HC-KAR
CNR: KAHC010479992026

NC: 2026:KHC:44367
WP No. 21376 of 2026

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 21376 OF 2026 (GM-RES)

BETWEEN

SRI. SHIVA SHANKARAPPA S SAHUKAR
AGED 61 YEARS
S/O SUGANNA SAHUKAR
CHAIRMAN, KPSC
ADREESS BESIDE SARASWATHI TEMPLE,
SB COLLEGE, ANAND NAGAR,
KALABURGI-585103

PRESENTLY R/AT HOSYALA DREAMS,
NEW BEL ROAD, SEENAPPA LAYOUT,
BENGALURU-94

...PETITIONER

(BY SRI. ARUN SHYAM.M., SR. COUNSEL A/W
SRI. SUYOG HERLE., ADVOCATES FOR
SRI. DILIP KUMAR GOWDA.R., ADVOCATE)

Digitally signed by SHWETHA RAGHAVENDRA
Location: HIGH COURT OF KARNATAKA

AND

1. THE SPECIAL SECRETARY
   TO HIS EXCELLENCY
   HONBLE THE HON'BLE THE HON'BLE GOVERNOR OF KARNATAKA
   LOKBHAVAN, BENGALURU-01

2. THE SECRETARY
   KARNATAKA PUBLIC SERVICE COMMISSION
   BENGALURU-560001

3. THE STATE OF KARNATAKA
REP THROUGH PRINICPAL SECTETARY
DPAR, VIDHANA SOUDHA
BENGALURU-560001.
(AMENDMENT CARRIED OUT VIDE ORDER
DATED 17.07.2026)

…RESPONDENTS

(BY SRI. UDYA HOLLA., SR. COUNSEL FOR
SRI. ABHISHEK KUMAR A/W
SMT. SHILPA G,
SRI. CHETHAN KUMAR,
SRI. VARUN GOWDA., ADVOCATES FOR R1;
SRI. RUBEN JACOB., SR. COUNSEL FOR
SRI. MUHAMMED SHAMIL., ADVOCATES FOR R2;
SRI. K. SHASHI KIRAN SHETTY., AG A/W
SRI. MITHUN GERAHALLI., AAG A/W
SRI. KUM. RACHEL RAJU ALICE ., ADVOCATE A/W
SRI. SHAMANTH NAIK., AGA FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS AND ISSUE A WRIT IN THE NATURE OF CERTIORARI AND QUASH THE IMPUGNED ORDER DATED 10.07.2026 IN NO.GS 28 ADM 2026 PASSED BY THE OFFICE OF HIS EXCELLENCY HON'BLE THE HON'BLE THE HON'BLE GOVERNOR OF THE STATE OF KARNATAKA COMMUNICATED BY RESPONDENT NO. 2, THEREBY SUSPENDING THE PETITIONER IN EXERCISE OF POWER UNDER ARTICLE 317(2) OF THE CONSTITUTION OF INDIA AND ALL FURTHER PROCEEDINGS/ACTIONS PURSUANT THERETO: (PRODUCED AT ANNEXURE-A AND A1) AND ETC.,

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 27.07.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The Petitioner is before this court seeking for the following reliefs:

> *i) Call for records.*
>
> *ii) Issue a writ in the nature of certiorari and quash the impugned order dated 10.7.2026 in No GS 28 ADM 2026 passed by office of His Excellency Hon'ble The Hon'ble The Hon'ble Governor of the State of Karnataka communicated by Respondent No.2 thereby suspending the Petitioner in exercise of power under Article 317(2) of the Constitution of India and all further proceedings/actions pursuant thereto; (produced at Annexure-A and A1);*
>
> *iii) Issue any other writ or order grant such other and further reliefs as this Hon'ble Court may deem fit in the facts and circumstances of the case, in the interest of justice and equity.*

2. The Petitioner is the Chairman of the Karnataka Public Service Commission ('**KPSC'** for short). His Excellency, the Hon'ble Governor of the State of Karnataka, vide order dated 10.07.2026, had suspended the Petitioner from the office of Chairman. It is the said order which is under challenge in these proceedings. The recommendation to the Hon'ble President is not the subject matter of these proceedings, as can be seen from the prayers extracted above.

3. Sri Arun Shyam M., learned Senior Counsel for the Petitioner submits that:

3.1. The Petitioner has been rendering services to the Society in general as also as a Chairperson of the KPSC from 03.04.2021. On 17.06.2026, the Secretary of KPSC had issued a notice of the 6th meeting of the Commission for the period 2026-2027 scheduled on 19.06.2026 along with the agenda of the meeting.

3.2. The Petitioner, noticing that agenda No.4 of the meeting related to his daughter's application for the post of Group-C Industrial Extension Officer, had recused from attending the said meeting and requested the senior-most member of the KPSC to conduct the meeting.

3.3. The meeting was conducted by the senior-most member of the KPSC. The agenda Nos.1 to 13 which were notified were discussed and resolved by the KPSC. In respect of agenda No.4 relating to the daughter of the Petitioner, the Commission resolved to reject her 3B certificate as claimed under backward classes

and permanently debarred the daughter of the Petitioner from taking up KPSC examination.

3.4. Thereafter, the members of the Commission with the permission of the Chairman, considered additional agenda No.1 and resolved to call upon the Petitioner to resign from the post of Chairman, KPSC in the meeting held on 19.06.2026.

3.5. In terms of Section 7 of the Karnataka Public Service Commission (Conduct of Business and Additional Functions) Act, 1959 (the 'Act' for short), after receiving the file of the proceedings on 03.07.2026 and looking into the proceedings held on 19.06.2026, the Petitioner accepted the resolution insofar as agenda No.1 to 13 by suggesting changes to agenda No.4 and had rejected the resolution on additional agenda item No.1 by directing the Secretary to place the same before the Commission for reconsideration in the next meeting.

3.6. Despite the operation of Section 7, the Secretary of KPSC had forwarded a report on the proceedings held on 19.06.2026 to the Chief Secretary of Government of Karnataka

and His Excellency the Hon'ble Governor on 06.07.2026 and 07.07.2026.

3.7. The Petitioner had challenged the resolution and the forwardal of the report by filing WP.No.20949/2026. This Court, had on 10.07.2026, stayed the operation of the resolution dated 19.06.2026 and the communication dated 06.07.2026 and 07.07.2026 on the ground that the members of the Commission could not have called upon the appointee of the Hon’ble Governor to resign.

3.8. His Excellency the Hon’ble Governor of Karnataka had on 10.07.2026, passed the impugned order bearing No.GS 28 ADM 2026, noting that he has already recommended to the Hon’ble President of India to make a reference to the Hon'ble Supreme Court of India under Article 317(1) of the Constitution of India for necessary enquiry into the allegation made against the Petitioner vide Letter No.GS 28 ADM 2026 dated 09.07.2026, was of the opinion that pending the decision of the Hon'ble President of India into allegation of misconduct, it is necessary to prevent the Petitioner-Chairman,

KPSC from attending the office and day-to-day functioning of the Commission had suspended the Petitioner under the spirit of Article 317(2) of the Constitution of India until further orders of the Hon'ble President of India and directed the next Senior Most Member of the KPSC to act as the Chairman of the Commission until further orders.

3.9. His submission is that Hon'ble Governor, having recommended to the Hon'ble President to make a reference, could not have suspended the Petitioner as a Chairman and in this regard, he relies on Article 317 (2) of the Constitution of India, which is reproduced hereunder for easy reference.

> ***"317. Removal and suspension of a member of a Public Service Commission***
>
> *(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference."*

3.10. By placing reliance on Article 317(1) of the Constitution of India, he submitted that the

Chairman or any other Member of a Public Service Commission can be removed from office only by an order of the Hon'ble President on the ground of misbehaviour, and that too only after the Hon'ble Supreme Court, upon a reference made to it by the Hon'ble President and after conducting an inquiry in accordance with the procedure prescribed under Article 145 of the Constitution, reports that the Chairman or Member, as the case may be, ought to be removed on that ground.

3.11. Article 317(3) provides that, notwithstanding anything contained in Article 317(1), the Hon'ble President may remove the Chairman or any other Member of a Public Service Commission if such Chairman or Member is adjudged insolvent, engages during the term of office in any paid employment outside the duties of the office, or is, in the opinion of the Hon'ble President, unfit to continue in office by reason of infirmity of mind or body. Thus, according to him, whether the removal is under Article 317(1) or Article 317(3), the power of removal is vested exclusively in the Hon'ble President.

3.12. Though the present case concerns an order of suspension and not removal, learned Senior Counsel submitted that suspension is governed by Article 317(2) of the Constitution. Under the said provision, the Hon'ble President, in the case of the Union Public Service Commission or a Joint Commission, and the Hon'ble Governor, in the case of a State Public Service Commission, may suspend the Chairman or any other Member against whom a reference has been made to the Supreme Court under Article 317(1), pending the Hon'ble President passing final orders upon receipt of the report of the Hon'ble Supreme Court.

3.13. It was contended that the power of suspension under Article 317(2) can be exercised by the Hon'ble Governor only after a reference has been made by the Hon'ble President to the Hon'ble Supreme Court under Article 317(1). According to him, unless and until such a reference is made, the Hon'ble Governor has no authority or jurisdiction to suspend the Chairman or a Member of the State Public Service Commission.

3.14. In the present case, the Hon'ble Governor had merely forwarded a recommendation to the Hon'ble President on 09.07.2026. Since no reference had, at that stage, been made by the Hon'ble President to the Hon'ble Supreme Court, the condition precedent for the exercise of power under Article 317(2) had not been satisfied. Consequently, the Hon'ble Governor could not have passed the impugned order of suspension.

3.15. He therefore contended that the impugned order of suspension has been passed without jurisdiction, without authority of law, and in contravention of Article 317 of the Constitution of India.

3.16. Even assuming such power existed, the principles of natural justice required that the petitioner be issued a show-cause notice and afforded an opportunity of hearing before any order of suspension was passed. According to him, no such notice was issued, nor was any opportunity granted to the petitioner to submit his explanation. The impugned order was thus

passed in complete violation of the principles of natural justice.

3.17. It was further contended that the Hon'ble Governor proceeded to suspend the petitioner merely on the basis of newspaper reports and certain complaints. According to learned Senior Counsel, in the absence of a reference to the Hon'ble Supreme Court under Article 317(1), and in the absence of any inquiry, preliminary investigation, or prima facie finding by any competent authority regarding the alleged misconduct of the petitioner as Chairman of the Karnataka Public Service Commission, the Hon'ble Governor could not have acted on such material. He submitted that the complaints relied upon are wholly devoid of substance.

3.18. The impugned order of suspension came to be passed after an interim order of stay had been granted in W.P. No. 20949/2026. Consequently, according to him, the reports forwarded by the Secretary of the Karnataka Public Service Commission could not have been taken into consideration by the Hon'ble Governor while passing the impugned order.

3.19. His submission is that according to him, four (4) points arise for consideration, namely;

1) ***Whether His Excellency the Hon'ble Governor could have suspended the Petitioner/Chairman, KPSC in exercise of Power under the Article 317(2) of the Constitution of India in the absence of OR before the reference to Hon'ble Supreme Court by Her Excellency Hon'ble President of India in exercise of power under Article 317(1) of the Constitution of India?***

2) ***Whether His Excellency Hon'ble Governor could act or suspend the Petitioner/Chairman, KPSC in exercise of power under the Article 317(2) of the Constitution of India without the aid and advice of the Council of Ministers of the State as contemplated under Article 163 of the Constitution of India.***

3) ***Whether the ex-post facto approval/ratification by the Council of Ministers of State can be treated as OR considered as aid and advice of Council of Ministers of State to His Excellency as mandated under Article 163 of the Constitution of India?***

4) ***Whether ex-post facto approval or ratification of the impugned order by the cabinet at a later date amounts to compliance with Article 163 of constitution of India?"***

3.20. He submits as regards the four points formulated by him as follows:

1) ***Whether His Excellency the Hon'ble Governor could have suspended the Petitioner/Chairman, KPSC in exercise of Power under the Article 317(2) of the Constitution of India in the absence of OR before the reference to Hon'ble Supreme Court by Her Excellency Hon'ble President of India in exercise of power under Article 317(1) of the Constitution of India?***

3.21. In support of the first point, learned Senior Counsel submitted that a plain reading of Article 317 of the Constitution makes it abundantly clear that the Hon’ble Governor may exercise the power of suspension under Article 317(2) only in respect of the Chairman or a Member of the Public Service Commission against whom a reference has been made by the Hon’ble President to the Hon’ble Supreme Court under Article 317(1).

3.22. In the present case, no reference had been made by the Hon'ble President of India to the Hon'ble Supreme Court for conducting an inquiry against the petitioner, who was then serving as the Chairman of the Karnataka Public Service Commission. In the absence of such a reference, the jurisdictional precondition prescribed under Article 317(2) was not satisfied. Consequently, according to him, the Hon'ble Governor lacked the authority and jurisdiction to pass the impugned order of suspension in purported exercise of the powers under Article 317(2) of the Constitution.

3.23. In this regard, he relies upon the decision of the Hon'ble Division Bench of this Court in ***Dr.(Smt).Mangala Sridhar v. The State of Karnataka***[1], more particularly paras 11, 12, 17, 18, 19, 20 and 21 thereof, which are reproduced hereunder for easy reference:

> ***"11.*** *The question that arises for our consideration in the context of Article 317 is squarely covered by a decision of the Supreme Court of India in Samsher Singh v. state Of Punjab [(1974) 2 SCC 831.] . The Supreme Court of India held that:—*
>
> *"30. In all cases in which the President or the Governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his Council of Ministers he does so by making rules for convenient transaction of the business of the Government of India or the Government of the State respectively or by allocation among his Ministers of the said business, in accordance with Articles 77(3) and 166(3) respectively. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360 the satisfaction required by the Constitution* ***is not the personal satisfaction of the President or of the Governor but is the satisfaction of the President or of the Governor in the constitutional sense*** *under the Cabinet system of Government. The reasons are these. It is the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions."*
>
> *[Emphasis supplied]*
>
> ***12.*** *Therefore, pursuant to the decision in the case of Samsher Singh (supra), there can be no doubt that the Governor, whilst exercising powers under Article 317(2) will have to do so, not in his absolute discretion, but in*

[1] ILR 2017 KAR 1404

accordance with the aid and advice of the Council of Ministers. This decision has, further, been referred to Meher Singh Sain, In Re. [(2010) 13 SCC 586.] and Nabam Rabia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly [(2016) 8 SCC 1.] .

