void abinitio and all actions consequent thereto are null and void. The Court held: (SCC pp. 418-19, para 107)

> *"107. Thus, from the foregoing, it is clear that a decision to be the decision of the Government must satisfy the requirements of the Business Rules framed by the State Government under the provisions of Article 166(3) of the Constitution of India. In the case on hand, as has been noticed by us and the High Court, the decisions leading to the notifications do not comply with the requirements of the Business Rules framedby the Government of Goa under the provisions of Article 166(3) of the Constitution and the notifications are the result of the decision taken by the Power Minister at his level. The decision of the individual Minister cannot be treated as the decision of the State Government and the notifications issued as a result of the decision of the individual Minister which are in violation of the Business Rules are void abInitio and all actions consequent thereto are null and void."*

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37. We have considered the larger Bench judgment of this Court in R. Chitralekha [AIR 1964 SC 1823] and taken note of the fact that MRF Ltd. [(2010) 11 SCC 374] is distinguishable

from the case at hand since that case dealt with rules pertaining to financial implications for which there were no provisions in the Appropriation Act, and so the rules required mandatory compliance. Here, there is no issue of financial repercussions. The issue here is whether the Council of Ministers is permitted to delegate the power to amend its decision to a Committee of Ministers consisting of the Ministers in charge of the Departments concerned and the Chief Minister, and whether such amendment needs to be consistent with the Rules of Business framed under Article 166 of the Constitution of India. The case law provides that delegation is permissible and thatRules of Business are directory in nature. In view of the above, we find that delegation of power is permissible. Submissions so made on behalf of the appellant in this regard are preposterous."

Relying on the findings recorded by the Hon'ble Apex Court in the above extracted judgment, learned Senior counsel would submit that the Special Rules, 2022 was regarding recruitment of Veterinary Health Officers and had no financial implications as to dragging the Transaction of Business Rules *supra,* to the case on hand. Hence he would submit that the Tribunal erred in not appreciating the fact that the case on hand had no financial implication and hence would not require to be seen from the angle of Transaction of Business Rules *supra*.

11. Learned Senior counsel further submits that the Tribunal erred in appreciating the fact that all the aspirants to the post that was called for were within the State of Karnataka and holding that written examination was required under proviso to Rule

5 of the Karnataka Civil Services (Direct Recruitment) (General) Rules 2021 (for short 'Direct Recruitment Rules,2021'). Learned Senior counsel would submit that the issue on hand is already academic and would rely upon the decision of the Hon'ble Apex Court in ***State of M.P. v. Gopal D. Tirthani,*** reported in ***(2003) 7 SCC 83*** wherein, the Hon'ble Apex Court has opined that:

> *"28. Clearly, the State of Madhya Pradesh was not justified in holding and conducting a separate entrance test for in-service candidates, Nor could ithave devised a formula by combining clauses (i) and (iii) of Regulation 9(1) by resorting to clause (iv). Recourse can be had to clause (iii) when there is only one university. When there is only one university in one State, the standard of assessment can reasonably be assumed to have been the same for assessing the academic merit of the students passing from that university. When there are more universities than one in a State, the standards of different universities and their assessment methods cannot obviously be uniform and may differ. Then it would be futile to assess the comparative merit of Individual performances by reference to clause (iii). The High Court is, therefore, right in forming an opinion that in the State of Madhya Pradesh, where five universities exist, the method of evaluation contemplated by clause (iii) is not available either in substitution of or in addition to clause (i). The candidates qualified at the pre-PG or PG entrance test held in common for in-service and open category candidates, would then be divided into two separate merit lists to be prepared for the two categories and merit inter se of the successful candidates shall be available to be assessed separately in the two respective categories."*

Relying on the above cited judgment, learned Senior counsel submits that, when there is only one University in the State,

question of competitive examination under Direct Recruitment Rules *supra* has no application to the recruitment on hand. Further, he would persuade this Court to Rule 1(3) of the Special Rules, 2022 which reads as under:-

> 'Notwithstanding anything contained in the Karnataka Civil Services (General Recruitment) Rules, 1977 or the Karnataka Civil Services (Direct Recruitment) (General) Rules, 2021 or in the Karnataka Animal Husbandry and Veterinary Services (Cadre and Recruitment) Rules, 2017 or in any other rules of recruitment relating to the categories of posts specified in the schedule made or deemed to have been made, under the Karnataka State Civil Services Act, 1978 (Karnataka Act 14 of 1990)'

and submits that, it is on the judgment passed by the Hon'ble Apex Court cited above, the said rider was inserted in the Special Rules,2022 barring the implementation of Karnataka Civil Services (General Recruitment) Rules, 1977 and also Direct Recruitment Rules, 2021. It is on this ground, learned Senior counsel would submit that, when there is only one University in the State of Karnataka imparting the course of Bachelor of Veterinary Science and Animal Husbandry and it is mandatory under 5 of the Special Rules,2022 that every candidate shall pass the test of Kannada language to apply for the post of Veterinary Health Officers. The Tribunal erred in holding that, if direct recruitment is called for in the manner argued by the respondents, then it would open the gateway for participants not only within the State but also to the

candidates from other parts of India. He would also submit that the recruitment now which is called for also mandates that the aspirants shall be registered in Karnataka Veterinary Council in order to apply for the post-in-question and the Veterinary Council Act, 1984, which mandates that, in order to get registered in the Karnataka Veterinary Council, one must be the resident of the very State itself. Hence, relying on the above decision in ***State of M.P. vs. Gopal D Tirthani's case supra***, he would submit that respondent Nos.6 to 55 would in no manner become aggrieved by the Special Rules,2022 and Tribunal setting aside the Special Rules considering them to be aggrieved is perverse and unwarranted.

12. Learned Senior counsel would submit that respondent Nos.6 to 55 cannot be called as 'aggrieved persons' as they are also from the same university i.e., Karnataka Veterinary, Animal and Fisheries Sciences University, Bidar and it is also not their case that they are outside the State. Such being the scenario, when law laid down by the top Court already holds the field, the respondent Nos.6 to 55 cannot be said to be 'aggrieved persons' who can demand direct recruitment by way of competative examination.

13. Learned Senior counsel would further rely upon the decision of the Co-ordinate Bench of this Court in ***Rajashree Cement vs. State of Karnataka*** reported in ***ILR 2005 Kar 1356*** which reads as under:-

> "22. Now, let me find out the ratio of the decision in Kusum Ingot's case. The Petitioner in that case is a Company having its Registered Office at Mumbai and it had obtained a loan from Bhopal Branch of State Bank of India. The Bank issued a notice for repayment of the said loan from Bhopal, in terms of the provisions of the Securitization and Reconsideration of Financial Assets and Enforcement Security Interest Act, 2002. The Petitioner challenged virus of the said Act by filing a writ petition at Delhi High Court and the Delhi High Court dismissed the petition on the ground of lack of territorial jurisdiction. It was contended that a constitutionality of a Primary Act can be questioned on the ground that the cause of action arises at a place of legislature enacting the legislation. In that background, the Hon'ble Supreme Court examined a question as to whether passing of legislation by itself confers any right to file a Writ Petition unless a cause of action arises thereof. It is categorically held that cause of action will arise only when the provisions of the Act or some of them which may implemented shall give rise to civil or evil consequences and that a Writ Court would not determine a constitutional question in a vacuum. It is also held that the Courtshould have requisite territorial jurisdiction. It is further held that framing of statutory rule or issue of an executive order or instructions would not confer jurisdiction upon a Court only, because of the situs of the Office of the maker thereof.
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> 23. I am of the view that the said decision is squarely applicable to the facts of the case. I am also of the view that since the authorities under the Act have not initiated any action against the Petitioner as on the date of filing of the Writ Petition, it cannot be said that they have a cause of action to file the Writ Petitions."

Relying on the above cited judgment, learned Senior counsel would submit that, the constitutionality of an Act can only be questioned on the ground that the cause of action arises at a place

where the legislation is in-force and when passing of an Act in-itself violates right of a person thereby giving him an opportunity to question the same. He submits, in the case on hand, as stated *supra* the respondent Nos.6 to 55 being the graduates of same University and residents of same State cannot be said to have been aggrieved and the Tribunal erred in holding that the Special Rules,2022 by its enactment itself would affect the rights of these respondents.

14. Learned Senior counsel would further make his submissions relying on the decision of Hon'ble Apex Court in ***Maya Mathew vs. State of Kerala*** reported in ***(2010) 4 SCC 498***, which reads thus:

> *"12. The rules of interpretation when a subject is governed by two sets of rules are well settled. They are:*
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> > *(i) When a provision of law regulates a particular subject and a subsequent law contains a provision regulating the same subject, there is no presumption that the latter law repeals the earlier law. The rule-making authority while making the later rule is deemed to know the existing law on the subject. If the subsequent law does not repeal the earlier rule, there can be no presumption of an intention to repeal the earlier rule;*
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> > *(ii) When two provisions of law-one being a general law and the other being a special law govern a matter, the court should endeavour to apply a*

harmonious construction to the said provisions. But where the intention of the rule-making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.

(iii) If the repugnancy or inconsistency subsists in spite of an effort to read them harmoniously, the prior special law is not presumed to be repealed by the later general law. The prior special law will continue to apply and prevail in spite of the subsequent general law. But where a clear intention to make a rule of universal application by superseding the earlier special law is evident from the later general law, then the later general law, will prevail over the prior special law.

(iv) Where a later special law is repugnant to or inconsistent with an earlier general law, the later special law will prevail over the earlier general law.

13. Having regard to the fact that several special rules had been tailor-made to suit and meet the special requirements of different specified services, the General Rules recognized the need for the Special Rules to prevail over the General Rules. Rule 2 of the General Rules providing for it, is extracted below:

"2. Relation to the Special Rules. If any provision in the General Rules contained in the part is repugnant to a provision in the Special Rules applicable to any particular service contained in Part III, the latter shall in respect of that service, prevail over the provision in the General Rules in this part."

Therefore, the provision of the Special Rules [Note (2) under Entry 5 of the Table] will prevail over the provision of the General Rules [Note (3) under Rule

> *5]. Even without such a specific provision, contextually, the said later special rule would have prevailed over the said prior general rule.*
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> *20. What logically follows from the principle enunciated in the two decisions is that if any special rule is subsequent to the general rule, then the question of examining whether the prior general rule will prevail over a later special rule will not arise at all having regard to the categorical provision contained in Rule 2 of the General Rules. The principle laid down in those decisions will not apply where the special rule is made subsequent to the general rule.*
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> *23. When the rule-making authority being aware of the existence of Note (3) to Rule 5 of the General Rules, chooses to subsequently make a contrary provision in the Special Rules, it is to be inferred that the subsequent rule is intended to prevail over the general rule. We therefore hold that Note (2) to Entry 5 of the Table under Rule 3 of the Special Rules will prevail over Note (3) to Rule 5 of the General Rules.*
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> *24. It therefore follows that the ratio of 5:1:1:1 has to be applied with reference to vacancies which were notified and not with reference to the cadre strength. There is no ground to interfere with the decision of the High Court."*

Relying on the above cited decision, learned Senior counsel would submit that, legislature has enacted the Special Rules,2022, keeping in mind proviso to Rule 5 of Direct Recruitment Rules,2021 so also the provisions of Karnataka Civil Services (General Recruitment) Rules 2021 (for short 'General Recruitment Rules, 2021') and has rightly exercised its powers in appreciating the facts

that, when the eligible officers to the said post are being taken from one University, there requires no additional assessment than the assessment that has been already made by the University. Moreover, as held by the Top Court in the above cited judgment Special Rules always prevail over General Rules. Moreover, when there is already a rider created by the Special Rules not to consider the recruitment under the General Recruitment Rules *supra,* Tribunal would have appreciated the stand of the legislature who has acted bonafidely keeping in mind the law laid down by the Apex Court in ***State of M.P. v. Gopal D. Tirthan's case*** *supra*.

