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Reserved on 06.12.2018

Delivered on 26.02.2019

Chief Justice's Court

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 4717 of 2018

Petitioner :- Allahabad Heritage Society And 12 Others
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Syed Farman Ahmad Naqvi,Deba Siddiqui,Kamal Krishna Roy,Shahid Ali Siddiqui,Syed Ahmed Faizan,Syed Mohammed Jafer Husain,Shri Ravi Kiran Jain(Senior Advocate),Shri Umesh Narain Sharma(Senior Advocate),Vijay Chandra Srivastava
Counsel for Respondent :- C.S.C.

With

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 4888 of 2018

Petitioner :- Janak Pandey And 16 Others
Respondent :- State Of U P And 4 Others
Counsel for Petitioner :- Rohan Gupta,Mr. Rakesh Dwivedi (Sr. Advocate),Mr. Shashi Nandan (Sr. Advocate),Rahul Agarwal,Udayan Nandan
Counsel for Respondent :- C.S.C.

With

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 4916 of 2018

Petitioner :- Javed Mohammad And 2 Others
Respondent :- State Of U.P. And 5 Others
Counsel for Petitioner :- Syed Farman Ahmad Naqvi,Deba Siddiqui,Sri Ravi Kiran Jain (Sr. Advocate),Syed Ahmed Faizan
Counsel for Respondent :- C.S.C.,Sunil Dutt Kautilya

With

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 4911 of 2018

Petitioner :- Zak Sewa Trust And 2 Others
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Anshul Nigam,Rekha Singh
Counsel for Respondent :- C.S.C.

Hon'ble Govind Mathur,Chief Justice
Hon'ble Dr. Yogendra Kumar Srivastava,J.

(Per : Dr. Yogendra Kumar Srivastava,J.)

1. Heard Sri Shashi Nandan, learned Senior Counsel assisted by

Sri SFA Naqvi, Sri Udayan Nandan and Sri Anshul Nigam, learned counsel for the petitioners and Sri Manish Goyal, learned Additional Advocate General assisted by Sri AK Goyal, learned Additional Chief Standing Counsel for the State.

2. The present public interest litigation i.e. PIL No.4717 of 2018 and the connected matters (PIL No.4888 of 2018 and PIL No.4911 of 2018) have been filed principally seeking to challenge the Notification No.1574/1-5-2018-72/2017-Rev-5 dated 18.10.2018 issued by the State Government in exercise of powers under sub-section (2) of Section 6 of UP Revenue Code, 2006[1] (UP Act No.8 of 2012) whereby the name of the existing district of "Allahabad" has been altered as the district of "Prayagraj", and for other ancillary reliefs.

3. In PIL No.4916 of 2018, the petitioners have sought to challenge the resolution dated 18.08.2018 passed by the Municipal Corporation, Allahabad whereby it was resolved to forward a proposal to the State Government for change of the name of Allahabad to Prayagraj.

4. In the PIL petitions, reference has been made to a document stated to be the Cabinet Note with regard to the decision taken to change the name of District Allahabad to District Prayagraj, which reads as follows:-

> *"**जनपद इलाहाबाद का नाम परिवर्तित कर जनपद 'प्रयागराज' किए जाने का निर्णय***
>
> *आयुक्त एवं सचिव, राजस्व परिषद, उ0 प्र0 के पत्र दिनांक 15.10.2018 में अवगत कराया गया है कि इलाहाबाद की जनता एक लम्बे समय से इलाहाबाद के स्थान पर जनपद एवं नगर का नाम ''प्रयाग'' या ''प्रयागराज'' करने की मांग निरन्तर कर रही है।*
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> *उनकी इस मांग के औचित्य निर्धारण के कम में राजस्व परिषद द्वारा उल्लेख किया गया है कि प्राचीन ग्रन्थों में हमारे देश में कुल 14 प्रयाग स्थल वर्णित हैं, इनमें प्रयाग (इलाहाबाद) के अतिरिक्त किसी अन्य स्थल का नाम परिवर्तित नहीं हुआ है, जबकि इस नगर को सभी प्रयागों का राजा अर्थात प्रयागराज कहा जाता है। जनपद एवं नगर का नाम ''प्रयाग'' से इलाहाबाद परिवर्तित होने के कारण राष्ट्रीय एवं अन्तर्राष्ट्रीय स्तर पर एक भ्रम की स्थिति हमेशा उत्पन्न रही है, जिसके निवारण के लिए सम्पूर्ण संस्कृतियों का प्रतिनिधित्व करने करने वाले ''प्रयाग'' का नाम इसे ''प्रयाग'' अथवा ''प्रयागराज'' के रूप में वापस मिलना तर्कपूर्ण न्यायसंगत प्रतीत होता है।*
>
> *जनपद इलाहाबाद एवं नगर इलाहाबाद का नाम ''प्रयागराज'' किये जाने से जहां एक ओर राष्ट्रीय एवं अन्तर्राष्ट्रीय स्तर पर भारतीय संस्कृति के प्रचार–प्रसार को बल मिलेगा तथा धार्मिक पर्यटन को बढ़ावा मिलेगा, वहीं दूसरी*

1 the Code, 2006

ओर इसकी वैदिक एवं पौराणिक पहचान भी अक्षुण्ण रह सकेगी।

उक्त के दृष्टिगत राजस्व परिषद द्वारा उपलब्ध करायी गयी संस्तुति के आधार पर जनपद इलाहाबाद का नाम परिवर्तित कर जनपद ''प्रयागराज'' किया जाना प्रस्तावित है। उक्त के संबंध में वित्त एवं न्याय विभाग द्वारा अनापत्ति व्यक्त की गयी है।"

5. The notification dated 18.10.2018 issued by the State Government whereby in exercise of powers under sub-section (2) of Section 6 of the Code, 2006 the name of the existing district of Allahabad has been altered as district of Prayagraj, is also on record, and the same is being reproduced below:

"Notification
No.1574/1-5-2018-72/2017-Rev-5
Lucknow, dated 18 October, 2018

In exercise of powers under sub-section (2) of section 6 of the Uttar Pradesh Revenue Code, 2006 (U.P. Act No.8 of 2012) the Governor is pleased to alter the name of the existing district of Allahabad as the district of Prayagraj.

2- The Governor is further pleased to direct that nothing in this notification shall affect any legal proceeding already commenced or pending in any court of law.

By order,

(SURESH CHANDRA)
Pramukh sachiv."

6. Further, the consequential office memo dated 20.10.2018 issued by the District Magistrate, Prayagraj has also been placed on record and the same reads as follows:-

*"**कार्यालय जिलाधिकारी, प्रयागराज***

पत्रांक 1000/डीएसटीओ/अधिसूचना–प्रयागराज/2018–19 दिनांक अक्टूबर 20, 2018

कार्यालय–ज्ञाप

उ0प्र0 शासन के राजस्व अनुभाग–5 अधिसूचना सं0 1574/1–5–2018–72/2017 दिनांक 18.10.2018 द्वारा सूचित किया गया है कि मा0 राज्यपाल महोदय द्वारा उ0 प्र0 राजस्व संहिता, 2006 (उत्तर प्रदेश अधिनियम सं0–8 सन् 2012) की धारा 6 की उपधारा 2 के अधीन शक्तियों का प्रयोग करके विद्यमान जिला इलाहाबाद का नाम जिला प्रयागराज के रूप में परिवर्तित कर दिया गया है। साथ ही यह भी निदेशित किया गया है कि अधिसूचना की किसी बात का प्रभाव किसी विधि न्यायालय में पहले से प्रारम्भ की गयी या विचाराधीन किसी विधिक कार्यवाही पर नहीं पड़ेगा।

उक्त के क्रम में विद्यमान जिला इलाहाबाद के समस्त कार्यालयों के सभी कियाकलापों में जिला इलाहाबाद के स्थान पर जिला प्रयागराज प्रयोग किये जाने के निर्देश निर्गत किये जाते हैं। यह आदेश तत्काल प्रभाव से लागू होगा।

(सुहास एल. वाई.)
जिलाधिकारी,
प्रयागराज"

7. Before proceeding to appreciate the rival contentions of the parties, it would be appropriate to refer to the relevant statutory provisions on the subject matter of the controversy involved in the present case.

8. The Code, 2006 (UP Act No.8 of 2012) was enacted to consolidate and amend the law relating to land tenures and land revenue in the State of UP and to provide for matters connected therewith and incidental thereto. Chapter II of the Code, 2006 deals with revenue divisions, and Section 5 provides for the division of the State into revenue areas comprising divisions which may consist of two or more districts and each district may consist of two or more tahsils and each tahsil may consist of one or more parganas and each pargana may consist of two or more villages. Section 6 provides for constitution of revenue areas, and in terms thereof the State Government may by notification specify: (i) the districts which constitute a division; (ii) the tahsils which constitute a district; and (iii) the villages which constitute a tahsil. Sub-section (2) of Section 6 provides that the State Government may, by notification, alter the limits of any revenue area referred to in sub-section (1) by amalgamation, readjustment, division or in any manner whatsoever, or abolish any such revenue area and may name and alter the name of any such revenue area. In terms of the proviso to sub-section (2) before passing any order under this sub-section on any proposal to alter the limits of any revenue area, the State Government is enjoined to publish, in the prescribed manner, such proposals for inviting objections, and is required to take into consideration any objection to such proposals.

9. For ease of reference, Sections 5 and 6 of the Code, 2006 are being extracted below:-

> *"**5. Division of State into revenue areas**.—For the purposes of this Code, the State shall be divided into revenue areas comprising of divisions which may consist of two or more districts, and each district may consist of two or more Tahsils, and each Tahsil may consist of one or more parganas, and each pargana may consist of*

two or more villages.

***6. Constitution of revenue areas**.— (1) The State Government may, by notification, specify—*

(i) the districts which constitute a division;

(ii) the tahsils which constitute a district;

(iii) the villages which constitute a tahsil.

(2) The State Government may, by notification, alter the limits of any revenue area referred to in sub-section (1) by amalgamation, re-adjustment, division or in any other manner whatsoever, or abolish any such revenue area and may name and alter the name of any such revenue area, and in any case where any area is renamed, then all references in any law or instrument or other document to the area under its original name shall be deemed to be references to the areas as renamed unless expressly provided otherwise:

Provided that before passing any order under this sub-section on any proposal to alter the limits of any revenue area, the State Government shall publish, in the prescribed manner, such proposals for inviting objections, and shall take into consideration any objection to such proposals.

(3) The Collector may, by an order, published in the prescribed manner, arrange the villages in a tahsil into Lekhpal Circles and the Lekhpal Circles into Revenue Inspector Circles and specify also the headquarters of each Revenue Inspector within the Circle.

(4) The divisions, districts, tahsils, parganas, Revenue Inspector circles, Lekhpal circles and villages, as existing at the commencement of this Code shall, until altered under the preceding sub-sections, be deemed to be the revenue areas specified under this section."

10. The Code, 2006 in terms of Section 230 thereof has repealed certain enactments of general application, and, in particular, the United Provinces Land Revenue Act, 1901. The UP Land Revenue Act, 1901[2] (UP Act No.3 of 1901) had been enacted to consolidate and amend the law relating to land revenue and the jurisdiction of Revenue Officers in Uttar Pradesh. Section 11 of the Act, 1901 was with regard to the power to create, alter and abolish divisions, districts, tahsils and sub-divisions, and for ease of reference the same is being extracted below:

*"**11. Power to create, alter and abolish divisions, districts, tahsils and sub-divisions**.—(1) The State Government may create new or abolish existing divisions or districts.*

(2) The State Government may alter the limits of any division, district, or tahsil and may create new or abolish existing tahsil, and may divide any district into sub-divisions, and may alter the limits of sub-divisions.

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2 the Act, 1901

(3) Subject to the orders of the State Government under sub-section (2), all tahsils shall be deemed to be sub-divisions of districts."

11. Section 233 of the Code, 2006 empowers the State Government to make rules for carrying out the purpose of the Code, and in terms thereof the UP Revenue Code Rules, 2016[3] were notified and the same came into force w.e.f. 10.02.2016. Chapter II of the Rules, 2016 deals with the subject matter of revenue divisions. In terms of Rule 3, every proposal for altering the limits of any revenue area under Section 6(2), including the abolition or creation of any new area is required to be based on administrative efficiency and public interest. Rule 4 provides that every proposal to alter the limits of any such area shall be published in *RC Form I*. In terms of Rule 5 the said notice is to be published in the official gazette; in two daily newspapers of wide circulation in locality of such area of which one shall be in the Hindi language; and shall be uploaded on the website of the Board of Revenue, UP. For ready reference, Rules 3, 4, 5 and 6 are being extracted below:-

*"**3. Alteration in the limits of Revenue Area [Section 6(2)]**.—Every proposal for altering the limits of any revenue area under section 6(2), including the abolition or creation of any new area should be based on administrative efficiency and public interest.*

***4. Format of public notice [Section 6(2)]**.—Every proposal to alter the limits of any such revenue area shall be published in R.C. Form I.*

***5. Publication of notice [Section 6(2)]**.—The above notice shall be published—*

(a) in two daily news-papers of wide circulation in locality of such area of which one shall be in the Hindi language; and

(b) shall be uploaded on the website of the Board.

***6. Consideration of objection by Committee [Section 6(2)]**.—(1) The objections received under this Chapter shall be considered by a Committee consisting of the following members—*

(a) Chairman, Board of Revenue—Chairman

(b) Commissioner, Lucknow Division— Member

(c) The Commissioner of the Division in which the revenue area is being affected—Member

(d) Secretary, Board of Revenue—Member-Secretary.

(2) The Committee shall, after considering the objections, if any, submit the report to the Board of Revenue which shall, after considering the report submitted by the Committee and the objections, if any, from the public, submit the report alongwith its

3 the Rules, 2016

> *comments to the State Government for the appropriate decision. The State Government shall take the decision on the report submitted by the Board."*

12. The principal ground of challenge sought to be raised by the petitioners is that the notification dated 18.10.2018 changing the name of the district, is not in accordance with the scheme as provided under the Code, 2006 and neither there was any reason relating to administrative efficiency for taking the said decision nor can the same be said to be in public interest.

13. It is contended that the notification impugned is in violation of provisions contained under Section 6 of the Code, 2006, and also the procedure prescribed for the purpose under the Rules, 2016, and particularly that Rules 3, 4 and 5 have not been followed.

14. It has been contended that in view of the proviso to sub-section (2), before passing any order under the said sub-section, the State Government was required to publish in the prescribed manner such proposal for inviting objections and was required to take into consideration any objections to such proposal. Further, relying upon Rules 3, 4 and 5, it is sought to be argued that the proposal under Section 6(2) should have been based on administrative efficiency and public interest, and that the same was required to be published in the prescribed *RC Form I*, and also that the notice thereof was required to be published in the official gazette and in two daily newspapers of wide circulation and was also required to be uploaded on the website of the Board of Revenue, and further that the objections received were required to be considered by a Committee constituted under Rule 6(1) and thereafter only on the basis of the report submitted by the Committee along with its comments the State Government could have taken a decision.

15. Placing reliance on certain extracts from the ***Uttar Pradesh District Gazetteer***, relating to Allahabad, published by the State Government in the year 1986, it has been asserted that while submitting the proposal for change of name the historical background

of Allahabad as reflected from the District Gazetteer, has been ignored.

16. Relying upon Article 51-A under Part IV-A on the subject of the fundamental duties in the Constitution, and in particular, clause (e) and clause (f) thereof whereunder it is enjoined upon every citizen of India the duty to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, and also the duty to value and preserve the rich heritage of our composite culture, the petitioners have sought to contend that the notification under challenge, is contrary to the secular ethos of our Constitution, and runs contrary to the spirit of our composite culture.

17. The petitioners have also sought to draw attention to a communication dated 27.05.1981 issued by Ministry of Home Affairs, Government of India on the subject of change in names of districts and talukas/tahsils wherein drawing reference to the Ministry's letter dated 11.09.1953, it was stated that in the case of proposed change in the name of districts/talukas/tahsils, the same procedure as was being adopted for affecting change in the name of villages, towns, railway stations etc. may invariably be adopted, i.e. all such proposals should be referred to the Government of India (Ministry of Home Affairs) for prior concurrence before any change was made or announced, and the instructions laid down in the letter dated 11.09.1953 may be kept in view before sending any such proposal.

18. It is argued that the impugned notification runs contrary to the specific directions issued by the Central Government vide its communications dated 27.05.1981 and 11.09.1953. Further, it has been contended that the entire action has been made in extreme and undue haste and is based on irrelevant and extraneous considerations. The State Reorganisation Act, 1956[4] and also UP Reorganisation Act, 2000[5] have been referred to contend that in terms of the aforementioned Acts, the State Government is not empowered to rename the

4 the Act, 1956
5 the Act, 2000

districts/divisions.

19. *Per contra*, Sri Manish Goyal, learned Additional Advocate General has supported the action of the State Government in issuing the notification dated 18.10.2018 by submitting that the State Government under Section 6 of the Code, 2006 is fully empowered to name or alter the name of any revenue area namely the division, district, tahsil, pargana or village, and the action of the State Government suffers from no illegality. The learned Additional Advocate General also produced the relevant records in order to support his contention that there was due application of mind by the State Government before exercising its powers under Section 6 of the Code, 2006 for altering the name of the district from Allahabad to Prayagraj.

20. We have heard the learned counsel for the parties and perused the material placed before us.

21. The Code, 2006 was enacted to consolidate and amend the law relating to land tenures and land revenue in the State of UP, and also to provide for matters connected therewith and incidental thereto. The Statement of Objects and Reasons of the enactment clearly states that the Revenue Code seeks to consolidate with modification the relevant provisions of the various enactments relating to revenue law which were in force in the State of UP, relating to land tenures and land revenue. The Statement of Objects and Reasons of the Code, 2006 reads as follows:-

> *"**Prefatory Note—Statement of Objects and Reasons**.—At present as many as 39 Acts relating to revenue law are enforced in the State of Uttar Pradesh. Out of these Acts, Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and U.P. Land Revenue Act, 1901 are the important Acts. Several enactments were enacted during the British Regime. Most of the provisions of those have become absolete. Some of the provisions of those enactments are inconsistent with each other. On account of different provisions in different enactments relating to revenue law, the revenue litigations have considerably increased. Consequently the revenue cases are pending for disposal for a very long period. Under these circumstances it has become necessary to consolidate with modifications of relevant*

provisions of all these enactments into single enactment. It has, therefore, been decided to provide for consolidating and amending the laws relating to land-tenures and land revenue in the State and for matters connected therewith and incidental thereto. The U.P. Revenue Code Bill, 2006 has, therefore, been prepared to fulfil the above mentioned requirements."