17. *The observations of the Supreme Court of India in the case of Ram Kumar Kashyap (supra) is clear and unambiguous that the power of suspension under Article 317(2) can be exercised by the Governor only after the President has referred the matter to the Supreme Court of India. Further, Article 317(2) leaves us with no element of doubt that the Governor can exercise such power only after a reference is made by the President to the Supreme Court of India under Article 317(1). We can profitably refer to the decision of the Supreme Court of India in the matter of Reference Under Article 317(1) of the Constitution of India v. Unknown.*

18. *Where the language of Article 317 is clear and unambiguous, reading anything further into it would not be justified. In the instant case, it is an admitted fact that as on May 14, 2014 when the Governor of Karnataka issued the order of suspension under Article 317(2), no reference to the Supreme Court of India had been made by the President under Article 317(1). We are informed that even till date, no such reference has been made by the President to the Supreme Court of India.*

19. *We have considered the decision of the Hon'ble Single Judge regarding the credibility of an institution such as the Public Service Commission and as to how such credibility ought to be preserved and as to how public accountability and transparency are sine quo non for the effective governance of that institution. We are in respectable agreement with those observations. However, it is equally, if not more important, that the powers being exercised by the Governor should be exercised in complete consonance with the Constitution of India and in consonance with the law declared by the Supreme Court of India.*

20. *In the instant case, when the order of suspension was issued under Article 317(2), on May 14, 2014, the Governor admittedly did not have the benefit of the aid and advice of the Council of Ministers under Article 163. Further, as on that date, no reference had been made by the President to the Supreme Court of India under Article*

> *317(1). On these counts, we have no option but to hold that the order of suspension dated May 14, 2014 is unconstitutional.*
>
> ***21.*** *We, therefore, allow the appeal. The order impugned in this appeal dated September 23, 2014, in Writ Petition No. 22801 of 2014, is set-aside. The Writ Petition is allowed. The order of suspension contained in Notification bearing No. GS 19 EST 2014 dated May 14, 2014 is quashed. The appellant shall be entitled to officiate as the member of the Karnataka Public Service Commission and shall be entitled to all emoluments and consequential benefits."*

3.24. By relying on **Mangala Sridhar**, learned Senior Counsel submitted that the Hon'ble Division Bench of this Court, after considering the judgment of the Hon'ble Supreme Court reported in ***Ram Kumar Kashyap v. Union of India*** [(2009) 9 SCC 378], categorically held that the language employed in Article 317 is plain, clear and unambiguous and, therefore, no words can be added to or read into the provision. According to him, the Hon'ble Division Bench held that even if the Hon'ble Governor had exercised the power under Article 317(2) with the object of preserving the credibility and integrity of the Karnataka Public Service Commission, such exercise of power must nevertheless conform strictly to the constitutional mandate. The Hon'ble Governor

is required to exercise the power only in the manner contemplated by Article 317(2) and in conformity with the law declared by the Hon'ble Supreme Court. Since, according to learned Senior Counsel, the impugned order has been passed in disregard of the mandatory requirements of Article 317(2), it is liable to be set aside.

3.25. He relies on ***Ahmedabad St. Xavier's College Society v. State of Gujarat***[2]**,** more particularly paras 51 and 109 thereof, which are reproduced hereunder for easy reference:

> ***"51.*** *The right of a linguistic or religious minority to administer educational institutions of their choice, though couched in absolute terms has been held by this Court to be subject to regulatory measures which the State might impose for furthering the excellence of the standards of education. The scope and ambit of the rights under Articles 29(1) and 30(1) were first considered and analysed by this Court while giving its advice on the Presidential Reference under Article 143 of the Constitution in Re the Kerala Education Bill, 1957. The report which was made to the President in that Reference, it is true, is not binding on this Court in any subsequent matter wherein in a concrete case the in fringement of the rights under any analogous provision may be called in question, though it is entitled to great weight. Under Article 143 this Court expresses its opinion if it so chooses and in some cases it might even decline to express its opinion, vide In Re Levy of Estate Duty [1944 FCR 317] cited with approval by Das, C.J. in In re The Kerala Education Bill, 1957. In some cases the opinion may be based on*

[2] (1974) 1 SCC 717

certain stated contingencies or on some assumed or hypothetical situations whereas in a concrete case coming before this Court by way of an appeal under Article 133, or by special leave under Article 136 or by a petition under Article 32, the law declared by it by virtue of Article 141 is binding on all courts within the territory of India. Nonetheless the exposition of the various facets of the rights under Article 29(1) and Article 30(1) by Das, C.J. speaking for the majority, with the utmost clarity, great perspicuity and wisdom has been the text from which this Court has drawn its sustenance in its subsequent decisions. To the extent that this Court has applied these principles to concrete cases there can be no question of there being any conflict with what has been observed by Das, C.J. The decisions rendered on analogous provisions as those that are under challenge in this case would prima facie govern these cases, unless this larger Bench chooses to differ from them.

109. *It has been argued on behalf of the respondents that in the case of Re Kerala Education Bill this Court upheld clauses 11 and 12. Clause 11 made it obligatory for all aided schools to select teachers from a panel of candidates selected for each district by the Public Service Commission. Clause 12 related to the conditions of service of aided teachers. According to sub-clause (4) of clause 12, no teacher of an aided school could be dismissed, removed or reduced in rank or suspended by the manager without the previous sanction of the authorised officer. Das, C.J., observed that the above provisions were serious inroads on the right of administration and appeared perilously near violating that right. All the same, he observed that this Court "as at present advised" was prepared to treat those regulations as permissible regulations. I have already mentioned above that in subsequent cases this Court held similar provisions to be violative of Article 30(1) in the case of minority institutions. The opinion expressed by this Court in Re Kerala Education Bill was of an advisory character and though great weight should be attached to it because of its persuasive value, the said opinion cannot override the opinion subsequently expressed by this Court in contested cases. It is the law declared by this Court in the subsequent contested cases which would have a binding effect. The words "as at present advised" as well as the preceding sentence indicate that the view expressed by this Court in Re Kerala Education Bill in*

> *this respect was hesitant and tentative and not a final view in the matter. It has been pointed out that in Re Levy of Estate Duty [AIR 1944 FC 73 : (1944) 6 FCR 317 : (1944) 2 Mad LJ 234] Spens, C.J., referred to an observation made in the case of Attorney-General for Ontario v. Attorney-General for Canada, [1912 AC 571] that the advisory opinion of the Court would have no more effect than the opinion of the law officers. I need not dilate upon this aspect of the matter because I am of the opinion that the view expressed by this Court in subsequent cases referred to above by applying the general principles laid down in the Re Kerala Education Bill is correct and calls for no interference."*

3.26. His submission by relying on **Ahmedabad St. Xavier's College Society** is that an opinion rendered by the Hon'ble Supreme Court on a Presidential Reference under Article 143 of the Constitution is merely advisory and does not have the same binding force as a judgment rendered in an adversarial proceeding. Though such an opinion carries considerable persuasive value, it cannot override the law subsequently declared by the Hon'ble Supreme Court in a contested case under Article 141 of the Constitution. He therefore submitted that, in the event of any inconsistency between an advisory opinion under Article 143 and a judgment rendered in a contested proceeding, it is the latter that would constitute the binding declaration of law.

3.27. He relies upon the decision in ***Ram Kumar Kashyap and Another v. Union of India***[3], more particularly, paras 11 and 12 thereof, which are reproduced hereunder for easy *reference.*

> ***"11.*** *In Sayalee Sanjeev Joshi, Member, Maharashtra Public Service Commission, In re [(2007) 11 SCC 547] , which concerned the removal of a member of the Maharashtra Public Service Commission under Article 317 on grounds of misbehaviour, this Court had observed: (SCC p. 552, para 2)*
>
> *"2. … Since a request was made to the President of India to act in terms of Article 317(1) of the Constitution,* ***the placing of the respondent under suspension under Article 317(2) of the Constitution was proper****."*
>
> ***12.*** *It is clear from the perusal of the above cases that the petitioners were not entitled to an opportunity to show cause or to be heard before the point of time that the orders of suspension were passed by the Hon'ble Governor of Haryana under Article 317(2) after the President had referred the matter to the Supreme Court. The rationale behind empowering the Governor of a State to issue such an order of suspension even before the reference is actually decided by the Supreme Court is* ***to maintain the public trust and confidence in the impartial*** *and honest working of the said Public Service Commission."*

3.28. Relying on **Ram Kumar Kashyap** Learned Senior Counsel submitted that the judgment in **Ram Kumar Kashyap** was specifically considered by the Hon'ble Division Bench of this Court in **Dr. (Smt.) Mangala Sridhar**,

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[3] (2009) 9 SCC 378

particularly in paragraph 17 thereof. According to him, the Hon'ble Division Bench unequivocally held, on the strength of the observations made by the Hon'ble Supreme Court in **Ram Kumar Kashyap**, that the power of suspension under Article 317(2) can be exercised by the Hon'ble Governor only after the Hon'ble President has made a reference to the Hon'ble Supreme Court under Article 317(1) of the Constitution.

3.29. Learned Senior Counsel submitted that, in the absence of any reference made by the Hon'ble President of India to the Hon'ble Supreme Court under Article 317(1), the Hon'ble Governor lacked the constitutional authority to invoke the power of suspension under Article 317(2). Consequently, according to him, the impugned order of suspension is without jurisdiction and liable to be set aside.

2) Whether His Excellency Hon'ble Governor could act or suspend the Petitioner/Chairman, KPSC in exercise of power under the Article 317(2) of the Constitution of India without the aid and advice of the Council of Ministers of the

State as contemplated under Article 163 of the Constitution of India.

3.30. In support of the second question formulated by him, learned Senior Counsel submitted that the Hon'ble Governor could not have exercised the power of suspension under Article 317(2) of the Constitution without acting on the aid and advice of the Council of Ministers as contemplated under Article 163 of the Constitution. According to him, since the impugned order was not preceded by such aid and advice, the exercise of power by the Hon'ble Governor is without jurisdiction, contrary to the constitutional mandate, and consequently liable to be set aside.

3.31. He relies on the decision in ***Samsher Singh v. State of Punjab***[4]**,** more particularly paras, 5, 30, 31, 88, 89, 130, 138 and 154 thereof, which are reproduced hereunder for easy reference.

[4] (1974) 2 SCC 831

*"**5.** The appellants contend that the Governor as the constitutional or the formal head of the State can exercise powers and functions of appointment and removal of members of the Subordinate Judicial Service only personally. The State contends that the Governor exercises powers of appointment and removal conferred on him by or under the Constitution like executive powers of the State Government only on the aid and advice of his Council of Ministers and not personally.*

***30.** In all cases in which the President or the Governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his Council of Ministers he does so by making rules for convenient transaction of the business of the Government of India or the Government of the State respectively or by allocation among his Ministers of the said business, in accordance with Articles 77(3) and 166(3) respectively. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360 the satisfaction required by the Constitution **is not the personal satisfaction of the President or of the Governor but is the satisfaction of the President or of the Governor in the constitutional sense** under the Cabinet system of Government. The reasons are these. It is the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. Neither Article 77(3) nor Article 166(3) provides for any delegation of power. Both Articles 77(3) and 166(3) provide that the President under Article 77(3) and the Governor under Article 166(3) shall make rules for the more convenient transaction of the business of the Government and the allocation of business among the Ministers of the said business. The Rules of Business and the allocation among the Ministers of the said business all indicate that the decision of any Minister or officer under the Rules of Business made under these two articles viz. Article 77(3) in the case of the President and Article 166(3) in the case of the Governor of the State is the decision of the President or the Governor respectively.*

***31.** Further the Rules of Business and allocation of business among the Ministers are relatable to the provisions contained in Article 53 in the case of the President and Article 154 in the case of the Governor, that the executive power shall be exercised by the President or the Governor*

directly or through the officers subordinate. The provisions contained in Article 74 in the case of the President and Article 163 in the case of the Governor that there shall be a Council of Ministers to aid and advise the President or the Governor, as the case may be, are sources of the Rules of Business. These provisions are for the discharge of the executive powers and functions of the Government in the name of the President or the Governor. Where functions entrusted to a Minister are performed by an official employed in the Minister's department there is in law no delegation because constitutionally the act or decision of the official is that of the Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister (see Halsbury's Laws of England 4th Ed., Vol. I, paragraph 748 at p. 170 and Carltona Ltd. v. Works Commissioners [(1943) 2 All ER 560]).

88. *For the foregoing reasons we hold that the President as well as the Governor acts on the aid and advice of the Council of Ministers in executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers. Where the Governor has any discretion the Governor acts on his own judgment. The Governor exercises his discretion in harmony with his Council of Ministers. The appointment as well as removal of the members of the Subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution. Appointments and removals of persons are made by the President and the Governor as the constitutional head of the Executive on the aid and advice of the Council of Ministers. That is why any action by any servant of the Union or the State in regard to appointment or dismissal is brought against the Union or the State and not against the President or the Governor.*

89. *The orders of termination of the services of the appellants are set aside. The appellant Ishwar Chand Agarwal is declared to be a member of the Punjab Civil Service (Judicial Branch). The appellant Samsher Singh succeeds insofar as the order of termination is set aside. In view of the fact that Samsher Singh is already employed in the Ministry of Law no relief excepting salary or other monetary benefits which accrued to him upto the time he obtained employment in the Ministry of Law is given.*

130. *The overwhelming weight of judicial authority is in favour of the Cabinet system of Government as inscribed in*

the Constitution. Mukherjea, C.J. in Rai Saheb Ram Jawaya Kapur v. State of Punjab observed:

"Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of Governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State.

* * *

In India, as in England, the Executive has to act subject to the control of the Legislature; but in what way is this control exercised by the Legislature? Under Article 53(1) of our Constitution, the executive power of the Union is vested in the President but under Article 75 there is to be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The President has thus been made a formal or constitutional head of the Executive and the real executive powers are vested in the Ministers or the Cabinet. The same provisions obtain in regard to the Government of States; the Governor or the Rajpramukh, as the case may be, occupies the position of the head of the Executive in the State but it is virtually the Council of Ministers in each State that carries on the executive Government. In the Indian Constitution, therefore, we have the same system of Parliamentary Executive as in England and the Council of Ministers consisting, as it does of the Members of the Legislature is, like the British Cabinet, a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part. The Cabinet enjoying, as it does, a majority in the Legislature concentrates in itself the virtual control of both legislative and executive functions and as the Ministers constituting the Cabinet are presumably agreed on fundamentals and act on the principle of collective responsibility, the most important questions of policy are all formulated by them."

138. *The President in India is not at all a glorified cipher. He represents the majesty of the State, is at the apex, though only symbolically, and has rapport with the people and parties, being above politics. His vigilant presence makes for good government if only he uses, what Bagehot described as, "the right to be consulted, to warn and encourage". Indeed, Article 78 wisely used, keeps the President in close touch with the Prime Minister on matters of national*

importance and policy significance, and there is no doubt that the imprint of his personality may chasten and correct the political Government, although the actual exercise of the functions entrusted to him by law is in effect and in law carried on by his duly appointed mentors i.e. the Prime Minister and his colleagues. In short, the President, like the King, has not merely been constitutionally romanticised but actually vested with a pervasive and persuasive role. Political theorists are quite conversant with the dynamic role of the Crown which keeps away from politics and power and yet influences both. While he plays such a role, he is not a rival centre of power in any sense and must abide by and act on the advice tendered by his Ministers except in a narrow territory which is sometimes slippery.

154. *We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations. Without being dogmatic or exhaustive, these situations relate to (a) the choice of Prime Minister (Chief Minister), restricted though this choice is by the paramount consideration that he should command a majority in the House; (b) the dismissal of a Government which has lost its majority in the House, but refuses to quit office; (c) the dissolution of the House where an appeal to the country is necessitous, although in this area the head of State should avoid getting involved in politics and must be advised by his Prime Minister (Chief Minister) who will eventually take the responsibility for the step. We do not examine in detail the constitutional proprieties in these predicaments except to utter the caution that even here the action must be compelled by the peril to democracy and the appeal to the House or to the country must become blatantly obligatory. We have no doubt that de Smith's statement [Constitutional and Administrative Law, by S.A. De Smith, Peguin Books on Foundations of Law] regarding royal assent holds good for the President and Governor in India:*

"Refusal of the royal assent on the ground that the Monarch strongly disapproved of a Bill or that it was intensely

controversial would nevertheless be unconstitutional. The only circumstances in which the withholding of the royal assent might be justifiable would be if the Government itself were to advise such a course, a highly improbable contingency, or possibly if it was notorious that a Bill had been passed in disregard to mandatory procedural requirements; but since the Government in the latter situation would be of the opinion that the deviation would not affect the validity of the measure once it had been assented to, prudence would suggest the giving of assent."