15. Relying on the above cited decision in ***Maya Mathew's case,*** learned Senior counsel would submit that minimum qualifications, method of recruitment, posts to be filled up are all being policy matter which are clearly under the ambit and scope of legislature, the Tribunal without considering the intention and objective behind enacting the Special Rules,2022 has over reached the powers vested in it and the same requires to be set at naught.

16. Further, argument is also advanced contending that the Special Rules, 2022 was brought into force keeping in view the administrative exigencies, more particularly the immediate requirement of 400 Veterinary Officers and the Tribunal erred in finding that same is *ultra vires* even though it is settled law that,

actual administrative exigencies and its domain are within the knowledge of State Executives.

17. Learned Senior counsel relying his submissions on the law laid down by the Hon'ble Apex Court in ***State of T.N. vs. K. Shyam Sunder,*** reported in ***(2011) 8 SCC 737,*** would submit that State being representative of entire citizens within its territory it bound to act in an unilateral manner, but State though supported the stand of the petitioners while arguing for the A.Nos.952-1001/2022 before the Tribunal, but have argued contrary denying the contentions leveled by these petitioners in review applications so also before this Court which is clearly against the law laid down by the Top Court and hence, he would submit that the stand taken subsequently by the State Government shall not be considered.

18. *Per contra*, learned Senior counsel for respondent Nos.6 to 55 would contend that the they have approached the Tribunal post non-consideration of their objections to the Draft Rules which were notified on 31.01.2022 and which was finalized vide Notification dated 25.02.2022. He would also contend that, these respondents are the Holders of Masters in Veterinary Science Course (for short 'MVSc') and some of the private respondents were pursuing 'MVSc' at the time of final application and few of them are employed in District Milk Producer's Co-operative Society, in private clinics established as Veterinary High-tech Clinic/Hospitals, also

employed in Animal-Centric Private Companies, working as contract lecturers in various institutions, Veterinary Doctors in the Animal Birth Control and Anti-rabies Vaccination Programs postulated by various city and town municipalities across the State at the time of filing the application. On these facts, he would submit that the private respondents will also be the eligible persons and hold requisite qualification for the post that is now being called for.

19. Learned Senior counsel would further submit that, the method of assessment for awarding the marks or the degrees varies from institution to institution and also even from an academic year to another academic year. He would submit, if the aggregate marks or the percentile marks are considered unilaterally, then the aggregate result which will be arrived at, will be of great discrepancy and dissimilarity; thereby affecting the rights of these respondents to be considered as aspirants to the recruitment process now called-in for. Hence, he would submit that, Tribunal has rightly held that there, mandatorily requires competitive examination in order to fulfill the post that are called for, in order to accomplish and uphold the Constitutional mandates of equal and fair opportunity in public employment under Articles 14 and 16 of the Indian Constitution. Adopting methods as displayed in Special Rules, 2022, not only would hamper the opportunity of many, but also is *prima facie* against the public policy prevailing in the State.

He would also submit that the competitive examination being a practice that is being adopted since the inception of our Constitution, would prove effective gateway in the recruitment process that is now being notified for.

20. He would further submit that, if the order of the Tribunal is given affect to, then it would aid not only to the degree holders from Bidar University, but also to the degree holders from various University which are recognized, Government Aided and also Un-aided. He would repeatedly submit that, there is considerable metamorphosis between the aggregate marks and percentile marks and if the aggregate marks are considered over and above the percentile marks, the same would cause great injustice and discrimination on the part of the respondents and is violative of Article 14 read with 16 of Constitution of India. To buttress his submission the learned Senior counsel would rely upon the decisions of the Hon'ble Apex Court in ***Shri Chander Chinar Bada Akhara Udasin Society v. State of J&K,*** reported in ***(1996) 5 SCC 732*** wherein, paragraph No.10 of the order reads thus:

> *10. It is unfortunate that due to the indifferent attitude of the State Government and haste shown by the appellant-Society, the so-called selected candidates, who are said to have been admitted, are virtually on the roads. But only on equitable grounds, a procedure which is not sanctioned by law cannot be approved only to mitigate the hardship of such candidates who*

> *have sought admissions in the medical college aforesaid. But at the same time many of the directions given by the Division Bench also cannot be approved. It has directed that selection be made on the basis of common viva voce entrance examination and no common entrance written examination be held. According to the direction of the Division Bench, 75% marks have been allotted for academic qualification and 25% marks for the viva voce examination. It need not be pointed out that the percentage of marks secured by different applicants at different types of examinations at the higher secondary stage cannot be treated as uniform. Some of such examinations are conducted at the State level, others at the national level including the Indian School Certificate examination. The percentage secured at different examinations are bound to vary according to the standard applied by such examining bodies, which is well known. As such a common entrance examination has to be held. The counsel appearing for the parties could not justify the awarding of 25% marks for viva voce examination in view of the several judgments of this Court in connection with admission in educational institutions; one such judgmentbeing from the State of J & K itself in the case of Ajay Hasia v. KhalidMujibSehravardi [(1981) 1 SCC 722: 1981 SCC (L&S) 258: AIR 1981 SC 487].*

and the decision in ***Dinesh Kumar (Dr) v. Motilal Nehru Medical College***, reported in ***(1985) 3 SCC 22*** wherein paragraph No.6 of the order of the Hon'ble Apex Court reads as under:

> *6. So far as admissions to 50% open seats not reserved on the basis of institutional preference (hereinafter referred to as "50% non-reserved seats") for post- graduate courses such as MD, MS and the like are concerned, we may point out that these admissions also cannot be made on the basis of marks obtained by the students at different MBBS examinations held by different*

universities, since there would be no comparable standards by reference to which the relative merits of the students seeking admission to post-graduate courses can be judged. It would not only be unfair and unjust but also contrary to the equality clause of the Constitution to grant admissions to 50% non-reserved seats in the post- graduate courses by mechanically comparing the marks obtained by the students at the MBBS examinations held by different universities where the standard of judging would necessarily vary from university to university and would not be uniform. If admissions were to be made on this basis, a less meritorious student appearing in the MBBS examination held by a university where the standard of evaluation is liberal would secure a march over a more meritorious student who appears in the MBBS examination where the standard of marking is strict. We cannot therefore approve of admissions to 50% non-reserved seats for the post-graduate courses being made on the basis of marks obtained by the students at the different MBBS examinations held by different universities. Such admissions would be clearly invalid as constituting denial of equality of opportunity. There can be no doubt that in order to meet the demands of the equality clause, the admissions to 50% non-reserved seats for the post- graduate courses must be made on the basis of comparative evaluation of merits of the students through an entrance examination. Such entrance examination must be held by the Government of India or the Indian Medical Council sufficiently in advance before the term is due to commence for the post-graduate courses. Here again the students seeking admission to post-graduate courses can express their preference for any particular university or medical college or colleges as also for any speciality or specialities which they wish to take up for the post-graduate course and admissions should be granted to the post-graduate courses in various medical colleges in the country on the basis of marks obtained at such entrance examination and while granting admissions, the preferences expressed by the students must be

kept in mind and as far as possible, effort should be made to conform to such preferences. We have directed the Government of India and the Indian Medical Council to put forward a positive scheme for holding an all-India entrance examination for regulating admissions to the post-graduate courses at the next hearing of the writ petition so that we can give necessary directions to the Government of India for holding such all-India entrance examination which would be conducted in at least one centre in each State and which would be open to the students from all over the country. We may point out that having regard to the size of the population, the number of students seeking admission and the extent of the geographical area of a State, it might be desirable to have more than one centre in some State or States both in regard to admissions to the post-graduate courses as also in regard to admissions to MBBS course. If for any reason the Government of India and the Indian Medical Council are unable to organize such all- India entrance examination for admissions to the post-graduate courses on account of paucity of the time now available to them, a situation for which they are almost entirely to blame, we may have to direct as the only possible alternative for the coming academic year, an entrance examination to be held by each State Government or university for regulating admissions to 50% non-reserved seats for the post-graduate courses in the medical colleges situate within that State or attached or affiliated to that university. But unquestionably no admissions can be allowed to be made on the basis of marks obtained at different MBBS examinations held by different universities.

21. Relying on these cited judgments, he would also submit that the manner in which evaluation is conducted varies from batch to batch, year to year and also some time from semester to semester. When such being the scenario, he would submit that

allowing implementation of Special Rules, 2022, not only hampers the Constitutional mandates, but also takes away the right of the petitioners to apply for the post that is now tabled for in the recruitment process.

22. Learned Senior counsel would further submit that, the law regarding in the recruitment of Veterinary Officers is already in force and in support of his contention he would persuade this Court to amendment to The Karnataka Civil Services (General Recruitment) Rules, 1977 dated 05.03.2021 and Rule 5 of the said Rules reads as under :

> **5. Method of selection:**
>
> The methods of selection to direct recruitment under these rules shall be
>
> a) On the basis of marks secured in interview.
>
> b) On the basis of the percentage of marks secured qualifying examination.
>
> c) On the basis of the percentage of marks secured in qualifying examination and interview conducted.
>
> d) On the basis of the percentage of marks secured in competitive examination On the basis of the percentage of marks secured in competitive examination and Interview conducted.
>
> Provided that, if selection is proposed to be based on marks secured in the Qualifying Examination and such Qualifying Examination is conducted by different

> Authorities/Boards/ Institutions, then the Selection shall be based on Competitive Examination only. If result of candidates in qualifying examination is given in different ways (like percentage of marks, percentile, CGPA, etc.), then recruitment should not be made on the basis of marks in the qualifying examination.
>
> Provided that if selection is based on percentage of marks obtained by candidates in qualifying examination and interview or based on percentage of marks obtained by candidates in qualifying examination only or based on marks obtained by candidates in interview only, in such recruitment, if two or more candidates secure equal marks, the order of merit of such candidates shall be fixed on the basis of their age, the person older in age being placed higher in the order of merit.
>
> Provided that, where the competitive examination is the basis of selection, then the marks so secured shall not be less than thirty-five percent of the total marks.
>
> Provided that in respect of entry level posts of Medical Officers, Veterinary Officers, Engineers and such other posts as may be notified by the Government and all Group C and D posts the method of selection shall not Include interview.