22. Chapter II of the Code, 2006 relates to the revenue divisions, and Section 5 provides for division of the State into revenue areas, and in terms thereof the State is to be divided into revenue areas comprising divisions which may consist of two or more districts, each district may consist of two or more tahsils, each tahsil may consist of one or more parganas and each pargana may consist of two or more villages. Further, Section 6 empowers the State Government to specify, by notification, the districts which constitute a division, the tahsils which constitute a district and the villages which constitute a tahsil. Sub-section (2) provides that the State Government may, by notification, alter the limits of any revenue area referred to in sub-section (1) by amalgamation, readjustment, division or in any other manner whatsoever, or abolish any such revenue area. It also empowers the State Government to name and alter the name of any such revenue area.

23. A conjoint reading of the provisions contained under Sections 5 and 6 of the Code, 2006 would go to show that the State Government is fully empowered to specify the various revenue areas, and may by notification alter the limits of the revenue areas including altering the name of any revenue area.

24. The term "district" has been referred to as a revenue area under Section 5 of the Code, 2006, and in terms thereof two or more districts may form a division, and a district may consist of two or more tahsils, each tahsil may consist of one or more parganas, each pargana may consist of two or more villages. Section 11 of the Act, 1901 (now repealed) in terms of which the State Government was empowered to create, alter and abolish the divisions, districts, tahsils and sub-divisions, also contemplated the "district" as a revenue division.

25. The term "district" has thus been referred to as a revenue area both under the Code, 2006 and also under the Act, 1901.

26. We may also refer to the definition of the term "district" as mentioned in the ***Black's Law Dictionary (Ninth Edition)*** whereunder the term “district” is defined as "a territorial area" into which a country, state, county, municipality or other political sub-division is divided for judicial, political, electoral or administrative purposes.

27. It may also be relevant to notice the constitutional provisions in this regard contained under ***Part IX*** and ***Part IX-A*** of the Constitution inserted by the ***Constitution (Seventy-third Amendment) Act, 1992*** and the ***Constitution (Seventy-fourth Amendment) Act, 1992*** respectively. The definition clause, under Article 243 of the Constitution runs as follows:-

> *"**243. Definitions.—**In this Part, unless the context otherwise requires,—*
>
> *(a) “district” means a district in a State;*
>
> *(b) “Gram Sabha” means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;*
>
> *(c) “intermediate level” means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;*
>
> *(d) “Panchayat” means an institution (by whatever name called) of self-government constituted under Article 243-B, for the rural areas;*
>
> *(e) “Panchayat area” means the territorial area of a Panchayat;*
>
> *(f) “population” means the population as ascertained at the last preceding census of which the relevant figures have been published;*
>
> *(g) “village” means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified."*

28. We may also refer to Article 243-P(b) under Part IX-A, which runs as follows:-

> *"**243-P. Definitions.—**In this Part, unless the context otherwise requires,—*
>
> *x x x x x*
>
> *(b) “district” means a district in a State;"*

29. Under Article 243(a) the term “district” is defined as, "district

means a district in a State". Article 243(c) defines "intermediate level" as a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part. Further, under Article 243(g), "village" has been defined as a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

30. The aforementioned provisions indicate that a public notification to be issued by the Governor of the State is required both for creation of "intermediate level" and "village" under Part IX, and also for creation of a "metropolitan area" and "municipal area" under Part IX-A; however, in case of a district both Article 243(a) and Article 243-P(b) define the "district" as meaning a district in a State.

31. Prior to coming into force of the Code, 2006 the power to create, alter and abolish divisions, districts, tahsils and sub-divisions was provided for under Section 11 of the Act, 1901, and as such we may gainfully refer to the law laid down with regard to the scope of powers under Section 11 of the Act, 1901.

32. A notification issued by the State Government exercising powers under Section 11 of the Act, 1901 creating a new district, was challenged in a public interest litigation, in the case of ***Ram Milan Shukla & Anr. Vs. State of UP & Ors.***[6] whereunder it was held that though creation of a new district was an administrative act yet such administrative powers must be exercised on relevant considerations and not arbitrarily and the case was remanded for fresh consideration, and the special leave petition filed thereafter was dismissed.

33. The question again came up for consideration before a subsequent Division Bench of this Court in ***Brijendra Kumar Gupta & Ors. Vs. State of UP & Ors.***[7] wherein the decision in the case of ***Ram Milan Shukla*** (supra) was held to be *per incuriam*, as it had not

6 1999 (35) ALR 364
7 2000 (1) AWC 750

considered an earlier Division Bench judgment in ***Samvidhan Bahali Andolan Vs. Union of India***[8].

34. In the case of ***Samvidhan Bahali Andolan*** (supra), the notifications creating six new districts were sought to be challenged besides seeking a prayer that Section 11 of the Act, 1901 be declared *ultra vires*. Repelling the challenge, the writ petition was dismissed with the following observations:-

> *"7. It may be pointed out that the State Government is empowered to appoint the Commissioner of certain divisions and by virtue of the provisions of Section 12 of the Act appoint Collector of the District. The Commissioner and the Collector are empowered to exercise all powers and discharge all the duties conferred by the U. P. Land Revenue Act and all other Acts which they are empowered to exercise under those other enactment.*
>
> *8. In view of the clear provision existing it is not known on what basis the creation of district can be stopped. The argument that the word 'district' has been defined in Article 243 and in this connection reference to the said Article and other Articles such as 254, 372 and 375 appear to be wholly misconceived. The territory of a State is already fixed under the constitutional provision. Internal arrangement of the State is obviously a matter which is to be decided by the State Government. Creation of the revenue district, therefore, lies within the exclusive power of the State Government. All other arguments advanced in this regard are, therefore, rejected.*
>
> *9. It may be mentioned here that Shri Mrityunjaya emphasised that neither there was any need nor any justification for creating this new district within about two or three months of assuming the office of Chief Ministership by opposite party No. 3. He wanted to argue that there may not be any proposal for creation of the new district, there may not be any budget for new district and there may not be any method by which immediate law and order can be looked after in the newly created district.*
>
> *10. It may be pointed out that all the three arguments are without any basis whatsoever. They have been mentioned only to be rejected. It may be noted that action of the Government creating district is obviously based on the satisfaction of the State Government. The Chief Minister has to advise the Governor who passes the necessary orders on behalf of the State Government Section 11 of the U. P. Land Revenue Act, therefore, permits such executive action. Political motive or imputation which was sought to be argued can and should not be entertained concerning creation of a district on the basis of the administrative exigency. No other ground was argued."*

35. Another challenge was raised to a notification issued under Section 11 of the Act, 1901 directing creation of a new district, which

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8 AIR 1998 All 210

was disposed of by the High Court with reference to the order passed in the case of ***Ram Milan Shukla*** (supra). The matter was taken to the Supreme Court in ***State of Uttar Pradesh & Ors. Vs. Chaudhari Ran Beer Singh & Anr***.[9] and it was held as follows:-

> *"12. Cabinet's decision was taken nearly eight years back and appears to be operative. That being so there is no scope for directing reconsideration as was done in Ram Milan's case, though learned counsel for the respondents prayed that such a direction should be given. As rightly contended by learned counsel for the State, in matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown, Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government."*

36. The scope of powers under Section 11 of the Act, 1901 with regard to creation/abolition of districts/divisions again came up for consideration before this Court in ***Rajesh Kumar Sharma & Ors. Vs. State of UP and Anr***.[10], whereunder it was held that the power under the said section was legislative in character, and principles of natural justice were not attracted, and that there was no requirement to afford opportunity to residents of the districts while taking a decision to create/abolish districts and divisions in exercise of power under Section 11 of the Act, 1901. The concept of the term "district" was considered in the following terms:-

> *"41. District is a geographical area carved out as an administrative unit for performance of Governmental duties and functions Black's Law Dictionary Sixth Edition defines the 'district' in following words "one of the territorial areas into which an entire State or Country, County, Municipality or other political sub-division is divided for judicial, political, electoral or administrative purposes".*
>
> *42. Concept of 'district' was very much in existence prior to enactment of the Act, 1901. The preamble of the Act clearly provides that this Act has been enacted to consolidate and amend the law relating to 'land revenue' and 'jurisdiction of revenue of officers' in State of Uttar Pradesh. Section 4 of the Act is a definition clause in which definitions of 'revenue court' 'revenue officers' 'revenue free'*

9 2008 (3) ALJ 570 (SC)
10 2004 (3) AWC 2234

and all other definitions have been indicated in Section 4 and its sub-sections. Section 4 (7) defines 'revenue' which means 'land revenue'. Section 4 (8) defines 'revenue court'. Section 4 (9) defines 'revenue officer'. Section 4 (10) defines 'revenue free'. There are other definitions incorporated in Section 4 of the Act. We have also perused the entire provisions of the Act including the definition clause, but we are unable to find any indication in the Act to define 'district' excepting that Section 11 of the Act is conferred with the power to create, alter or abolish the divisions, districts, tehsils and sub-divisions. Since we are concerned in this case with Section 11 of the Act, by which the notifications were, however, issued for abolishing nine districts and four divisions, we like to refer Section 11 of the Act, which is quoted below :

"11. Power to create, alter and abolish divisions, districts, tehsil and sub-divisions.—(1) The (State Government) may create new or abolish existing divisions or districts.

(2) The (State Government) may alter the limits of any division, district, or tehsil and may create new or abolish existing tehsil, and may divide any district into sub-divisions, and may alter the limits of sub-divisions.

(3) Subject to the orders of the (State Government) under sub-section (2), all tehsils shall be deemed to be sub-divisions of districts."

43. From a plain reading of Section 11 of the Act, we have no hesitation in our mind to say that it is an exclusive power of the State Government to create new districts or abolish existing 'divisions' or 'districts'.

44. Keeping in mind that the 'district' has not been defined in the Act, the user of the word 'district' has been made by the Legislature under Section 11 of the Act.

x x x x x

54. From the aforesaid principles as laid down by the Supreme Court, it is, therefore, clear that the word 'district' has definite meaning and concept of district was well known to the Legislature at the time of 73rd and 74th amendment in the Constitution and the district as existing at that time was adopted for the purposes of Part IX and Part IX-A. As already held that neither Part IX and Part IX-A contemplate creation of district for purposes of Part IX and Part IX-A nor the concept of district in Part IX and Part IX-A was different from the normal meaning of 'district' as understood by the Legislature. It is also difficult to accept the submission of Mr. Jain, learned senior counsel appearing for the writ petitioner that the Constitution creates a different concept of district as that of existing. From the scheme of Part IX-A of the Constitution, as noted above, it is clear that municipality, i.e., a Nagar Panchayat, a Municipal Council and a Municipal Corporation do not carry with it any concept of municipal district. Article 243-P(c) defines "Metropolitan area" which means an area having population of ten lacs or more, comprised in one or more districts and consisting of two or more Municipalities or panchayats or other contiguous areas, specified by the Governor by public notification.

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56. Various Statutes in which word 'district' has been used, has been

used in accordance with the concept of 'district' as understood by common parlance, i.e., district created in a State. The provisions of Section 2 (26) of the U. P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961, clarifies that 'district' means revenue district under the U. P. Land Revenue Act, 1901. Section 2 (26) of the U. P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961, runs as follows :

"2 (26) "division", "district" and "tehsil" shall have the same meanings as they have in the United Provinces Land Revenue Act, 1901;"

57. This view of ours is fully supported by the observations of the Apex Court in State of U. P. and Ors. v. Pradhan Sangh Kshetra Samiti and Ors., 1995 (2) AWC 1316 (SC) : 1995 Supp (2) SCC 305, in which the Supreme Court while dealing with the provisions of Article 243(e) of Part IX of the Constitution made the following observations in paragraph 11, which is as under:

"11, The panchayats are to be constituted at the village, intermediate and district levels and the "panchayat area" as defined by Article 243(e) means the territorial area of the panchayat whether at the village, intermediate or district levels. What is necessary to remember further is that while as per Article 243(c) "Intermediate Level" is a level between the village and district levels, as specified by the Governor, the 'district' as per Article 243(a) means a district in a State the boundaries of which may be changed by the State Government. The district is not required to be specified by the Governor whereas village and intermediate levels have to be specified by him for the purposes of the said Part of the Constitution."

37. The nature of scope of powers under Section 11 of the Act, 1901 again came up for consideration before a Full Bench of this Court in ***Brij Kishore Verma Vs. State of UP & Ors.***[11] and this Court after referring to the provisions as contained under Section 11 of the Act, 1901 and also the relevant entries in List-II of Schedule-VII of the Constitution came to the conclusion that the State Government had been conferred power to alter the limits of revenue areas, districts and create new area or abolish the districts. The observations made in the judgment in this regard are as follows:-

"41. In view of Article 372 of the Constitution, the Act continues to deal with the matter regulating the land laws in the State of U.P. However, certain provisions were omitted and substituted by the A.O. 1950 and in Section 11 of the Act, the word, 'State Government' was added. The power has been conferred by the amended Section 11 of the Act on the State Government to alter the limits or any division, district or tahsil and may create new or abolish existing tahsil. Section 11 of the Act is reproduced as under:-

"11. Power to create, alter and abolish divisions, districts, tahsil and sub-divisions.—(1) The State Government may create new or abolish existing divisions or districts.

(2) The 'State Government' may alter the limits or any division, district or tahsil and may create new or abolish existing tahsil, and may divide any

11 2012 (9) ADJ 385 (LB) (FB)

district into sub -divisions, and may alter the limits of sub-divisions.

(3) Subject to the orders of the 'State Government' under sub-section (2), all tahsils shall be deemed to be sub-divisions of districts."

42. Section 12 of the Act empowers the State Government to appoint Divisional Commissioner in each division who shall exercise power and discharge duty conferred upon him under the Act or any other law for the time being in force. Under Section 14 of the Act, State Government has been conferred power to appoint collector in each district who shall exercise power and discharge duty conferred under the Act or any other law for the time being in force.

Section 221 of the U.P. Land Revenue Act provides that while conferring power under the Act, State Government may empower persons by name or classes of officials generally by their official titles, to quote Section 221 of the U.P. Land Revenue Act as under:-

"221. Conferring of powers—In conferring powers under this Act, the State Government may empower persons by name, or classes of officials, generally, by their official titles, and may vary or cancel any such order."

The power conferred by Section 221 of the Act is analogous to power conferred by Section 14 of the U.P. General Clauses Act 1904.

43. Entry 5, 18, 45, 46, and 47 of List-II of Schedule-VII of the Constitution of India, empowers the State Government to legislate the law with regard to local Government and local authorities, village administration, land and land revenue including assessment and collection of revenue, taxes on agricultural income etc. For convenience, they are reproduced as under:

"5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

46. Taxes on agricultural income.

47.Duties in respect of succession to agricultural land."

38. On the question as to whether the powers under Section 11 are legislative or administrative in nature, it is pertinent to refer to the following observations made in the judgment:-

“58. A combined reading of Articles 154, 162, 166 of the Constitution and Section 11 of the U.P. Land Revenue Act, does not make a decision with regard to creation of district, legislative in nature. Conferment of executive power on the State Government under Section 11 of the Act by the State Legislature, is itself indicative of the fact that the power exercised by the State Government for creation of district shall be administrative in nature, may have

legislative trapping. It is residual power exercised by the State Government, in terms of Government order of 1992.

x x x x x

60. Under Section 11 of the Act, power with regard to alteration of limits oF any division, district or tahsil has been conferred on the State Government and not on the State Legislature. Chapter-III of the Constitution deals with the State Legislatures. The State Legislatures are constituted through electoral body and discharges its constitutional obligations in the manner prescribed by the Constitution.

61. Section 11 of the Act does not require a decision by the State Legislature but it confers power on the State Government. It is well settled law that executive power of the State is co-extensive with that of the State Legislature. The State may make rules regulating any matter within the legislative competence of the State Legislature without prior legislative authority except where a law is required. It is further trite law that where statutory rules govern the field, the executive instructions shall cease to apply and they cannot be in derogation of statutory rules, vide AIR 1971 SC 2560: State Of Andhra Pradesh & Ors vs Lavu Narendranath & Ors.; AIR 1971 SC 2045 : State of Madhya Pradesh Vs. Jain.; AIR 2006 SC 2138, K.P. Sudhakaran. Vs. State of Kerala; AIR 2008 SC 3: Union of India Vs. Central Electoral Mechanical Engineering Group A (Direct Recruit) Association), AIR 2008 SC 3.

x x x x x

63. Hon'ble Supreme Court has defined the word, 'State Government' and held that it means the authority or person authorised at the relevant date to exercise executive power of the Government in the State and after commencement of Constitution it means the Governor of the State, vide AIR 1964 SC 703: State of U.P. Vs. Mohammad Naim, AIR 1964 SC 703.

64. In the case reported in AIR 1984 SC 684 :R.S. Nayak. Vs. A.R. Antule:, Hon'ble Supreme Court held that expression "Government" requires to be interpreted in the context used in a particular statute.

While interpreting Section 21 of Indian Penal Code, Hon'ble Supreme Court held that expression "State" denotes the the executive and not the Legislature. In earlier judgment also reported in AIR 1963 SC 1323: State Of Rajasthan And Anr Vs Sripal Jain, same view has been expressed.

65. In (2006) 2 SCC 682: Shrikant Vs. Vasantrao, while defining the word, State Government, it is held that it is different from local or other authorities under the control of the State Government. Section 11 of the Act (supra) refers to State Government which means the Government of the State exercising power under Section 11 read with 166 of the Constitution. In any case, it does not refer to State Legislature provided under Chapter-VII of the Constitution.

66. In view of the above, the power exercised by the State Government under Section 11 of the Act shall be statutory but administrative in nature having legislative trapping. The power conferred in pursuance of the provisions conferred under Section 11 of the Act is to be exercised in accordance with Rules of Business

> *notified under Article 166 of the Constitution. In view of Section 14 of the General Clauses Act and the Government order of 1992 (supra) decision under Section 11 of the Act may not be purely legislative."*

39. The aforementioned discussion clearly shows that it has been consistently held that the State Government was fully empowered to alter the limits of any division, district or tahsil or create any new or abolish existing tahsil or to divide any district into sub-divisions and to alter the limits of sub-divisions, in exercise of powers under Section 11 of the Act, 1901.

40. Under the Code, 2006, which has been enacted together with repeal of the Act, 1901, sub-section (2) of Section 6 empowers the State Government to alter the limits of any revenue area, division, district, tahsil by amalgamation, readjustment, division or in any other manner whatsoever or to abolish any such revenue area, and also to name and alter the name of any such revenue area with a stipulation that in case where any area is renamed, then all references in any law or instrument or other document to the area under its original name shall be deemed to be references to the areas as renamed unless expressly provided otherwise.