3.32. By relying on **Samsher Singh**, learned Senior Counsel submitted that the Constitution Bench of the Hon'ble Supreme Court has authoritatively held that wherever the Constitution requires the satisfaction of the Hon'ble President or the Hon'ble Governor for the exercise of any power or function, including those under Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360 of the Constitution, such satisfaction is not the personal satisfaction of the Hon'ble President or the Hon'ble Governor. According to him, the satisfaction contemplated under the Constitution is the constitutional satisfaction of the Hon'ble President or the Hon'ble Governor acting within the framework of the parliamentary system of government, namely, on the aid and advice of the Council of

Ministers. He therefore submitted that the Hon'ble President or the Hon'ble Governor cannot ordinarily exercise such executive powers independently of, or contrary to, the aid and advice of the Council of Ministers.

3.33. The Constitution Bench has also held that, even where the Hon'ble Governor is vested with constitutional powers, such powers are ordinarily exercised in harmony with the aid and advice of the Council of Ministers. The case before the Constitution Bench concerned the appointment and removal of members of the Subordinate Judicial Service, which was held to be an executive function required to be exercised by the Hon'ble Governor on the aid and advice of the Council of Ministers. According to him, the same constitutional principle equally governs the exercise of power under Article 317(2) of the Constitution.

3.34. The Constitution Bench has unequivocally held that appointments and removals are made by the Hon'ble President and the Hon'ble Governor, only in their capacity as constitutional heads of the Executive and not in their individual or

personal capacities. Such powers, according to him, are exercised on the aid and advice of the respective Council of Ministers.

3.35. Insofar as the Hon'ble President is concerned, Article 53(1) vests the executive power of the Union in the Hon'ble President, while Article 74 mandates that such power is to be exercised on the aid and advice of the Council of Ministers headed by the Hon'ble Prime Minister. The reference to Article 75 in **Samsher Singh** is in the context of the constitution and collective responsibility of the Council of Ministers.

3.36. Although the Hon'ble President is the formal or constitutional head of the Executive, the real executive authority is exercised by the Council of Ministers headed by the Hon'ble Prime Minister. According to him, the same constitutional scheme applies to the States, where the Hon'ble Governor is the constitutional head of the Executive, while the real executive power vests in the Council of Ministers headed by the Hon'ble Chief Minister.

3.37. On the date when the impugned order came to be passed under Article 317(2), there was

neither any aid and advice of the Council of Ministers nor any recommendation of the Hon'ble Chief Minister or the Cabinet to the Hon'ble Governor either recommending that a reference be made to the Hon'ble President or recommending the suspension of the petitioner from the office of Chairman of the Karnataka Public Service Commission. According to him, in the absence of such constitutionally mandated aid and advice, the Hon'ble Governor lacked the authority to issue the impugned order.

3.38. In the aforesaid background, learned Senior Counsel submitted that, as on the date of the impugned order, there existed neither any aid and advice of the Council of Ministers nor any recommendation of the Hon'ble Chief Minister or the Cabinet advising the Hon'ble Governor either to recommend a reference under Article 317(1) or to suspend the petitioner under Article 317(2). Consequently, according to him, the Hon'ble Governor could not have validly exercised the power under Article 317(2), rendering the impugned order constitutionally unsustainable.

3.39. He relies upon the decision in ***Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly***[5]**,** more particularly paras 153, 154, 155, 166, 176, 177, 183 and 387 thereof, which are reproduced hereunder for easy reference:

> ***"153.*** *Though the debate could be endless, yet we would consider it apposite to advert to the decisions rendered by this Court in Sardari Lal case [Sardari Lal v. Union of India, (1971) 1 SCC 411] and Samsher Singh case [Samsher Singh v. State of Punjab, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] . Insofar as Sardari Lal case [Sardari Lal v. Union of India, (1971) 1 SCC 411] is concerned, this Court had held therein that the President or the Governor, as the case may be, would pass an order only on his personal satisfaction. In the above case, this Court while examining the case of an employee under Article 311(2) [more particularly, under proviso (c) thereof], recorded its conclusions, in the manner expressed above. The same issue was placed before a seven-Judge Bench constituted to re-examine the position adopted in Sardari Lal case [Sardari Lal v. Union of India, (1971) 1 SCC 411] . The position came to be reversed. This Court in Samsher Singh case [Samsher Singh v. State of Punjab, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] declared that wherever the Constitution required the satisfaction of the President or the Governor, for the exercise of any power or function, as for example under Articles 123, 213, 311(2), 317, 352(1), 356 and 360, the satisfaction required by the Constitution was not the personal satisfaction of the President or the Governor "… but is the satisfaction of the President or of the Governor in the constitutional sense under the Cabinet system of Government". It is, therefore, clear that even though the Governor may be authorised to exercise some functions, under different provisions of the Constitution, the same are* ***required to be exercised only on the basis of the aid and advice tendered to him under Article 163****, unless the Governor has been expressly authorised, by or under a constitutional provision, to discharge the function concerned, in his own discretion.*

[5] (2016) 8 SCC 1

154. *We are, therefore, of the considered view that insofar as the exercise of discretionary powers vested with the Governor is concerned, the same is* ***limited to situations, wherein a constitutional provision expressly so provides that the Governor should act in his own discretion****. Additionally, a Governor can exercise his functions in his own discretion, in situations where an interpretation of the constitutional provision concerned, could not be construed otherwise. We, therefore, hereby reject the contention advanced on behalf of the respondents, that the Governor has the freedom to determine when and in which situation, he should take a decision in his own discretion, without the aid and advice of the Chief Minister and his Council of Ministers. We accordingly, also turn down the contention, that whenever the Governor in the discharge of his functions, takes a decision in his own discretion, the same would be final and binding, and beyond the purview of judicial review. We are of the view that finality expressed in Article 163(2) would apply to functions exercised by the Governor in his own discretion, as are permissible within the framework of Article 163(1), and additionally, in situations where the clear intent underlying a constitutional provision, so requires i.e. where the exercise of such power on the aid and advice, would run contrary to the constitutional scheme, or would be contradictory in terms.*

155. *We may, therefore, summarise our conclusions as under:*

155.1. *Firstly, the measure of discretionary power of the Governor, is limited to the scope postulated therefor, under Article 163(1).*

155.2. *Secondly, under Article 163(1) the discretionary power of the Governor extends to situations, wherein a constitutional provision expressly requires the Governor to act in his own discretion.*

155.3. *Thirdly, the Governor can additionally discharge functions in his own discretion, where such intent emerges from a legitimate interpretation of the provision concerned, and the same cannot be construed otherwise.*

155.4. *Fourthly, in situations where this Court has declared that the Governor should exercise the particular function at his own and without any aid or advice because of the impermissibility of the other alternative, by reason of conflict of interest.*

155.5. *Fifthly, the submission advanced on behalf of the respondents, that the exercise of discretion under Article 163(2) is final and beyond the scope of judicial review cannot be accepted. Firstly, because we have rejected the submission advanced by the respondents, that the scope and extent of discretion vested with the Governor has to be ascertained from Article 163(2), on the basis whereof the submission was canvassed. And secondly, any discretion exercised beyond the Governor's jurisdictional authority, would certainly be subject to judicial review.*

155.6. *Sixthly, in view of the conclusion drawn at fifthly above [para 155.5], the judgments rendered in Mahabir Prasad Sharma case [Mahabir Prasad Sharma v. Prafulla Chandra Ghose, (1968) 72 CWN 328 : 1968 SCC OnLine Cal 3] , and Pratapsingh Raojirao Rane case [Pratapsingh Raojirao Rane v. Governor of Goa, AIR 1999 Bom 53 : 1998 SCC OnLine Bom 351] , by the High Courts of Calcutta and Bombay, respectively, do not lay down the correct legal position. The constitutional position declared therein, with reference to Article 163(2), is accordingly hereby set aside.*

166. *In view of the consideration recorded hereinabove, we are of the view that in ordinary circumstances during the period when the Chief Minister and his Council of Ministers enjoy the confidence of the majority of the House, the power vested with the Governor under Article 174, to summon, prorogue and dissolve the House(s) must be exercised in consonance with the aid and advice of the Chief Minister and his Council of Ministers. In the above situation, he is precluded to take an individual call on the issue at his own will, or in his own discretion. In a situation where the Governor has reasons to believe that the Chief Minister and his Council of Ministers have lost the confidence of the House, it is open to the Governor, to require the Chief Minister and his Council of Ministers to prove their majority in the House, by a floor test. Only in a situation, where the Government in power on the holding of such floor test is seen to have lost the confidence of the majority, it would be open to the Governor to exercise the powers vested with him under Article 174 at his own, and without any aid and advice.*

176. *In view of the above, we have no hesitation in concluding, that the messages addressed by the Governor to the Assembly, must abide by the mandate contained in Article 163(1), namely, that the same can only be addressed to the State Legislature, on the aid and advice of*

the Council of Ministers with the Chief Minister as the head. The message of the Governor dated 9-12-2015, was therefore beyond the constitutional authority vested with the Governor.

177. *For all the reasons recorded hereinabove, we are of the considered view that the impugned message of the Governor dated 9-12-2015 is liable to be set aside. We order accordingly.*

IV. Article 179 of the Constitution

178. *"**179. Vacation and resignation of, and removal from, the Offices of the Speaker and Deputy Speaker**.—A member holding Office as the Speaker or Deputy Speaker of an Assembly—*

(a) shall vacate his Office if he ceases to be a Member of the Assembly;

(b) may at any time by writing under his hand addressed, if such Member is the Speaker, to the Deputy Speaker, and if such Member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his Office by a resolution of the Assembly passed by a majority of all the then Members of the Assembly:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution."

183. *Despite the above, the facts and circumstances of the present case reveal that the Governor in his alleged bona fide determination issued the impugned message dated 9-12-2015, statedly to advise and guide the State Legislature, to carry out its functions in consonance with the provisions of the Constitution, and the Rules framed under Articles 166 and 208. The question which arises for adjudication is not, that of the Governor's bona fides. The*

question is of the jurisdictional authority of the Governor, in the above matter. The Governor has no direct or indirect constitutionally assigned role, in the matter of removal of the Speaker (or the Deputy Speaker). The Governor is not the conscience keeper of the Legislative Assembly, in the matter of removal of the Speaker. He does not participate in any executive or legislative responsibility, as a marshal. He has no such role assigned to him, whereby he can assume the position of advising and guiding the Legislative Assembly, on the question of removal of the Speaker (or Deputy Speaker). Or to require the Legislative Assembly to follow a particular course. The Governor can only perform such functions, in his own discretion, as are specifically assigned to him "by or under this Constitution", within the framework of Article 163(1), and nothing more. In our final analysis, we are satisfied in concluding that the interjects at the hands of the Governor, in the functioning of the State Legislature, not expressly assigned to him, however bona fide, would be extraneous and without any constitutional sanction. A challenge to an action beyond the authority of the Governor, would fall within the scope of the judicial review, and would be liable to be set aside.

387. *That the functions of the Governor are limited to matters of executive governance or executive issues and the Council of Ministers is made explicit through Article 166 of the Constitution which provides that all executive action of the Government shall be expressed to be taken in the name of the Governor, [Article 166(1) of the Constitution] orders and instruments shall be executed in the name of the Governor [Article 166(2) of the Constitution] and the Governor shall make rules for the more convenient transaction of business of the Government and allocation of business among the Ministers "insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion". This clearly has reference to Article 163 of the Constitution and must be understood as meaning that framing the rules under Article 166(3) of the Constitution is not the discretion of the Governor but an executive exercise undertaken by the Council of Ministers. Article 167 of the Constitution relates to the duty of the Chief Minister of a State to communicate the decisions of the Council of Ministers to the Governor and furnish information to the Governor. Chapter II of Part VI of the Constitution is, therefore, quite compact and delineates the relations between the Executive and governance of the State."*

3.40. By referring to **Nabam Rebia**, learned Senior Counsel submitted that the Hon'ble Supreme Court, after referring to the Constitution Bench decision in **Samsher Singh**, reiterated that wherever the Constitution requires the satisfaction of the Hon'ble President or the Hon'ble Governor for the exercise of any power or function, including under Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360 of the Constitution, such satisfaction is not the personal satisfaction of the Hon'ble President or the Hon'ble Governor. According to him, the satisfaction contemplated is the constitutional satisfaction of the Hon'ble President or the Hon'ble Governor acting within the framework of the parliamentary system of Government, namely, on the aid and advice of the Council of Ministers.

3.41. The Hon'ble Supreme Court categorically rejected the contention that the Hon'ble Governor is at liberty to determine, at his own discretion, the circumstances in which he may act without the aid and advice of the Hon'ble Chief Minister and the Council of Ministers. The Hon'ble Supreme Court held that the

discretionary powers of the Hon'ble Governor are confined only to those situations where the Constitution expressly so provides or where such discretion necessarily flows from the constitutional scheme.

3.42. Any action taken by the Hon'ble Governor beyond the limits of the constitutional authority vested in him is amenable to judicial review. According to him, since the impugned order has been passed without satisfying the constitutional requirements governing the exercise of power under Article 317(2), the same falls within the scope of judicial review and is liable to be set aside.

3.43. The Hon'ble Governor could not have, on his own and without the constitutionally mandated aid and advice of the Council of Ministers, suspended the petitioner from the office of Chairman of the Karnataka Public Service Commission.

3) Whether the ex-post facto approval/ratification by the Council of Ministers of State can be treated as OR considered as aid and advice of Council of Ministers of State to His Excellency as

mandated under Article 163 of the Constitution of India?

3.44. In support of the third question formulated by him, learned Senior Counsel submitted that a plain reading of Article 163 of the Constitution makes it abundantly clear that the aid and advice of the Council of Ministers is a constitutional precondition for the exercise of executive powers by the Hon'ble Governor, except in matters where the Constitution expressly confers discretion upon the Hon'ble Governor. According to him, Article 163 does not contemplate or permit an ex post facto approval or ratification of a decision already taken by the Hon'ble Governor. In the present case, admittedly, there was no aid and advice of the Council of Ministers before the impugned order came to be passed.

3.45. It was only as an afterthought that the Chief Secretary addressed a communication dated 16.07.2026. Thereafter, the matter was placed before the Cabinet on 18.07.2026, when the decision already taken by the Hon'ble Governor was purportedly approved or ratified. According to him, such subsequent approval cannot cure

the constitutional infirmity attached to the exercise of power at its inception.

3.46. It is a settled principle of law that where a statute or the Constitution prescribes that a particular act must be performed in a particular manner, it must be performed in that manner alone or not at all. According to him, Article 163 mandates that the Hon'ble Governor shall act on the aid and advice of the Council of Ministers while exercising executive powers of the nature involved in the present case. Consequently, if the impugned order was passed by the Hon'ble Governor without such constitutionally mandated aid and advice, the same is rendered legally unsustainable and is liable to be set aside.

3.47. He relies on ***Sunny Abraham v. Union of India,***[6] more particularly paras 14, 15 and 17 thereof, which are reproduced hereunder for easy reference.