23. He would further submit that the recruitment notification calls for evaluation on a common yard stick that is on the basis of Cumulative Grade Point Average (hereinafter referred to as 'CGPA'). Such being the scenario, the respondents whose performances are evaluated otherwise are deprived of applying for the same and hence he would plead before this Court that these

respondents are aggrieved by the impugned action of the State as conducting direct recruitment for selection of eligible candidates for the post would be more feasible and licit and also *sine qua non* as per Constitutional mandates of Articles 14 and 16. Further, by emphasizing upon the Notification dated 24.11.2020, passed by the Government of India, he would also submit that the batch of Bachelor of Veterinary Sciences Course (for short 'BVSc') 2017-2022 (MSVE 2016 syllabus) compared to the odd batch of MSVE 2008 are assessed differently than the odd batch due to pandemic situation and the odd batch of MSVE 2008. Learned Senior counsel would also place before this Court a tabulation which explains the difference between MSVE-2008 batch and MSVE-2016 batch.

	MSVE-2018	**MSVE-2016**
ACADEMICS	**SEMESTER SYSTEM**	**ANNUAL PROFESSIONAL YEAR SYSTEM**
COURSE DURATION	**5 YEARS**	**5 YEARS 6 MONTHS**
CREDITS Credit Hour means the weekly unit of work recognized for any particular course as per the course catalogue issued by the University. A lecture class of one	**177 CREDITS (hours)** THEORY – 101 PRACTICAL – 76 (GPA per subject will be calculated based on number of credit hours)	**81 CREDITS (hours)** THEORY – 50 PRACTICAL – 31 Equivalent to 179 credit hrs. as per semester system

hour per week shall be counted as one credit.		
CURRICULUM	Course includes: 1. CORE COURSES 2. TRACKING PROGRAMME 3. STUDY CIRCLE 4. ENTREPRENEURIAL TRAINING 5. INTERNSHIP 6. COMPETENCE IN SKILL (The competence in veterinary skills examination based on an evaluation of core competence in professional skills like examining animal, checking temperature, etc.,)	Course includes: 1. CORE COURSES **2. INTERNSHIP INCLUDING ENTREPRENEURIAL TRAINING**
CORE COURSES	15 Subjects and Livestock Farm Practices is Non-credit course	18 Subjects including Livestock Farm Practices as credit course
Tracking Programme: These programmes have been developed to allow students to exercise more control over the profession and self-learning.	COMPULSORY TRACKING PROGRAMME **Student has to compulsorily take any two programmes of two credits each (2x2=4 credits)**	**No Tracking Programme**
Study Circle	**Each student of B.V.Sc. & A.H degree course shall have to enroll himself/herself**	**No Study Circle**

	for at least two study circle activities during the B.V.Sc. & A.H. degree course.	
Internship	**Six Calender Months** Internship limiting only **inside the State** where college is located	**Twelve Calender Months** Internship in **home state and also, interns shall be posted to any other State in India.**
Comprehensive Exam :	Comprehensive exam conducted after completing internship. Exam has **no marking**. Have to mark only Satisfactory or Unsatisfactory	Comprehensive Exam **conducted for 100 marks**. Minimum 50 marks if for passing.
Examination Pattern	Internal Exam consist of Both **THEORY AND PRACTICAL.** **INTERNAL – THEORY (30 MARKS)** **Question paper set by course teacher and evaluated by same course teacher internally inside the college only.** **INTERNAL – PRACTICAL 20 MARKS** Conducted by course teacher only. **EXTERNAL EXAM** **EXTERNAL – THEORY** **30 MARKS**	Internal Exam Only **THEORY EXAMINATION INTERNAL THEORY (40 MARKS)** **Question paper set by course teacher and evaluated by same course teacher internally inside the college only.** **THERE IS NO INTERNAL PRACTICAL EXAM.** **EXTERNAL EXAM** **EXTERNAL THEORY 100 MARKS** **Question paper is prepared for whole university by paper setter and evaluation of answer books of annual theory examinations shall be done by the external examiner for**

	Common question paper set for whole University by external question paper setter and evaluated by external evaluator for whole University and colleges under University. **EXTERNAL – PRACTICAL 20 MARKS** **External Practical examination conducted jointly by course teacher and external examiners**	**whole university and colleges under University.** **EXTERNAL – PRACTICAL 60 MARKS** **External Practical Examination conducted by course teacher only.**
WEIGHTAGE OF EXAMINATION (OUT OF 100%)	**INTERNAL :** **THEORY : 30%** **PRACTICAL : 20%** **EXTERNAL :** **THEORY : 30%** **PRACTICAL : 20%**	**INTERNAL :** **THEORY : 20%** **NO INTERNAL PRACTICALS** **EXTERNAL :** **THEORY : 40%** **PRACTICAL : 40%**
EXAMINATIONS	**INTERNAL EXAMINATION** ONLY **ONE** INTERNAL Theory and One internal practical exam is conducted per	**INTERNAL EXAMINATION** **Here three internal examinations conducted per academic year and only BEST OF TWO internal**

	semester. **The schedule of examinations (internal/external) shall be adhered to strictly. No re-examination shall be allowed in events of, students, strike, boycott, walkouts and medical grounds or what-so-ever may be the reason.** **HERE THERE IS NO LIBERTY FOR STUDENT TO TAKE RE-EXAM HE MUST ATTEND THE EXAM WHEN ANNOUNCED EVEN IF HE HAS A GENUINE REASON TO MISS IT.**	**assessment marks shall be submitted by the instructor.** **SO STUDENT GETS OPPORTUNITY TO WRITE ONLY TO INTERNALS IN WHOLE YEAR AND CAN MISS ONE INTERNAL EXAM AT HOS CONVENIENCE WITHOUT AFFECTING HIS SCORE AND CGPA.**
EVALUATION	**UPTO 70% OF THE EVALUATION AND MARKING IS IN THE HANDS OF COURSE TEACHER** • **INTERNAL THEORY 30%** • **INTERNAL PRACTICAL 20%** • **EXTERNAL PRACTICAL 20%**	**UPTO 60% OF THE EVALUATION AND MARKS IS IN THE HANDS FOR COURSE TEACHER** • **INTERNAL THEORY I** • **INTERNAL THEORY II** • **EXTERNAL PRACTICAL 40%**
QUESTION PAPER PATTERN	60% OBJECTIVES 40% SUBJECTIVES	40% OBJECTIVES 60% SUBJECTIVES
VARIATION OF SUBJECTS PER YEAR	FOR FIRST YEAR OF BVSc & AH STUDENT	FOR FIRST YEAR OF BVSc & AH STUDENT HAS TO

	HAS TO STUDY **6** SUBJECTS – 1. VETERINARY ANATOMY 2. VETERINARY PHYSIOLOGY 3. VETERINARY BIOCHEMISTRY 4. LIVESTOCK PRODUCTION 5. ANIMAL GENETICS & BREEDING 6. ANIMAL NUTRITION	STUDY **3** SUBJECTS – 1. VETERINARY ANATOMY. 2. VETERINARY PHYSIOLOGY 3. LIVESTOCK PRODUCTION AND MANAGEMENT 4. **PHYSICAL EDUCATION ISJUST NON CREDIT PRACTICAL COURSE**.

24. Learned Senior Counsel further relying on Rule 5 of General Recruitment Rules, 2021 at the cost of repetition would vehemence his submission that, said Rule 5 if read completely, the proviso to Rule 5 which is being carved out expressively includes Veterinary Officers. As such, he submits, it is not only a General Rule but also a rule which is in specific nature when it relates to Veterinary Officers. Hence, he would contend that, when Special Rule is being enacted, it certainly overlaps all the general laws and when a special Rule is in existence without specifying the non-functionality of the same, bringing another special rules which violates the Constitutional mandates is nothing but usurping the power of the State Government to give a back door entry to favorable candidates, which is in the teeth of Constitutional Doctrine of "*Colorable Legislation*". Learned Senior counsel in order to

countenance his submission would lay his anchor on the decision of the Hon'ble Apex Court in ***Anvar P.V. V. P.K. Basheer,*** reported in ***(2014) 10 SCC 473*** which reads as under:

> *20. Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The very caption of Section 65- A of the Evidence Act, read with Sections 59 and 65-B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under Section 65-B of the Evidence Act. That is a complete code in itself. Being a special law, the general law under Sections 63 and 65 has to yield.*
>
> *22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600: 2005 SCC (Cri) 1715], does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is Inadmissible.*

25. Further the learned Senior counsel asserting his stand on competitive examination would persuade this Court to Government Notification dated 05.03.2021 i.e., Karnataka Civil

Services (Direct Recruitment) Rules, 2021 wherein Rule 5 of the said rule reads as under:

> 5. **Method of selection**. - The methods of selection to direct recruitment under these rules shall be:
>
> a) On the basis of marks secured in interview
>
> b) On the basis of the percentage of marks secured in qualifying examination
>
> c) On the basis of the percentage of marks secured in qualifying examination and interview conducted
>
> d) On the basis of the percentage of marks secured in competitive examination
>
> e) On the basis of the percentage of marks secured in competitive examination and interview conducted
>
> Provided that the Head of the Department or Appointing Authority shall specify to the selection authority one of the above methods of selection while intimating the vacancies under Rule 3.
>
> Provided that, if selection is proposed to be based on marks secured in the Qualifying Examination and such Qualifying Examination is conducted by different Authorities/Boards/ Institutions, then the Selection shall be based on Competitive Examination only. If result of candidates in qualifying examination is given in different ways (like percentage of marks, percentile, CGPA, etc.), then recruitment should not be made on the basis of marks in the qualifying examination.
>
> Provided that if selection is based on percentage of marks obtained by candidates in qualifying examination and interview or based on percentage of marks obtained by candidates in qualifying examination only or based on marks obtained by candidates in interview only, in such recruitment, if two or more candidates secure equal marks, the order of merit of such candidates shall be fixed on the basis of their age, the person older in age being placed higher in the order of merit.
>
> Provided that, where the competitive examination is the basis of selection, then the marks so secured shall not be less than thirty-five percent of the total marks.

> Provided that in respect of entry level posts of Medical Officers, Veterinary Officers, Engineers and such other posts as may be notified by the Government and all Group C and D posts the method of selection shall not include interview.

Hence, he would submit that even scrutinized with an angle of Direct Recruitment rules; conducting competitive examination for candidates who are weighed on a different footing would be more apt and suitable, than recruiting them only on service weightage and CGPA basis and he would also submit that the State without mentioning any cogent reasons or appreciating the objections filed by these respondents, overlooking all the hurdles have proceeded ahead to pass the Special Rules, 2022 with a blanket reasoning of administrative exigencies. This impugned action of the State so also the petitioners, has not only delayed the administrative exigency but it can also be said that the State has made an endeavor in a manner to make sure the sanctity of recruitment process is being compromised. Hence, he would submit that if the Special Rules, 2022 is given effect to it will not only be a rule that will be against the Constitutional mandates but also be a precedent that discourages the pubic to believe in democratic setup, which encourages actual competitive examination.