41. As regards, the contention raised on behalf of the petitioners that in view of the proviso to sub-section (2) of Section 6, before passing any order under the said sub-section the State Government was required to publish in the prescribed manner such proposal for inviting objections and was required to take into consideration any objections to the said proposal, it may be noticed that in terms of the proviso the requirement of publishing a proposal and inviting objections, is only in respect of a proposal to alter the limits of any revenue area, and the same is not required in the case of a proposal for naming or altering the name of any revenue area.

42. A plain reading of the proviso to sub-section (2) of Section 6 indicates that the requirement of publication of a proposal in a prescribed manner inviting objections and taking into consideration the

objections to such proposals, is only in the case of a proposal to alter the limits of a revenue area. It is a well settled principle of statutory interpretation that where the words of a statute are clear, plain or unambiguous, the Courts are bound to give effect to that meaning. In this regard, we may refer to the exposition of law as made in ***Principles of Statutory Interpretation***[12] by ***Justice G.P. Singh***, wherein it has been stated as follows:-

> *"When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. The rule stated by TINDAL, C.J. In Sussex Peerage case is in the following form: "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver". The rule is also stated in another form: 'When a language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, for the Act speaks for itself'. The results of the construction are then not a matter for the court, even though they may be strange or surprising, unreasonable or unjust or oppressive. "Again and again", said VISCOUNT SIMONDS, L.C., "this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used"."*

43. The argument raised by the petitioners placing reliance on the proviso to sub-section (2) of Section 6 is also liable to be rejected for the reason that while construing a proviso as an internal aid to construction, it has been consistently held that a proviso has no repercussion on the interpretation of the enacting portion of the section so as to exclude something by implication which is embraced by clear words of the enactment. Moreover, it is legally well settled that the proviso is normally to be construed in relation to the subject matter covered by the said section as a proviso does not travel beyond the provision to which it is a proviso.

44. The manner in which provisos are to be construed has been explained in *Maxwell on The Interpretation of Statutes*[13] and it has been stated as follows:-

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12 Principles of Statutory Interpretation (14th Edition) by Justice G.P. Singh
13 Maxwell on The Interpretation of Statutes (12th Edition)

> *".....a proviso is of necessity … limited in its operation to the ambit of the section which it qualifies. And, so far as that section itself is concerned, the proviso again receives a restricted construction: where the section confers powers it would be contrary to the ordinary operation of a proviso to give it an effect which would cut down those powers beyond what compliance with the proviso renders necessary."*

45. The function of a proviso as an internal aid to construction has been considered in *extenso* in a recent judgment of the Supreme Court in ***Delhi Metro Rail Corporation Ltd. Vs. Tarun Pal Singh & Ors.***[14] in the following terms:-

> *"8. Before coming to the construction of the proviso to Section 24, we deem it appropriate to consider the Rules regarding construction of proviso.*
>
> *9. Craies on Statute Law, 7th Edn. referring to various decisions for construction of provisos has observed:*
>
> *9.1. "The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."*
>
> *9.2. "When one finds a proviso to a section", said Lush, J. in Mullins v. Treasurer of Surrey (1880) LR 5 QBD 170 at p. 173 (DC), "the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso."*
>
> *9.3. "In West Derby Union v. Metropolitan Life Assurance Society, 1897 AC 647 (HL), Lord Watson said: (AC pp. 652-53)*
>
> > *'… I am perfectly clear that if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso. When one regards the natural history and object of provisos, and the manner in which they find their way into Acts of Parliament, I think your Lordships would be adopting a very dangerous and certainly unusual course if you were to import legislation from a proviso wholesale into the body of the statute, although I perfectly admit that there may be and are many cases in which the terms of an intelligible proviso may throw considerable light upon the ambiguous import of the statutory words.'*
>
> *And Lord Herschell in the same case said: (West Derby Union v. Metropolitan Life Assurance Society, 1897 AC 647 (HL), AC p. 655)*
>
> > *'… I decline to read into any enactment words which are not to be found there and which would alter its operative effect because of provisions to be found in any proviso.'*
>
> *though he admitted that a proviso may be a useful guide in the selection of one or other of two possible constructions of words in the enactment or to show the scope of the latter in a doubtful case.*
>
> *In R. v. Dibdin 1910 AC 57 (CA), Moulton, L.J. said: (AC pp. 125-26)*

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14 (2018) 14 SCC 161

> *'The fallacy of the proposed method of interpretation is not far to seek. It sins against the fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. It treats it as if it were an independent enacting clause instead of being dependent on the main enactment. The courts, as, for instance, in Partington, ex p, (1844) 6 QB 649 at p. 653 : 115 ER 244, Brockelbank, In re, ex p Dunn & Raeburn (1889) LR 23 QBD 461 (CA) and Hill v. East and West India Dock Co. (1884) LR 9 AC 448 (HL) have frequently pointed out this fallacy, and have refused to be led astray by arguments such as those which have been addressed to us, which depend solely on taking words absolutely in their strict literal sense, disregarding the fundamental consideration that they are appearing in the proviso.'*

So where Section 65 in a group of sections from Section 62 onwards in a private Act at the side of which was a note "Sewers — Sanitary arrangements", provided that:

> *'nothing in the Act shall authorise the Corporation of Newcastle-on-Tyne to commit a nuisance", and the Improvement Act, 1885 by Section 22 authorised the corporation to erect posts, rails, and fences for the protection of passengers and traffic, it was argued that this authority must be read subject to the proviso as to nuisance; but the court held that the proviso affected only the group of sections to which it was attached and was not a proviso to Section 22. But sections, though framed as provisos upon preceding sections, may exceptionally contain matter which is in substance a fresh enactment, adding to and not merely qualifying what goes before.'*

10. In Nizam's Religious Endowment Trust v. CIT (AIR 1966 SC 1007), this Court has observed: (AIR p. 1010, para 7)

"7. As has been pointed out by Craies in his book on Statute Law, 6th Edn. at p. 217:

> *'The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it.'*

The proviso to clause (i) excepts the two classes of income subject to the condition mentioned therein from the operation of the substantive clause. It comes into operation only when the said income is applied to religious or charitable purposes without the taxable territories. In that event, the Central Board of Revenue, by general or special order, may direct that it shall not be included in the total income. The proviso also throws light on the construction of the substantive part of clause (i) as the exception can be invoked only upon the application of the income to the said purposes outside the taxable territories. The application of the income in praesenti or in futuro for purposes in or outside the taxable territories, as the case may be, is the necessary condition for invoking either the substantive part of the clause or the proviso thereto."

11. In Kedarnath Jute Mfg. Co. Ltd. v. CTO (AIR 1966 SC 12), this Court has discussed the purpose of the proviso thus: (AIR p. 14, para 8)

"8. Section 5(2)(a)(ii) of the Act in effect exempts a specified turnover of a dealer from sales tax. The provision prescribing the exemption shall, therefore, be strictly construed. The substantive clause gives the exemption and the proviso qualifies the substantive clause. In effect, the proviso says that part of the turnover of the selling dealer covered by the terms of sub-

clause (ii) will be exempted provided a declaration in the form prescribed is furnished. To put it in other words, a dealer cannot get the exemption unless he furnishes the declaration in the prescribed form. It is well settled that 'the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it': see Craies on Statute Law, 6th Edn., p. 217. If the intention of the legislature was to give exemption if the terms of the substantive part of sub-clause (ii) alone are complied with, the proviso becomes redundant and otiose. To accept the argument of the learned counsel for the appellant is to ignore the proviso altogether, for if his contention be correct it will lead to the position that if the declaration form is furnished, well and good; but, if not furnished, other evidence can be produced. That is to rewrite the clause and to omit the proviso. That will defeat the express intention of the legislature. Nor does Rule 27-A support the contrary construction. The expression "on demand" only fixes the point of time when the declaration forms are to be produced; otherwise, the rule would be inconsistent with the section. Section 5(2)(a)(ii) says that the declaration form is to be furnished by the dealer and Rule 27-A says that it shall be furnished on demand, that is to say, it fixes the time when the form is to be furnished. This reconciles the provisions of Rule 27-A with those of Section 5(2)(a)(ii) of the Act, whereas the construction suggested by the learned counsel introduces an incongruity which shall be avoided. Section 21-A on which reliance is placed has no bearing on the question to be decided. It only empowers the Commissioner or any person appointed to assist him under sub-section (1) of Section 3 to take evidence on oath, etc. It can be invoked only in a case where the authority concerned is empowered to take evidence in respect of any particular matter, but that does not enable him to ignore a statutory condition to claim exemption."

12. In Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai (AIR 1966 SC 459), the intendment of the proviso has been discussed thus: (AIR p. 465, para 8)

"8. The proper function of a proviso is to except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso. But the question is one of interpretation of the proviso and there is no rule that the proviso must always be restricted to the ambit of the main enactment. Occasionally in a statute, a proviso is unrelated to the subject-matter of the preceding section, or contains matters extraneous to that section, and it may have then to be interpreted as a substantive provision, dealing independently with the matter specified therein, and not as qualifying the main or the preceding section."

13. In Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha (AIR 1961 SC 1596), this Court has discussed the object of the proviso and how it is to be interpreted thus: (AIR p. 1600, para 9)

"9. The law with regard to provisos is well settled and well understood. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But, provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be construed as controlled by the section. The proviso which has been added to Section 50 of the Act deals with the effect of repeal. The substantive part of the section repealed two Acts which were in force in the State of Bombay. If nothing more had been said, Section 7 of

the Bombay General Clauses Act, would have applied, and all pending suits and proceedings would have continued under the old law as if the repealing Act had not been passed. The effect of the proviso was to take the matter out of Section 7 of the Bombay General Clauses Act and to provide for a special saving. It cannot be used to decide whether Section 12 of the Act is retrospective. It was observed by Wood, V.C., in Fitzgerald v. Champneys (1861) 2 J&H 31 : 70 ER 958) that saving clauses are seldom used to construe Acts. These clauses are introduced into Acts which repeal others, to safeguard rights which, but for the savings, would be lost. The proviso here saves pending suits and proceedings, and further enacts that suits and proceedings then pending are to be transferred to the courts designated in the Act and are to continue under the Act and any or all the provisions of the Act are to apply to them. The learned Solicitor General contends that the savings clause enacted by the proviso, even if treated as substantive law, must be taken to apply only to suits and proceedings pending at the time of the repeal which, but for the proviso, would be governed by the Act repealed. According to the learned Attorney General, the effect of the savings is much wider, and it applies to such cases as come within the words of the proviso, whenever the Act is extended to new areas."

14. In S. Sundaram Pillai v. V.R. Pattabiraman (1985) 1 SCC 591, this Court has elaborately considered various decisions with respect to the proviso and has discussed the matter thus: (SCC pp. 607-11, paras 29-44)

"29. Odgers in Construction of Deeds and Statutes (5th Edn.) while referring to the scope of a proviso mentioned the following ingredients:

> *'p. 317. Provisos—These are clauses of exception or qualification in an Act, excepting something out of, or qualifying something in, the enactment which, but for the proviso, would be within it.*
>
> *p. 318. Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment.'*

30. Sarathi in Interpretation of Statutes at pp. 294-95 has collected the following principles in regard to a proviso:

> *(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.*
>
> *(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.*
>
> *(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.*
>
> *(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation: but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.*
>
> *(e) The proviso is subordinate to the main section.*
>
> *(f) A proviso does not enlarge an enactment except for compelling reasons.*
>
> *(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.*
>
> *(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.*
>
> *(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be*

read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision.

31. In Local Govt. Board v. South Stoneham Union 1909 AC 57 (HL), Lord Macnaghten made the following observation: (AC p. 62)

> *'… I think the proviso is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate.'*

32. In Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai AIR 1966 SC 459] , it was held that the main object of a proviso is merely to qualify the main enactment. In Madras and Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality [Madras and Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality, 1944 SCC OnLine PC 7 : (1943-44) 71 IA 113 : AIR 1944 PC 71] , Lord Macmillan observed thus: (SCC OnLine PC)

> *'… The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.'*

33. The above case was approved by this Court in CIT v. Indo-Mercantile Bank Ltd. 1959 SC 713 : 1959 Supp (2) SCR 256, where Kapur, J. held that the proper function of a proviso was merely to qualify the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. In Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha AIR 1961 SC 1596, Hidayatullah, J., as he then was, very aptly and succinctly indicated the parameters of a proviso thus: (AIR p. 1600, para 9)

> *'9. … As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule.'*

34. In West Derby Union v. Metropolitan Life Assurance Society, 1897 AC 647 (HL), while guarding against the danger of interpretation of a proviso, Lord Watson observed thus: (AC p. 653)

> *'… a very dangerous and certainly unusual course if you were to import legislation from a proviso wholesale into the body of the statute.…'*

35. A very apt description and extent of a proviso was given by Lord Loreburn in Rhondda Urban District Council v. Taff Vale Railway Co., 1909 AC 253 (HL), where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. To the same effect is a later decision of the same Court in Jennings v. Kelly, 1940 AC 206 (HL), wherein it was observed thus: (AC p. 216)

> *'We must now come to the proviso, for there is, I think, no doubt that, in the construction of the section, the whole of it must be read, and a consistent meaning, if possible, given to every part of it. The words are: "provided that such licence shall be granted only for premises situate in the ward or district electoral division in which such increase in population has taken place." There seems to be no doubt that the words "such increase in population" refer to the increase of not less than 25 per cent of the population mentioned in the opening words of the section.'*

36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

38. Apart from the authorities referred to above, this Court has in a long course of decisions explained and adumbrated the various shades, aspects, and elements of a proviso. In State of Rajasthan v. Leela Jain, AIR 1965 SC 1296, the following observations were made: (AIR p. 1300, para 41)

> *'14. … So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part.'*

39. In STO v. Hanuman Prasad, AIR 1967 SC 565, Bhargava, J. observed thus: (AIR p. 567, para 5)

> *'5. … It is well recognised that a proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the legislature desires should be excluded.'*

40. In CCT v. Jhaver Ramkishan Shrikishan, AIR 1968 SC 59, this Court made the following observations: (AIR p. 63, para 8)

> *'8. … Generally speaking, it is true that the proviso is an exception to the main part of the section; but it is recognised that in exceptional cases a proviso may be a substantive provision itself.'*

41. In Dwarka Prasad v. Dwarka Das Saraf (1976) 1 SCC 128, Krishna Iyer, J. speaking for the Court observed thus: (SCC pp. 136-37, paras 16 & 18):

> *'16. There is some validity in this submission but if, on a fair construction, the principal provision is clear, a proviso cannot expand or limit it. Sometimes a proviso is engrafted by an apprehensive draftsman to remove possible doubts, to make matters plain, to light up ambiguous edges. Here, such is the case.*
>
> *x x x x x*
>
> *18. … If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.'*

42. In Hiralal Rattanlal v. State of U.P. (1973) 1 SCC 216 : 1973 SCC (Tax) 307, this Court made the following observations: [SCC para 22, p. 224: SCC (Tax) p. 315]

> *'22. … Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called proviso has substantially altered the main section.'*

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

44. These seem to be by and large the main purport and parameters of a proviso."

15. In Dibyasingh Malana v. State of Orissa, 1989 Supp (2) SCC 312 : AIR 1989 SC 1737, this Court considered the effect of proviso and observed: (SCC pp. 316-17, para 7)

"7. On a plain reading of the definition of the term "family" in Section 37(b) of the Act we are of the view that the said definition as it stands is neither meaningless nor of doubtful meaning. In this connection, it may be pointed out that keeping in view the agrarian reform which was contemplated by the Act and particularly the provisions of Chapter IV relating to ceiling and disposal of surplus land which were calculated to distribute the surplus land of big tenure holders among the overwhelming have-nots of the State the legislature in its wisdom gave an artificial meaning to the term "family". The main provision containing the definition of the term is to be found in the first part of Section 37(b), namely, 'family in relating to an individual means the individual, the husband or wife as the case may be of such individual and their children whether major or minor', The later part of Section 37(b), namely, 'but does not include a major married son who as such had separated by partition or otherwise before the 26th day of September 1970' does not on the face of it contain a matter which may in substance be treated as a fresh enactment adding something to the main provision but is apparently and unequivocally a proviso containing an exception. This admits of no doubt in view of the words 'but does not include'. In CIT v. Indo-Mercantile Bank Ltd., AIR 1959 SC 713 : 1959 Supp (2) SCR 256 it was held: (AIR p. 716, para 5)

'5. … Ordinarily the effect of an excepting or a qualifying proviso is to carve something out of the preceding enactment or to qualify something enacted therein which but for the proviso would be in it and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect.'"

16. In Kush Saigal v. M.C. Mitter (2000) 4 SCC 526 : AIR 2000 SC 1390, this Court has observed thus: (SCC p. 538, para 32)

"32. Under sub-section (1) of Section 21, a landlord can apply for eviction of a tenant on the ground that the building was bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family either for residential purposes or for purposes of any profession, trade or calling or on the ground that the building which was in a dilapidated condition was required for purposes of demolition and new construction. The second proviso to sub-section (2) however provides that—

'an application under clause (a) shall not be entertained in the case of any residential building for occupation for business purposes.'

Thus, if an application is made by the landlord for eviction of the tenant on the ground that the building in occupation of that tenant which was used exclusively for residential purposes was required for business purposes or

for any other commercial activity, it would not be a ground within the meaning of Section 21(1) of the new Act for the eviction of the tenant and the application will not be entertained. This we say because the normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. (See: Kedarnath Jute Mfg. Co. Ltd. v. CTO, AIR 1966 SC 12) Since the natural presumption is that but for the proviso, the enacting part of the section would have included the subject-matter of the proviso, the enacting part has to be given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided (see: Justice G.P. Singh's "Principles of Statutory Interpretation" Seventh Edn. 1999, p. 163). This principle has been deduced from the decision of the Privy Council in Province of Bombay v. Hormusji Manekji, 1947 SCC OnLine PC 34 : (1946-47) 74 IA 103 : AIR 1947 PC 200, as also the decision of this Court in Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories (AIR 1965 SC 980)."

17. In Haryana State Coop. Land Development Bank Ltd. v. Employees Union (2004) 1 SCC 574 : 2004 SCC (L&S) 257, this Court has considered normal function of proviso and observed thus: (SCC pp. 579-80, paras 9 & 11)

"9. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Surrey (1880) LR 5 QBD 170 at p. 173 (DC) (referred to in Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha (AIR 1961 SC 1596) and Calcutta Tramways Co. Ltd. v. Corpn. of Calcutta (AIR 1965 SC 1728), when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule.