> ***"14.*** *We do not think that the absence of the expression "prior approval" in the aforesaid Rule would have any impact so far as the present case is concerned as the same Rule has been construed by this Court in B.V. Gopinath [Union of India v. B.V. Gopinath, (2014) 1 SCC*

[6] (2021) 20 SCC 12

351 : (2014) 1 SCC (L&S) 161] and it has been held that charge-sheet/charge memorandum not having approval of the disciplinary authority would be non est in the eye of the law. Same interpretation has been given to a similar Rule, All India Services (Discipline and Appeal) Rules, 1969 by another Coordinate Bench of this Court in State of T.N. v. Promod Kumar [State of T.N. v. Promod Kumar, (2018) 17 SCC 677 : (2019) 2 SCC (L&S) 127] (authored by one of us, L. Nageswara Rao, J.). Now the question arises as to whether concluded proceeding (as in B.V. Gopinath [Union of India v. B.V. Gopinath, (2014) 1 SCC 351 : (2014) 1 SCC (L&S) 161]) and pending proceeding against the appellant is capable of giving different interpretations to the said Rule. The High Court's reasoning, referring to the notes on which approval for initiation of proceeding was granted, is that the disciplinary authority had taken into consideration the specific charges. The ratio of the judgments in Ashok Kumar Das [Ashok Kumar Das v. University of Burdwan, (2010) 3 SCC 616 : (2010) 1 SCC (L&S) 886] and Bajaj Hindustan [Bajaj Hindustan Ltd. v. State of U.P., (2016) 12 SCC 613] , in our opinion, do not apply in the facts of the present case. We hold so because these authorities primarily deal with the question as to whether the legal requirement of granting approval could extend to ex post facto approval, particularly in a case where the statutory instrument does not specify taking of prior or previous approval. It is a fact that in the Rules with which we are concerned, there is no stipulation of taking "prior" approval. But since this very Rule has been construed by a Coordinate Bench to the effect that the approval of the disciplinary authority should be there before issuing the charge memorandum, the principles of law enunciated in the aforesaid two cases, that is, Ashok Kumar Das [Ashok Kumar Das v. University of Burdwan, (2010) 3 SCC 616 : (2010) 1 SCC (L&S) 886] and Bajaj Hindustan [Bajaj Hindustan Ltd. v. State of U.P., (2016) 12 SCC 613] would not aid the respondents. The distinction between the prior approval and approval simpliciter does not have much impact so far as the status of the subject charge memorandum is concerned.

15. *The next question we shall address is as to whether there would be any difference in the position of law in this case vis-à-vis B.V. Gopinath [Union of India v. B.V. Gopinath, (2014) 1 SCC 351 : (2014) 1 SCC (L&S) 161] . In the latter authority, the charge memorandum without approval of the disciplinary authority was held to be non est in a concluded proceeding. The High Court*

has referred to the variants of the expression non est used in two legal phrases in the judgment under appeal. In the context of our jurisprudence, the term non est conveys the meaning of something treated to be not in existence because of some legal lacuna in the process of creation of the subject-instrument. It goes beyond a remediable irregularity. That is how the Coordinate Bench has construed the impact of not having approval of the disciplinary authority in issuing the charge memorandum. In the event a legal instrument is deemed to be not in existence, because of certain fundamental defect in its issuance, subsequent approval cannot revive its existence and ratify acts done in pursuance of such instrument, treating the same to be valid. The fact that initiation of proceeding received approval of the disciplinary authority could not lighten the obligation on the part of the employer (in this case the Union of India) in complying with the requirement of sub-clause (3) of Rule 14 of CCS (CCA), 1965. We have quoted the two relevant sub-clauses earlier in this judgment. Sub-clauses (2) and (3) of Rule 14 contemplates independent approval of the disciplinary authority at both stages, for initiation of enquiry and also for drawing up or to cause to be drawn up the charge memorandum. In the event the requirement of sub-clause (2) is complied with, not having the approval at the time of issue of charge memorandum under sub-clause (3) would render the charge memorandum fundamentally defective, not capable of being validated retrospectively. ***What is non-existent in the eye of the law cannot be revived retrospectively. Life cannot be breathed into the stillborn charge memorandum****. In our opinion, the approval for initiating disciplinary proceeding and approval to a charge memorandum are two divisible acts, each one requiring independent application of mind on the part of the disciplinary authority. If there is any default in the process of application of mind independently at the time of issue of charge memorandum by the disciplinary authority, the same would not get cured by the fact that such approval was there at the initial stage. This was the argument on behalf of the authorities in B.V. Gopinath [Union of India v. B.V. Gopinath, (2014) 1 SCC 351 : (2014) 1 SCC (L&S) 161] , as would be evident from para 8 of the Report which we reproduce below : (SCC p. 358)*

"8. Ms Jaising has elaborately explained the entire procedure that is followed in each and every case before the matter is put up before the Finance Minister for

> *seeking approval for initiation of the disciplinary proceedings. According to the learned Additional Solicitor General, the procedure followed ensures that entire material is placed before the Finance Minister before a decision is taken to initiate the departmental proceedings. She submits that approval for initiation of the departmental proceedings would also amount to approval of the charge memo. According to the learned Additional Solicitor General, CAT [B.V. Gopinath v. Union of India, 2009 SCC OnLine CAT 1108] as well as the High Court [Union of India v. B.V. Gopinath, 2009 SCC OnLine Del 2183] had committed a grave error in quashing the departmental proceedings against the respondents, as the procedure for taking approval of the disciplinary authority to initiate penalty proceeding is comprehensive and involved decision making at every level of the hierarchy."*
>
> ***17.*** *We are conscious of the fact that the allegations against the appellant are serious in nature and ought not to be scuttled on purely technical ground. But the Tribunal in the judgment which was set aside by the High Court had reserved liberty to issue a fresh memorandum of charges under Rule 14 of the CCS (CCA) Rules, 1965 as per Rules laid down in the matter, if so advised. Thus, the department's power to pursue the matter has been reserved and not foreclosed."*

3.48. By relying on **Sunny Abraham**, learned Senior Counsel submitted that although the said judgment arose in the context of disciplinary proceedings relating to the issuance of a charge memorandum, the principle laid down therein is of general application. According to him, the Hon'ble Supreme Court held that where the statutory scheme requires approval before the exercise of a particular power, such approval must necessarily precede the exercise of that

power and cannot be accorded subsequently by way of ex post facto approval or ratification. He submitted that a charge memorandum issued without the approval of the competent disciplinary authority was held to be non est in the eye of law and incapable of being validated retrospectively by a subsequent approval.

3.49. The Hon'ble Supreme Court explained that the expression "non est" denotes an instrument which is treated in law as non-existent on account of a fundamental defect in its creation and not merely because of a curable procedural irregularity. Drawing an analogy to the facts of the present case, he submitted that the impugned order suffers from similar foundational jurisdictional defects.

3.50. Firstly, according to him, the recommendation made by the Hon'ble Governor to the Hon'ble President for initiating proceedings under Article 317(1) was made without the constitutionally mandated aid and advice of the Council of Ministers.

3.51. Secondly, even before the Hon'ble President could make a reference to the Hon'ble Supreme

Court under Article 317(1), the Hon'ble Governor proceeded to suspend the petitioner in purported exercise of the power under Article 317(2).

3.52. According to learned Senior Counsel, these defects strike at the very root of the exercise of power and render both the recommendation and the impugned order of suspension non est in the eye of law. He submitted that such foundational defects cannot be cured or validated by any subsequent ex post facto approval or ratification accorded by the Council of Ministers.

3.53. He relies upon the decision in ***Shri Khereshwar Mahadev VA Dauji Maharaj Samiti v. State of U.P.***[7], more particularly para 15 thereof, which is reproduced hereunder for easy reference.

> ***"15.*** *Apart from that it is a settled law that when a law requires a particular thing to be done in a particular manner,* ***it has to be done in that manner alone or not at all****. When a legal proceeding to be filed by the Gram Sabha is to be filed only on the resolution of the Gram Sabha, the petition at the instance of Respondent No. 5/Manju Devi, without there being a resolution of the Gram Sabha was not tenable at the*

[7] 2025 SCC OnLine SC 774

instance of the Gram Sabha. If the High Court wanted to treat the same as a public interest litigation at the instance of Respondent No. 5/Manju Devi in her individual capacity then the High Court ought to have taken into consideration as to whether the public interest litigation should have been entertained in a private lis or not."

3.54. By relying on **Shri Khereshwar Mahadev,** Learned Senior Counsel reiterated the well-settled principle that where a statute or the Constitution prescribes that a particular act is to be performed in a particular manner, it must be performed in that manner alone or not at all. According to him, in the present case, the Constitution mandates that the Hon'ble Governor exercise the power under Article 317(2) only upon the aid and advice of the Council of Ministers and in accordance with the constitutional procedure. Since, according to him, the impugned order was passed without complying with the said constitutional requirement, the exercise of power is vitiated and the impugned order is liable to be set aside.

3.55. He relies on ***Padma Sundara Rao v. State of T.N.***[8]**,** more particularly para 9 thereof, which is reproduced hereunder for easy reference:

> ***"9.*** *Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that* ***judicial utterances are made in the setting of the facts of a particular case****, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."*

3.56. By relying on **Padma Sundara Rao,** learned Senior Counsel submitted that it is a well-settled principle that a judicial precedent cannot be applied divorced from the facts in which it was rendered. According to him, before placing reliance on any precedent, the Court is required to examine whether the factual matrix of the case under consideration is comparable to that of the precedent relied upon. He therefore submitted that the decisions relied upon by the respondents arise in entirely different factual and constitutional contexts

[8] (2002) 3 SCC 533

and, consequently, do not govern the issues arising for consideration in the present case.

3.57. He relies on ***Babu Verghese v. Bar Council of Kerala***[9]**,** more particularly para 31 and 32 thereof, which are reproduced hereunder for easy reference.

> ***"31.*** *It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute,* ***the act must be done in that manner or not at all****. The origin of this rule is traceable to the decision in Taylor v. Taylor [(1875) 1 Ch D 426 : 45 LJCh 373] which was followed by Lord Roche in Nazir Ahmad v. King Emperor [(1936) 63 IA 372 : AIR 1936 PC 253] who stated as under:*
>
> *"[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."*
>
> ***32.*** *This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322 : 1954 SCR 1098] and again in Deep Chand v. State of Rajasthan [AIR 1961 SC 1527 : (1962) 1 SCR 662] . These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 SCWR 57] and the rule laid down in Nazir Ahmad case [(1936) 63 IA 372 : AIR 1936 PC 253] was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law."*

3.58. By relying on **Babu Verghese**, learned Senior Counsel reiterated that it is a settled principle of law that where a statute or the Constitution prescribes the manner in which a particular power is to be exercised or a particular act is to

[9] (1999) 3 SCC 422

be performed, it must be exercised or performed in that manner alone and in no other. According to him, since the constitutional requirements governing the exercise of power under Articles 163 and 317 have not been complied with in the present case, the impugned exercise of power by the Hon'ble Governor is contrary to the constitutional mandate and is therefore liable to be declared invalid.

4) Whether ex-post facto approval or ratification of the impugned order by the cabinet at a later date amounts to compliance with Article 163 of constitution of India?"

3.59. In support of the fourth point formulated by him, learned Senior Counsel submitted that the present case concerns the holder of a constitutional office, namely the Chairman of the Karnataka Public Service Commission, and involves the interpretation and application of Article 317 of the Constitution. According to him, the matter directly affects the petitioner's constitutional rights flowing from Articles 316 and 317 of the Constitution and also concerns the constitutional obligations cast upon the

Council of Ministers and the Hon'ble Governor in the exercise of powers under Article 317. He submitted that the case therefore involves the observance of constitutional procedure and the constitutional safeguards expressly engrafted under Article 317 of the Constitution.

3.60. Since the impugned order has the effect of depriving the petitioner of the rights and privileges attached to a constitutional office, it was incumbent upon the Hon'ble Governor to ensure strict compliance with all the constitutional requirements governing the exercise of such power. According to him, any departure from the prescribed constitutional procedure would vitiate the exercise of power.

3.61. The very fact that the Council of Ministers subsequently accorded ex post facto approval or ratification to the impugned order unequivocally demonstrates that, on the date the order of suspension was passed, there was no aid and advice of the Council of Ministers available to the Hon'ble Governor. According to him, the constitutional requirement of aid and advice under Article 163 is a condition

precedent to the exercise of the power under Article 317(2) and cannot be supplied retrospectively by way of ex post facto approval or ratification. Consequently, he submitted that the impugned order stands vitiated for non-compliance with the constitutional mandate.

3.62. There cannot be *ex post facto* approval/ratifications or *post facto* aid and advice by the Council of Ministers to the Hon'ble Governor.

3.63. He relies on ***Harbinder Singh Sekhon & Ors. v. State of Punjab and Ors.***[10]**,** more particularly paras 10, 34, 40, 43, 44, 45, 47 thereof, which are reproduced hereunder for easy reference:

> ***"10.*** *We have heard the learned counsel for the parties, and we have gone through the comprehensive material on record. In our considered opinion, the following questions arise for determination in the present appeals.*
>
> ***10.1.*** *(I) Whether the CLU dated 13-12-2021 could have been granted for the proposed unit when the land use under the Master Plan for Sangrur treated the site as falling in a rural agricultural zone.*
>
> ***10.2.*** *(II) Whether the "approval" recorded in the 43rd meeting of the Punjab Regional and Town Planning and Development Board dated 5-1-2022 could lawfully cure the admitted defect in the CLU and whether such approval is*

[10] (2026) 5 SCC 107

capable in law of operating as an alteration or amendment of the Master Plan under the PRTPD Act.

10.3. *(III) Whether the siting norms and environmental safeguards, including the PPCB Notification dated 2-9-1998 and the relevant regulatory framework, were complied with in relation to the proximity of habitations and the school, and whether the process adopted by the authorities satisfies the requirements of the prevailing legal norms.*

34. *It must be emphasized that when a statute prescribes a particular manner for doing an act, it must be done in that manner and in no other manner. In the present case, where the Master Plan is the governing statutory instrument for land use, a departure which effectively changes land use permissibility must satisfy the statutory procedure for alteration, amendment, or revision contemplated by the PRTPD Act. It cannot rest on internal approvals or administrative convenience. This is also why the High Court's recording that, as on 13-12-2021, the CLU did not have statutory backing, assumes decisive significance. If on the date of its issuance the CLU lacked statutory support to permit the proposed use in the relevant zone, the defect is not a mere irregularity. It goes to the root of jurisdiction. A permission must be lawful when it is granted. It cannot be rendered lawful by a later event unless the PRTPD Act itself so provides.*

40. *We now turn to the reliance placed on the "approval" recorded in the 43rd meeting of the Punjab Regional and Town Planning and Development Board dated 5-1-2022. The record indicates that the item placed before the Planning Board itself described the proposal as requiring ex post facto approval, and the minutes record that such ex post facto approval was granted. The crucial question, however, is not the label applied by the administration, nor the form in which the approval is described. The determinative question is whether the decision recorded on 5-1-2022 is capable, in law, of operating as an alteration or amendment of the Master Plan so as to retrospectively validate and cure the admitted defect in the CLU dated 13-12-2021.*

43. *This conclusion becomes inescapable where, as in the present case, the asserted "approval" has the effect of permitting an otherwise impermissible industrial activity in a rural agricultural zone, with direct consequences for residents, habitations, and a functioning educational institution. Zoning prescriptions under a Master Plan are*

not mere internal guidelines. They represent a considered legislative balance between competing land uses and are intended to protect public interest. Any departure which dilutes that balance must satisfy the full statutory process prescribed for altering the Plan itself. Executive convenience or post facto endorsement cannot be a substitute for statutory compliance.