26. Learned Senior counsel would further contend that special rules when implemented must hold an objective which is also special in nature rather than general. But, in the case on hand,

he would submit, the prior scheme of recruitment is in-force since a decade and the present Special Rules,2022, which is now being made, does not give any special effect but takes away the fruitfulness of very recruitment process itself, by withdrawing the competitive examination. As the Special Rules, 2022 is making a comparison between a person who has scored high marks in CGPA Grade due to the assessment criteria's that were been relaxed during the phase of COVID pandemic with, batch of people whose assessment were meticulous and were more strict, when compared to pandemic batch. When it is true that there are people with requisite qualification and requisite Bachelor degree who though have studied outside the State but have come back to the State and have registered here and have employed here as Veterinary Inspectors or alike jobs and who are also well versed with Kannada language, which is also pre-requisite to apply for the recruitment, their rights will be completely withdrawn, withheld, tied and violated all of which clearly goes to root of a dignified life of an individual which is very much protected under Article 21 of the Indian Constitution and though Article 21 carves out an exception to this Fundamental Right as to the same can be withdrawn according to procedure established by law. But, the same procedure is enforceable only when it just and reasonable.

27. Further, learned Senior counsel would submit that by a Notification dated 06.02.2010 issued by Government of Karnataka, Animal Husbandry and Fisheries Secretariat, 5% service weightage was given to candidates who possessed additional qualification of MVSc for the post of Veterinary Officers, the righteousness of which, was also tested by the Hon'ble Apex Court in ***Umadevi vs. State of Karnataka,*** reported in ***(2006) 4 SCC 1*** which is now being taken away by enacting the Special Rules, 2022 also violates the rights of these respondents. Learned Senior counsel also contend that the State, by way of recruitment Notification has called applications for 400 vacancies out of which 342 are regular vacancies and 58 backlog vacancies of previous recruitment. But, he would submit that as per Government of Karnataka proceedings dated 09.10.2017 the total number of upgraded posts are 1512. Since, only 400 posts are now being called for recruitment, placing a special rider by way of Special Rules, 2022, would not only amount to losing opportunity, but also is a denial of equal opportunity for employment to these respondents. Learned Senior counsel would also place a submission that, instead of 400 vacancies if all the 1512 upgraded posts will be tabled for recruitment, then, it would be more righteous and also would allow all the participants including the petitioners as a door of opportunity to be employed in the Department. Further, learned Senior counsel in address to the contention raised by the petitioners that they were not made as a

party to the proceedings and they were unheard being a necessary party, would rely on the judgment of Hon'ble Apex Court in ***Govt. of A.P. v. G. Jaya Prasad Rao,*** reported in ***(2007) 11 SCC 528*** wherein, paragraph No.29 of the Order reads as under:

> ***29.*** *It is true that when the validity of the rules is challenged it is not necessary to implead all persons who are likely to be affected as party. It is not possible to identify who are likely to be affected and secondly, the question of validity of the rule is a matter which is decided on merit and ultimately, if the rule is held to be valid or invalid, the consequence automatically flows. Therefore, the original applications filed before the Andhra Pradesh Administrative Tribunal or for that matter before the High Court does not suffer from the vice of non-joinder of necessary party.*

And submit that the action under question before the Tribunal was *vires* and constitutionality of Special Rules, 2022 itself and hence, he would submit that, there arises no necessity for the impleadment of these petitioners as the State being representative of all its citizens is the 'aggrieved person', when validity of a Rule is under challenge and on all these assertive grounds, learned Senior counsel for the respondent Nos.6 to 55 supports the findings recorded by the Tribunal and prays for dismissal of the petition by confirming the order of the Tribunal.

28. In reply, learned Senior counsel for petitioners contend that, before the Tribunal, when the matter was being heard, though petitioners were aware or had means to know about the details of aspirants who were the beneficiaries to Special Rules, 2022 did not

make any efforts to make some of them as party to the proceedings so as to give a reasonable opportunity of hearing and as such learned Senior counsel would rely on the decision of ***Prabodh Verma vs. State of U.P*** reported in ***(1984) 4 SCC 251*** wherein he makes his reliance on paragraph No.50(1) reads as under:

> 50. XXXX
>
> (*1*) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their numbesr is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.

29. Further he would also submit that if the prayer sought in Original Application that was being filed by respondent Nos.6 to 55 is seen (Page No.525 of the writ petition) these respondents have sought a writ in the nature of certiorari to quash a Rule which is clearly in violation of the settled norms as a Rule cannot be quashed on exercising a Writ of Certiorari. He would further contend that the Tribunal erred in granting and also entertaining such relief despite the fact that the relief was sought in the nature of Certiorari. In support of his contention learned Senior counsel would rely upon paragraph Nos.31, 32, 34, 37, 38 and 50(3) of ***Prabhod Verma v. State of UP.,*** reported in ***(1984) 4 SCC 251,*** which reads as under:

31. *A writ of certiorari can never be issued to call for the record or papers and proceedings of an Act or Ordinance and for quashing such Act or Ordinance. The writ of certiorari and the writs of habeas corpus, mandamus, prohibition and quo warranto were known in English common law as "prerogative writs". "Prerogative writs" are to be distinguished from "writs of right" also known as "writs of course". Writs issued as part of the public administration of justice are called "writs of right" or "writs of course" because the Crown is bound by Magna Carta of 1215 to issue them, as for instance, a writ to commence an action at common law. Prerogative writs are (or rather, were) so called because they are issued by virtue of the Crown's prerogative, not as a matter of right but only on some probable cause being shown to the satisfaction of the court why the extraordinary power of the Crown should be invoked to render assistance to the party. The common law regards the Sovereign as the source or fountain of justice, and certain ancient remedial processes of an extraordinary nature, known as prerogative writs, have from the earliest times issued from the Court of King's Bench in which the Sovereign was always present in contemplation of law. (See Jowitt's Dictionary of Law, Vol. 2, p. 1885, and Halsbury's Laws of England, Fourth Edn., Vol. 11, para 1451, f.n. 3).*

32. *We are concerned here with the writ of certiorari. "Certiorari" is a late Latin word being the passive form of the word "certiorare" meaning "inform" and occurred in the original Latin words of the writ which translated read "we, being desirous for certain reasons, that the said record should by you be certified to us". Certiorari was essentially a royal demand for information; the King, wishing to be certified of some matter, orders that the necessary information be provided for him. We find in De Smith's Judicial Review of Administrative Action, Fourth Edn., p. 587, some interesting instances where writs of certiorari were so issued. Thus, these writs were addressed to the escheator or the sheriff to make inquisitions; the earliest being for the year 1260. Similarly, when Parliament granted Edward II one foot-soldier for every township, the writ addressed to the sheriffs to send in returns of their townships to the Exchequer was a writ of certiorari. Very soon after its first appearance this writ was used to remove to the King's Court at Westminster the proceedings of inferior courts of record; for instance, in 1271 the proceedings in an assize of darrein presentment were transferred to Westminster*

because of their dilatoriness. This power was also assumed by the Court of Chancery and in the Tudor and early Stuart periods a writ of certiorari was frequently issued to bring the proceedings of inferior courts of common law before the Chancellor. Later, however, the Chancery confined its supervisory functions to inferior courts of equity. In A New Abridgement of the Law, Seventh Edition, Vol. II at pp. 9 and 10, Matthew Bacon has described a writ of certiorari in these words:

> *"A certiorari is an original writ issuing out of Chancery, or the King's Bench, directed in the Kings name, to the judges or officers of inferior courts, commanding them to return the records of a cause pending before them, to the end the party may have the more sure and speedy justice before him, or such other justices as he shall assign to determine the cause."*

34. *The different functions of the prerogative writs of prohibition, certiorari and mandamus have been thus described in Halsbury's Laws of England, Fourth Edn., Vol. I, in para 80:*

> *"Historically, prohibition was a writ whereby the royal courts of common law prohibited other courts from entertaining matters falling within the jurisdiction of the common law courts; certiorari was issued to bring the record of an inferior court into the King's Bench for review or to remove indictments for trial in that Court; mandamus was directed to inferior courts and tribunals, and to public officers and bodies, to order the performance of a public duty. All three were called prerogative writs. . . .During the seventeenth century certiorari evolved as a general remedy to quash the proceedings of inferior tribunals and was used largely to supervise justices of the peace in the performance of their criminal and administrative functions under various statutes. In 1700 [in R.v. Glamorganshire (Inhabitants) [(1700) 1 Ld Raym 580 : 12 Mod Rep 403] and Groenvelt v. Burnell [(1700) 1 Ld Raym 454 : 1 Com 76 : Holt, KB 184]] it was held that the Court of King's Bench would examine the proceedings of all*

> *jurisdictions erected by Act of Parliament, and that, if under pretence of such an Act they proceeded to arrogate jurisdiction to themselves greater than the Act warranted, the Court would send a certiorari to them to have their proceedings returned to the Court, so that the Court might restrain them from exceeding that jurisdiction. If bodies exercising such jurisdiction did not perform their duty, the King's Bench would grant a mandamus. Prohibition would issue if anything remained to prohibit. The ambit of certiorari and prohibition was not limited to the supervision of functions that would ordinarily be regarded as strictly judicial, and in the nineteenth century the writs came to be used to control the exercise of certain administrative functions by local and central government authorities which did not necessarily act under judicial forms"*

37. *The fact that the High Courts and a fortiori this Court have power to mould the reliefs to meet the requirements of each case does not mean that the draftsman of a writ petition should not apply his mind to the proper relief which should be asked for and throw the entire burden of it upon the Court. An advocate owes a duty to his client as well as to the court — a duty to his client to give of his best to the case which he has undertaken to conduct for his client and a duty to assist the court to the utmost of his skill and ability in the proper and satisfactory administration of justice. In our system of administration of justice the courts have a right to receive assistance from the Bar and it is the duty of the advocate who drafts a writ petition or any other pleading to ask for appropriate reliefs. The true nature of a writ of certiorari has been pointed out by this Court in several decisions. We need refer to only one of them, namely, Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar [AIR 1963 SC 786 : 1963 Supp 1 SCR 676, 682 : (1964) 1 SCJ 151] . In that case Subba Rao, J., as he then was, speaking for the Court, said:*

> *"Certiorari lies to remove for the purpose of quashing the proceedings of inferior courts of record or other persons or bodies exercising judicial or quasi-judicial functions. It is not necessary for the purpose of this appeal to notice the*

distinction between a writ of certiorari and a writ in the nature of certiorari : in either case the High Court directs an inferior tribunal or authority to transmit to itself the record of proceedings pending therein for scrutiny and, if necessary, for quashing the same."