> *'… if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso',*

said Lord Watson in West Derby Union v. Metropolitan Life Assurance Society 1897 AC 647 (HL), AC p. 653. Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. [See A.N. Sehgal v. Raje Ram Sheoran 1992 Supp (1) SCC 304 : 1993 SCC (L&S) 675], Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal (1991) 3 SCC 442] and Kerala State Housing Board v. Ramapriya Hotels (P) Ltd. [Kerala State Housing Board v. Ramapriya Hotels (P) Ltd. (1994) 5 SCC 672]

'This word (proviso) hath diverse operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant.' (Coke upon Littleton, 18th Edn., p. 146.)

'If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the earlier clause prevails. … But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole' (per Lord Wrenbury in Forbes v. Git

(1921 SCC OnLine PC 102 : (1922) 1 AC 256).

A statutory proviso 'is something engrafted on a preceding enactment' (R. v. Taunton St. James (1829) 9 B&C 831 : 109 ER 309, ER p. 311).

'The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances' (per Lord Esher in Barker, In re, ex p Constable (1890) LR 25 QBD 285 (CA).

x x x x x

11. The above position was noted in Ali M.K. v. State of Kerala (2003) 11 SCC 632 : 2004 SCC (L&S) 136."

18. In Romesh Kumar Sharma v. Union of India (2006) 6 SCC 510 : 2006 SCC (L&S) 1430, this Court has observed that normally proviso does not travel beyond the provisions to which it is proviso. This Court held: (SCC pp. 514-15, para 12)

"12. '10. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Surrey (1880) LR 5 QBD 170 at p. 173 (DC) (referred to in Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha (AIR 1961 SC 1596) and Calcutta Tramways Co. Ltd. v. Corpn. of Calcutta (AIR 1965 SC 1728), when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule.

> *"… if the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso",*

said Lord Watson in West Derby Union v. Metropolitan Life Assurance Society 1897 AC 647 (HL), AC p. 652. Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. [See A.N. Sehgal v. Raje Ram Sheoran, 1992 Supp (1) SCC 304 : 1993 SCC (L&S) 675, Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal, (1991) 3 SCC 442 and Kerala State Housing Board v. Ramapriya Hotels (P) Ltd. (1994) 5 SCC 672.

"This word (proviso) hath diverse operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant." (Coke upon Littleton, 18th Edn., p. 146.)

"If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the earlier clause prevails. … But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole." (Per Lord Wrenbury in Forbes v. Git 1921 SCC OnLine PC 102 : (1922) 1 AC 256.

11. A statutory proviso "is something engrafted on a preceding enactment" (R. v. Taunton St. James (1829) 9 B&C 831 : 109 ER 309, ER p. 311).

"The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances." (Per Lord Esher in Barker, In re, ex p Constable, (1890) LR 25 QBD 285 (CA), LR p. 292.)

12. A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings it may be controlled by the proviso (see Jennings v. Kelly 1940 AC 206 (HL).' (Ali M.K. case [Ali M.K. v. State of Kerala, (2003) 11 SCC 632 : 2004 SCC (L&S) 136, SCC pp. 637-39, paras 10-12)"

19. In Nagar Palika Nigam v. Krishi Upaj Mandi Samiti (2008) 12 SCC 364 : AIR 2009 SC 187, this Court has observed thus: (SCC p. 368, para 9)

"9. '10. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Surrey (1880) LR 5 QBD 170 at p. 173 (DC) (referred to in Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha (AIR 1961 SC 1596) and Calcutta Tramways Co. Ltd. v. Corpn. of Calcutta (AIR 1965 SC 1728); when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule.

> *'… if the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso',*

said Lord Watson in West Derby Union v. Metropolitan Life Assurance Society 1897 AC 647 (HL) (AC p. 652). Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. [See A.N. Sehgal v. Raje Ram Sheoran 1992 Supp (1) SCC 304 : 1993 SCC (L&S) 675, Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal (1991) 3 SCC 442 and Kerala State Housing Board v. Ramapriya Hotels (P) Ltd. (1994) 5 SCC 672 Ed.: As observed in Maulavi Hussein Haji Abraham Umarji v. State of Gujarat, (2004) 6 SCC 672, p. 679, para 10."

20. In Shimbhu v. State of Haryana (2014) 13 SCC 318 : (2014) 5 SCC (Cri) 651, this Court has observed that fundamental rule of construction is that a proviso must be considered part of the main proviso to which it stands as a proviso. This Court held: (SCC pp. 324-25, para 13)

"13. It is a fundamental rule of construction that a proviso must be considered in relation to the main provision to which it stands as a proviso, particularly, in such penal provisions. Whether there exists any "special and adequate reason" would depend upon a variety of factors and the peculiar facts and circumstances of each case. This Court, in various judgments, has reached the consensus that no hard-and-fast rule can be laid down in that behalf for universal application."

21. What follows from the aforesaid enunciation is that effect of a proviso is to except all preceding portion of the enactment. It is only occasionally that proviso is unrelated to the subject-matter of the preceding section, it may have to be interpreted as a substantive provision. Ordinarily, a proviso is not interpreted as stating a general rule. Provisos are often added as saving clauses. A proviso must be construed with reference to the preceding parts of the clause to which

it is appended. The proviso is ordinarily subordinate to the main section. A construction placed on proviso which brings general harmony to the terms of the section should prevail. A proviso may sometime contain substantive provision. Ordinarily, proviso to a section is intended to take out a part of the main section for special treatment. Normally, a proviso does not travel beyond the main provision to which it is a proviso. A proviso is not interpreted as stating a general rule, it is an exception to the main provision to which it is carved out as a proviso. Proviso cannot be construed as enlarging the scope of enactment when it can be fairly and properly constructed without attributing that effect. It is not open to read in the words of enactment which are not to be found there and which would alter its operative effect."

46. The petitioners have also sought to place reliance upon the Uttar Pradesh District Gazetteer, Allahabad published in the year 1986 and the general geographical and historical description of the district mentioned therein to support their contention. The brief historical sketch as given in the Gazetteer, which would be relevant in the facts of the present case, is being extracted below:-

"अध्याय दो

इतिहास

गंगा और यमुना (जिनका उल्लेख कालिदास ने अपने प्रसिद्ध काव्य रघुवंश में क्रमशः धवल एवं श्याम रंग की जल धाराओं के रूप में किया है) तथा परम्परागत सरस्वती, जिसकी धारा अदृश्य है, के संगम पर स्थित प्रयाग (इलाहाबाद) बहुत प्राचीन काल से ही हिन्दुओं का एक सर्वाधिक महत्वपूर्ण पवित्र तीर्थ रहा है। इस स्थान का उल्लेख महाकाव्यों, पुराणों एवं अन्य कृतियों में आया है। मनु–स्मृति के अनुसार विनशन से प्रयाग तक विस्तृत भूभाग मध्यदेश में सम्मिलित था। लिंग पुराण के अनुसार, चन्द्रवंश के पूर्व पुरूष पुरूरवा ऐल (मनु वैवस्वत के पौत्र) ने यमुना के उत्तरी संभाग में शासन किया था जिसकी राजधानी प्रतिष्ठान (आधुनिक झूसी) थी जो गंगा के किनारे (इलाहाबाद नगर के दूसरी ओर) स्थित थी। वनवास के लिए अयोध्या से प्रस्थान करते समय राम पहले गंगा की ओर बढ़े जिसके किनारे, निषादों के राजा गुह का राज्य था और उसकी राजधानी श्रृंगवेरपुर (आधुनिक सिंगरौर जो परगना सोरांव में स्थित है) थी। इसके पश्चात् उन्होने गंगा को पार किया और प्रयाग पहुंचे, जहां ऋषि भरद्वाज का आश्रम था। राम से मिलने के लिए जाते समय उनके भाई भरत भी यहां रूके थे। कूर्मपुराण के अनुसार, प्रयाग मंडल पांच योजन (लगभग 40 कि0मी0) तक फैला हुआ था। और मत्स्य पुराण के वर्णन के अनुसार इसका विस्तार प्रतिष्ठान से वासुकि सरोवर तथा नागों (कम्बल, अश्वतर और बाहुमूलक) के निवास स्थान तक था किन्तु साक्ष्य के अभाव में ये स्थान अज्ञात रह गये हैं।

ब्राह्मण एवं बौद्ध साहित्य में उल्लिखित विवरणों के अनुसार प्रयाग का सम्बन्ध कुछ पौराणिक विभूतियों से भी रहा है। महाभारत के अनुसार सृष्टि के देवता ब्रह्मा ने यहां पर यज्ञ किया था जिससे इस स्थान का नाम प्रयाग पड़ा, ('प्र' शब्द उत्तम और 'याग' शब्द यज्ञ का द्योतक है)। इसे भास्कर क्षेत्र भी कहा जाता था और सोम, वरूण एवं प्रजापति का जन्म यहीं पर हुआ था। 'दीपवंस' तथा 'महावंस' (लंका के बौद्ध इतिहास) से यह ज्ञात होता है कि प्रयाग में ही भद्दयाजी द्वारा पूर्वकालीन राजा महापणदास का जलमग्न महल पानी से ऊपर उठाया गया था। 'विनय पिटक' में यह उल्लेख आया है कि गौतम बुद्ध ने प्रयाग से होकर प्रस्थान किया था। जिले के कतिपय प्राचीन स्थानों से प्राप्त मिट्टी के बर्तनों के प्राचीन टुकड़ों से यह संकेत मिलता है कि ईसा संवत प्रारम्भ होने के शताब्दियों पूर्व से ही इस क्षेत्र में मानव बस्तियां विद्यमान थीं।

अध्याय उन्नीस

महत्वपूर्ण स्थान

इलाहाबाद (परगना और तहसील चायल)

इलाहाबाद नगर जिसमें इलाहाबाद नगर महापालिका तथा छावनी का क्षेत्र सम्मिलित है, 25°26′ अक्षांश उत्तर तथा 81°50′ देशान्तर पूर्व में समुद्र तल से 103.63 मीटर की ऊंचाई पर स्थित है। यह नगर कलकत्ता से लगभग 908 कि0मी0 उत्तर–पश्चिम में, लखनऊ से लगभग 202 कि0मी0 दक्षिण–पूर्व, बम्बई से लगभग 1358 कि0मी0 उत्तर–पूर्व तथा दिल्ली से 663 कि0मी0 की दूरी पर स्थित है। गंगा और यमुना नदियां इसके ऐतिहासिक किले के पास ही मिलती है तथा पौराणिक और प्रचलित विश्वास के अनुसार सरस्वती नामक एक गुप्त धारा भी यहीं पर इन नदियों में मिलती है। इस स्थल को त्रिवेणी (तीन धाराओं का संगम) कहते है।

इस स्थान का प्राचीन नाम प्रयाग है जिसका उल्लेख रामायण और पुराणों में आया है तथा नगर में अब भी इसी नाम से एक रेलवे स्टेशन है। अतीतकाल से ही इसे एक प्रवित्र तीर्थ स्थान माना जाता रहा है। गंगा और यमुना के संगम के पास ही एक ऊंचा टीला है यहीं पर भरद्वाज ऋषि के आश्रम में (राम के भाई) भरत उस समय उनके अतिथि बने थे जब वह राम के वन चले जाने पर उन्हे ढूंढते हुये यहां आये थे। कहा जाता है कि यहीं पर ब्रह्मा ने देवों में सर्व प्रमुख होने के प्रतीक स्वरूप एक यज्ञ किया था और यहीं पर उन्होने शंखासुर से चारों वेदों की पुनः प्राप्ति के उपलक्ष्य में उत्सव मनाया था। अपनी धार्मिक पवित्रता के कारण यह नगर अतीत काल से तीर्थराज (अर्थात सभी तीर्थस्थानों का राजा) के नाम से विख्यात है। गौतम बुद्ध के समय में यह वत्स राज्य का अंग था और चन्द्र गुप्त मौर्य (321–297 ई0 पू0) के विशाल साम्राज्य में इसको एक महत्वपूर्ण स्थान प्राप्त था। अशोक के बाद इस स्थान के इतिहास के बारे में बहुत कम जानकारी है सिवाय इसके कि यह नगर कुषाण साम्राज्य की पूर्वी सीमा पर स्थित था तथा समुद्रगुप्त के राज्य का पश्चिमी अंग था। चीनी यात्री फाह्यान गुप्त सम्राट चन्द्रगुप्त द्वितीय (376–414 ई0) के शासनकाल में प्रयाग आया था। उसने प्रयाग को एक समृद्ध तथा घनी जनसंख्या वाला नगर पाया। हर्ष (606–647 ई0) के शासनकाल में यह एक महान् नगर था जहां पर वह प्रत्येक पांचवे वर्ष एक महासभा आयोजित करता था और गरीबों तथा धार्मिक व्यक्तियों (जिनमें बौद्ध भिक्षु तथा जैन सम्मिलित थे) में अपना कोष बांट देता था। ह्वेनसांग भी एक चीनी यात्री था जो हर्ष के शासन काल में प्रयाग आया था, उसने लिखा है कि यह कौशाम्बी से बड़ा नगर है तथा यहां पर 50 समृद्धशाली हिन्दू मन्दिर (पातालपुरी को सम्मिलित करते हुये जो शहर के बीच में है) तथा 82 बौद्ध मठ है। हर्ष की मृत्यु के पश्चात् इस स्थान का महत्व घट गया और मुसलमानों की विजय के उपरान्त यह एक साधारण स्थान रह गया। किन्तु अकबर के शासनकाल में इसे पुनः महत्व प्राप्त हुआ जब उसने यहां एक शाही नगर की स्थापना की और उसका नाम इलाहावास अथवा इलाहाबाद रखा तथा गंगा और यमुना के संगम के निकट एक किला भी बनवाया। यह नगर इलाहाबाद सूबे की राजधानी बना तथा इसके महत्व और आकार में भी वृद्धि हुई।"

47. The issue as to whether the Gazetteer can be relied upon as source of history came up before the Supreme Court in ***Mahant Shri Srinivas Ramanuj Das Vs. Surjanarayan Das & Anr.***[15] and it was held as follows:-

> *"26. It is urged for the appellant that what is stated in the Gazetteer cannot be treated as evidence. These statements in the Gazetteer are not relied on as evidence of title but as providing historical material and the practice followed by the Math and its head. The Gazetteer can be consulted on matters of public history."*

48. The utility of the District Gazetteer as an official document of value was underlined by the Supreme Court in ***Sukhdev Singh Vs. Maharaja Bahadur of Gidhaur***[16] where it was held as follows:-

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15 AIR 1967 SC 256
16 AIR 1951 SC 288

> *"10. … The statement in the District Gazetteer is not necessarily conclusive, but the Gazetteer is an official document of some value, as it is complied by experienced officials with great care after obtaining the facts from official records."*

49. The material in a Gazetteer was also relied upon as an authority on the subject in ***Lalu Dome & Anr. Vs. Bejoy Chand Mahatap***[17] wherein it was held as follows:-

> *"..... But we have the authority of the Bengal District Gazetteer for Bankura that "in Thanas Indas and Kotalpur, there are a body of men called simanadars, who perform the duties of chaukidars. They have grants of lands in lieu of wages ; but in some instance these service lands have been resumed under Act VI of 1870"*
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> *We are entitled to use this book of reference for the purpose of seeing what the duties of simanadars are, that is to say, whether their duties correspond with those of which description is given in S. I of the Chaukidari Chakran Land Act."*

50. In the light of the above the District Gazetteer may be relied upon as providing some historical material, and it is pertinent to notice that while giving an overview of the history of the district of Allahabad, reference has been made to the existence of "Prayag" as a site of cultural importance from the ancient times by placing reliance on ancient literary and historical sources. It has further been stated that the existence of a site by the name of "Prayag" has been continuously referred to in ancient Indian Literature. The historical account mentioned in the Gazetteer provides a description that the ancient site of "Prayag" was in existence during the period of Gautam Buddha. Further, the Gazetteer draws reference to the site being part of the area under the control of the Maurya Dynasty and also the Gupta Dynasty and also that a description of the place finds mention in the travelogue of the Chinese traveller, Fa Hien who visited India during the reign of Chandragupta-II. Further reference has been made to the fact that during the reign of Harsha (606-647 AD) a periodical congregation was held and the description in this regard is found in the travel accounts of the Chinese traveller, Hiuen Tsang.

51. The petitioners have also placed on record extracts from certain literary and historical sources which we shall now refer to. Certain

17 AIR 1916 Calcutta 842

extracts from "*Tareekh-e-Ilahabad*" written by *Maulvi Sayyad Maqbul Ahmad Samdani*, *Volume I, (1938)* published by *Star Press, Allahabad* are on record wherein it has been stated that the earlier name of the place by the name of "Ilahabad" within the province "Ilahabad" was "Prayag". It is also stated that the name Ilahabad attained fame during the reign of Emperor Akbar. Further, the geographical location of the place is identified as being situate on the confluence of rivers Ganga, Yamuna and Saraswati.

52. Reference is drawn from another book entitled "*Muntakhab-ut-Tawarikh" (Selected History)*, *Volume II*, written by *Mulla Abdul Qadir Badayuni* published by *National Council for Promotion of Urdu Language, Human Resource Development Ministry, Government of India, New Delhi* in the year 2008, and the portion which has been extracted mentions that Allahabad or Prayag was situate at the site of the confluence of the rivers Ganga and Yamuna.