44. *Equally, the statutory scheme does not contemplate the curing of a jurisdictional defect by retrospective administrative approval. A CLU which is unlawful on the date of its grant for want of statutory authority does not become lawful merely because a later decision purports to validate it, unless the statute expressly confers such a power of retrospective validation. The PRTPD Act contains no such provision. The legality of the CLU must therefore be tested with reference to the law and the operative planning framework as they stood on the date the CLU was granted.*

45. *Therefore, we hold that where the PRTPD Act occupies the field and prescribes the manner in which an operative planning instrument is to be revised or altered, that manner cannot be substituted by executive decision-making or by treating minutes of a meeting as the equivalent of an amendment brought into operation under the Act.*

47. *It was lastly urged that substantial financial investment has been made pursuant to the CLU and that interference at this stage would cause prejudice. We are unable to accept this submission. Expenditure incurred or steps taken in furtherance of a permission that is unlawful or without statutory authority cannot confer legitimacy upon the underlying action. No amount of financial investment can justify the continuation of an illegal project that operates in derogation of the statutory planning framework and directly impacts the rights of civilians living in the region."*

3.64. By relying on **Harbinder Singh Sekhon**, learned Senior Counsel submitted that the Hon'ble Supreme Court has reiterated the well-settled principle that where a statute prescribes a particular manner in which an act is required

to be performed, it must be performed in that manner alone and in no other manner. He submitted that the Hon'ble Supreme Court further held that where the statutory scheme does not contemplate the retrospective validation of an action which was unlawful at its inception, a subsequent administrative approval or ex post facto ratification cannot cure the foundational defect or confer legality upon such action. Drawing an analogy to the facts of the present case, he submitted that the constitutional scheme embodied in Articles 163 and 317 does not contemplate the validation of an otherwise unconstitutional exercise of power by means of a subsequent approval or ratification by the Council of Ministers. According to him, since the impugned order was allegedly passed without complying with the mandatory constitutional requirements governing the exercise of power under Article 317(2), the same cannot be retrospectively validated by the subsequent decision of the Council of Ministers and is therefore liable to be declared unconstitutional.

3.65. He relies on ***Vijay Kumar v. Central Bank of India and Ors.***[11]**,** more particularly paras 9, 17, 19, 20, 21 and 24 thereof, which are reproduced hereunder for easy reference:

> ***"9.*** *Mr. Neeraj Shekhar contended pension is not a bounty and appellant's right to pension is constitutionally protected under Article 300A. Such right could not be taken away save and except by a clear prescription of law. High Court erred in holding that a compulsorily retired employee is not entitled to pension at all unless an order under regulation 33(1) of the Pension Regulations is passed. Regulation 33(1) and (2) must be harmoniously construed to mean in cases where penalty of compulsory retirement is imposed, such employee has a right to receive pension not less than two-third of the full pension and such deduction can be made only after prior consultation with the Board of Directors.*
>
> ***17.*** *There is no cavil that pension is not a discretion of the employer but a valuable right to property and can be denied only through authority of law. When an authority is vested with the discretion to grant pension less than full pension admissible under the Pension Regulations, all procedural safeguards in favour of the employee including prior consultation must be strictly followed.*
>
> ***19.*** *In fine, we hold clause (1) and clause (2) of regulation 33 must be read conjointly and in all cases when the full pension admissible to a compulsorily retired employee under the regulations is reduced, a prior consultation with the Board is necessary.*
>
> ***20.*** *It would be argued the Field General Manager's order to reduce pension may be placed before the Board for ex-post facto approval. Whether 'prior consultation' is mandatory or a post facto approval would suffice would depend on various factors including nature of consultation, status of the authority consulted, and the rights affected by the decision.*
>
> ***21.*** *A plain reading of regulation 33 would show award of pension less than full pension is to be done with prior consultation of the Board of Directors. Such prior consultation with the highest authority of the Bank i.e.,*

[11] 2025 SCC Online SC 1442

Board of Directors ***must be understood as a valuable mandatory safeguard*** *before an employee's constitutional right to pension is curtailed. In these circumstances, a post facto approval cannot be a substitute of prior consultation with the Board before the decision is made. Reference may be made to Indian Administrative Service (S.C.S.) Association, U.P. v. Union of India*[6] *wherein the parameters to decide whether prior consultation is mandatory or directory have been succinctly elucidated:—*

"26. *The result of the above discussion leads to the following conclusions:*

(1) Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute the foundation and source for final decision. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.

(2) When the offending action affects fundamental rights or to effectuate built-in insulation, as fair procedure, consultation is mandatory and non-consultation renders the action ultra vires or invalid or void.

(3) When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal.

(4) When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.

(5) When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be taken be put to notice of the authority or the persons to be consulted; have the views or objections, take them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision thereon. In such circumstances it amounts to an action "after consultation".

(6) No hard and fast rule could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down the manner in which consultation must take place. It is for the Court to determine in each case in the light of its facts and circumstances whether the action is "after consultation"; "was in fact consulted" or was it a "sufficient consultation".

(7) Where any action is legislative in character, the consultation envisages like one under Section 3(1) of the Act, that the Central Government is to intimate to the State Governments concerned of the proposed action in general outlines and on receiving the objections or suggestions, the Central Government or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules. The revised draft bill or rules, amendments or additions in the altered or modified form need not again be communicated to all the concerned State Governments nor have prior fresh consultation. Rules or Regulations being legislative in character, would tacitly receive the approval of the State Governments through the people's representatives when laid on the floor of each House of Parliament. The Act or the Rule made at the final shape is not rendered void or ultra vires or invalid for non-consultation."

24. *Accordingly, we allow the appeal and set aside the order of the High Court and order of the Field General Manager dated 07.08.2015 reducing pension without prior consultation of the Board of Directors. It shall be open to the Bank to take appropriate decision regarding reduction of pension after giving an opportunity of hearing to the appellant and with prior consultation of the Board within two months from the date of this judgment failing which the appellant shall be entitled to full pension from the date of superannuation."*

3.66. By relying on **Vijay Kumar**, learned Senior Counsel submitted that the Hon'ble Supreme Court has held that where the governing statutory framework mandates prior consultation before the exercise of a power affecting valuable rights, such prior consultation

constitutes a mandatory safeguard and cannot be substituted by an ex post facto approval. According to him, the Hon'ble Supreme Court further held that where the opinion or advice of the authority to be consulted is binding upon the decision-maker, non-compliance with the requirement of prior consultation renders the consequential action illegal and void. Drawing an analogy to the present case, he submitted that the aid and advice of the Council of Ministers under Article 163 of the Constitution is binding upon the Hon'ble Governor in the exercise of executive powers of the nature involved herein. Consequently, according to him, if the Hon'ble Governor exercised the power under Article 317(2) without first obtaining the aid and advice of the Council of Ministers, the impugned order would be illegal, void and incapable of being validated by a subsequent approval or ratification.

3.67. The Hon'ble Supreme Court has explained that consultation is not an empty formality but a constitutional process requiring a meeting of minds between the parties involved on the material facts and issues so as to arrive at an

informed and considered decision. Applying the said principle to the present case, he submitted that there ought to have been a meeting of minds between the Hon'ble Governor and the Council of Ministers before any recommendation was made to the Hon'ble President under Article 317(1) or before any decision was taken to suspend the petitioner under Article 317(2). According to him, in the absence of such prior deliberation and aid and advice, the constitutional requirement stood unfulfilled and could not thereafter be supplied or cured by any ex post facto approval or ratification of the Council of Ministers.

3.68. He relies on the decision in ***Marathwada University v. Seshrao Balwant Rao Chavan***[12]**,** more particularly paras 27, 28 and 29 thereof, which are reproduced hereunder for easy reference;

> ***"27.*** *These principles of ratification, apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity.* ***It is ab initio void and cannot be ratified****.*

[12] (1989) 3 SCC 132

28. *The counsel for the appellant, however, invited our attention to the case of Parmeshwari Prasad Gupta v. Union of India [(1973) 2 SCC 543 : (1974) 1 SCR 304] . It was a case of termination of services of the Secretary of a Company. The Board of Directors decided to terminate the services of the Secretary. The Chairman of the Board of Directors in fact terminated his services. Subsequently, in the meeting of the Board of Directors the action taken by the Chairman was confirmed. In the suit instituted by the Secretary challenging the termination of his services, the court upheld on the principle that the action of the Chairman even though it was invalid initially, could be validated by ratification in a regularly convened meeting of the Board of Directors. Mathew, J. while considering this aspect of the matter, observed: (SCC pp. 546-47, para 14 : SCR pp. 307-08)*

"Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953. The appellant was not entitled to the declaration prayed for by him and the trial court as well as the High Court was right in dismissing the claim."

29. *These principles of ratification governing transactions of a company where the general body is the repository of all powers cannot be extended to the present case. We were also referred to the decision of the Court of Appeal in Barnard v. National Dock Labour Board [(1953) 1 All ER 1113] and in particular the observation of Denning, L.J.: (All ER 1118 and 1119)*

"While an administrative function can often be delegated, a judicial function rarely can be. No judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication. In Local Government Board v.

Arlidge [1915 AC 120 : 84 LJKB 72] the power to delegate was given by necessary implication, but there is nothing in this scheme authorising the board to delegate this function and it cannot be implied. It was suggested that it would be impracticable for the board to sit as a board to decide all these cases, but I see nothing impracticable in that. They have only to fix their quorum at two members and arrange for two members, one from each side, employers and workers, to be responsible for one week at a time.

Next, it was suggested that, even if the board could not delegate their functions, at any rate they could ratify the actions of the port manager, but, if the board have no power to delegate their functions to the port manager, they can have no power to ratify what he has already done. ***The effect of ratification is to make it equal to a prior command, but as a prior command, in the shape of delegation, would be useless, so also is a ratification****."*

3.69. By referring to **Seshrao Balwant Rao Chavan** learned Senior Counsel submitted that the Hon'ble Supreme Court has drawn a clear distinction between the principles of ratification applicable to acts performed on behalf of a company and the exercise of powers conferred by statute. According to him, the Hon'ble Supreme Court has categorically held that the doctrine of ratification has no application where the exercise of power is governed by a statutory or constitutional provision. He submitted that a statutory authority cannot travel beyond the limits of the power conferred upon it, and any action taken without jurisdiction or in contravention of the

mandatory statutory or constitutional requirements is void ab initio and incapable of being validated by subsequent ratification. Drawing an analogy to the present case, learned Senior Counsel submitted that the powers exercised by the Hon'ble Governor under Article 317 of the Constitution are constitutional powers circumscribed by the constitutional limitations contained in Articles 163 and 317. Therefore, according to him, if the impugned order was passed without satisfying the mandatory constitutional preconditions, the defect goes to the root of the exercise of jurisdiction and cannot be cured by any subsequent approval or ratification by the Council of Ministers.

3.70. He refers to the decision in ***State of Gujarat and Anr. v. Justice R.A.Mehta (Retired) & Ors***[13]**,** more particularly paras 33, 34, 36, 37, 38, 41, 42, 48, 53, 54, 57 and 70 thereof, which are reproduced hereunder for easy reference:

> ***"33.*** *In Samsher Singh v. State of Punjab [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : AIR 1974 SC 2192] , this Court*

[13] (2013) 3 SCC 1

expounded the universal rule that the Governor is bound to act only in accordance with the aid and advice of the Council of Ministers headed by the Chief Minister. The Rules of Business and allocation of business among the Ministers related to the provisions of Article 53 in the case of the President and Article 154 in the case of the Governor state that executive power in connection with the same shall be exercised by the President or the Governor either directly or through subordinate officers. The President is the formal or constitutional head of the executive. The real executive powers, however, are vested in the Ministers of the Cabinet. Wherever the Constitution requires the satisfaction of the President or the Governor, for the purpose of exercise by the President or the Governor any power or function, such satisfaction is not the personal satisfaction of the President or of the Governor in their personal capacity but the satisfaction of the President or Governor in the constitutional sense as contemplated in a Cabinet system of government, that is, the satisfaction of the Council of Ministers, on whose aid and advice the President or the Governor generally exercise all their powers and functions. The President of India is not a glorified cipher. He represents the majesty of the State, and is at its apex, though only symbolically, and has a different rapport with the people and parties alike, being above politics. His vigilant presence makes for good governance if only he uses, what Bagehot described as, "the right to be consulted, to warn and to encourage".

***34. Whenever the Constitution intends to confer discretionary powers upon the Governor or to permit him to exercise his individual judgment, it has done so expressly**. For this purpose, the provisions of Articles 200, 239(2), 371-A(1)(b), 371-A(1)(d), 371-A(2)(b) and 371-A(2)(f), Schedule VI Para 9(2) [and Schedule VI Para 18(3), until omitted with effect from 21-1-1972], may be referred to. Thus, discretionary powers exist only where they are expressly spelt out.*

***36.** The Governor shall act with the aid and advice of the Council of Ministers, save in a few well-known exceptional situations. Without being dogmatic or exhaustive, this situation relates to the choice of the Chief Minister, dismissal of the Government, and dissolution of the House.*

***37.** In M.P. Special Police Establishment v. State of M.P. [(2004) 8 SCC 788 : 2005 SCC (Cri) 1 : AIR 2005 SC 325] , the question that arose was whether for the purpose of grant of sanction for the prosecution of Ministers for*

offences under the Prevention of Corruption Act and/or the Penal Code, the Governor, while granting such sanction, could exercise his own discretion or act contrary to the advice rendered to him by the Council of Ministers. The Court, in this regard, first considered the object and purpose of the statutory provisions which are aimed at achieving the prevention and eradication of acts of corruption by public functionaries. The Court then also considered the provisions of Article 163 of the Constitution, and took into consideration with respect to the same a large number of earlier judgments of this Court including Samsher Singh [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : AIR 1974 SC 2192] and State of Maharashtra v. Ramdas Shrinivas Nayak [(1982) 2 SCC 463 : 1982 SCC (Cri) 478 : AIR 1982 SC 1249] and thereafter, came to the conclusion that in a matter related to the grant of sanction required to prosecute a public functionary, the Governor is usually required to act in accordance with the aid and advice rendered to him by the Council of Ministers and not upon his own discretion. However, an exception may arise while considering the grant of sanction required to prosecute the Chief Minister, or a Minister, where as a matter of propriety, the Governor may have to act upon his own discretion. Similar would be the situation in a case where the Council of Ministers disables or disentitles itself from providing such aid and advice. Such a conclusion by the Court was found to be necessary for the reason that the facts and circumstances of a case involving any of the aforementioned fact situations may indicate the possibility of bias on the part of the Chief Minister or the Council of Ministers. This Court carved out certain exceptions to the said provision. For instance, where bias is inherent or apparent, or, where the decision of the Council of Ministers is wholly irrational, or, where the Council of Ministers, because of some incapacity or other situation, is disentitled from giving such advice, or, where it refrains from doing so as matter of propriety, or in the case of a complete breakdown of democracy.

38. *Article 163(2) of the Constitution provides that it would be permissible for the Governor to act without ministerial advice in certain other situations, depending upon the circumstances therein, even though they may not specifically be mentioned in the Constitution as discretionary functions e.g. the exercise of power under Article 356(1), as no such advice will be available from the Council of Ministers, who are responsible for the breakdown of constitutional machinery, or where one Ministry has resigned, and the other alternative Ministry cannot be formed. Moreover, clause (2) of Article 163 provides that*

the Governor himself is the final authority to decide upon the issue of whether he is required by or under the Constitution, to act in his discretion. The Council of Ministers, therefore, would be rendered incompetent in the event of there being a difference of opinion with respect to such a question, and such a decision taken by the Governor would not be justiciable in any court. There may also be circumstances where there are matters with respect to which the Constitution does not specifically require the Governor to act in his discretion but the Governor, despite this, may be fully justified to act so e.g. the Council of Ministers may advise the Governor to dissolve a House, which may be detrimental to the interests of the nation. In such circumstances, the Governor would be justified in refusing to accept the advice rendered to him and act in his discretion. There may even be circumstances where ministerial advice is not available at all i.e. the decision regarding the choice of Chief Minister under Article 164(1) which involves choosing a Chief Minister after a fresh election, or in the event of the death or resignation of the Chief Minister, or dismissal of the Chief Minister who loses majority in the House and yet refuses to resign or agree to dissolution. The Governor is further not required to act on the advice of the Council of Ministers where some other body has been referred for the purpose of consultation i.e. Article 192(2) as regards decisions on questions related to the disqualification of Members of the State Legislature.