38. *A writ in the nature of certiorari is thus a wholly inappropriate relief to ask for when the constitutional validity of a legislative measure is challenged and it is surprising to find that in spite of repeated pronouncements of this Court as to the true nature of this writ it should have been asked for in the Sangh's petition. As pointed out in Dwarkanath case [AIR 1966 SC 81: (1965) 3 SCR 536, 540-41 : 57 ITR 349] under Article 226 the High Courts have the power to issue directions, orders and writs, including prerogative writs. This power includes the giving of declarations as also consequential reliefs including relief by way of injunction. The proper relief for the petitioners in the Sangh's petition to have asked was a declaration that U.P. Ordinance 22 of 1978 was unconstitutional and void and, if a consequential relief was thought necessary, a writ of mandamus or writ in the nature of mandamus or a direction, order or injunction restraining the State and its officers from enforcing or giving effect to the provisions of that Ordinance. The High Court granted the proper relief by declaring that Ordinance to be void but it should have, before proceeding to hear the writ petition, insisted that the petitioners should set their house in order by amending the petition and praying for proper reliefs. The High Court was too indulgent in this matter. After all, it was not a petition from a prisoner languishing in jail or from a bonded labourer or a party in person or by a public-spirited citizen seeking to bring a gross injustice to the notice of the court. Here, the High Court had before it as the main petitioner a union which had taken collective action to enforce its demands and had defied the Government by flouting its orders and an Ordinance promulgated by the Governor, namely, U.P. Ordinance 25 of 1977, and had by reason of its collective might ultimately made the Government come to terms with it. The petitioners were represented by well-known counsel, one of them practising in this Court. It is true that neither this Court nor any High Court should dismiss a writ petition on a mere technicality or just because a proper relief is not asked for; but from this it does not follow that it should condone every kind of laxity.*

> *We would not have dwelt upon this aspect of the case but for the fact that we find that laxity in drafting all types of pleadings is becoming the rule and a well-drafted pleading, an exception. An ill-drafted pleading is an offspring of the union of carelessness with imprecise thinking and its brothers are slipshod preparation of the case and rambling and irrelevant arguments leading to waste of time which the courts can ill afford by reason of their overcrowded dockets.*
>
> ***50.*** *XXXX*
>
> *(1) XXXX*
>
> *(2) XXXX*
>
> *(3) A writ of certiorari or a writ in the nature of certiorari cannot be issued for declaring an Act or an Ordinance as unconstitutional or void. A writ of certiorari or a writ in the nature of certiorari can only be issued by the Supreme Court under Article 32 of the Constitution and a High Court under Article 226 of the Constitution to direct inferior courts, tribunals or authorities to transmit to the court the record of proceedings pending therein for scrutiny and, if necessary, for quashing the same.*

30. Learned Senior counsel in reply to the malafides pleaded by the learned Senior counsel for the respondent Nos.6 to 55 would submit that, the malafides pleaded unless corroborated with cogent evidences cannot be believed with and he also strongly submits that no person against whom the malice is alleged has been made as the party to this proceedings and also the proceedings before the Tribunal. Further, at the cost of repetition, he would contend that, the question of allowing the aspirants from other state does not arise when it is mandatory to get registered in Karnataka Veterinary Council, the pre-condition to which, is that one must know the Kannada language and he must be the resident

of the Karnataka State. Further, he also contends that the respondents Nos.6 to 55 made submissions before this Court, on grounds that are not pleaded originally before the Tribunal as it is the Court of first instance and also in their pleadings before this Court. In support of this contention learned Senior counsel would rely upon the decision of the Hon'ble Apex Court in ***Ishwar Dutt v. Collector (LA),*** reported in ***(2005) 7 SCC 190*** wherein, Paragraph Nos.33 and 34 held as under:

> **33.** The High Court, in our opinion, although has a wide power in terms of Section 107 of the Code of Civil Procedure but it could not have gone outside the pleadings and make out a new case.
>
> **34.** In *Siddu Venkappa Devadiga* v. *Rangu S. Devadiga* [(1977) 3 SCC 532] it was held: (SCC p. 535, para 8)
>
> > "*8*. … As has been stated, the defendant traversed that claim in his written statement and pleaded that the business always belonged to him as owner. There was thus no plea that the business was 'benami' for Shivanna. We also find that the parties did not join issue on the question that the business was 'benami'. On the other hand, the point at issue was whether Shivanna was the owner of the business and the tenancy rights of the premises where it was being carried on. It is well settled, having been laid down by this Court in *Trojan and Co. Ltd.* v. *RM. N.N. Nagappa Chettiar* [1953 SCR 789 : AIR 1953 SC 235] and *Raruha Singh* v. *Achal Singh* [AIR 1961 SC 1097] that the decision of a case cannot be based on grounds outside the plea of the parties, and that it is the case pleaded which has to be found. The High Court therefore went wrong in ignoring this basic principle of law, and in making out an entirely new

> case which was not pleaded and was not the subject-matter of the trial."

31. With respect to conducting competitive examination as contemplated under Direct Recruitment Rules, 2021 is concerned learned Senior counsel would submit that, it would only be necessary when selection is based on a competitive examination and when qualifying examinations are conducted by different Boards/Authorities/Institutions but when every aspirants including respondent Nos.6 to 55 are being students of same University where their assessment cannot be altered with. Learned Senior counsel in order to rebuff the contention of learned Senior counsel for respondent Nos.6 to 55 that, the COVID batch had preferential evaluation, the petitioners have filed a detailed affidavit dated 18.12.2023 explaining the manner and the mode of evaluation to the COVID batch by the University's Examination Board which clearly depicts that the evaluation was more tougher than the usual.

32. Further, learned Senior counsel for the petitioners contend that the arguments made antithetical stating that, there is no requirement of petitioners being impleaded when a Rule is challenged is concerned, the learned Senior counsel would rely on the decision of the Hon'ble Apex Court in ***Poonam vs. State of U.P.,*** reported in ***(2016) 2 SCC 779*** and submit that the petitioners are being necessary and affected party would very much required to be heard prior to deciding the case on merit. On these

submissions, learned Senior counsel for the petitioners prays for allowing the petition by setting-aside the order passed by the Tribunal.

33. On objectionable footing, learned Additional Advocate General in support of the arguments advanced by the learned Senior counsel for the respondents Nos.6 to 55 would vehemence her submission that, pursuant to impugned order of the Tribunal, the respondent-State has proceeded with a selection process by way of competitive examination but for the stay granted by this Court on 04.08.2023. She would further submit that, it is rightly contended by the learned Senior counsel for the private respondents that when *vires* is challenged, it is the State who has to defend its action and State was a party before the Tribunal and was also heard. Moreover, conducting of competitive examination would not in any way affect the rights of the petitioners as they are also given an equal opportunity to participate in the selection process along with all others who wishes to participate. This would also portray transparency, integrity and also uphold the Constitutional mandates. On these grounds, she prays for dismissal of the petition.

34. On hearing the learned Senior Counsel Sri. P.S. Rajagopal for Sri. Jayanth Dev Kumar learned counsel for the petitioners and learned Senior counsel Sri. Lakshminarayana S for

Smt. Anusha K L leanred counsel for respondent Nos. 6 to 55 and learned AAG Smt. Pratima Honnapur for Sri V. Shivareddy learned AGA for the State and having perused the records so also the government records made available to this Court, the question that would arise for our consideration are:

> "*i. Whether Special Rules, 2020 is ultra vires to the Constitution of India?*
>
> *ii. Whether the petitioners before this Court can be called as the affected/aggrieved parties to the order of the Tribunal in A. Nos. 952-1001/2022?*
>
> *iii. Whether the review petition filed by the petitioner seeking review of the order of the Tribunal In A.Nos.952-1001/2022 is maintainable?*"

35. The case on hand has a varied history before it being brought before this Bench for adjudication. Initially, an application came to be filed before the Tribunal challenging the legality and correctness of the Karnataka Animal Husbandry and veterinary Services (Recruitment of Veterinary Officers) (Special) Rules, 2022 dated 25.02.2022 (vide Annexure-A8 to the Review Application filed before the Tribunal) upon which respondent No.6 to 55 notified and called for the recruitment of Veterinary Inspectors on the ground that the same violates the provisions contemplated under Article 14 and 16 of the Constitution. The primary attack by the private respondents countenancing their contention was on the mode of recruitment, that is being adopted by the respondents in recruiting

these Veterinary Officers. The mode of recruitment was said to be done as per the Rule 5 and 6 of the Special Rules, 2022 dated 25.02.2022 which reads as under:

> **5. Knowledge of Kannada Language** - No candidate shall qualify for inclusion of his name in the selection list to the post of Veterinary Officer, unless he qualifies in a test in Kannada language comprising of one paper carrying maximum of 150 marks and secure a minimum of 50 marks in the said qualifying test regarding knowledge of Kannada. The standard of this paper shall be that of first language of Kannada at S.S.L.C. level:
>
> Provided that, the committee may exempt a candidate from passing the Kannada language test if the candidate has passed the SSLC examination or any equivalent examination or any examination higher than SSLC in which Kannada is the main language or second language or an optional subject (but not one of the subject in composite paper) or has passed in Kannada medium or the test of Kannada language conducted by the committee through examination authority earlier.
>
> **6. Preparation of Selection List.**- (1) The Selection Committee shall from among the candidates who have qualified in Kannada language test, prepare in the order of merit, a selection list of candidates eligible for appointment under these rules on the basis of aggregate percentage of marks secured in the qualifying examination and the reservation of posts (Vertical and Horizontal) provided by or under any law or any order for the time being in force.
>
> (2) The number of candidates to be selected under sub-rule (1) shall be equal to the number of vacancies notified.
>
> (3) If the marks secured by two or more candidates are equal, then the order of merit in respect of such candidates shall be fixed on the basis of their age, the older in age being placed

above the younger. The number of candidates to be included in such list of eligible candidates shall be equal to the number of vacancies specified in the schedule.

(4) The committee shall also prepare an additional list of such of the candidates not included in the man list prepared under sub-rule (1). The number of candidates to be included in the additional list shall be as far as possible twenty percent of the number of candidates in each of the reservation categories (horizontal and vertical) in the list under sub-rule (1). There shall be at least one candidate in the additional list belonging to each of the reservation categories (horizontal and vertical) represented in the list under sub-rule(1). If a candidate whose name is included in the list under sub-rule (1), fails to report for duty within the prescribed period, to the that extent a candidate belonging to the same reservation category as that of the candidate who failed to report for duty shall be appointed from the additional list.

(5) The lists so prepared under sub-rules (1) and (4), shall be published in the official Gazette and also on the notice board of the office of the Commissioner.

(6) The list of candidates selected by the Selection Committee and assigned to the Appointing authority shall be valid till all the notified vacancies are filled or till the notification of next select list of the said cadre whichever is earlier.