53. Further, the text "*Hindu Dharmakosh*" written by *Dr. Rajbali Pandey*, published by the *Uttar Pradesh Hindi Sansthan* has been referred to and the following extracts have been placed on record:-

> "..... *प्रयाग शब्द की व्युत्पत्ति वनपर्व (87.18.19) में यज् धातु से मानी गयी है। उसके अनुसार सर्वात्मा ब्रह्मा ने सर्वप्रथम यहां यजन किया था (आहुति दी थी) इसलिए इसका नाम प्रयाग पड़ गया। पुराणों में प्रयागमण्डल, प्रयाग और वेणी अथवा त्रिवेणी की विविध व्याख्याएँ की गयी है। मत्स्य तथा पद्मपुराण के अनुसार प्रयागमण्डल पाँच योजन की परिधि में विस्तृत है और उसमें प्रविष्ट होने पर एक–एक पद पर अश्वमेघ यज्ञ का पुण्य मिलता है। प्रयाग की सीमा प्रतिष्ठान (झूँसी) से वासुकिसेतु तक तथा कंबल और अश्वतर नागों तक स्थित है। यह तीनों लोकों में प्रजापति की पुण्यस्थली के नाम से विख्यात है। पद्मपुराण (1.43–27) के अनुसार 'वेणी' क्षेत्र प्रयाग की सीमा में 20 धनुष तक की दूरी में विस्तृत है। वहाँ प्रयाग, प्रतिष्ठान (झूँसी) तथा अलर्कपुर (अरैल) नाम के तीन कूप है। मत्स्य (110.4) और अग्नि (111.12) पुराणों के अनुसार वहाँ तीन अग्नि कुण्ड भी हैं जिनके मध्य से होकर गङ्गा बहती है। वनपर्व (85.81 और 85) तथा मत्स्य0 (104.16–17) में बताया गया है कि प्रयाग में नित्य स्नान को 'वेणी' अर्थात दो नदियों (गङ्गा और यमुना) का संगम स्नान कहते है। वनपर्व (85.75) तथा अन्य पुराणों में गङ्गा और यमुना के मध्य की भूमि को पृथ्वी का जघन या कटिप्रदेश कहा गया है। इसका तात्पर्य है पृथ्वी का सबसे अधिक समृद्ध प्रदेश अथवा मध्य भाग।*
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> *गङ्गा, यमुना और सरस्वती के त्रिवेणीसंगम को 'ओंकार' नाम से अभिहित किया गया है। 'ओंकार' का 'ओम' परब्रह्मा परमेश्वर की ओ रहस्यात्मक संकेत करता है। यही सर्वसुखप्रदायिनी त्रिवेणी का सूचक है। ओंकार का अकार सरस्वती का प्रतीक, उकार यमुना का प्रतीक तथा मकार गङ्गा का प्रतीक है। तीनों क्रमशः प्रद्युम्न, अनरुिद्ध तथा संकषर्ण (हरि के व्यूह) को उद्भूत करने वाली है। इस प्रकार इन तीनों का संगम त्रिवेणी नाम से विख्यात है (त्रिस्थलीसेतु, पृष्ठ 8)।*
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> *नरसिंहपुराण (65.17) में विष्णु को प्रयाग में योगमूर्ति के रूप में स्थित बताया गया है। मत्स्यपुराण (111.4–10) के अनुसार रूद्र द्वारा एक कल्प के उपरान्त प्रलय करने पर भी प्रयाग नष्ट नहीं होता। उस समय प्रतिष्ठान के उत्तरी भाग में ब्रह्मा छद्म वेश में, विष्णु*

वेणीमाधव रूप में तथा शिव वटवृक्ष के रूप में आवास करते है और सभी देव, गंधर्व, सिद्ध तथा ऋषि पाप शक्तियों से प्रयागमण्डल की रक्षा करते है। इसीलिए मत्स्यपुराण (10.4.18) में तीर्थयात्री को प्रयाग जाकर एक मास निवास करने तथा संयमपूर्वक देवताओं और पितरों की पूजा करके अभीष्ट फल प्राप्त करने का विधान है।"

54. The petitioners have also placed on record extracts from the text "*Dharmshashtra Ka Itihas*" *Volume III* written by *Dr. Pandurang Vaman Kane* (original text translated from *Marathi* by *Sri Arjun Chaubey Kashyap*) published by the *Uttar Pradesh Hindi Sansthan*, *Lucknow* whereunder references have been made to a place by the name of "Prayag" in the ancient texts in the following terms:-

"प्रयाग

गंगा–यमुना के संगम से सम्बन्धित अत्यन्त प्राचीन निर्देशों में एक खिल मन्त्र है, जो बहुधा ऋग्वेद (10।75) में पढ़ा जाता है और उसका अनुवाद यों है––''जो लोग श्वेत (सित) या कृष्ण (नील या असित) दो नदियों के मिलन–स्थल पर स्नान करते हैं, वे स्वर्ग को उठते (उड़ते) हैं; जो धीर लोग वहाँ अपना शरीर त्याग करते हैं (डूब कर मर जाते है), वे मोक्ष पाते है।'' सम्भवतः यह अपेक्षाकृत पश्चात्कालीन मन्त्र है। स्कन्दपुराण ने इसे श्रुति कहा है। महाभारत ने प्रयाग की महत्ता का वर्णन किया है (वन० 85।69–97, 87।18–20; अनुशासन० 25।36–38)। पुराणों में भी इसकी प्रशस्ति गायी गयी है (मत्स्य०, अध्याय 103–112; कूर्म० 1।36–39; पद्म० 1, अध्याय 40–49; स्कन्द०, काशीखण्ड, अध्याय 7।45–65)। हम केवल कुछ ही श्लोकों की ओर संकेत कर सकेंगे। यह ज्ञातव्य है कि रामायण ने प्रयाग के विषय में कुछ विशेष नहीं कहा है। संगम का वर्णन आया है, किन्तु ऐसा प्रतीत होता है कि उन दिनों वहाँ वन था (रामायण, 2।54–6)। प्रयाग को तीर्थराज कहा गया है (मत्स्य० 109।15; स्कन्द० काशीखण्ड, 7।45 एवं पद्म०, 6।23।27–35, जहाँ प्रत्येक श्लोक के अन्त में ''स तीर्थराजो जयति प्रयागः'' आया है)। गाथा यों है कि प्रजापति या पितामह (ब्रह्मा) ने यहाँ यज्ञ किया था प्रयाग ब्रह्मा की वेदियों में बीच वाली वेदी है, अन्य वेदियाँ हैं उत्तर में कुरूक्षेत्र (जिसे उत्तरवेदी कहा जाता है) एवं पूर्व में गया। ऐसा विश्वास है कि प्रयाग में तीन नदियाँ मिलती हैं, यथा गंगा, यमुना एवं सरस्वती (जो दोनों के बीच में अन्तर्भूमि में है)। मत्स्य, कूर्म आदि पुराणों में ऐसा कहा गया है कि प्रयाग के दर्शन, नाम लेने या इसकी मिट्टी लगाने मात्र से मनुष्य पापमुक्त हो जाता है। कूर्म० ने घोषणा की है– 'यह प्रजापति का पवित्र स्थल है, जो वहाँ स्नान करते हैं, वे स्वर्ग जाते है और जो यहाँ मर जाते हैं वे पुनः जन्म नहीं लेते।' यही पुनीत स्थल तीर्थराज है; यह केशव को प्रिय है। इसी को त्रिवेणी की संज्ञा मिली है।'

'प्रयाग' शब्द की व्युत्पति कई प्रकार से की गयी है। वनपर्व में आया है कि सभी जीवों के अधीश ब्रह्मा ने यहाँ प्राचीन काल में यज्ञ किया था और इसी से 'यज्' धातु से 'प्रयाग' बना है। स्कन्द० ने इसे 'प्र' एवं 'याग' से युक्त माना है––'इसलिए कहा जाता है कि यह सभी यज्ञों से उत्तम है, हरि, हर आदि देवों ने इसे 'प्रयाग' नाम दिया है।' मत्स्य० ने 'प्र' उपसर्ग पर बल दिया है और कहा है कि अन्य तीर्थों की तुलना में यह अधिक प्रभावशाली है।

ब्रह्म० का कथन है––प्रकृष्टता के कारण यह प्रयाग है और प्रधानता के कारण यह 'राज' शब्द (तीर्थराज) से युक्त है।

'प्रयागमण्डल', 'प्रयाग' एवं 'वेणी' (या 'त्रिवेणी') के अन्तर को प्रकट करना चाहिए, जिनमें आगे का प्रत्येक पूर्व वाले से अपेक्षाकृत छोटा किन्तु अधिक पवित्र है। मत्स्य० का कथन है कि प्रयाग का विस्तार परिधि में पाँच योजन है और ज्यों ही कोई उस भूमिखण्ड में प्रविष्ट होता है, उसके प्रत्येक पद पर अश्वमेघ का फल होता है। त्रिस्थलीसेतु (पृ० 15) में इसकी व्याख्या यों की गयी है––यदि ब्रह्मयूप (ब्रह्मा के यज्ञस्तम्भ) को खूंटी मानकर कोई डेढ़ योजन रस्सी से चारों ओर मापे तो वह पाँच योजन की परिधि वाला स्थल प्रयागमण्डल होगा। वनपर्व, मत्स्य० (104।5 एवं 106।30) आदि ने प्रयाग के क्षेत्रफल की परिभाषा दी है––'प्रयाग का विस्तार प्रतिष्ठान से वासुकि के जलाशय तक है और कम्बल नाग एवं अश्वतर नाग तथा बहुमूलक तक है; यह तीन लोकों में प्रजापति के पवित्र स्थल के रूप में विख्यात है।' मत्स्य० (106।30) ने कहा है कि गंगा के पूर्व में समुद्रकूप है, जो प्रतिष्ठान ही है। त्रिस्थलीसेतु ने इसे यों व्याख्यात किया है––पूर्व सीमा प्रतिष्ठान का कूप

है, उत्तर में वासुकिह्रद्र है, पश्चिम में कम्बल एवं अश्वतर हैं और दक्षिण में बहुमूलक है। इन सीमाओं के भीतर प्रयाग तीर्थ है। मत्स्य० (कल्पतरू, तीर्थ, पृ० 143) के मत से दोनों नाग यमुना के दक्षिणी किनारे पर हैं, किन्तु मुद्रित ग्रन्थ में 'विपुले यमुनातटे' पाठ है। किन्तु प्रकाशित पद्म० (1।43।27) से पता चलता है कि कल्पतरू का पाठान्तर (यमुना–दक्षिणे तटे) ठीक है। वेणी–क्षेत्र प्रयाग के अन्तर्गत है और विस्तार में 20 धनु है, जैसा कि पद्म० में आया है। यहाँ तीन पवित्र कूप हैं, यथा प्रयाग, प्रतिष्ठानपुर एवं अलर्कपुर में। मत्स्य० एवं अग्नि० का कथन है कि यहाँ तीन अग्निकुण्ड हैं और गंगा उनके मध्य से बहती है। जहाँ भी कहीं पुराणों में स्नान–स्थल का वर्णन (विशिष्ट संकेतों को छोड़कर) आया है, उसका तात्पर्य है वेणी–स्थल–स्नान और वेणी का तात्पर्ण है दोनों (गंगा एवं यमुना) का संगम। वनपर्व एवं कुछ पुराणों के मत से गंगा एवं यमुना के बीच की भूमि पृथिवी की जाँघ है (अर्थात् यह पृथिवी की अत्यन्त समृद्धिशाली भूमि है) और प्रयाग जघनों की उपस्थ–भूमि है।

नरसिंह० (63।17) का कथन है कि प्रयाग में विष्णु योगमूर्ति के रूप में है। मत्स्य० (111।4–10) में आया है कि कल्प के अन्त में जब रूद्र विश्व का नाश कर देते हैं उस समय भी प्रयाग का नाश नहीं होता है। ब्रह्मा, विष्णु एवं महेश्वर (शिव) प्रयाग में रहते है; प्रतिष्ठान के उत्तर में ब्रह्मा गुप्त रूप में रहते हैं, विष्णु वहाँ वेणीमाधव के रूप में रहते है और शिव वहाँ अक्षयवट के रूप में रहते है। इसी लिए गन्धर्वों के साथ देवगण, सिद्ध लोग एवं बड़े–बड़े ऋषिगण प्रयाग के मण्डल को दुष्ट कर्मो से बचाते रहते है। इसी से मत्स्य० (104।18) में आया है कि यात्री को देवरक्षित प्रयाग में जाना चाहिए, वहाँ एक मास ठहरना चाहिए, वहाँ सम्भोग नहीं करना चाहिए, देवों एवं पितरों की पूजा करनी चाहिए और वांछित फल प्राप्त करने चाहिए। इसी पुराण (105।16–22) ने यह भी कहा है कि वहाँ दान करना चाहिए, और इसने वस्त्रों, आभूषणों एवं रत्नों से सुशोभित कपिला गाय के दान की प्रशस्ति गायी है। और देखिए पद्म० (आदि, 42।17–24)। मत्स्य० (106।8–9) ने प्रयाग में कन्या के आर्ष विवाह की बड़ी प्रशंसा की है। मत्स्य० (105।13–14) ने सामान्य रूप से कहा है कि यदि कोई गाय, सोना, रत्न, मोती आदि का दान करता है तो उसकी यात्रा सुफल होती है और उसे पुण्य प्राप्त होता है, तथा जब कोई अपनी समर्थता एवं धन के अनुसार दान करता है तो तीर्थयात्रा की फल–वृद्धि होती है, और वह कल्पान्त तक स्वर्ग में रहता है। ब्रह्माण्ड० ने आश्वासन दिया है कि यात्री जो कुछ अपनी योग्यता के अनुसार कुरूक्षेत्र, प्रयाग, गंगा–सागर के संगम, गंगा, पुष्कर, सेतुबन्ध, गंगाद्वार एवं नैमिष में देता है उससे अनन्त फल मिलता है। वनपर्व (85।82=83।77) में आया है कि यह ब्रह्मा की यज्ञ–भूमि देवों द्वारा पूजित है और यहाँ पर थोड़ा भी दिया गया दान महान् होता है।

तीनों नदियों का संगम 'ओंकार' से सम्बन्धित माना गया है (ओंकार शब्द ब्रह्म का द्योतक है)। पुराण–वचन ऐसा है कि 'ओम्' के तीन भाग, अर्थात् अ, उ एवं म् क्रम से सरस्वती, यमुना एवं गंगा के द्योतक है और तीनों के जल क्रम से प्रद्युम्न, अनिरूद्ध एवं संकर्षण हरि के प्रतीक है।

यह ज्ञातव्य है कि यद्यपि मत्स्य०, कूर्म० (1।37।39), पद्म० (आदि, अध्याय 41–49), अग्नि० (111) आदि पुराणों में प्रयाग के विषय में सैकड़ों श्लोक हैं, किन्तु कल्पतरू (तीर्थ) ने, जो तीर्थ–सम्बन्धी सबसे प्राचीन निबन्ध है, केवल मत्स्य० (104।1–13 एवं 16–20; 105।1–22; 106।1–48; 107।2–21; 108।3–4, 8–17 एवं 23–24; 109।10–12; 110।11; 111।8–10; कुल मिलाकर लगभग 151 श्लोक एवं वनपर्व अध्याय 85।79–87 एव 97) को उद्धृत किया है और कहीं भी व्याख्या या विवेचन के रूप कुछ भी नहीं जोड़ा है। किन्तु अन्य निबन्धों ने पुराणों से खुलकर उद्धरण दिये हैं और कई विषयों पर विशद विवेचन उपस्थित किया है।.....''

55. Certain extracts from the "*Ayodhyakand Chapter of Valmiki Ramayana*" have also been placed on record wherein reference is made to *Vatsadesh* (Prayag).

56. The aforementioned historical and literary texts which have been referred in the writ petition and extracts whereof have also been placed on record go to show that references have been made in the ancient literary and historical texts with regard to existence of a place by the

name of 'Prayag' at the confluence of the rivers Ganga and Yamuna.

57. The references also show that this was a centre of culture and pilgrimage in ancient times, and it continued to be so in the medieval age and down to our times. References to the site have been made in the travel accounts of the Chinese travellers *Fa Hien* and *Hiuen Tsang*.

58. The petitioners have placed much reliance on a communication dated 27.05.1981 issued by the Ministry of Home Affairs, Government of India on the subject "changes in the names of districts and talukas/tahsils" a copy whereof has been placed on record in *PIL No.4888 of 2018 (Janak Pandey & Ors. Vs. State of UP & Ors.)*. The aforementioned communication refers to an earlier letter dated 11.09.1953 issued by the Deputy Secretary, Government of India, Ministry of Home Affairs, New Delhi on the subject of changes in the names of villages, towns and procedure thereof, and the same is extracted below:-

> *"Copy of letter No.130/53 Public, dated the 11th September 1953, from Sardar Fateh Singh, Deputy Secretary to the Govt. of India, Ministry of Home Affairs New Delhi 2/11 State Govt. (A, B, C & D) except Jammu & Kashmir*
>
> . . . . .
>
> *Sub :- Changes in the names of villages, towns, etc. Procedure of . .*
>
> *I am directed to say that of late several requests have been received from the State Govt. for changing the names of villages etc. The question has been examined in detail by the Govt. of India and they consider that changes in the names of villages, towns, etc. should be discouraged as far as possible, that no change should be agreed to unless there were compelling reasons to justify it; and that all proposals should be referred to the Govt. of India in the Ministry of Home Affairs before any change is made.*
>
> *2. It is essential that there should be a uniform procedure in the matter of changing the names of places and that the State Govt. should keep in view the following broad principles which making propose for changes in the names of villages, towns, etc. to the Govt. of India.*
>
> *i) Unless there is some very special reason, it is not desirable to change a name which people have got used to*
>
> *ii) Names of villages etc. having a historical connection should not be changed as far as possible*
>
> *iii) A change should not be made merely on grounds of local patriotism or for linguistic reasons, e.g. villages etc. should not be renamed after national leaders merely to show respect to them or for satisfying local*

sentiment in the matter of language, etc.

iv) In selecting names, care should be taken to see that there is no village or town etc. of the same name in the State and neighbourhood which might lead to confusion.

v) While recommending any change, the State Govt. should furnish detailed reasons for proposing a change in the name and also for selecting the new name.

3. Notwithstanding what has been stated in para 2 above, it may be eminently desirable that where an ancient place has fallen into decay and with that the old place name has also disappeared, the ancient name should be restored. To cite an instance, a village now called "Gandhawal" in the old Dewas State near Ujjain has been built on the ruins of an ancient town populous and Flourishing in the times of "Vikramaditya" and in the ancient scriptures and other books as "Gandharvapuri". The present name "Gandhawal" is obviously a corruption of Gandharvapuri. The Govt. of Madhya Pradesh in whose territory the village is now situated may consider the propriety of restoring the ancient name."

59. We may notice that the aforementioned letter/communication issued by the Government of India which is in the nature of an executive instruction specifying certain guidelines on the subject of change of names of villages, towns, districts and talukas/tahsils also provides that it may be eminently desirable that where an ancient place has fallen into decay and with that the old place name has also disappeared, the ancient name should be restored.

60. Moreover, it is trite law that where there are specific provisions under the statute, executive instructions would have no application, and in the instant case the State Government being empowered under sub-section (2) of Section 6 of the Code, 2006 with regard to altering the name of any revenue area, reliance sought to be placed on the executive instructions is clearly misplaced, and cannot be legally sustained. In this regard we may refer to the judgment of the Supreme Court in ***State of Orissa & Ors. Vs. Prasana Kumar Sahoo***[18] wherein it was held that executive instructions referable to the powers under Article 162 of the Constitution cannot override the statute or statutory rules.