41. *Thus, where the Governor acts as the Head of the State, except in relation to areas which are earmarked under the Constitution as giving discretion to the Governor, the exercise of power by him must only be upon the aid and advice of the Council of Ministers, for the reason that the Governor being the custodian of all executive and other powers under various provisions of the Constitution is required to exercise his formal constitutional powers only upon and in accordance with the aid and advice of his Council of Ministers. He is, therefore, bound to act under the Rules of Business framed under Article 166(3) of the Constitution. (Vide Pu Myllai Hlychho v. State of Mizoram [(2005) 2 SCC 92 : AIR 2005 SC 1537] .)*

42. *In Ram Nagina Singh v. S.V. Sohni [AIR 1976 Pat 36] the Patna High Court considered the issue involved herein i.e. the appointment of the Lokayukta, under the Bihar Lokayukta Act, 1973, and held that ordinarily when a power is vested even by virtue of a statute in the Governor he must act in accordance with the aid and advice tendered to him by the Council of Ministers for the simple reason that he*

does not cease to be an executive head as mentioned under the Constitution merely because such authority is conferred upon him by a statute. It would in fact be violative of the scheme of the Constitution if it was held that the mere use of the word "Governor" in any statute is sufficient to impute to the legislature an intention by it to confer a power "eo nomine". Any interpretation other than the one mentioned above would, therefore, be against the concept of parliamentary democracy which is one of the basic postulates of the Constitution. In view of the Rules of Executive Business, the topic involving appointment of the Lokayukta must be brought before the Council of Ministers. Even if the appointment in question is not governed by any specific rule in the Rules of Executive Business such appointment must still be made following the said procedure for the reason that the Rules of Executive Business cannot be such so as to override any bar imposed by Article 163(3) of the Constitution.

48. *In Maru Ram v. Union of India [(1981) 1 SCC 107 : 1981 SCC (Cri) 112 : AIR 1980 SC 2147] a Constitution Bench of this Court held that : (SCC pp. 146-47, para 61)*

"61. … the Governor is but a shorthand expression for the State Government and the President is an abbreviation for the Central Government."

53. *In Bhuri Nath [(1997) 2 SCC 745 : AIR 1997 SC 1711] the question that arose was in relation to whether the Governor was bound to act in accordance with the aid and advice of the Council of Ministers, or whether he could exercise his own discretion, independent of his status and position as the Governor, by virtue of him being the ex officio Chairman of the Shri Mata Vaishno Devi Shrine Board under the Shri Mata Vaishno Devi Shrine Act, 1988. The Shrine Board discharges functions and duties, as have been described under the Act in the manner prescribed therein, and thus, after examining the scheme of the Act, this Court held that : (SCC p. 765, para 24)*

24. … The decision is his own decision, on the basis of his own personal satisfaction, and not upon the aid and advice of the Council of Ministers. The nature of exercise of his powers and functions under the Act is distinct, and different from the nature of those that are exercised by him formally, in the name of the Governor, under his seal, for which responsibility rests only with his Council of Ministers, headed by the Chief Minister.

54. *In State of U.P. v. Pradhan Sangh Kshettra Samiti [1995 Supp (2) SCC 305 : AIR 1995 SC 1512] this Court dealt with the position of the Governor in relation to functions of the State and held as under : (SCC pp. 326-27, paras 37-38)*

"37. Admittedly, the function under Article 243(g) is to be exercised by the Governor on the aid and advice of his Council of Ministers. Under the rules of business made by the Governor under Article 166(3) of the Constitution, it is in fact an act of the Minister concerned or of the Council of Ministers as the case may be. When the Constitution itself thus equates the Governor with the State Government for the purposes of the relevant function … Further, Section 3(60)(c) of the General Clauses Act, 1897 defines 'State Government' to mean Governor which definition is in conformity with the provisions of the Constitution. …

38. … [The] 'Governor' means the Government of the State and all executive functions which are exercised by the Governor except where he is required under the Constitution to exercise the functions in his discretion, are exercised by him on the aid and advice of the Council of Ministers."

(emphasis added)

57. *In view of the aforesaid discussion, the law as evolved and applicable herein can be summarised to the effect that* ***<u>the Governor is bound to act on the aid and advice of the Council of Ministers, unless he acts as</u>*** *"persona designata" i.e. "eo nomine", under a particular statute, or acts in his own discretion under the exceptions carved out by the Constitution itself.*

70. *Be that as it may, the judgments referred to hereinabove, do not leave any room for doubt with respect to the fact that when the Governor does not act as a statutory authority, but as the Head of the State, being Head of the executive and appoints someone under his seal and signature, he is bound to act upon the aid and advice of the Council of Ministers. The Governor's version of events stated in her letter dated 3-3-2010 to the effect that she was not bound by the aid and advice of the Council of Ministers and that she had the exclusive right to appoint the Lokayukta is most certainly not in accordance with the spirit of the Constitution. It seems that this was an outcome of an improper legal advice and the opinion expressed is not in conformity with the rule of law. The view of the Governor was unwarranted and logically insupportable."*

3.71. By relying on **R. A. Mehta**, learned Senior Counsel submitted that the Hon'ble Supreme Court has comprehensively reiterated the constitutional position that the Hon'ble Governor, while functioning as the constitutional Head of the State, is ordinarily bound to act on the aid and advice of the Council of Ministers, except in those limited situations where the Constitution expressly confers discretion upon the Hon'ble Governor or where such discretion necessarily flows from the constitutional scheme. According to him, the Hon'ble Supreme Court has categorically held that wherever the Constitution contemplates the satisfaction of the Hon'ble Governor, such satisfaction is not the personal satisfaction of the Hon'ble Governor but the constitutional satisfaction arrived at on the aid and advice of the Council of Ministers.

3.72. The Hon'ble Supreme Court has held that the mere conferment of a power upon the Hon'ble Governor, whether under the Constitution or under a statute, does not by itself imply that such power is to be exercised in his individual

discretion. Unless the Constitution expressly provides otherwise, the Hon'ble Governor continues to function as the constitutional Head of the Executive and is required to act in accordance with the aid and advice of the Council of Ministers and in conformity with the Rules of Business framed under Article 166(3) of the Constitution.

3.73. The Hon'ble Supreme Court has recognised only limited exceptions to the aforesaid constitutional rule, such as cases involving the appointment of the Hon'ble Chief Minister, dismissal of a Government which has lost the confidence of the House, dissolution of the Legislative Assembly in exceptional circumstances, or other situations expressly contemplated by the Constitution. According to him, the exercise of power under Article 317(2) of the Constitution does not fall within any such recognised exception and, therefore, the Hon'ble Governor could not have exercised the said power independently of the aid and advice of the Council of Ministers.

3.74. The Hon'ble Supreme Court has also explained that where the Hon'ble Governor acts as the Head of the State and not as a "persona designata" or "eo nomine" under a statute, the Hon'ble Governor is constitutionally bound to act upon the aid and advice of the Council of Ministers. He submitted that the power under Article 317(2) is exercised by the Hon'ble Governor in his capacity as the constitutional Head of the State and not as a statutory authority acting in an independent capacity. Consequently, according to him, the exercise of such power must necessarily conform to the constitutional mandate contained in Article 163.

3.75. The impugned order of suspension, having been issued by the Hon'ble Governor without the aid and advice of the Council of Ministers and without attracting any of the recognised constitutional exceptions, is contrary to the law declared by the Hon'ble Supreme Court in **Justice R.A. Mehta (Retired)**. He therefore submitted that the impugned order is constitutionally unsustainable and liable to be set aside.

3.76. On the basis of all the above, his submission is that the above writ petition is required to be allowed by granting the reliefs sought for.

4. Sri Udaya Holla, learned Senior Counsel appearing for respondent No.1 – Special Secretary to the Hon'ble Governor, made the following submissions:

4.1. The Hon'ble Governor appointed the petitioner as the Chairman of the Karnataka Public Service Commission (KPSC) on 03.04.2021.

4.2. The petitioner's elder daughter had applied for the post of Group-C Industrial Extension Officer pursuant to a recruitment notification issued by the KPSC and had appeared for the written examination conducted by the KPSC. According to him, she had claimed reservation under Category III-B (Women). However, under the Government Order relating to the creamy layer, the children of the Chairman of the Public Service Commission fall within the creamy layer and are not entitled to claim the benefit of reservation under the Other Backward Classes category. In spite of this, the petitioner's daughter claimed the benefit of reservation.

4.3. The petitioner's younger daughter was also selected by the KPSC to the post of Industrial Extension Officer under the General Merit category pursuant to the Hyderabad-Karnataka recruitment notification.

4.4. The petitioner did not disclose these facts to the KPSC. According to him, this amounted to serious misconduct, gave rise to a conflict of interest and amounted to misuse of the petitioner's position as the Chairman of the KPSC. He submitted that the petitioner, being the Chairman of the KPSC, was expected to maintain complete fairness and transparency in the recruitment process and avoid any situation that could create a conflict of interest.

4.5. The issue relating to the reservation claimed by the petitioner's daughter was widely reported in the newspapers and other media and had become a matter of public discussion. It was in these circumstances that the Hon'ble Governor exercised the powers under Article 317 of the Constitution by recommending to the Hon'ble President that the matter be referred to the Hon'ble Supreme Court for an inquiry.

Thereafter, by the impugned order dated 10.07.2026, the petitioner was placed under suspension from the office of Chairman of the KPSC.

4.6. The order of suspension was passed to ensure that the petitioner did not interfere with the day-to-day administration of the KPSC or with the inquiry that was proposed to be held.

4.7. Article 315 of the Constitution provides for the establishment of a Public Service Commission for the Union and for every State. The object of creating such a constitutional body is to ensure a fair, transparent and impartial process of recruitment to public services. Article 315 of the Constitution of India is reproduced hereunder for easy reference;

> ***315. Public Service Commissions for the Union and for the States***
>
> *(1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.*
>
> *(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the*

appointment of a Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law.

(4) The Public Service Commission for the Union, if requested so to do by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

(5) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question.

4.8. Referring to Article 315 of the Constitution, learned Senior Counsel submitted that the Public Service Commission is a constitutional body entrusted with the important responsibility of selecting suitable candidates for appointment to public services. According to him, the Chairman and the Members of the Commission hold constitutional offices and are expected to discharge their duties with complete fairness, impartiality and integrity. He submitted that the credibility of the Commission and the confidence of the public in the recruitment process depend upon the conduct of its

Chairman and Members. Therefore, whenever allegations affecting the integrity or impartiality of the Chairman arise, immediate steps are required to be taken to protect the credibility of the Commission and to ensure that the recruitment process remains fair and transparent. According to him, it was with this object that the Hon'ble Governor exercised the powers under Article 317 of the Constitution.

4.9. He relies on Article 320 of the Constitution of India which is reproduced for easy reference;

320. Functions of Public Service Commissions

(1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by hi m in defending legal proceedings instituted against hi m in respect of acts done or purporting to be done in the execution of hi s duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them:

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335 .

(5) All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.

4.10. Referring to Article 320 of the Constitution, learned Senior Counsel submitted that the Constitution entrusts important functions to the Public Service Commission. He submitted that it is the duty of the State Public Service Commission to conduct examinations for appointment to the services of the State. The Commission is also required to advise the Government on matters relating to methods of recruitment, principles governing appointments, promotions and transfers, the suitability of candidates for such appointments, promotions and transfers, and disciplinary matters relating to persons serving under the State in a civil

capacity. According to him, these constitutional functions show the importance of the role assigned to the Public Service Commission in the administration of the State.

4.11. Having regard to the nature of the functions entrusted to the Public Service Commission under Article 320 of the Constitution, the Chairman and Members of the Commission are expected to maintain the highest standards of integrity, fairness, transparency and impartiality. According to him, public confidence in the recruitment process depends upon the credibility of the Commission and its members. He therefore submitted that whenever allegations arise which have the potential to affect the credibility of the Commission or public confidence in its functioning, appropriate action is required to protect the institution and to ensure that the recruitment process remains fair and free from any influence.

4.12. He relies on the decision of the Hon'ble Apex Court in ***Reference under Article 317(1) of the Constitution of India, In re***[14]**,** more

[14] (1990) 4 SCC 262

particularly para 8 thereof, which is reproduced hereunder for easy reference;

> ***8.*** *Sri R.N. Mittal next contended that the reference must be treated to have become infructuous and need not be answered. As provided in Article 316(2), the tenure of office of a Member of a Public Service Commission is six years (subject to reduction of the period in case of the Member reaching the age of superannuation earlier, which is not the case here). The term of office of Sri Saini was to expire in May 1986. The contention of Sri Mittal is that since his tenure expired in 1986, Sri Saini cannot now be removed from his office and it is, therefore, futile to examine the evidence recorded in the case in pursuance of the earlier order of this Court, and to record a finding on the correctness or otherwise of the allegations made against him. Referring to the provisions of Article 316, dealing with the appointment and term of office of Members, the learned counsel emphasised the fact that the period of six years has been rigidly fixed making it clear that the period cannot be extended and the Member on the expiration of his term would be ineligible for re-appointment. Reliance was placed on several decisions dealing with disciplinary proceedings against the government servants, and it was argued that the same principle should be applicable to Members of the Public Service Commissions. Reference was made to the decisions in R.T. Rangachari v. Secretary of State , State of Assam v. Padma Ram Borah, Dinesh Chandra Sangma v. State of Assam , B.J. Shelat v. State of and C.L. Verma v. State of Madhya Pradesh . An examination of these decisions would show that the cases depended on the interpretation and effect of the relevant service rules dealing with the conditions of service including provisions in regard to retirement and compulsory retirement. So far the present case is concerned, the conduct of a Member of the Public Service Commission is in question which has been considered important enough to be directly dealt with by the Constitution itself. The efficiency and purity of administration are greatly dependent on the right choice of the candidates to be entrusted with official duty; and to ensure that suitable persons, in whom the public may have full faith are selected, it was considered necessary to have a body with members of integrity, sincerity, and practical wisdom capable of commanding the confidence of the people for examining the merits of the candidates and*

make available to the appointing authorities their conclusion. Taking into account the possibility of their being subject to pressure, they were given special protection by the Constitution under Article 317 providing that they, except in cases covered by clause (3), can be removed from their office only by an order of the President on the ground of misbehaviour after an enquiry by the Supreme Court in this regard. The fact that the apex court of the country was entrusted with such a duty indicates the great importance which has been attached to the office of the Member of the Commission. Under clause (2) of Article 317, authority to suspend the Chairman or Member of the Commission pending an inquiry by the Supreme Court has been vested with the Governor in the case of a State Commission. If the position is examined in this background it is difficult to suggest that the conduct of a Member of the Commission under scrutiny of this Court in a reference made by the President can be ignored on account of the tenure being over. ***The Regulations framed under Article 318 by the Governor do not and cannot deal with removal and suspension of a Member of the Commission since they are exclusively covered by Article 317****. Part V of the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958, provides for the payment of pension with the proviso that a Member who has been removed from office shall not be entitled to the same. So far as the government servants are concerned, there are specific set of rules in regard to pension, inter alia dealing with cases in which government servants are found guilty of serious charges committed on the eve of their retirement. The rules governing many services also provide for extending the period of service of the government servant with a view to complete a pending disciplinary proceeding. In the case of a Member of the Commission, the Constitution, while dealing with the removal of a Member, does not provide for such contingencies. The issue, therefore, must be treated as a live one even after the expiry of a Member's tenure. The President of India has requested this Court to investigate into the conduct of a Member and this Court ought to convey its conclusions rather than refuse to answer the question. During the hearing of the case, we enquired from Sri Mittal, the learned counsel for Sri Saini, whether, in the event of this proceeding being dropped as suggested on his behalf, he is ready to give up his claim for salary for the period he was under suspension and for pension, and Sri Mittal after taking instructions*

from Sri Saini, who was present in court throughout the arguments, stated that the respondent would not give up his claim and would demand arrears of his salary and pension.