36. The applicants therein who are the private respondents herein challenged the said Rule on the ground that the same does not call for recruitment by way of conducting competitive examination but the same is done by way of considering the marks scored in the Kannada language test and also as per the aggregate

percentage of qualifying examination. It is the contention of these private respondents that, non-conducting of the competitive examination for the recruitment, not only hampers the rights of these of private respondents, but also those who are not assessed on the basis of aggregate percentage. To further enunciate this position, we shall effort to ponder upon examining the factual aspects of the merit in the submission made by the learned Senior counsel. Accordingly, when looked into the chart furnished by the learned Senior Counsel who has highlighted the differences among the assessments of the students whose have studied Bachelors degree vide the batch of year 2008 and also 2016 respectively as extracted *supra,* we find that:

i. Both the batch had difference in the assessment system i.e., wherein the 2016 batch had a yearly assessment system, where as the 2008 batch had been assessed twice in a year as per semester assessment system and the duration of the course also varying from 5 years to 5 years 6 months to subsequent batch students.

ii. When Credit Hours of teaching are taken into consideration as the same will become a vital factor for considering the GPA scores, there seems major difference in the credit hours that has been accredited to both the students, which reliably depict that

these credit hours allotted to the subsequent batch who are now before this Court.

iii. There seems differences in curriculums, subjects that are relevant which would prove vital in judging efficiency of the aspirants when compared to the subsequent batch and on the other hand, the subsequent batch has been made sure that they obtain more of internship opportunity, thereby exposing them to the challenges more than the previous batch, which also aims in obtaining the required experience before in hand and adds on to the expertise of these candidates.

iv. Now if mulled upon the examination patterns so also weightage and evaluation of these both batch students, we primarily see that, there are extraneous differences in the manner adopted to assess both these batch of students.

37. It is on this ground, and on the ground that it deprives the students of other university, the private respondents have pleaded the violation of the fundamental rights enshrined under Article 14 and 16 of the Constitution on implementation of the said Special Rules, 2022. The antithetical arguments advanced by the learned Senior counsel for the petitioners is that, the aspirants to the recruitment that is now being called for mandates that, one must clear the Kannada Language Test, before they being

considered for the selection process under Rule 6 of the Special Rules,2022 that is now-in-question. Learned Senior Counsel making his reliance on the Veterinary council Act,1984 and the Special Rules, 2022 also contend that, it is mandatory for the candidates to get registered in Karnataka Veterinary Council to participate in the recruitment process the precondition to which, is that one must know the Kannada language and he must be the resident of the Karnataka State. Such being the scenario, he would submit that, when the aspirants to the recruitment process are from the same university and also are from within the state, there arises no need for the State Government to conduct competitive examination and the State Government can apply the procedure under Rule 6 of the Special Rules, 2022 and conduct the recruitment process, leaving open the opportunity to everyone of them including these private respondents. On the above aspects, he would oppose the submission of the learned Senior counsel for the private respondents so also the AAG that, the competitive examination in a given scenario and also for the urgency pleaded by the state that, the recruitment are now called in for the purpose of the '*epidemic lumpy skin*' decease among the cattle's which has warranted the current Special Rules. To answer and also further enunciate our findings on the above said contention, we would now rely upon the ration laid down by the Hon'ble Apex Court in ***Shri Chander Chinar Bada Akhara Udasin Society v. State of J&K,*** reported in

(1996) 5 SCC 732, wherein the Hon'ble Apex Court in paragraph No. 10 of the Order reads as under:

> ***10.*** *It is unfortunate that due to the indifferent attitude of the State Government and haste shown by the appellant-Society, the so-called selected candidates, who are said to have been admitted, are virtually on the roads. But only on equitable grounds, a procedure which is not sanctioned by law cannot be approved only to mitigate the hardship of such candidates who have sought admissions in the medical college aforesaid. But at the same time many of the directions given by the Division Bench also cannot be approved. It has directed that selection be made on the basis of common viva voce entrance examination and no common entrance written examination be held. According to the direction of the Division Bench, 75% marks have been allotted for academic qualification and 25% marks for the viva voce examination. It need not be pointed out that the percentage of marks secured by different applicants at different types of examinations at the higher secondary stage cannot be treated as uniform. Some of such examinations are conducted at the State level, others at the national level including the Indian School Certificate examination. The percentage secured at different examinations are bound to vary according to the standard applied by such examining bodies, which is well known. As such a common entrance examination has to be held. The counsel appearing for the parties could not justify the awarding of 25% marks for viva voce examination in view of the several judgments of this Court in connection with admission in educational institutions; one such judgment being from the State of J & K itself in the case of Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722 : 1981 SCC (L&S) 258 : AIR 1981 SC 487] .*
>
> (**Emphasis drawn by us**)

38. Further the Hon'ble Apex Court emphasizing on the manner of evaluation and methodology of evaluation among different universities so also among the hands of the different personnel's has opined in ***Dinesh Kumar (Dr) vs. Motilal Nehru***

Medical College, reported in ***(1985) 3 SCC 22*** in paragraph Nos. 4, 6 and 11 of the order reads as under -

> ***"4.*** *Since it was made clear as far back as July 26, 1984, that our Judgment dated June 22, 1984, shall be given effect from the academic year 1985-86, we should have thought that the Government of India and the Indian Medical Council would make the necessary arrangements for holding an all-India entrance examination well in time for admissions to the MBBS course for the academic year 1985-86 so far as the minimum 30% open seats not reserved on the basis of residence requirement or institutional preference (hereinafter referred to as "the minimum 30% non-reserved seats") were concerned. But it seems that so far nothing has been done either by the Government of India or the Indian Medical Council and the fate of the students seeking admissions to the MBBS course for the academic year 1985-86 is in a state of total uncertainty. The State Governments have also been equally guilty of indifference and inaction in not taking any steps for the purpose of holding an entrance examination which would test the relative merits of the students seeking admission to the minimum 30% non-reserved seats in the MBBS course in the medical colleges. Some of the State Governments and universities, we are informed, are proposing to fill up the minimum 30% non-reserved seats for the MBBS course on the basis of the marks obtained by the students at the qualifying examinations held by different States and/or universities, totally ignoring the fact that the standard of judging at these different qualifying examinations cannot, by its very nature be uniform. Some universities may be very liberal in their marking while some others may be strict. There would be no comparable standards on the basis of which the relative merits of the students can be judged. It would be wholly unjust to grant admissions to students by assessing their relative merits with reference to the marks obtained by them, not at the same qualifying examination where standard of judging would be reasonably uniform but at different qualifying examinations held by different State Governments or universities where the standard of judging would necessarily vary and not be the same. That would indeed be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution. We must, therefore, make it clear that no State Government or university or medical college shall grant admission to students to fill the minimum 30% non-reserved seats*

for the MBBS course, on the basis of comparison of the marks obtained by them at different qualifying examinations. The admissions must be based on evaluation of relative merits through an entrance examination which would be open to all qualified candidates throughout the country. Such entrance examination should in our opinion be held by the Government of India or the Indian Medical Council on an all-India basis and admissions should be granted to the various medical colleges in the country on the basis of the marks obtained at such entrance examination and while granting admission any preference expressed by the students for any particular State or university or medical college or colleges shall be kept in mind, and as far as possible, effort shall be made to conform to such preferences so that the students who secure admissions are least inconvenienced and they are able to carry on their studies near their place of residence. There can be no constitutional impediment in the way of the Government of India or the Indian Medical Council for holding such entrance examination, because the topic of education is in the Concurrent List. We are of the view that such entrance examination must be held by the Government of India or the Indian Medical Council because then there will be only one examination in which the students seeking admission to the MBBS course will have to appear, irrespective of the place where the university or medical college in which, they are seeking admission is located. Today we are witnessing the highly distressing spectacle of students rushing from place to place to appear at entrance examinations which are being held in Delhi, Chandigarh, Bangalore and various other places. So much time, money and energy of the students is wasted and in addition there is a gnawing anxiety at the almost chaotic uncertainty in regard to admission. It is therefore absolutely essential that there should be only one entrance examination common to all the medical colleges in the country and such entrance examination can be held only by the Government of India or the Indian Medical Council. That is why at the last hearing of the present writ petition, we directed the Indian Medical Council to come forward with a positive scheme for holding an all-India entrance examination for regulating admissions to the minimum 30% non-reserved seats for the MBBS course. We hope and trust that at the next healing of this writ petition, the Indian Medical Council will produce a well thought out scheme for holding an all-India entrance examination so that the necessary directions can be given by the Court in regard to the holding of such entrance examination well in time

before the next academic year begins in June/July, 1985. Much time has already been lost and we are anxious that no further delay should occur, because any delay now will jeopardise the future of the students seeking admissions to the MBBS course for the academic year 1985-86.

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6. *So far as admissions to 50% open seats not reserved on the basis of institutional preference (hereinafter referred to as "50% non-reserved seats") for post-graduate courses such as MD, MS and the like are concerned, we may point out that these admissions also cannot be made on the basis of marks obtained by the students at different MBBS examinations held by different universities, since there would be no comparable standards by reference to which the relative merits of the students seeking admission to post-graduate courses can be judged. It would not only be unfair and unjust but also contrary to the equality clause of the Constitution to grant admissions to 50% non-reserved seats in the post-graduate courses by mechanically comparing the marks obtained by the students at the MBBS examinations held by different universities where the standard of judging would necessarily vary from university to university and would not be uniform. If admissions were to be made on this basis, a less meritorious student appearing in the MBBS examination held by a university where the standard of evaluation is liberal would secure a march over a more meritorious student who appears in the MBBS examination where the standard of marking is strict. We cannot therefore approve of admissions to 50% non-reserved seats for the post-graduate courses being made on the basis of marks obtained by the students at the different MBBS examinations held by different universities. Such admissions would be clearly invalid as constituting denial of equality of opportunity. There can be no doubt that in order to meet the demands of the equality clause, the admissions to 50% non-reserved seats for the post-graduate courses must be made on the basis of comparative evaluation of merits of the students through an entrance examination. Such entrance examination must be held by the Government of India or the Indian Medical Council sufficiently in advance before the term is due to commence for the post-graduate courses. Here again the students seeking admission to post-graduate courses can express their preference for any particular university or medical college or colleges as also for any speciality or specialities which they wish to take up for*

the post-graduate course and admissions should be granted to the post-graduate courses in various medical colleges in the country on the basis of marks obtained at such entrance examination and while granting admissions, the preferences expressed by the students must be kept in mind and as far as possible, effort should be made to conform to such preferences. We have directed the Government of India and the Indian Medical Council to put forward a positive scheme for holding an all-India entrance examination for regulating admissions to the post-graduate courses at the next hearing of the writ petition so that we can give necessary directions to the Government of India for holding such all-India entrance examination which would be conducted in at least one centre in each State and which would be open to the students from all over the country. We may point out that having regard to the size of the population, the number of students seeking admission and the extent of the geographical area of a State, it might be desirable to have more than one centre in some State or States both in regard to admissions to the post-graduate courses as also in regard to admissions to MBBS course. If for any reason the Government of India and the Indian Medical Council are unable to organise such all-India entrance examination for admissions to the post-graduate courses on account of paucity of the time now available to them, a situation for which they are almost entirely to blame, we may have to direct as the only possible alternative for the coming academic year, an entrance examination to be held by each State Government or university for regulating admissions to 50% non-reserved seats for the post-graduate courses in the medical colleges situate within that State or attached or affiliated to that university. But unquestionably no admissions can be allowed to be made on the basis of marks obtained at different MBBS examinations held by different universities.