61. As regards the contention raised by the learned counsel for the petitioners that in terms of the provisions contained under the States

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Reorganisation Act, 1956 and also the Uttar Pradesh Reorganisation Act, 2000 the State Government is not empowered to rename the districts/divisions. We may gainfully refer to Section 13 of the Act, 1956 which is as follows:-

> *"**13. Saving powers of State Governments**.—Nothing in the foregoing provisions of this Part shall be deemed to affect the power of a State Government to alter, after the appointed day the name, extent and boundaries of any district or division in the State.*

62. To a similar effect the provisions contained under Section 6 of the Act, 2000, are as follows:-

> ***6. Saving powers of State Governments**.—Nothing in the foregoing provisions of this Part shall be deemed to affect the power of the Government of Uttar Pradesh or Uttaranchal to alter, after the appointed day, the name, area, or boundaries of any district or other territorial division in the State."*

63. Section 13 of the Act, 1956 provides in unambiguous terms that nothing in the foregoing provisions of Part II which is with regard to territorial changes and formation of new States, shall be deemed to affect the power of the State Government to alter, after the appointed day, the name, extent and boundaries of any other district or division in the State.

64. Similarly in terms of Section 6 of the Act, 2000 it is provided that nothing in the foregoing provisions of Part II which is with regard to reorganisation of the State of Uttar Pradesh shall be deemed to affect the power of the Government of Uttar Pradesh or Uttaranchal to alter, after the appointed day, the name, area or boundaries of any district or any other territorial division in the State.

65. Section 13 of the Act, 1956 as also Section 6 of the Act, 2000 both contain saving powers of the State Government and recognize in clear terms the power of the State to alter the name, area or boundary of any district or other territorial division in the State.

66. The arguments raised by the petitioners that under the Act, 1956 as also the Act, 2000 State Government is not empowered to rename the districts or divisions, thus cannot be accepted.

67. In *PIL No.4916 of 2018 (Javed Mohammad & Ors. Vs. State of UP & Ors.)* a prayer has been made seeking quashing of the resolution dated 18.08.2018 passed by the Municipal Corporation of Allahabad proposing to change the name of Allahabad to Prayagraj.

68. In this regard it may be relevant to refer to the provisions under ***Part IX-A*** as inserted by the ***Constitution (Seventy-fourth Amendment) Act, 1992***. For ease of reference, Articles 243-P and 243-Q are reproduced below:-

> *"**243-P. Definitions.—**In this Part, unless the context otherwise requires,—*
>
> > *(a) "Committee" means a Committee constituted under Article 243-S;*
> >
> > *(b) "district" means a district in a State;*
> >
> > *(c) "Metropolitan area" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;*
> >
> > *(d) "Municipal area" means the territorial area of a Municipality as is notified by the Governor;*
> >
> > *(e) "Municipality" means an institution of self-government constituted under Article 243-Q;*
> >
> > *(f) "Panchayat" means a Panchayat constituted under Article 243-B;*
> >
> > *(g) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.*
>
> ***243-Q. Constitution of Municipalities.—**(1) There shall be constituted in every State,—*
>
> > *(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;*
> >
> > *(b) a Municipal Council for a smaller urban area; and*
> >
> > *(c) a Municipal Corporation for a larger urban area,*
>
> *in accordance with the provisions of this Part:*
>
> *Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.*
>
> *(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit,*

specify by public notification for the purposes of this Part."

69. In terms of Article 243-P(d), a "Municipal area" means the territorial area of a Municipality as is notified by the Governor. Further clause (e) of Article 243-P defines the term "Municipality" as meaning an institution of self-government constituted under Article 243-Q.

70. Article 243-Q envisages constitution of a Municipal Council for a smaller urban area, a nagar panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area; and a Municipal Corporation for a larger urban area. Clause (2) of Article 243-Q provides that "a transitional area", "a smaller urban area" or "a larger urban area" would mean such area as the Governor may having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment and non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification.

71. The city of Allahabad falls under the description of "a larger urban area", and there is constituted a Municipal Corporation for this "larger urban area". The statutory provisions applicable to such larger urban areas are in terms of the UP Municipal Corporations Act, 1959[19] (UP Act No.2 of 1959). Sub-section (10) of Section 2 defines the term "city" as meaning a larger urban area notified under clause (2) of Article 243-Q of the Constitution, in the following terms:-

> *"**2(10)**. "city" means a larger urban area as notified under clause (2) of Article 243-Q of the Constitution;"*

72. Section 3 of the Act, 1959 provides for declaration of a larger urban area, and in terms thereof, it is stipulated that any area specified by the Governor in a notification under clause (2) of Article 243-Q of the Constitution with such limits as are specified therein to be a larger urban area, shall be known as city, by such name as he may specify. For ease of reference, Section 3 of the Act, 1959 is being reproduced below:-

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19 the Act, 1959

> *"**3. Declaration of larger urban area.** – (1) Any area specified by the Governor in a notification under clause (2) of Article 243-Q of the Constitution with such limits as are specified therein to be a larger urban area, shall be known as a City, by such name as he may specify.*
>
> *(2) x x x x x"*

73. A conjoint reading of the provisions contained under clause (2) of Article 243-Q and Section 3(1) read with Section 2(10) of the Act, 1959 makes it clear that an area specified by the Governor by public notification issued under clause (2) of Article 243-Q, as "a larger urban area", with such limits as are specified therein shall be known as a city, by such name as the Governor may specify by a notification. The power to name "a larger urban area" also described as a "city" under the Act, 1959 is clearly implicit under Section 3 of the Act, 1959. It was sought to be argued on behalf of the petitioners that the power to specify the name of "a larger urban area" also known as a "city", under Section 3 of the Act, 1959 could not be exercised for renaming, as once the power having been exercised the same stood exhausted.

74. We are afraid, the aforementioned contention sought to be canvassed is liable to be rejected by simply referring to the provisions contained under the UP General Clauses Act, 1904[20], in particular, Sections 14 and 21. Section 14 deals with the exercise of a power successively and it provides that where, by any Uttar Pradesh Act any power is conferred then that power may be exercised from time to time as the occasion requires. Further Section 21 embodies a rule of construction to the effect that a power to issue a notification includes the power to add, amend, vary or rescind the same. For ready reference, Sections 14 and 21 of the Act, 1904 are being extracted below:-

> *"**14. Powers conferred on the State Government to be exercisable from time to time**.—Where, by any Uttar Pradesh Act conferred then that power may be exercised from time to time as occasion requires.*
>
> *x x x x x*
>
> *"**21. Power to make to include power to add to, amend, vary or rescind statutory instruments**.—Where, by any Uttar Pradesh Act, a power to issue statutory instruments is conferred, then that power*

20 the Act, 1904

includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add, amend, vary or rescind any statutory instruments so issued."

75. Sections 14 and 21 of the Act, 1904, read together, make it clear that where the power is conferred on an authority to do a particular act, such power can be exercised from time to time as the occasion arises and carries with it the power to withdraw, modify, amend or cancel the notification earlier issued in exercise of the said power. The law in this regard has been succinctly summarized in the case of ***Shree Sidhbali Steels Ltd. & Ors. Vs. State of UP & Ors.***[21] wherein it was held as follows:-

"36. It may be mentioned that the Electricity (Supply) Act, 1948 was enacted by Parliament to provide for the rationalisation of the production and supply of electricity and generally for taking measures conducive to electrical development. The Electricity (Supply) Act, 1948 being a Central Act, the provisions of Sections 14 and 21 of the General Clauses Act, 1897 would be applicable. Section 14 of the General Clauses Act, 1897 reads as under:

> *"**14. Powers conferred to be exercisable from time to time**.—(1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then, unless a different intention appears, that power may be exercised from time to time as occasion requires.*
>
> *(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."*

Whereas Section 21 of the General Clauses Act, 1897 reads as under:

> *"**21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws**.—Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."*

37. Section 14 deals with the exercise of a power successively and has no relevance to the question whether the power claimed can at all be conferred. By Section 14 of the General Clauses Act, 1897, any power conferred by any Central enactment may be exercised from time to time as occasion arises, unless a different intention appears in the Act. There is no different intention in the Electricity (Supply) Act, 1948. Therefore, the power to issue a notification under Section 49 of the Act of 1948, can be exercised from time to time if circumstances so require.

38. Section 21 is based on the principle that power to create includes the power to destroy and also the power to alter what is created. Section 21, amongst other things, specifically deals with power to add to, amend, vary or rescind the notifications. The power to

21 (2011) 3 SCC 193

rescind a notification is inherent in the power to issue the notification without any limitations or conditions. Section 21 embodies a rule of construction. The nature and extent of its application must be governed by the relevant statute which confers the power to issue the notification, etc. However, there is no manner of doubt that the exercise of power to make subordinate legislation includes the power to rescind the same. This is made clear by Section 21. On that analogy an administrative decision is revocable while a judicial decision is not revocable except in special circumstances. Exercise of power of a subordinate legislation will be prospective and cannot be retrospective unless the statute authorises such an exercise expressly or by necessary implication.

39. The principle laid down in Section 21 is of general application. The power to rescind mentioned in Section 21 is without limitations or conditions. It is not a power so limited as to be exercised only once. The power can be exercised from time to time having regard to the exigency of time. When by a Central Act power is given to the State Government to give some relief by way of concession and/or rebate to newly-established industrial units by a notification, the same can be curtailed and/or withdrawn by issuing another notification under the same provision and such exercise of power cannot be faulted on the ground of promissory estoppel.

40. It would be profitable to remember that the purpose of the General Clauses Act is to place in one single statute different provisions as regards interpretations of words and legal principles which would otherwise have to be specified separately in many different Acts and Regulations. Whatever the General Clauses Act says whether as regards the meaning of words or as regards legal principles, has to be read into every statute to which it applies. Further, power to curtail and/or withdraw the notification issued under Section 49 of the Electricity (Supply) Act, 1948 giving rebate is implied under Section 49 itself on proper interpretation of Section 21 of the General Clauses Act. Therefore, this Court is of the firm opinion that, power to curtail and/or withdraw the notification issued under Section 49 of the Electricity (Supply) Act, 1948, granting certain benefits, was available to the respondents.

41. By virtue of Sections 14 and 21 of the General Clauses Act, when a power is conferred on an authority to do a particular act, such power can be exercised from time to time and carries with it the power to withdraw, modify, amend or cancel the notifications earlier issued, to be exercised in the like manner and subject to like conditions, if any, attached with the exercise of the power. It would be too narrow a view to accept that chargeability once fixed cannot be altered. Since the charging provision in the Electricity (Supply) Act, 1948 is subject to the State Government's power to issue notification under Section 49 of the Act granting rebate, the State Government, in view of Section 21 of the General Clauses Act, can always withdraw, rescind, add to or modify an exemption notification. No industry can claim as of right that the Government should exercise its power under Section 49 and offer rebate and it is for the Government to decide whether the conditions are such that rebate should be granted or not."

76. The power to lay down a policy by an administrative decision as being inclusive of the power to change or withdraw the policy was considered by the Supreme Court in ***Bajaj Hindustan Ltd. Vs. Sir Shadi Lal Enterprises Ltd. & Anr.***[22]

> *"41. The power to lay policy by executive decisions or by legislation includes power to withdraw the same unless it is by mala fide exercise of power, or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is settled law that the court gives a large leeway to the executive and the legislature. Granting licences for import or export is an executive or legislative policy. The Government would take diverse factors for formulating the policy in the overall larger interest of the economy of the country. When the Government is satisfied that change in the policy was necessary in the public interest it would be entitled to revise the policy and lay down a new policy."*

77. We may thus infer that the power under Section 3 of the Act, 1959 to specify "a larger urban area" as a "city" would include within its ambit and scope to exercise the said power successively so as to modify or amend the notification issued earlier, and the power to specify a name under Section 3 would also include the power to rename the said "larger urban area".

78. We, however, may note that in respect of the question with regard to naming/renaming the larger urban area the records placed before us only refer to a resolution dated 18.08.2018 said to have been passed by the Municipal Corporation of Allahabad, and as such the issue in this regard, is premature, and in our view the same is not required to be gone into at this stage.

79. In the case at hand the language of the proviso to sub-section (2) of Section 6 of the Code, 2006 read with Rules 3 and 4 of the Rules, 2016 make it clear that a distinction has been drawn between the powers exercisable by the State Government while altering the limits of any revenue area and the powers which are exercisable while naming and altering the name of a revenue area. It is only in a case of a

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22 (2011) 1 SCC 640

proposal to alter the limits of any revenue area that the proviso to sub-section (2) of Section 6 is attracted. The requirement of publishing of a proposal for inviting objections and considering the objections to such proposals is required only in the case of consideration of a proposal to alter the limits of any revenue area, and not in a case of a proposal with regard to naming or altering the name of any revenue area. Any other construction of the proviso to sub-section (2) of Section 6 would be contrary to the intent of the statute, and in view of the settled principles of construction of a statutory provision the same is required to be avoided.

80. Sub-section (2) of Section 6 empowers the State Government to name or alter the name of any revenue area by issuance of a notification to the said effect.

81. The limited scope of judicial review in such matters was underlined by the Supreme Court in ***State of UP & Anr. Vs. Johri Mal***[23] and it was held as follows:-

> *"28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review, succinctly put, is:*
>
> *(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.*
>
> *(ii) A petition for a judicial review would lie only on certain well-defined grounds.*
>
> *(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.*
>
> *(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.*

23 (2004) 4 SCC 714

> *(v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a judge should not be invoked as a substitute for the judgment of the legislative bodies. (See Ira Munn v. State of Illinois [94 US 113 : 24 L Ed 77 (1876)].”*

82. The law on the scope of judicial review in policy matters and administrative decisions, in the context of a challenge raised to a proposal for shifting of a sanctuary notified under the Wildlife (Protection) Act, 1972 was considered recently by this Court in the case of ***Bharat Jhunjhunwala Vs. Union of India & 4 Ors.***[24] wherein it was stated as follows:-

> *“43. The scope of judicial review in the policy matters and administrative decisions, has been considered by the Apex Court in a number of cases.*
>
> *44. In a public interest litigation against setting up a public project involving environmental pollution, the Government's clearance to the proposal for construction of a thermal power plant was challenged, and after going into the matter in depth and finding nothing wrong in the decision of the Government the High Court dismissed the writ petition whereupon special leave petitions were filed before the Supreme Court and reiterating the self-imposed restrictions of a court in considering such an issue, the special leave petitions were dismissed by the Supreme Court in the case of Dahanu Taluka Environment Protection Group & Anr. Vs. Bombay Suburban Electricity Supply Company Ltd & Ors. (1991) 2 SCC 539 with the following observations:-*
>
> > *“2. The limitations, or more appropriately, the self-imposed restrictions of a Court in considering such an issue as this have been set out by the Court in Rural Litigation & Entitlement Kendra v. State of U.P. and Ors. 1987 (1) SCR 637 and Sachidanand Pandey v. State of W.B. The observations in those decisions need not be reiterated here. It is sufficient to observe that it is primarily for the Governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand and the necessity for preservation of social and ecological balances, avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting objectives. The Court's role is restricted to examine whether the Government has taken into account all relevant aspects and has neither ignored or overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision.”*
>
> *45. The scope of judicial review of a policy evolved by the Government was considered before the Supreme Court in Federation of Railway Officers Association & Ors. Vs. Union of India (2003) 4 SCC 289 wherein the decision of the Government to create new Railway Zones on the basis of recommendations made by a Railway*

24 2019 (1) ADJ 837 (DB)

Reforms Committee and also a study group set up for the purpose was sought to be challenged. Upholding the decision of the High Court wherein it had been held that propriety or beneficence of a policy decision of the Government was beyond domain of the Court, the Special Leave Petitions were dismissed, with the following observations:-

> *"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, the Court will not interfere with such matters."*

46. In Essar Oil Ltd. Vs. Halar Utkarsh Samiti (2004) 2 SCC 392 while considering the decision of the State Government, which had been put to challenge, granting permission under Section 29 of the Act, 1972, the law on the subject was laid down in the following terms:-

> *"37. Once the State Government has taken all precautions to ensure that the impact on the environment is transient and minimal, a court will not substitute its own assessment in place of the opinion of persons who are specialists and who may have decided the question with objectivity and ability. [See Shri Sachidanand Pandey v. The State of W.B. (1987) 2 SCC 295: AIR 1987 SC 1109.] Courts cannot be asked to assess the environmental impact of the pipelines on the wild life but can at least oversee that those with established credentials and who have the requisite expertise have been consulted and that their recommendations have been abided by, by the State Government. If it is found that the recommendations have not been so abided by, the mere fact that large economic costs are involved should not deter the Courts from barring and if necessary, undoing the development."*

47. The ambit of judicial review of the decision making process of the Government again came up before the Supreme Court in a matter pertaining to the safety and environmental aspects of the Tehri Dam, in N.D. Jayal & Anr. Vs. Union of India & Ors. (2004) 9 SCC 362 wherein the decision of the Government on a particular safety aspect of the dam, which was based upon a report submitted by group of experts, was sought to be questioned, and the Apex Court by its majority judgment held that the Court cannot sit in judgment over the cutting edge of scientific analysis and where the Government or the authorities concerned after due consideration of all view points and full application of mind had taken a decision it would not be appropriate for the Court to interfere and such matters must be left to the wisdom of the Government or the implementing agency, and only, if such decision is based on irrelevant consideration or non-consideration of material or is thoroughly arbitrary, then the Court would get in the way.

48. The relevant observations of the Supreme Court made in the aforesaid judgment are as follows:-

> *"19. In the present case the Government, even after the decision of this Court which did not interfere with the decision of the Government on*

safety aspects in Tehri Bandh Virodhi Sangarsh Samiti's case (supra) again seriously examined safety aspects as a matter of precaution. The Office Memorandum dated 1.2.1999 of the Ministry of Power, Government of India, before us testifies this position. Green signal for further works was given by the Government after satisfying itself with the safety of the dam. A mere revisit to the earlier decision cannot be counted as a sign of doubt regarding the dam safety. If the Government so desires they could have abandoned the Project. The necessity or effectiveness of conducting 3D Non- Linear Test or Dam Break Analysis were taken into account by the Government and if the Government decided not to conduct such tests upon the opinion of the expert bodies concerned, then the Court cannot advice the Government to go for such tests unless malafides, arbitrariness or irrationality is attributed to that decision. The decision of the Government is not based on any financial constraints or uncertainty as to technical opinion. It was clearly of the view that the last Committee was unanimous that the Tehri Dam to be constructed is safe but the advice based on abundant caution was not accepted. As a result, we need not re-examine the safety aspects of the dam.

20. This Court cannot sit in judgment over the cutting edge of scientific analysis relating to the safety of any project. Experts in science may themselves differ in their opinions while taking decisions on matters related to safety and allied aspects. The opposing viewpoints of the experts will also have to be given due consideration after full application of mind. When the Government or the authorities concerned after due consideration of all viewpoints and full application of mind took a decision, then it is not appropriate for the Court to interfere. Such matters must be left to the mature wisdom of the Government or the implementing agency. It is their forte. In such cases, if the situation demands, the Courts should take only a detached decision based on the pattern of the well-settled principles of administrative law. If any such decision is based on irrelevant consideration or non-consideration of material or is thoroughly arbitrary, then the Court will get in the way. Here the only point to consider is whether the decision-making agency took a well-informed decision or not. If the answer is "yes", then there is no need to interfere. The consideration in such cases is in the process of decision and not in its merits."