4.13. By relying on **Reference under Article 317(1) of the Constitution of India, In re**, learned Senior Counsel submitted that the Hon'ble Supreme Court has recognised the importance of the office of the Chairman and Members of a Public Service Commission. He submitted that the Hon'ble Supreme Court has observed that the Constitution itself provides special safeguards regarding their appointment, suspension and removal, as they hold constitutional offices and discharge important constitutional functions. The Hon'ble Supreme Court has further observed that the efficiency and purity of public administration depend upon selecting suitable persons for public service and, therefore, the Chairman and Members of the Public Service Commission are expected to possess integrity, sincerity and practical wisdom and to command the confidence of the public. According to him, it was these considerations that weighed with the Hon'ble Governor while recommending to the Hon'ble President that the

matter be referred to the Hon'ble Supreme Court under Article 317(1) and while passing the impugned order of suspension.

4.14. When the writ petition was originally filed, the petitioner had challenged the impugned order mainly on the ground that the Hon'ble Governor had no power to suspend the petitioner under Article 317(2) before the Hon'ble President made a reference to the Hon'ble Supreme Court under Article 317(1). According to him, it was only subsequently that the petitioner raised an additional ground contending that the impugned order was also invalid for want of the aid and advice of the Council of Ministers.

4.15. His submission is that the aspect of the Hon'ble Governor cannot suspend the petitioner till Hon'ble Supreme Court makes a reference to Hon'ble Supreme Court is covered by the decision of the Hon'ble Apex Court in ***Sayalee Sanjeev Joshi, Member, Maharashtra Public Service Commission, In re***[15]**,** more particularly para 1 and 2 thereof, which are reproduced hereunder for easy reference:

[15] (2007) 11 SCC 547

> ***1.*** *This reference is made by the Hon'ble President of India under Article 317 of the Constitution of India in relation to the conduct of the respondent, a member of the Maharashtra Public Service Commission. The question is whether Respondent 3 is liable to be removed from office on the ground of misbehaviour.*
>
> ***2.*** *The said respondent joined the Maharashtra Public Service Commission as a member on 8-5-2001. She was arrested on 8-6-2003 in a crime registered in connection with a complaint lodged by the Public Service Commission relating to malpractices in respect of an examination conducted in the year 1999. Twenty-one others were also arrested. The respondent was lodged in jail. This led to His Excellency the Governor of Maharashtra to request His Excellency the President of India to initiate action under Article 317 of the Constitution of India for her removal. He also suspended her from office until an order had been passed by the President under Clause (1) of Article 317 of the Constitution. It is seen that the respondent was subsequently released on bail though at least on three earlier occasions, her prayers for bail were rejected. Since a request was made to the President of India to act in terms of Article 317(1) of the Constitution,* ***the placing of the respondent under suspension under Article 317(2) of the Constitution was proper****. Considering the nature of the scam that emerged and the constitutional position enjoyed by the Public Service Commission, the reference to this Court under Article 317(1) of the Constitution is seen to be the proper step to be taken.*

4.16. By relying on **Sayalee Sanjeev Joshi,** learned Senior Counsel submitted that the facts before the Hon'ble Supreme Court were substantially similar to the facts of the present case. He submitted that, in that case, a Member of the

Maharashtra Public Service Commission had been arrested in connection with a criminal case relating to alleged malpractices in an examination conducted by the Commission. In those circumstances, the Hon'ble Governor of Maharashtra requested the Hon'ble President of India to initiate proceedings under Article 317(1) of the Constitution for her removal and, at the same time, placed the Member under suspension under Article 317(2) until orders were passed by the Hon'ble President.

4.17. The aforesaid course of action was expressly approved by the Hon'ble Supreme Court. He drew the attention of the Court to the observation of the Hon'ble Supreme Court that

"since a request was made to the Hon'ble President of India to act in terms of Article 317(1) of the Constitution, ***the placing of the respondent under suspension under Article 317(2) of the Constitution was proper****."*

4.18. Placing particular reliance on the expression "was proper" used by the Hon'ble Supreme Court, learned Senior Counsel submitted that the Hon'ble Supreme Court approved the order

of suspension passed by His Excellency the Hon'ble Governor even though, at that stage, the Hon'ble President had not yet made a reference to the Hon'ble Supreme Court under Article 317(1). According to him, the said judgment clearly shows that the making of a reference by the Hon'ble President to the Hon'ble Supreme Court is not a condition precedent for the exercise of the power of suspension under Article 317(2). He therefore submitted that the Hon'ble Governor is empowered to suspend the Chairman or a Member of a State Public Service Commission after requesting the Hon'ble President to initiate proceedings under Article 317(1), even before the Hon'ble President makes a formal reference to the Hon'ble Supreme Court for an inquiry.

4.19. He relies on the decision of Hon'ble Apex Court in ***Ram Kumar Kashyap v. Union of India***[16]**,** more particularly para 1, 11 and 12 thereof, which is reproduced hereunder for easy reference:

> ***1.*** *The Chairman and eight members of the Haryana Public Service Commission were placed*

[16] (2009) 9 SCC 378

under suspension on 9-8-2008 by the Governor of the State of Haryana. A reference was made under Article 317(1) of the Constitution of India by the Hon'ble President of India. In these writ petitions the petitioners have sought for a writ of certiorari for quashing the reference made on 31-7-2008 by the Hon'ble President of India under Article 317(1) of the Constitution of India and also for a direction that the order of suspension dated 9-8-2008 passed by the Governor of the State of Haryana be declared as illegal and be quashed.

11. *In Sayalee Sanjeev Joshi, Member, Maharashtra Public Service Commission, In re [(2007) 11 SCC 547], which concerned the removal of a member of the Maharashtra Public Service Commission under Article 317 on grounds of misbehaviour, this Court had observed: (SCC p. 552, para 2)*

"2. … Since a request was made to the President of India to act in terms of Article 317(1) of the Constitution, ***the placing of the respondent under suspension under Article 317(2) of the Constitution was proper****."*

12. *It is clear from the perusal of the above cases that the petitioners were not entitled to an opportunity to show cause or to be heard before the point of time that the orders of suspension were passed by the Hon'ble Governor of Haryana under Article 317(2) after the President had referred the matter to the Supreme Court. The rationale behind empowering the Governor of a State to issue such an order of suspension even before the reference is actually decided by the Supreme Court is* ***to maintain the public trust and confidence in the impartial and honest working of the said Public Service Commission****.*

4.20. By relying on **Ram Kumar Kashyap**, learned Senior Counsel submitted that, in that case, the

Chairman and eight Members of the Haryana Public Service Commission were placed under suspension by the Hon'ble Governor of Haryana. Thereafter, the Hon'ble President of India made a reference to the Hon'ble Supreme Court under Article 317(1) of the Constitution. The Chairman and the Members challenged both the reference made by the Hon'ble President and the order of suspension passed by the Hon'ble Governor.

4.21. While considering the challenge, the Hon'ble Supreme Court referred to its earlier decision in **Sayalee Sanjeev Joshi,** and in particular to paragraph 2 thereof, wherein it was observed that, since a request had been made to the Hon'ble President to act under Article 317(1) of the Constitution, the order of suspension passed under Article 317(2) "was proper".

4.22. By referring to and relying upon the observations made in **Sayalee Sanjeev Joshi**, the Hon'ble Supreme Court in **Ram Kumar Kashyap** approved the said view. According to him, the judgment in **Ram Kumar Kashyap** affirms the principle that an order of suspension

passed by the Hon'ble Governor under Article 317(2), after requesting the Hon'ble President to initiate proceedings under Article 317(1), is legally valid. He submitted that the said decision therefore supports the action taken by the Hon'ble Governor in the present case.

4.23. Insofar as the contentions of the learned Senior Counsel for the petitioner, that an opportunity of hearing had to be provided before an order of recommendation to the Hon'ble President and/or the order of suspension were to be passed. He submits that the Hon'ble Apex Court in **Ram Kumar Kashyap** has categorically held that there is no need for the Hon'ble Governor to give any opportunity or to issue any show-cause before passing such order.

4.24. He relies on the decision of Hon'ble Apex Court in ***Reference under Article 317(1) of the Constitution of India, In re*** [(1990) 4 SCC 262]***,*** more particularly para 19 and 21 thereof, which is reproduced hereunder for easy reference;

> ***19.*** *It has been argued on behalf of the respondent that the issue must be examined in the background of the circumstances indicating a deep conspiracy to oust the*

respondents from the Commission hatched out at the instance of the Chief Minister by the Chairman and others. Reliance was placed on the affidavit of his wife Smt. Krishna Chaudhary (who has been referred to during the hearing as Smt. Krishna so as to avoid the confusion between her name and the name of the Chairman) which was filed along with the main affidavit of the respondent. She is a social worker and has been rendering public service in various capacities detailed in her affidavit. She has stated about her visit to the residence of the Chief Minister, Sri Darbara Singh, in the company of her husband and the Chairman. She says that on seeing her and her husband the Chief Minister lost his cool and declared that the Public Service Commission would be dissolved. From the manner in which the attack proceeded, it was clear to her that the "outburst was directed against her husband", the present respondent. At the end of the meeting the Chief Minister asked the respondent to align with the Chairman and follow her instructions. She has described another incident when she had to face the wrath of the Chief Minister earlier. She was espousing the cause of certain villagers and in that connection led a delegation to the Prime Minister Smt. Indira Gandhi. The Prime Minister after giving a patient hearing to her, sent a telex message to the Chief Minister instructing him to do the needful, and accordingly Sri Darbara Singh paid a visit to the village in question in March 1981. There he made a pointed inquiry from the villagers as to who had led and prompted them to go to the Prime Minister instead of approaching him. When he learnt that it was Smt. Krishna who had gone to the Prime Minister with their case, the Chief Minister shouted at her expressing his deep displeasure. She appeared before the Additional District and Sessions Judge for cross-examination. Her deposition in the case attempted to evade many questions which she thought would show her in bad light. Asked about her unsuccessful attempt to get a party ticket for the election to the State Assembly, she first stated that she had never made an application, but later she had to correct it by accepting that she had asked for the party ticket from Anandpur Saheb Constituency which was refused. From the evidence on the record it is clear that members of both the families of the respondent and his wife's father have been respectable Congressmen of Punjab, and their presence in the public life of the State cannot be ignored. But when Smt. Krishna was asked about various details of her association in the political field she did not come out with straightforward answers. She had been arrested and put in custody for about 2 months during the Janata Party regime in the country in 1977-1979

along with Sri Darbara Singh and several other Congress workers. With a view to evade the questions which were being put to her about her company and the manner in which she conducted herself during that period, she first said that she did not recollect when she underwent the imprisonment and that the other persons mentioned by the cross-examining lawyer "might have been" also there. Another line which was pursued in her cross-examination was about her and her husband's financial position. About receiving donations for social work, she claimed that she stopped collecting donations after her husband became a Member of the Public Service Commission. Several questions were asked about the income of her husband from his law practice as well as that derived from his ancestral properties but she evaded to give the necessary information. She said that she did not have any idea as to the extent of the family properties and the income available therefrom. Nor could she say whether her husband was paying income tax or not before he became a Member of the Commission. However, pursued further she had to admit that the income from the properties could not be substantial. We are not here concerned with the actual properties belonging to the respondent or his income, but the manner in which Smt. Krishna answered the questions put to her in her cross-examination becomes relevant as it shows that she did not have unflinching respect for truth and that she is capable of making a statement which may suit her. Reliance has also been placed on the affidavits of several other persons in support of her story about the threat publicly given to her by the Chief Minister. For the reasons briefly indicated below they also cannot be believed.

21. *It has been argued on behalf of the respondent that the complaint petition of the Chairman and the joint letter of the other three Members of the Commission were not drafted at Patiala and came into existence later at Chandigarh after a deliberation by all the collaborators of the conspiracy. As has been mentioned earlier, the argument is that while the Governor was away on leave, the matter should have awaited his return and should not have been rushed through by sending the complaint to the President of India for immediate action. It has also been said that the issue was not placed even before the Cabinet before taking these steps and it was only belatedly that a post facto resolution in this regard was got passed by the Cabinet. We have given our anxious consideration to all these aspects and we do not find any merit in the argument of the learned counsel for the respondent that*

> *the theory of conspiracy is fit to be accepted. We, therefore, reject the case of Sri G.K. Saini of a conspiracy to get him removed from the office of a Member of the Commission.*

4.25. By relying on **Reference under Article 317(1) of the Constitution of India, In re**, learned Senior Counsel submitted that the Hon'ble Supreme Court considered a case where the complaint against a Member of the Public Service Commission had been forwarded to the Hon'ble President when the Hon'ble Governor was away on leave. It was also contended before the Hon'ble Supreme Court that the matter had not been placed before the Cabinet before the complaint was sent to the Hon'ble President and that the Cabinet had passed only a subsequent resolution approving the action already taken. Learned Senior Counsel submitted that, while considering those facts, the Hon'ble Supreme Court took note of the subsequent approval of the Cabinet and did not find any illegality in the action taken. According to him, the said decision shows that a subsequent approval or ratification by the Council of Ministers is sufficient to satisfy the requirement that the Hon'ble Governor acts on

the aid and advice of the Council of Ministers. On that basis, he submitted that the challenge made by the petitioner to the recommendation made by the Hon'ble Governor to the Hon'ble President and to the order of suspension on the ground that there was no prior aid and advice of the Council of Ministers is not sustainable and is liable to be rejected.

4.26. He relies on the decision of Hon'ble Apex Court in ***U.P. Avas Evam Vikas Parishad v. Rajendra Kumar Aggarwal***[17]**,** more particularly para 6 thereof, which is reproduced hereunder for easy reference:

> ***6****. Having heard the learned counsel for the parties and after going through the decision of this Court in M. Nagaraj v. Union of India [(2006) 8 SCC 212] in which the constitutional validity of the provisions of Article 16(4-A) of the Constitution of India has already been upheld, we are unable to agree with Mr P.P. Rao that at the interim stage, there was any occasion for the High Court to grant the interim order in this pending writ application. In any view of the matter, in our view, it was not a fit case for grant of the interim order. It is true that another Division Bench of the High Court, after considering the decision of this Court in M. Nagaraj v. Union of India [(2006) 8 SCC 212] has granted the interim order but we feel that since the grant of interim order is discretionary in nature and therefore, only because an interim order has been passed by another coordinate Bench of the High Court, it*

[17] (2008) 3 SCC 672

> *cannot be said that the interim order should also be passed in this pending writ application when the constitutional validity of Article 16(4-A) of the Constitution of India and Rule 8(A) of the U.P. Government Servants Seniority (Third Amendment) Rules, 2007 has already been upheld.*

4.27. By relying on **Rajendra Kumar Aggarwal**, learned Senior Counsel submitted that the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution is binding on all Courts in the country. According to him, where there is a decision of the Hon'ble Supreme Court on the issue, this Court is bound to follow the same notwithstanding any contrary view expressed by a Co-ordinate Bench or even a Division Bench of the Hon'ble High Court. He therefore submitted that the decisions of the Hon'ble Supreme Court relied upon by respondent No. 1 govern the issues arising in the present case and deserve to be followed in preference to the judgment in **Mangala Shridhar** of the Hon'ble Division Bench relied upon by the petitioner.