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11. *Now there can be no doubt that the grievance made by the petitioners is justified. The petitioners are right when they contend that having regard to the fact that the house job was started by them prior to the delivery of the Judgment on June 22, 1984, their admissions to the post-graduate courses for the academic year 1985-86, that being the academic year for which they became due to be considered, should have been governed by the old rules which prevailed prior to the date of the Judgment and not by the new principle laid down in the Judgment. We have already*

stated our reasons for taking this view and we need not reiterate those reasons. Of course the Principal of the Motilal Nehru Medical College cannot be blamed for granting admissions for the academic year 1985-86 in accordance with the new principle laid down by us in the Judgment, since we had said in our order dated July 26, 1984 that the Judgment shall be effective from the academic year 1985-86 and on a literal interpretation of that order even admissions to the two-year post-graduate courses for the academic year 1985-86 would have to be in accordance with the new principle laid down in the Judgment. But, as pointed out above, it would work considerable hardship and injustice if, in case of students who have started house job prior to the delivery of the Judgment on June 22, 1984, admissions to the two-year post-graduate courses for the academic year 1985-86 were to be made on the basis of the rule enunciated in the Judgment. We must therefore hold that in the State of Uttar Pradesh and other States where the system of post-graduate medical education adopted, is to have one-year house job followed by two-year post-graduate course, students who started their house job prior to the delivery of the Judgment on June 22, 1984 should be governed by the old rules prevailing prior to the date of the Judgment when seeking admission to the post-graduate courses for the academic year 1985-86 but in case of students who started their house job after the date of the Judgment, their admissions to the post-graduate courses for the academic year 1985-86 should be governed by the new principle laid down in the Judgment. On this view, 75% of the seats in the post-graduate courses for the academic year 1985-86 should have been made available to the institutional students and the case of the petitioners was that, if that had been done, the petitioners would have been able to secure admission as falling within the 75% quota. It was not seriously disputed on behalf of the respondents that if the old rules governing admissions had been applied, the petitioners would, save perhaps a solitary case, have been able to get admission to the post-graduate courses. The petitioners were thus unjustly and improperly left out of the quota for institutional students on what has turned out to be erroneous view of the legal position. The petitioners also complained that even in regard to the 50% non-reserved seats, the petitioners were denied an opportunity of competing for them, because no entrance examination was held either by the Government of India or by the State Government or even by the concerned university for testing the relative merits of the students seeking admission to

the post-graduate courses. This complaint was made in the alternative on the premise that the admissions were governed by the new principle laid down in the Judgment. We have already pointed out that this premise was unjustified and the admissions were governed not by the new principle laid down in the Judgment but by the old rules which prevailed prior to the delivery of the Judgment. But even if the admissions were governed by the new principle laid down in the Judgment, the Principal could not grant admissions to 50% non-reserved seats in the postgraduate courses without judging the relative merits of the candidates through a common entrance examination. The Principal was clearly wrong in granting admissions to 50% non-reserved seats on the basis of the marks obtained by the candidates at the different MBBS examination held by different universities. No admissions could be granted to 50% non-reserved seats except through a common entrance examination where the relative merits of the candidates could be tested and a comparative evaluation could be made on the basis of a common standard. It is quite possible that if a common entrance examination had been held, the petitioners or at least some of them might have been able to establish their superior merit as against those who happen to have been admitted on the basis of the marks obtained at the different MBBS examinations. We are therefore of the view that the admissions purported to have been made to 50% non-reserved seats in the post-graduate courses were invalid and the admissions should have been made in accordance with the old rules prevailing prior to the delivery of the Judgment on June 22, 1984.

(Emphasis drawn by us)

39. Before we speak anything on the merits of the case, we also find it relevant to refer to the decision of the Hon'ble Apex Court in the case of ***Ashok Kumar Yadav v. State of Haryana***, reported in ***(1985) 4 SCC 417,*** wherein the paragraph No. 23 of the Order reads as under:

"23. *This Court speaking through Chinnappa Reddy, J. pointed out in Lila Dhar v. State of Rajasthan [(1981) 4*

SCC 159 : 1981 SCC (L&S) 588 : AIR 1981 SC 1777 : (1982) 1 SCR 320] that the object of any process of selection for entry into public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So open competitive examination has come to be accepted almost universally as the gateway to public services. But the question is how should the competitive examination be devised? The competitive examination may be based exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case. To quote the words of Chinnappa Reddy, J. "In the very nature of things it would not be within the province or even the competence of the Court and the Court would not venture into such exclusive thickets to discover ways out, when the matters are more appropriately left" to the wisdom of the experts. It is not for the Court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test. Of course the marks must be minimal so as to avoid charges of arbitrariness, but not necessarily always. There may be posts and appointments where the only proper method of selection may be by a viva voce test. Even in the case of admission to higher degree courses, it may sometimes be necessary to allow a fairly high percetange of marks for the viva voce test. That is why rigid rules cannot be laid down in these matters by courts. The expert bodies are generally the best judges. The Government aided by experts in the field may appropriately decide to have a written examination followed by a viva voce test.

(Emphasis relied by us)

40. This Court is aware of the fact that first judgment of the Full Bench of the Supreme Court clearly laid down its opinion in the case of admission of students are concerned. But, if the case on hand is seen collocated to the decision of the Full Bench of the Hon'ble Apex Court, though the case on hand is one questioning the legality of the procedure adopted in recruitment process, the very

root of the recruitment process that is under the challenge is that, the eligibility of aspirants is based on Aggregate marks scored in their respective degrees qualifying examination. The Rule 6 of the impugned rules contemplates that the selection of the aspirants post Kannada Language test as per Rule 5 will be conducted on the basis of considering the Aggregate marks scored by the candidates keeping in view both the vertical and horizontal reservations. Such being the *scaenarium*, we are forced to perpend upon the legality of the decision of the Respondent-state to adopt such method. Now, if carefully accentuated, as observed *supra,* we find that there are dissimilarities between the manner in which the evaluation has been conducted between these private respondents and petitioners. Be that as it may, keeping aside the factual aspects, if this Court weighs into the comparison between the students of different batches on their final outcomes in their respective batches in general, even in such circumstances, it is evident as observed by the Hon'ble Apex Court in ***Shri Chander Chinar Bada Akhara Udasin Society case supra and Dinesh Kumar's*** case *supra,* that the degree of evaluation always stands on the different footing and also on the different standards between two different stand-alones. If the case on hand seen further exquisitely, then by giving effect to Rule 6 of the impugned Rules, State would not only hamper the interest of the aspirants who have obtained degrees in different batches, but also hamper the interest of those who have

traveled to other States for studies but basically belong to this State, have returned to work/practice in this State so also have registered in the Karnataka Veterinary Council under the Veterinary Council Act,1984. These aspirants being from this State itself, an inference can also be drawn, to the fact that they are aware of the Kannada Language as required under Rule 5 of the impugned Rules and also eligible to write the test. Moreover, the Hon'ble Apex Court in ***Bhupendra Nath Hazarika v. State of Assam***, reported in ***(2013) 2 SCC 516*** while considering the legality of the recruitment, with the rules that were in force, has clearly laid down the principle that the State being in a position of 'Model Employer' is bound to act in a prudent and fair manner. State is also expected to act in accordance with the Rules prevailing as on the date, instead adopting the deceitful and also betrayal manners in order to circumvent the expectations of the public. Such kind of practice adopted by the State has been highly deprecated by the Hon'ble Apex Court in the above cited judgment, as the same is against dignity and fairness that is being legitimately expected from the State, the sanctity of which even the state cannot let go in view of the provisions of Article 14 and 16 of the Indian Constitution. Such being the scenario, it is very much within the ambit of the state to consider all the mitigating facts and circumstances so also the objection filed by the aspirants, before finalizing the draft and publishing the same for implementation. In the case on hand,

respondent-State has not only erred in considering the fact that, there will be discrepancies in the manner and also degree of evaluation in different batches, so also different universities. Hence, it is for this reason and also for the observation made, we are in conformity with the learned Senior Counsel for the respondents as to factual position that is put forth before this Court and we find that, the ratio laid down by the learned Senior counsel in ***State of M.P. v. Gopal D. Tirthani case*** is not applicable to the case on hand given the difference of facts and circumstances therein and herein.

41. Now, if the facts settled is looked into from the facet of the Order of the Hon'ble Apex Court in ***Ashok Kumar Yadav's case supra,*** keeping in view the observations made by the Hon'ble Supreme Court in ***Dental Council of India v. Biyani Shikshan Samiti***, reported in ***(2022) 6 SCC 65*** **(power of the Court to interfere in the sub-ordinate legislations are concerned),** this Court being the guardian of Constitution, is dragooned to interfere with any legislations that are in the teeth of Constitutional Mandates. Howbeit, the action of the respondent-State in notifying the impugned Rules requires scrutiny at the hands of this Court, for the reason, that are already put in the preceding paragraphs. In addition, the State has failed to make sure that, the Rules that are impugned herein, are the one, that surpasses the test of

arbitrariness, fairness and also justness in providing opportunity to all the aspirants on fair scale of eligibility. To summaries, this Court would opine that the Competitive examination is very much essential in order to recruit the personnel in the public employment for the reason that –

a) *If the same is being conducted, it would ensure that the righteous and deserving candidate will be selected for the post that are called for.*

b) *It would also ensure that, the same would fulfill the legitimate expectation that is being vested upon the state to address the concerns of its citizens.*

c) *It would also maintain transparence and integrity in the process of selection and also in the functioning of the state.*

d) *The same would also built the trust on the State by the public in view of livelihoods are concerned.*

e) *If conducted, would also rightly favor the citizen in reaping the fruits of constitution safeguards of Article 14 and 21 of the Indian Constitution.*

f) *Diminishes the practice of favoritism and nepotism thereby, providing opportunities to the eligible.*

Hence, in our considered opinion, we are in congruence with the findings rendered by the Tribunal in favor of the private respondents herein and hold this contention as against the petitioners.