49. The scope of a public interest litigation and the exercise of judicial review in a policy matter was considered by the Supreme Court in Networking of Rivers In Re. (2012) 4 SCC 51 and the principles in this regard were restated in the following terms:-

"74. The abovestated principles clearly show that a greater element of mutuality and consensus needs to be built between the States and the Centre on the one hand, and the States inter se on the other. It will be very difficult for the Courts to undertake such an exercise within the limited scope of its power of judicial review and even on the basis of expanded principles of Public Interest Litigation. A Public Interest Litigation before this Court has to fall within the contours of constitutional law, as no jurisdiction is wider than this Court's constitutional jurisdiction under Article 32 of the Constitution. The Court can hardly take unto itself tasks of making of a policy decision or planning for the country or determining economic factors or other crucial aspects like need for acquisition and construction of river linking channels under that programme. The Court is not equipped to take such expert decisions and they essentially should be left for the Central Government and the State concerned. Such an attempt by the

Court may amount to the Court sitting in judgment over the opinions of the experts in the respective fields, without any tools and expertise at its disposal."

50. In the case of Jal Mahal Resorts (P) Ltd. Vs. K.P. Sharma (2014) 8 SCC 804 the Supreme Court while examining the decision of the Government of Rajasthan to restore the Lake and Jal Mahal monument and declare the precinct area on a public-public partnership format observed as follows:-

"137 Although the Courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State Authorities specially if it based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the Court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. This might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers."

51. In the case of Centre for a Public Interest Litigation Vs. Union of India & Ors. (2016) 6 SCC 408 while considering the scope of a judicial review of a policy decision of the Government, a view was taken calling for minimal interference by the Courts in exercise of powers of judicial review of Government policy when based on deliberations of technical experts. It was held that interference with the discretion of the Government would be warranted only when found to be arbitrary, mala fide, based on extraneous considerations or against statutory provisions. The observations made by the Supreme Court in the said judgment are being extracted below:-

"21. Such a policy decision, when not found to be arbitrary or based on irrelevant considerations or mala fide or against any statutory provisions, does not call for any interference by the Courts in exercise of power of judicial review. This principle of law is ingrained in stone which is stated and restated time and again by this Court on numerous occasions. In Jal Mahal Resorts (P) Ltd. v. K.P. Sharma, the Court underlined the principle in the following manner:

137. From this, it is clear that although the courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State authorities, specially if it is based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the court chooses to overrule the correctness of such administrative decision and merits of the view of

the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra-judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. In our considered view, this might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers. In fact, this Court in M.P. Oil Extraction v. State of M.P., (1997) 7 SCC 592 at p. 611 has unequivocally observed that:

> *'41. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.'*

138. However, we hasten to add and do not wish to be misunderstood so as to infer that howsoever gross or abusive may be an administrative action or a decision which is writ large on a particular activity at the instance of the State or any other authority connected with it, the Court should remain a passive, inactive and a silent spectator. What is sought to be emphasised is that there has to be a boundary line or the proverbial "Laxman rekha" while examining the correctness of an administrative decision taken by the State or a Central authority after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution. If such equilibrium in the matter of governance gets disturbed, development is bound to be slowed down and disturbed specially in an age of economic liberalisation wherein global players are also involved as per policy decision.

22. Minimal interference is called for by the courts, in exercise of judicial review of a Government policy when the said policy is the outcome of deliberations of the technical experts in the fields inasmuch as courts are not well-equipped to fathom into such domain which is left to the discretion of the execution. It was beautifully explained by the Court in Narmada Bachao Andolan v. Union of India (2000) 10 SCC 664 and reiterated in Federation of Railway Officers Assn. v. Union of India (2003) 4 SCC 289 in the following words:

> *"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters."*

23. Limits of the judicial review were again reiterated, pointing out the same position by the courts in England, in G. Sundarrajan v. Union of India (2013) 6 SCC 620 in the following manner:

> *"15.1. Lord MacNaughten in Vacher & Sons Ltd. v. London Society of*

Compositors (1913 AC 107 : (1911-13) All ER Rep 241 (HL) has stated:

> *"... Some people may think the policy of the Act unwise and even dangerous to the community. … But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction."*

15.2. In Council of Civil Service Unions v. Minister for the Civil Service (1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL), it was held that it is not for the courts to determine whether a particular policy or particular decision taken in fulfilment of that policy are fair. They are concerned only with the manner in which those decisions have been taken, if that manner is unfair, the decision will be tainted with what Lord Diplock labels as "procedural impropriety."

15.3. This Court in M.P. Oil Extraction v. State of M.P. (1997) 7 SCC 592 held that unless the policy framed is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is invalid in constitutional or statutory mandate, court's interference is not called for.

15.4. Reference may also be made of the judgments of this Court in Ugar Sugar Works Ltd. v. Delhi Admn. (2001) 3 SCC 635, Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal (2007) 8 SCC 418 and Delhi Bar Assn. v. Union of India (2008) 13 SCC 628.

15.5. We are, therefore, firmly of the opinion that we cannot sit in judgment over the decision taken by the Government of India, NPCIL, etc. for setting up of KKNPP at Kudankulam in view of the Indo-Russian Agreement."

24. When it comes to the judicial review of economic policy, the Courts are more conservative as such economic policies are generally formulated by experts. Way back in the year 1978, a Bench of seven Judges of this Court in Prag Ice & Oil Mills v. Union of India (1978) 3 SCC 459 : AIR 1978 SC 1296 : 1978 Cri LJ 1281 carved out this principle in the following terms:

> *"24. We have listened to long arguments directed at showing us that producers and sellers of oil in various parts of the country will suffer so that they would give up producing or dealing in mustard oil. It was urged that this would, quite naturally, have its repercussions on consumers for whom mustard oil will become even more scarce than ever ultimately. We do not think that it is the function of this Court or of any court to sit in judgment over such matters of economic policy as must necessarily be left to the government of the day to decide. Many of them, as a measure of price fixation must necessarily be, are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts."*

25. Taking aid from the aforesaid observations of the Constitution Bench, the Court reiterated the words of caution in Peerless General Finance and Investment Co. Limited v. RBI (1992) 2SCC 343 with the following utterance:

> *"31. The function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good*

> *faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."*
>
> *26. It cannot be doubted that the primary and central purpose of judicial review of the administrative action is to promote good administration. It is to ensure that administrative bodies act efficiently and honestly to promote the public good. They should operate in a fair, transparent, and unbiased fashion, keeping in forefront the public interest. To ensure that aforesaid dominant objectives are achieved, this Court has added new dimension to the contours of judicial review and it has undergone tremendous change in recent years. The scope of judicial review has expanded radically and it now extends well beyond the sphere of statutory powers to include diverse forms of "public" power in response to the changing architecture of the Government. Thus, not only has judicial review grown wider in scope; its intensity has also increased. Notwithstanding the same,*
>
> > *"it is, however, central to received perceptions of judicial review that courts may not interfere with exercise of discretion merely because they disagree with the decision or action in question; instead, courts intervene only if some specific fault can be established–for example, if the decision was reached procedurally unfair."*
> >
> > *27. The raison d'etre of discretionary power is that it promotes decision maker to respond appropriately to the demands of particular situation. When the decision-making is policy-based, judicial approach to interfere with such decision making becomes narrower. In such cases, in the first instance, it is to be examined as to whether policy in question is contrary to any statutory provisions or is discriminatory/arbitrary or based on irrelevant considerations. If the particular policy satisfies these parameters and is held to be valid, then the only question to be examined is as to whether the decision in question is in conformity with the said policy."*
> >
> > *52. In G. Sundarrajan Vs. Union of India (2013) 6 SCC 620 a challenge sought to be raised regarding setting up of a nuclear power plant on grounds of safety and environmental protection was repelled by the Apex Court and it was held that fairness and reasonableness of policy and findings by experts were not amenable to judicial review and that the Courts were concerned only with the manner in which the policy decisions had been taken and unless the policy framed was absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the authority or was invalid in constitutional or statutory mandate the Court's interference was not called for."*

83. With regard to the "standard of reasonableness" which may be applied while exercising the power of judicial review, we may gainfully refer to the following extract from the well known treatise on ***Administrative Law***[25] by ***William Wade and Christopher Forsyth***:-

> *"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not*

25 Administrative Law (10th Edition) by William Wade and Christopher Forsyth

> *usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion..... The court must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits. 'With the question whether a particular policy is wise or foolish the court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority."*

84. The aforementioned passage was also noticed by the Supreme Court while considering the scope of judicial review in the context of grant of a contract in ***Sterling Computers Ltd. Vs. M/s M & N Publications Ltd. & Ors.***[26].

85. The limitations inherent in the courts' constitutional role while exercising powers of judicial review have been discussed in ***De Smith's Judicial Review***[27], and in para 1-033, it has been stated as follows:-

> *"The principle of the separation of powers confers matters of social and economic policy upon the legislature and the executive, rather than the judiciary. Courts should, therefore, avoid interfering with the exercise of discretion by the legislature or executive when its aim is the pursuit of policy. It is not for judges to weigh utilitarian calculations of social, economic or political preference."*

86. We are thus of the view that the powers to be exercised by the State Government while naming or altering the name of any revenue area, is purely an administrative power which is in the realm of a policy decision, and there are clearly circumscribed limits of judicial review of such administrative and policy decisions.

87. A similar issue as in the present case arose in the case of ***Mohd. Mustaq Ahemad Vs. State of Maharashtra***[28], whereunder a notification issued by the State of Maharashtra publishing a draft notification intimating the intention of the State Government to rename

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26 (1993) 1 SCC 445
27 De Smith's Judicial Review, 7th Edition (Woolf, Jowell, Le Sueur, Donnelly and Hare)
28 1996 (1) MhLJ 589

Aurangabad Revenue Division as Marathwada Division, Aurangabad District as Sambhajinagar District and Aurangabad Sub-Division as Sambhajinagar Sub-Division, Aurangabad Taluka as Sambhajinagar Taluka and Aurangabad City as Sambhajinagar City, were put to challenge. The provisions contained under the relevant state enactment namely the Maharashtra Land Revenue Code, 1966[29] with regard to the powers of the State Government for altering the limits of the revenue area and also altering the name of the revenue area, are being extracted below:-

> *"6. Section 4 of the Maharashtra Land Revenue Code, 1966 so far as is relevant for the purposes of this petition is quoted below:—*
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> *4. (1) The State Government may, by notification in the Official Gazette, specify —*
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> *(i) the districts (including the City of Bombay) which constitute a division;*
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> *(ii) the sub-divisions which constitute a district;*
>
> *(iii) the talukas which constitute a sub-division;*
>
> *(iv) the villages which constitute a taluka;*
>
> *(v) the local area which constitute a village; and*
>
> *(vi) alter the limits of any such revenue area so constituted by amalgamation, division or in any manner whatsoever, or abolish any such revenue area and may name and alter the name of any such revenue area; and in any case where any area is renamed, then all references in any law or instrument or other document to the area as renamed, unless expressly otherwise provided:*
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> …....
>
> (2) …...
>
> *3. The divisions, districts, sub-divisions, talukas, circles, sazas and villages existing at the commencement of this Code shall continue under the names they bear respectively to be the divisions, districts, sub-divisions, talukas, circles, sazas and villages, unless otherwise altered under this section."*

88. Clause (vi) of sub-section (1) of Section 4 of the Code, 1966, referred to above, is on the subject of alteration of the limits of revenue area so constituted by amalgamation, division or in any manner whatsoever and gives power to name or rename the areas, and it was held by the High Court that Section 4 of the Code, 1966 is a declaration of the executive power of the State Government to name or rename any revenue area either it be a division, a district, a sub-division, a taluka or a village which includes town or city, in the

29 the Code, 1966

following terms:-

> *"Clause (vi) of sub-section (1) of Section 4 speaks about the alteration of the limits of revenue area so constituted by amalgamation, division or in any manner whatsoever and gives power to name or rename the areas and provides that after name and/or renaming the areas, reference to any local law, instrument or other document to the area under its original name shall be deemed to be references to the area as renamed unless expressly otherwise provided. Therefore, section 4 is a declaration of the executive power of the State to name or rename any revenue area either it be a division, a district, a sub-division, a taluka or a village which includes town or city. There is nothing in this sub-section which supports Mr. Latif's submission that the power can be exercised only in case there is alteration in the boundaries of revenue area. Sub-section (3) of said section 4 makes the position clear. It says that the divisions, districts, sub-divisions, talukas, circles, sazas and villages shall continue under the names they bear respectively unless otherwise altered under this section 4 of the Maharashtra Land Revenue Code, 1966 would extend to renaming any revenue area and it is not qualified by any clause limiting power only at the time of alteration of the boundaries. The Notification issued by Urban Development Department which is subject matter of the challenge in Writ Petition No.5565 of 1995, is only consequential in nature that if the State Government changes the name then the Notification of 3.12.1982 constituting a Municipal Corporation for city of Aurangabad will have to be suitably amended giving effect to what is provided, under sub-section (3) of section 4 of the Maharashtra Land Revenue Code, 1966. Therefore, submission of Shri Latif that both the notifications are totally without jurisdiction will have to be discarded."*

89. Further, the High Court repelled the contention raised by the learned counsel for the petitioners that the change of name would affect the life of the citizens in respect of culture and heritage and it was held that naming or renaming of division, district, taluka, city or village cannot, in any manner, be said to further the cause of welfare of the people and the said decisions being policy decisions, there was a limit to the judicial review of such decisions. The High Court held as follows:-

> *"8. Though Counsel for the petitioner very vehemently submitted before us that the name of the city of Aurangabad is integral part of heritage enjoyed by the citizens of the city, nothing is placed on record as to how life of the citizens in respect of culture and heritage would be affected mere by change of the name. ....."*

90. A similar controversy with regard to altering the place of the Headquarter of a Mandal came up for consideration before the

Supreme Court in the case of ***B.N. Shankarappa Vs. Uthanur Srinivas & Ors.***[30] wherein provisions contained under Section 4 of Karnataka Zila Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983[31] fell for consideration, and it was held that the power to specify the Headquarter of a Mandal could be exercised from time to time as the occasion requires and the ultimate decision in this regard was left to the Government to decide and that conferment of discretion on the concerned authority must necessarily leave the choice to the discretion of the said authority and it would not be proper for the Courts to interfere with the discretion so exercised unless it is exercised in an arbitrary or whimsical manner without proper application of mind or for ulterior or *mala fide* purpose. The observations made by the Supreme Court in this regard are being extracted below:-

> *"7. As pointed out earlier, Section 4(1) empowers the Deputy Commissioner to do two things, namely, (i) to declare an area as a Mandal, and (ii) to specify its headquarter. The word 'also' preceding the words 'specify its headquarter' cannot be understood to convey that the power once exercised would stand exhausted. Such a construction sought to be placed by counsel for the respondent does not accord with the language of the provision. It merely conveys that when the Deputy Commissioner constitutes a Mandal for the first time it will be necessary for him to specify its headquarter also. This power to specify the headquarter conferred on the Deputy Commissioner can be exercised from time to time as occasion requires by virtue of Section 14 of the Karnataka General Clauses Act. The attention of the High Court was not drawn to the provision in Section 14 when it disposed of the Writ Appeal No. 2564 of 1987 and Writ Petition No. 375 of 1989 on May 28, 1991. It is true that the power conferred by sub-section (2) of Section 4 can be exercised where there is a change in the area of the Mandal either by addition or reduction in the area. Under clause (c) of sub-section (2) of Section 4 the Deputy Commissioner is also invested with the power to alter the name of any Mandal. The scheme of sub-section (2) would, therefore, show that when there is any increase or decrease in the area of any Mandal, the Deputy Commissioner may, after the previous publication of the proposal by notification, exercise that power and rename the Mandal, if so required. The absence of the power in sub-section (2) of Section 4 to specify the headquarter afresh does not necessarily mean that once the initial constitution of the Mandal takes place and the headquarter is specified the power is exhausted, notwithstanding Section 14 of the Karnataka General Clauses Act. If such an interpretation is placed on the scheme of*

30 (1992) 2 SCC 61
31 the Act, 1983

> *Section 4 of the Act neither the Deputy Commissioner nor any other authority will thereafter be able to alter and specify any other place as the Mandal's headquarter. Such a view would create a vacuum and even when a genuine need for specifying any other headquarter arises, the authorities will not be able to exercise power for want of a specific provision in the Act and that may lead to avoidable hardship and complications. It is, therefore, essential that we read the provision of the Act in a manner so as to ensure that such a vacuum does not arise and the power is retained in the concerned authority which can be exercised should a genuine need arise. In J.R. Raghupathy v. State of A.P. (1988) 4 SCC 364 this Court observed that the ultimate decision as to the place or location of Mandal headquarter is left to the Government to decide and conferment of discretion upon the concerned authority in that behalf must necessarily leave the choice to the discretion of the said authority and it would not be proper for the courts to interfere with the discretion so exercised. This is not to say that the discretion can be exercised in an arbitrary or whimsical manner without proper application of mind or for ulterior or malafide purpose. If it is shown that the discretion was so exercised it would certainly be open to the courts to interfere with the discretion but not otherwise."*

91. In the case of ***J.R. Raghupathy & Ors. Vs. State of A.P. & Ors.***[32] which has also been referred to in ***B.N. Shankarappa*** (supra) the legality and propriety of the formation of certain Revenue Mandals, and particularly location of Mandal Headquarters, abolition of certain Mandals or shifting of Mandal Headquarters, deletion and addition of villages to certain Mandals were questioned in a bunch of petitions and in some of the cases the High Court quashed the notification for location of Mandal Headquarters at a particular place holding that there was a breach of the guidelines and directions were issued to the Government to issue a fresh notification for location of Mandal Headquarters. The appeals by Special Leave were heard and the Supreme Court held that the High Court was not justified in interfering with the location of Mandal Headquarters and in quashing the notifications on the ground that the Government acted in breach of the guidelines or that one place or the other was more centrally located or that location at the other place would promote general public convenience or that the Headquarters should be fixed at the particular place with a view to develop the area surrounded by it. The observations made by the Supreme Court are being extracted below:-

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32 (1988) 4 SCC 364

> *"9. ….. We are of the opinion that the High Court had no jurisdiction to sit in appeal over the decision of the State Government to locate the Mandal Headquarters at a particular place. The decision to locate such headquarters at a particular village is dependent upon various factors. The High Court obviously could not evaluate for itself the comparative merits of a particular place as against the other for location of the Mandal Headquarters. …..*
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> *x x x x x*
>
> *31. We find it rather difficult to sustain the judgment of the High Court in some of the cases where it has interfered with the location of Mandal Headquarters and quashed the impugned notifications on the ground that the Government acted in breach of the guidelines in that one place or the other was more centrally located or that location at the other place would promote general public convenience, or that the headquarters should be fixed at a particular place with a view to develop the area surrounded by it. ….."*

92. The power of the State Government with regard to creation of a new district fell for consideration before the High Court of Kerala in ***Madhusoodan Nair Vs. Governor of Kerala***[33] wherein after referring to a Division Bench judgment of the Andhra Pradesh High Court in ***R. Sultan Vs. State of Andhra Pradesh***[34], it was held as follows:-

> *"15. A Division Bench of the Andhra High Court speaking through Justice Ekbote, as he then was held in R. Sultan v. State ILR (1970) AP 1075:*
>
> *"There is admittedly no provision in the Constitution on the lines of Art. 3 of the Constitution of India empowering the State Government to organise or reorganise Districts, Taluks or Villages situate within the geographical limits of the States. It would however be a mistake to infer from the absence of any specific provision in the Constitution that the State Executive or legislature is not competent to divide the area of the State into several Districts, Divisions, Taluks, Firkhas or Village.*
>
> *Art. 154 vests the Executive power of the State in the Governor. For purposes of effectively executing the law and for the purpose of carrying out effective and efficient administration, formation of District, Taluks and Villages is necessary and that is why such a power to form and re-form District or other Units is a necessary power which inseparably goes with the power to legislate on the subjects enumerated in the State of Concurrent list. This power necessarily goes along with both the executive power referred to in Art.154 read with Art.162 and with the legislative power referred to in Art.246 read with the several entries of the state and the concurrent list. The State Governor who has executive power and who can exercise the same either directly or through the officers subordinate to him appointed at the District. Taluk or Village level, can in the exercise of his executive powers constitute or reconstitute District. Taluks or Village for the purpose of carrying out his executive obligation in regard to entries in the State or Concurrent list.*
>
> *Formation or re-formation of a District is an incidental or ancillary or subsidiary power relating to various entries in the State or Concurrent list,*

33 LSWS (KER) 1982 127
34 ILR (1970) AP 1075

and Entry 97, the residuary provision cannot be said to be attracted to the said subject."

93. In the aforementioned case of ***Madhusoodan Nair*** (supra) the judgment of the Supreme Court of the United States in ***Missouri vs. Lewis***[35] was also referred to and it was held that it was difficult for the Court to intervene in matters which are completely within the executive powers of the Government and which are purely administrative matters unless there is a patent abuse of powers. The relevant extract from ***Missouri Vs. Lewis*** (supra) is as follows:-

"5. ….Each State has the right to make political subdivisions of its territory for municipal purposes, and to regulate their local government..…....Convenience, if not necessity, often requires this to be done, and it would seriously interfere with the power of a State to regulate its internal affairs to deny to it this right....."

94. An attempt was made by the petitioners to challenge the notification in question by asserting that the same is contrary to the secular ethos of the Indian polity. In this regard, reliance was sought to be placed on clause (e) under Article 51-A which enjoins upon every citizen a duty to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities.

95. We may take note of the fact that Article 51-A was inserted under Part IV vide Constitution (Forty-second Amendment) Act, 1976, and together with the duty to promote harmony and the spirit of brotherhood amongst people of India transcending religious, linguistic and regional or sectional diversities as provided under clause (e) thereof, it also enjoins as a duty on every citizen of India to value and preserve the rich heritage of our composite culture, under clause (f) of Article 51-A. The concept of secularism under the Constitution and the development of a composite culture embedded in national identity has been noticed by the Supreme Court in a series of judgments.

96. In ***S.R. Bommai & Ors. Vs. Union of India & Ors.***[36] it was held as follows:-

35 101 US 22 : 25 L.Ed. 989
36 (1994) 3 SCC 1

"25. India can rightly be described as the world's most heterogeneous society. It is a country with a rich heritage. Several races have converged in this sub-continent. They brought with them their own cultures, languages, religions and customs. These diversities threw up their own problems but the early leadership showed wisdom and sagacity in tackling them by preaching the philosophy of accommodation and tolerance. This is the message which saints and sufis spread in olden days and which Mahatma Gandhi and other leaders of modern times advocated to maintain national unity and integrity. The British policy of divide and rule, aggravated by separate electorates based on religion, had added a new dimension of mixing religion with politics which had to be countered and which could be countered only if the people realised the need for national unity and integrity. It was with the weapons of secularism and non-violence that Mahatma Gandhi fought the battle for independence against the mighty colonial rulers. As early as 1908, Gandhiji wrote in Hind Swaraj:

"India cannot cease to be one nation, because people belonging to different religions live in it. … In no part of the world are one nationality and one religion synonymous terms; nor has it ever been so in India."

Gandhiji was ably assisted by leaders like Pandit Jawaharlal Nehru, Maulana Abul Kalam Azad and others in the task of fighting a peaceful battle for securing independence by uniting the people of India against separatist forces. In 1945 Pandit Nehru wrote:

"I am convinced that the future government of free India must be secular in the sense that government will not associate itself directly with any religious faith but will give freedom to all religious functions."

And this was followed up by Gandhiji when in 1946 he wrote in Harijan:

"I swear by my religion. I will die for it. But it is my personal affair. The State has nothing to do with it. The State will look after your secular welfare, health, communication, foreign relations, currency and so on, but not my religion. That is everybody's personal concern."

x x x x x

182. Making of a nation State involves increasing secularisation of society and culture. Secularism operates as a bridge to cross over from tradition to modernity. The Indian State opted this path for universal tolerance due to its historical and cultural background and multi-religious faiths. Secularism in the Indian context bears positive and affirmative emphasis. Religions with secular craving for spiritual tolerance have flourished more and survived for longer period in the human history than those who claimed to live in a non-existent world of their own. Positive secularism, therefore, separates the religious faith personal to man and limited to material, temporal aspects of human life. Positive secularism believes in the basic values of freedom, equality and fellowship. It does not believe in hark back either into country's history or seeking shelter in its spiritual or cultural identity dehors the man's need for his full development. It moves mainly around the State and its institution and, therefore, is political in nature. At the same time religion does not include other socio-economic or cultural social structure. The State is enjoined to counteract the evils of social forces, maintaining internal peace and

to defend the nation from external aggression. Welfare State under the Constitution is enjoined to provide means for well-being of its citizens; essential services and amenities to all its people. Morality under positive secularism is a pervasive force in favour of human freedom or secular living. Prof. Holyoake, as stated earlier, who is the father of modern secularism stated that "morality should be based on regard for well-being of the mankind in the person, to the exclusion of all considerations drawn from the belief in God or a future State". Morality to him was a system of human duty commencing from man and not from God as in the case of religion. He distinguished his secularism from Christianity, the living interest of the world that is prospects of another life. Positive secularism gives birth to biological and social nature of the man as a source of morality. True religion must develop into a dynamic force for integration without which the continued existence of human race itself would become uncertain and unreal. Secularism teaches spirit of tolerance, catholicity of outlook, respect for each other's faith and willingness to abide by rules of self-discipline. This has to be for both — as an individual and as a member of the group. Religion and secularism operate at different planes. Religion is a matter of personal belief and mode of worship and prayer, personal to the individual while secularism operates, as stated earlier, on the temporal aspect of the State activity in dealing with the people professing different religious faiths. The more devoted a person in his religious belief, the greater should be his sense of heart, spirit of tolerance, adherence of secular path. Secularism, therefore, is not antithesis of religious devoutness. Swami Vivekananda and Mahatma Gandhi, though greatest Hindus, their teachings and examples of lives give us the message of the blend of religion and the secularism for the good of all the men. True religion does not teach to hate those professing other faiths. Bigotry is not religion, nor can narrow-minded favouritism be taken to be an index of one's loyalty to his religion. Secularism does not contemplate closing each other's voices to the sufferings of the people of other community nor it postulates keeping mum when his or other community make legitimate demands. If any group of people are subjected to hardship or sufferings, secularism always requires that one should never remain insensitive and aloof to the feelings and sufferings of the victims. At moments of testing times people rose above religion and protected the victims. This cultural heritage in India shaped that people of all religious faiths, living in different parts of the country are to tolerate each other's religious faith or beliefs and each religion made its contribution to enrich the composite Indian culture as a happy blend or synthesis. Our religious tolerance received reflections in our constitutional creed."

97. The underlying unity of Indian culture fostering a national composite culture and way of life was taken note of in ***Valsamma Paul (Mrs.) Vs. Cochin University & Ors.***[37] in the following terms:-

"*22. In the onward march of establishing an egalitarian secular social order based on equality and dignity of person, Article 15(1)*

37 (1996) 3 SCC 545

prohibits discrimination on grounds of religion or caste identities so as to foster national identity which does not deny pluralism of Indian culture but rather to preserve it. Indian culture is a product or blend of several strains or elements derived from various sources, in spite of inconsequential variety of forms and types. There is unity of spirit informing Indian culture throughout the ages. It is this underlying unity which is one of the most remarkable everlasting and enduring feature of Indian culture that fosters unity in diversity among different populace. This generates and fosters cordial spirit and toleration that make possible the unity and continuity of Indian traditions. Therefore, it would be the endeavour of everyone to develop several identities which constantly interact and overlap, and prove a meeting point for all members of different religious communities, castes, sections, sub-sections and regions to promote rational approach to life and society and would establish a national composite and cosmopolitan culture and way of life.

23. Arun Shourie in his Religion in Politics, 1986 stated thus at pp. 332-33:

"To fashion a fair and firm State; a State and society in which the individual is all, an individual with an inviolate sphere of autonomy that neither the State nor anyone acting in the name of religion nor any other collectivity can breach; a State and society in which we learn to look upon one another as human beings, in which the habit of partitioning our fellow-men between 'them' and 'us' is gone; a H State and society in which a man of God is known not by the externals — by his appearance, by the rituals he observes, by the religious office he holds — but by the service he renders to his fellowmen; a State and society in which each of us recognises all our traditions as the common heritage of us all; a State and society in which we shed the dross in religion and perceive the unity and truth to which the mystics of all traditions have born testimony; a state and society in which we learn, in which we examine, in which we begin to think for ourselves — fashioning such a State and society is a programme worthy of those who aspire to humanism and secularism.

The sine qua non for such a programme is that all of us accept a limitation on means. We must accept the right of everyone to his own opinion and belief as well as the right of everyone to influence others to adopt his opinion and belief, but simultaneously each of us must vow that he will influence others by persuasion alone or not at all.

And the hallmark of the humanist and the secularist in regard to the ideals he will pursue and the means by which he will pursue them is not 'I will be secular, I will be a humanist, only when all the "others" also conduct themselves as secularists and humanists.' Our conduct must be principles, whatever the conduct of others. 'For', as Jesus said, 'if you love those who love you, what reward have you?"

24. The approach in reconciling diverse practices, customs and traditions of the marriages as one of the means for social and national unity and integrity and establishment of Indian culture for harmony, amity and self-respect to the individuals, is the encouragement to inter-caste, inter-sect, inter-religion marriages from inter-region. The purposive interpretation would, therefore, pave way to establish secularism and a secular State.

25. At the cost of repetition, it is stated that pluralism is the keynote of Indian culture and religious tolerance is the bedrock of Indian secularism. It is based on the belief that all religions are equally

good and efficacious pathways to perfection or God-realisation. It stands for a complex interpretive process in which there is a transcendence of religion and yet there is a unification of multiple religions. It is a bridge between religions in a multi-religious society to cross over the barriers of their diversity. Secularism is the basic feature of the Constitution as a guiding principle of State policy and action. Secularism in the positive sense is the cornerstone of an egalitarian and forward-looking society which our Constitution endeavours to establish. It is the only possible basis of a uniform and durable national identity in a multi-religious and socially disintegrated society. It is a fruitful means for conflict-resolution and harmonious and peaceful living. It provides a sense of security to the followers of all religions and ensures full civil liberties, constitutional rights and equal opportunities."

98. The word 'secularism' in the context of the Constitution and in particular Article 51-A was explained by the Apex Court in ***Ms. Aruna Roy & Ors. Vs. Union of India & Ors.***[38] in the following terms:-

"86. The word "secularism" used in the preamble of the Constitution is reflected in the provisions contained in Articles 25 to 30 and Part IV-A added to the Constitution containing Article 51-A prescribing fundamental duties of the citizens. It has to be understood on the basis of more than 50 years' experience of the working of the Constitution. The complete neutrality towards religion and apathy for all kinds of religious teachings in institutions of the State have not helped in removing mutual misunderstanding and intolerance inter se between sections of the people of different religions, faiths and beliefs. "Secularism", therefore, is susceptible to a positive meaning that is developing understanding and respect towards different religions. The essence of secularism is non-discrimination of people by the State on the basis of religious differences. "Secularism" can be practised by adopting a complete neutral approach towards religions or by a positive approach by making one section of religious people to understand and respect the religion and faith of another section of people. Based on such mutual understanding and respect for each other's religious faith, mutual distrust and intolerance can gradually be eliminated.

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88. The real meaning of secularism in the language of Gandhi is sarva dharma samabhav meaning equal treatment and respect for all religions, but we have misunderstood the meaning of secularism as sarva dharma sam abhav meaning negation of all religions. The result of this has been that we do not allow our students even a touch of our religious books. Gandhiji in his lifetime had been trying to create religious and communal harmony and laid down his life in doing so. His ardent follower Vinoba Bhave after independence had not only learnt all the languages and made in-depth study of all the religions of India but covered the length and breadth of India on foot to unite the hearts of the Indian people by spreading his message of non-violence and love. Based on his in-depth study of all religious

38 (2002) 7 SCC 368

> *books of India, he published, in his lifetime, their essence in the form of different books. He has very strongly recommended that the essence of various religions, which he published in book forms like Quran Saar, Khista Dharma Saar,Bhagwat Dharma Saar, Manushasanam etc., should be introduced to the students through textbooks because these religious books have been tested since thousands of years and proved to be useful for the development of man and human society. In a society wedded to secularism, "study of religions" would strengthen the concept of secularism in its true spirit. In the name of secularism, we should not keep ourselves aloof from such great treasures of knowledge which have been left behind by sages, saints and seers. How can we develop cultured human beings of moral character without teaching them from childhood the fundamental human and spiritual values? (See Vinoba Sahitya, Vol. 17, pp. 44-49 and 67.)*

99. The word 'secularism' as introduced in the preamble by the *Constitution (Forty-second Amendment) Act, 1976* is also reflected in the provisions contained under Articles 25 to 30 and Part IV-A containing Article 51-A prescribing fundamental duties of the citizens. In ***Dr. M. Ismail Faruqui & Ors. Vs. Union of India & Ors.***[39] it was observed as follows:-

> *"37. ….. The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution."*

100. The *English Historian E.P. Thompson* is said to have written in the context of India that *"all the convergent influences of the world run through this society.....there is not a thought that is being thought in the west or east that is not active in some Indian mind"*.

101. The theme of development of a composite culture over centuries is reflected in a famous couplet of the poet *Raghupati Sahay (Firaq Gorakhpuri)*;

> "S*arzameen-e-Hind par aqwaam-e-aalam ke Firaq*
>
> *Qafile baste gaye Hindostan banta gaya*".

which means—

> *"In the land of Hind, the caravans of the peoples of the world kept coming in and India kept getting formed"*.

102. The aforementioned lines have also been referred to by the

39 (1994) 6 SCC 360

Supreme Court in ***Kailas Vs. State of Maharashtra***[40] and ***Hinsa Virodhak Sangh Vs. Mirzapur Moti Kuresh Jamat & Ors.***[41].

103. In this context it may be apt to draw reference from "***The Discovery of India***[42]" where *Pt. Jawaharlal Nehru* describes our country as an *"ancient palimpsest on which layer upon layer of thought and reverie had been inscribed, and yet no succeeding layer had completely hidden or erased what had been written previously"*.

104. As we have noted in the earlier part of this judgment the term 'secularism' has been understood as a positive concept in the case of ***S.R. Bommai*** (supra) wherein it has been held that in the Indian context the State strikes a balance to ensure an atmosphere of faith and confidence among its people to achieve progress and national integrity. Emphasis has also been laid on the development of a composite cultural heritage which has shaped the lives of our people cutting across their religious faith and beliefs leading to development of a composite Indian culture as a blend or synthesis.

105. We may also take notice of the fact that the social and cultural life in India as seen today is a result of centuries of cultural transactions and social negotiations which have embraced the entire sub-continent resulting in the development of a cultural mosaic which reflects the dynamism of a composite culture embedded in national identity. The contemporary Indian culture is seen as a manifestation of a continuous process of a synthesis, assimilation and acculturation.

106. We are of the view that the extracts from the various literary and historical texts which have been placed on record by the petitioners themselves contain references of the site identified by the name of *'Prayag'* at the confluence of rivers Ganga and Yamuna, as a major centre of culture and pilgrimage from the ancient times continuing through the medieval age and down to our times. The reference to the site by the said name has also been made in the travel accounts of

40 AIR 2011 SC 598
41 (2008) 5 SCC 33
42 The Discovery of India by Pt. Jawaharlal Nehru

foreign travellers. We may also take notice of the fact that the periodical congregation held at the confluence of rivers Ganga and Yamuna as a tradition continuing through centuries as per historical references represents a myriad cultural mosaic as a reflection of the composite Indian culture.

107. Viewed in the context of the aforementioned discussion, the material which has been placed before us giving the reasons for the proposed change of name by the State Government, cannot be said to be without basis, and the same clearly reflects a policy decision of the State Government.

108. The petitioners have not been able to place on record any material to demonstrate that the decision taken in this regard by the State Government is wholly unreasonable, arbitrary and is based on irrelevant considerations, or that the same is violative of any constitutional or statutory provision, so as to bring the same within the parameters of the limited scope of judicial review in such matters. There is also nothing on record to demonstrate as to how the larger public interest would be affected by a mere change of name.

109. In the conspectus of the aforementioned facts, we are not inclined to exercise our extra ordinary jurisdiction under Article 226 of the Constitution of India to interfere in this matter. The writ petitions filed as Public Interest Litigation, which are before us are devoid of merit and are, accordingly, ***dismissed***.

110. We may observe that the dismissal of these petitions may not be understood so as to draw an inference that we have either endorsed the notification in question or have expressed any opinion with regard to the decision of the State Government in respect of the change of name.

Order Date :- 26.02.2019
Shahroz

(Dr. Y.K. Srivastava,J.) (Govind Mathur,C.J.)