42. Further, the learned Senior counsel for the petitioners would contend that, the petitioners being the aspirants who applied for the post that is now called for, will be the 'aggrieved persons' and so also the 'necessary persons' to the application that was heard before the Tribunal in A.Nos.952-1001/2022. These private respondents, being aware of the factual position, failed to implead them before the Tribunal, thereby depriving them, the opportunity to put-forth their defense in support of the impugned Special Rules,2022, the legality of which is now being decided by this Court under the supervisory jurisdiction. Antithetically, the learned Senior counsel for the respondents would contend that, the Co-ordinate Bench of this Court in W.P.No.6662/2022 vide order dated 14.12.2022 had ordered for *status quo* and as such, the state had paused the recruitment process in view of the said order and consequently, the same have come to the knowledge of these petitioners who are portraying themselves as the aspirants before this Court and hence, when there exists 'constructive knowledge' as to the pendency of proceedings before the Tribunal, the petitioners have neither made any efforts to approach the Tribunal nor filed any necessary application to that effect. As such, he would contend that, it cannot be said, the petitioners have approached this Court with clean hands. He would also rely upon the decision of the Hon'ble Supreme Court in ***Govt. of A.P. v. G. Jaya Prasad Rao*** *supra* and submit that, when a *vires* of a statute is being

challenged, there arises no necessity to implead all the effected parties to the case and only primary necessity would be that, the state being the representative of its entire citizens, will be in righteous position to defend its action, so also the voices of its people, will be a necessary party and also be a 'aggrieved person who the Tribunal is bound to hear and accordingly, the Tribunal has heard the contention of the State, which defended its action while making its submission in A.Nos.952-1001/2022.

43. To enunciate this position, we would rely upon the decision referred by the learned Senior Counsel in ***Govt. of A.P. v. G. Jaya Prasad Rao case supra,*** where in the Hon'ble Apex Court held that-

> "***29.*** *It is true that when the validity of the rules is challenged it is not necessary to implead all persons who are likely to be affected as party. It is not possible to identify who are likely to be affected and secondly, the question of validity of the rule is a matter which is decided on merit and ultimately, if the rule is held to be valid or invalid, the consequence automatically flows. Therefore, the original applications filed before the Andhra Pradesh Administrative Tribunal or for that matter before the High Court does not suffer from the vice of non-joinder of necessary party."*
>
> **(Emphasis relied by us)**

If the case on hand is viewed from the perspective of the norms by the Hon'ble Apex Court, it is amply clear that, when a *vires* of a statue is challenged, the State being an entity who has passed such statute and also that, it represents its entire citizens so

also their interests, is a necessary party to the case on hand to be heard before arriving at a conclusion in that regard. When State has been made a party to the proceedings and also that, it has defended its actions effectively before the Tribunal, it cannot be said that, the petitioners grievances were not heard with and as they would be the 'aggrieved persons' to any orders passed by the Tribunal. As it is amply clear that, whenever Constitutional perspective of a statute is being questioned, its implications shall always be on the Citizens of the State who are either expressly or impliedly will be affected by the decision of the Court. Further, on careful scrutiny of the contention raised, this Court keeping in mind the principles in '*Actus Curiae neminem gravabit*', is of the congruent opinion that, when the State being heard in representative capacity in the case on hand, it cannot be expected by the each and every individuals that, their case must be heard by the Court as the same would not meet the ends of justice and also would amount to the repetition of the grounds enunciated in totality by the State.

44. Be that as it may, on inquisition of the order of the Tribunal and also the stand of the State in accepting the Order of Tribunal and proceeding ahead with recruitment process, would no-way inspire this Court as to the submission made by the learned Senior counsel is concerned. As we do not find any cause of action

in the case on hand to say that, the petitioners are 'aggrieved persons' as the recruitment by way of adoption of Direct Recruitment Rules, 2021 would no-way harm these petitioners or would no way close the doors for them to apply for the posts that are now called for. It is always open for them to apply for the same and to compete with all the others on an equal margin and evidently, the meritorious shall succeed. In our opinion, we do not find any merit in the submission advanced by the learned Senior counsel and we are also not in agreement with the proposition that is now being tabled before us for the reason that, just because a person's degree of chances of selection is affected due to inclusion of wider perspective in the recruitment, there by increasing the level of competition in getting selected, is never a ground to challenge before this Hon'ble Court. As it is just and fair to opine in the case on hand that, if there exist more competition and rigidity in the selection process, then there would also be more fruitful outcomes of it, as the outcomes will be in public employment and which requires work efficiency of highest degree in the present fast developing scenario. Though the learned Senior counsel for the petitioners has relied upon the decision of the Hon'ble Apex Court in ***Poonam vs. State of U.P.,*** reported in ***(2016) 2 SCC 779,*** the same in our considered opinion cannot be relied upon, for the reason that, the scrutiny of necessary parties in the said case were made in the eye of Order I Rule 9 of CPC and nowhere, the

Constitutional validity and its necessary party are being discussed. In our opinion, the decision do not stand on the same footing as that of the case on hand and as such, placing reliance in the above decision is misplaced. Hence, we decide the above raised second contention in favor of the private respondents herein and are of the congruent opinion that, these petitioners cannot be considered as the necessary parties to the case before the Tribunal in A.No.952-1001/2022. Accordingly, we hold the second contention in favor of the respondents herein.

45. Things being kept aside, if the case on hand is seen from the angle of maintainability of the petition is concerned, also keeping in view the finding of the of this Court in preceding paragraphs that the petitioners are not the 'aggrieved persons' to the case on hand is concerned, this Court would now emphasize upon the decision of the Co-Ordinate Bench of this Court in ***M.G. Maheshwara Rao v. State of Karnataka***, reported in ***2002 SCC OnLine Kar 335,*** wherein the very question that fell for consideration before the Co-ordinate Bench was that-

> *"Whether an Application under Section 19 of the KAT Act is maintainable for setting aside the earlier order passed by the KAT in another application without recourse to review provided under Regulation 3(b) of the KAT (Review Applications) Regulation, 1994 or by seeking special leave to Appeals before the Supreme Court?"*

And the Co-ordinate Bench in paragraph Nos.14 to 16 of its Order has held as under –

"14. *The Tribunal committed an error in rejecting the applications on the ground that as there was a provision enabling non-parties to any proceedings to file Application for review under Regulation 3(b) of the KAT (Review Applications) Regulations, 1994, the petitioners ought to have sought review, instead of challenging them in a separate applications. The provision for review being conditional, requiring permission of the Tribunal and being only available on limited grounds, cannot be said to be an efficacious remedy.*

15. *The petitioners were not parties to the decision in Jagadeesha. The Acting Chairman of the Tribunal, effected certain promotions of stenographers on the basis of the decision in Jagadeesha, affecting their prospects of promotion. They could not challenge the promotions without challenging the said decision. Therefore they have challenged the promotion of stenographers as also the decision of the Tribunal which enabled such promotions. We see no reason why the petitioners could not challenge the decision in Jagadeesha while challenging the promotions of Stenographers. There is no need either to seek review or seek special leave to appeal to the Supreme Court. For example, a person aggrieved by a Rule can challenge it whenever he is aggrieved by it. The cause of action to challenge the Rule arises not only when a Rue is made and published, but also when any action taken under it which affects him. The challenge cannot simply be turned down on the ground that the Rule has been in existence for several years and that it had not been challenged earlier. Similarly when a Rule is modified by a decision of the Tribunal, a non-party to the decision, who is affected by any act done as per such modified Rule, can while challenging such act, also challenge the correctness of the decision, on the basis of which such action is taken. He cannot be non-suited merely on the ground that he had failed to seek review of the decision or on the ground that he failed to challenge it before the Supreme Court by seeking special leave.*

16. *In fact the correct procedure to be followed by Tribunal is such a situation is set down by the Supreme Court in K. Ajit Babu v. Union of India [1997 AIR SCW 3340.] . It held that any person aggrieved by a decision of a Tribunal affecting his seniority is entitled to file an Application under Section 19 of Administrative Tribunals Act. The following observations are relevant:*

"Often in service matters the judgments rendered either by the Tribunal or by the Court also affect other persons, who are not parties to the cases. It may help one class of employees and at the same time adversely affect another class of employee. In such circumstances the judgments of the Courts or the Tribunals may not be strictly judgments in personam affecting only the parties to the cases, they would be judgments in rem. In such a situation, the question arises: What remedy is available to such affected persons who are not parties to a case, yet the decision in such a case adversely affects their rights in the matter of their seniority. In the present case, the view taken by the Tribunal that the only remedy available to the affected persons is to file a review of the Judgment which affects them and not to file a fresh application under Section 19 of the Act,…… Ordinarily, right of review is available only to those who are party to a case. However, even if we give wider meaning to the expression "a person feeling aggrieved" occurring in Section 22 of the Act whether such person aggrieved can seek review by opening the whole case decided by the Tribunal. The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking the Order 47 of the Code of Civil Procedure may not be applicable to the Tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times

> *to come. Public Policy demands that there should be end to law suits and if the view of the Tribunal is accepted the proceedings in a case will never come to an end. … Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger Bench/Full Bench and place the matter before the Chairman for constituting a larger Bench so that there may be no conflict upon the two Benches. The larger Bench, then, has to consider the correctness of earlier decision in disposing of the later application. The Larger Bench can overrule the view taken in the earlier judgment and declare the law, which would be binding on all the Benches."*
>
> *(**Original Emphasis Relied**)*

Hence, if the case on hand is examined, the petitioners being the third parties to the proceedings, approaching the Tribunal by filing a review application on the ground that the earlier order passed by the Tribunal in A.Nos.952-1001/2022, may not be tenable for the reason that, on perusal of the pleadings of the petitioners who are the review applicants before the Tribunal, this Court would find that, the petitioners are not only contending for the legality of passing the order without impleading them as a party, but also contend upon the very merit of the case on hand as to correctness of the action of the State in passing the impugned Special Rules,2022 are concerned. Similar approach is also made

before this Court. As such, when the righteousness of notification which the Tribunal has already decided upon; is being made by a third party who is not said to be necessary party to the proceeding is concerned, in our opinion, the action of the Tribunal in passing the order in A.Nos.952-1001/2022 dated15.02.2023 itself would become a cause of action for the petitioners and as such, we are in congruence to the submissions of the learned Senior counsel that the petitioners are bound to approach the Tribunal by way of filing a fresh application under Section 19 of the Administrative Tribunals Act,1985 as a third party.

46. It is on these findings, we hold the third contention as against the petitioners and consequently by answering the above raised point No.1 in ***affirmative*** and Point Nos. 2 and 3 in ***negative*** and proceed to uphold the impugned order dated 15.02.2023 passed by the Karnataka State Administrative Tribunal in A.Nos.952-1001/2022 and proceed to ***dismiss*** the petition filed by these petitioners as being devoid of merits and not maintainable.

47. Consequently, for the discussion made herein *supra*, we are in serious dissonance with the approach of the petitioners, even though they have every opportunities to pursue their aspirations in the process now, the State has called for the recruitment. As of such, in our considered opinion, we are not able to appreciate the conduct of these petitioners in stalling the recruitment process

which was called for as matter of emergency situation. Hence, we impose the cost of Rs.25,000/- per petitioner which shall be payable to the Karnataka State Legal Services Authorities within 4 weeks from the date of receipt of copy of this Order.

Sd/-
(JUDGE)

Sd/-
(JUDGE)

HKV