4.28. He relies on the decision of Hon'ble Apex Court in ***Sagar Sharma v. Phoenix ARC (P) Ltd.,***[18]

[18] (2019) 10 SCC 353

more particularly para 3 thereof, which is reproduced hereunder for easy reference:

> ***3.*** *Article 141 of the Constitution of India mandates that our judgments are followed in letter and spirit. The date of coming into force of the IB Code does not and cannot form a trigger point of limitation for applications filed under the Code. Equally, since "applications" are petitions which are filed under the Code, it is Article 137 of the Limitation Act which will apply to such applications.*

4.29. By relying on **Sagar Sharma**, learned Senior Counsel submitted that Article 141 of the Constitution mandates that the law declared by the Hon'ble Supreme Court is binding on all Courts in the country. He submitted that the judgments of the Hon'ble Supreme Court are required to be followed not only in their conclusion but also in their true spirit. According to him, this Court is therefore bound to apply the law laid down by the Hon'ble Supreme Court while deciding the issues that arise in the present case.

4.30. Article 141 of the Constitution is reproduced hereunder for easy reference;

> ***141. Law declared by Supreme Court to be binding on all courts***

> *The law declared by the Supreme Court shall be binding on all courts within the territory of India.*

4.31. Relying on Article 141 learned Senior Counsel submitted that the law declared by the Hon'ble Supreme Court is binding on all Courts in India, including this Hon'ble Court. According to him, once the Hon'ble Supreme Court has laid down the law on a particular issue, this Court is bound to follow the same. He therefore submitted that the decisions of the Hon'ble Supreme Court relied upon by respondent No. 1 are binding on this Court and must be applied while deciding the issues arising in the present writ petition.

4.32. He relies on the decision of Hon'ble Apex Court in ***State of Punjab v. Bhag Singh***[19]**,** more particularly para 5 thereof, which is reproduced hereunder for easy reference:

> ***5.*** *The trial court was required to carefully appraise the entire evidence and then come to a conclusion. If the trial court was at a lapse in this regard the High Court was obliged to undertake such an exercise by entertaining the appeal. The trial court on the facts of this case did not perform its duties, as was enjoined on it by law. The High Court ought to have in such circumstances granted leave and thereafter as a first court of appeal, reappreciated*

[19] (2004) 1 SCC 547

the entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused. It has failed to do so. The questions involved were not trivial. The requirement of independent witness and discarding testimony of official witnesses even if it was reliable, cogent or trustworthy needed adjudication in appeal. The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal, and seems to have been completely oblivious to the fact that by such refusal, a close scrutiny of the order of acquittal by the appellate forum has been lost once and for all. The manner in which the appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. A similar view was expressed in State of U.P. v. Battan [(2001) 10 SCC 607 : 2003 SCC (Cri) 639] . About two decades back in State of Maharashtra v. Vithal Rao Pritirao Chawan [(1981) 4 SCC 129 : 1981 SCC (Cri) 807 : AIR 1982 SC 1215] the desirability of a speaking order while dealing with an application for grant of leave was highlighted. The requirement of indicating reasons in such cases has been judicially recognized as imperative. The view was reiterated in Jawahar Lal Singh v. Naresh Singh [(1987) 2 SCC 222 : 1987 SCC (Cri) 347] . Judicial discipline to abide by declaration of law by this Court, cannot be forsaken, under any pretext by any authority or court, be it even the highest court in a State, oblivious to Article 141 of the Constitution of India.

4.33. By relying on **Bhag Singh,** learned Senior Counsel submitted that the Hon'ble Supreme Court has emphasised that judicial discipline

requires every Court to follow the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution. According to him, no Court, including the High Court, can ignore or depart from the law laid down by the Hon'ble Supreme Court. He therefore submitted that this Court is bound to follow the principles laid down by the Hon'ble Supreme Court while deciding the issues arising in the present writ petition.

4.34. He relies on the decision of Hon'ble Apex Court in ***Palitana Sugar Mills (P) Ltd. v. State of Gujarat***[20]**,** more particularly, para 62 thereof, which is reproduced hereunder for easy reference:

> ***62.*** *It is well settled that the judgments of this Court are binding on all the authorities under Article 141 of the Constitution and it is not open to any authority to ignore a binding judgment of this Court on the ground that the full facts had not been placed before this Court and/or the judgment of this Court in the earlier proceedings had only collaterally or incidentally decided the issues raised in the show-cause notices. Such an attempt to belittle the judgments and the orders of this Court, to say the least, is plainly perverse and amounts to gross contempt of this Court. We are pained to say that the then Deputy Collector has scant respect for the orders passed by the Apex Court.*

4.35. By relying on **Palitana Sugar Mills**, learned Senior Counsel submitted that the Hon'ble

[20] (2004) 12 SCC 645

Supreme Court has reiterated that the law declared by it is binding on all Courts and authorities under Article 141 of the Constitution. According to him, it is not open to any Court or authority to ignore a binding judgment of the Hon'ble Supreme Court on the ground that the complete facts were not placed before the Hon'ble Supreme Court or that the issue was decided only incidentally or collaterally in the earlier proceedings. He submitted that the Hon'ble Supreme Court has held that any such attempt would amount to disregarding the binding force of its judgments. Therefore, according to him, this Court is bound to follow the law laid down by the Hon'ble Supreme Court in the decisions relied upon by respondent No. 1 while deciding the issues arising in the present case.

4.36. He relies on the decision of Hon'ble Apex Court in ***Som Mittal v. Govt. of Karnataka***[21]**,** more particularly para 12 thereof, which is reproduced hereunder for easy reference:

> ***12.*** *When this Court renders judgments, it does so with great care and responsibility. The law declared by this*

[21] (2008) 3 SCC 574

> *Court is binding on all courts. All authorities in the territory of India are required to act in aid of it. Any interpretation of a law or a judgment, by this Court, is a law declared by this Court. The wider the power, more onerous is the responsibility to ensure that nothing is stated or directed in excess of what is required or relevant for the case, and to ensure that the Court's orders and decisions do not create any doubt or confusion in regard to a legal position in the minds of any authority or citizen, and also to ensure that they do not conflict with any other decision or existing law. Be that as it may.*

4.37. By relying on **Som Mittal,** learned Senior Counsel submitted that the Hon'ble Supreme Court has reiterated that the law declared by it is binding on all Courts and authorities in the country. He submitted that every Court and every authority is bound to act in accordance with the law declared by the Hon'ble Supreme Court. According to him, any interpretation of a statutory or constitutional provision made by the Hon'ble Supreme Court also forms part of the law declared under Article 141 of the Constitution. He therefore submitted that this Court is required to follow the law laid down by the Hon'ble Supreme Court in its true letter and spirit while deciding the present writ petition.

4.38. He relies on the decision of Hon’ble Apex Court in ***Panchaxari Shidramappa Yeligar v.***

Shiggaon Taluka Shikshana Samithi[22]**,** more particularly, paras 12 and 14 thereof, which are reproduced hereunder for easy reference:

> ***12.****Re: Question No (iii)*
>
> ***12.1.*** *While some of the exceptions to the rule of stare decisis can be applied to all decisions which can be called as precedents, some, like the exception based on per incuriam Rule can be applied only in regard to decisions of Co-ordinate Branches of the same Court, and not to decisions of larger Benches of the same Court or the Apex Court. While a decision rendered per incuriam by a co-ordinate Bench may not be binding as a precedent, a Court in a lower tier (Smaller Bench) can not refuse to follow the ratio decided of a decision rendered by the Court in a higher tier (larger Bench of the same Court or the Apex Court) by stating that such decision is rendered per incuriam. Let me refer to same of the decisions on this aspect.*
>
> ***12.2****. In B.M. Lakhani v. Malkhapur Municipality [(1970) 2 SCC 267 : AIR 1970 SC 1002.] , the Supreme Court held that the High Court could not ignore a decision of the Supreme Court because it thought that the relevant provisions were not brought to the notice of Supreme Court.*
>
> ***12.3.*** *The following observations of the Supreme Court in Asst. Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. [(1985) 1 SCC 260 : AIR 1985 SC 330.] are clinching:*
>
> *"We desire to add and as was said in Cassesl and Co. Ltd. v. Broome, (1972) AC 1027) we hope it will never be necessary for us to say so again that in the hierarchical system of courts, which exists in our country, it is necessary for each lower tier including the High Court, to accept loyally the decisions of the higher tiers. It is inevitable in a hierarchical system of Courts that there are decisions of the Supreme Appellate Tribunal which do not attract the unanimous approval of all members of the*

[22] ILR 1998 Kar 3748

judiciary…..But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted, (see observations of Lord Hailsham and Lord Diplock). The better wisdom of the Court below must yield to the higher wisdom of the Court above. That is the strength of the hierarchical judicial system. In Cassel v. Broome, commenting on the Court of appeals' comment that Rookes v. Barnard, 1964 AC 1129, was rendered per incuriam. Lord Diplock observed: "The Court of appeal found themselves able to disregard the decision of this House in Rookes v. Barnard by applying to it the label per incuriam. That lable is relevant only to the right of an appellate Court to decline to follow one of its own previous decisions, not to its right to disregard a decision of a higher appellate Court or to the right of a judge of the High Court to disregard a decision of the Court of Appeal.'

(emphasis supplied)

12.4. *In Eaton Baker v. The Queen [1975 AC 775.] the Privy Council observed as follows:*

Strictly speaking the per incuriam rule as such, while it justifies a Court which is bound by precedent in refusing to follow one of its own previous decisions (Young v. Bristol Aeroplane Co. Ltd. (1944 KB 718), does not apply to decisions of Courts of appellate jurisdiction superior to that of the Court in which the rule is sought to be invoked (Broome v. Cassel & Co. - 1972 AC 1027). To permit this use of the per incuriam rule would open the door to disregard of precedents by the Court of inferior jurisdiction by the simple device of holding that decisions of superior Courts with which it disagreed must have been given per incuriam."

12.5. *In H. Muniswamy Gowda v. Management of KSRTC [ILR 1997 Kar 509.] , the Learned Chief Justice, speaking for the Division Bench of this Court while stressing the need for Single Judges in follow the decisions of the Full Bench, reiterated the position that the hierarchical system of Courts prevalent in our country mandates upon each lower tier including the High Court to accept loyally the decisions of the higher tiers.*

> ***12.6**. Question No. (iii) is therefore answered in the negative.*
>
> ***14.** Hence a Single Judge of the High Court can not refuse to follow the decision of a Division Bench of Full Bench of the same Court, by holding that such decision was rendered per incuriam. Consequently, with great respect to the learned Single Judge, who rendered the decision in 'Hungund case, it has to be held that the decision of the Full Bench in EXCELLENT Education society can not be avoided and the single Judges will have to follow the said decision.*

4.39. By relying on **Panchaxari Shidramappa Yeligar,** learned Senior Counsel submitted that the doctrine of precedent requires every Court to follow the decisions of a higher Court. He submitted that a Court subordinate to the Hon'ble Supreme Court cannot refuse to follow a judgment of the Hon'ble Supreme Court on the ground that it was rendered per incuriam or that certain provisions or judgments were not brought to the notice of the Hon'ble Supreme Court. He further submitted that, similarly, a Single Judge is bound by the judgment of a Division Bench of the High Court and cannot disregard it by holding that the judgment was rendered per incuriam. According to him, the judicial discipline underlying the hierarchical system of Courts requires every Court to loyally follow the law declared by the higher Court. He

therefore submitted that the judgments of the Hon'ble Supreme Court relied upon by respondent No.1 are binding on this Court and are required to be followed in deciding the present writ petition.

4.40. On the basis of the aforesaid decisions, learned Senior Counsel submitted that the petitioner has contended that the observations made by the Hon'ble Supreme Court in **Sayalee Sanjeev Joshi**, are only part of a report rendered under Article 317(1) of the Constitution and are therefore not binding. He submitted that such a contention cannot be accepted. According to him, the Hon'ble Supreme Court has categorically observed that, since a request had been made to the Hon'ble President to act under Article 317(1), the order of suspension passed under Article 317(2) was "proper". He submitted that this declaration of law is binding on this Court under Article 141 of the Constitution. Therefore, according to him, this Court cannot take a view contrary to that taken by the Hon'ble Supreme Court by holding that an order of suspension under Article 317(2) can be passed only after the Hon'ble

President makes a reference to the Hon'ble Supreme Court under Article 317(1).

4.41. As regards the contention that the Hon'ble Governor was required to act on the aid and advice of the Council of Ministers, learned Senior Counsel submitted that Article 163 of the Constitution provides that the Hon'ble Governor ordinarily acts on the aid and advice of the Council of Ministers. He submitted that Article 163(1) itself recognises that, in matters where the Constitution requires the Hon'ble Governor to exercise his functions in his discretion, the Hon'ble Governor is entitled to act accordingly. According to him, the powers exercised by the Hon'ble Governor in the facts of the present case fall within such constitutional framework.

4.42. Learned Senior Counsel submitted that preserving the credibility and reputation of the Karnataka Public Service Commission is of paramount importance. According to him, having regard to the allegations made against the petitioner and the importance of maintaining public confidence in the functioning

of the Commission, the Hon'ble Governor was justified in passing the order of suspension. He further submitted that, in any event, the action taken by the Hon'ble Governor was subsequently approved and ratified by the Council of Ministers, including the Hon'ble Chief Minister. According to him, the impugned action therefore does not suffer from any legal infirmity.

4.43. In this regard he relies on the decision of Hon'ble Apex Court in ***High Court of Judicature for Rajasthan v. P.P. Singh***[23]**,** more particularly para 39, 40, 41 and 42 thereof, which are reproduced hereunder for easy reference;

> ***39.*** *The High Court, in our opinion, further committed a manifest error in arriving at its conclusion insofar as it failed to take into consideration that Rule 15 does not postulate the prior approval of the Full Court in relation to any action which may be initiated by the Chief Justice.*
>
> ***40.*** *When an approval is required, an action holds good. Only if it is disapproved it loses its force. Only when a permission is required, the decision does not become effective till permission is obtained. (See U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd. [1995 Supp (3) SCC 456]) In the instant case both the aforementioned requirements have been fulfilled.*

[23] (2003) 4 SCC 239

> ***41.*** *There is another aspect of the matter. In terms of Rule 2(2) of the Rules, the decision of the Full Court would have a retrospective effect and retroactive operation.*
>
> ***42****. In any view of the matter, even in a case where the initial action is illegal, the same can be ratified by a body competent therefor. This aspect of the matter has not been considered by the High Court at all. In Parmeshwari Prasad Gupta v. Union of India [(1973) 2 SCC 543] this Court held: (SCC pp. 546-47, para 14)*
>
> *"Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorized to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorized, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953."*

4.44. By relying on **P.P. Singh,** learned Senior Counsel submitted that the Hon'ble Supreme Court has held that, even where an action initially suffers from a legal defect, the same can be ratified by the authority competent to take such action and, upon such ratification, the action would relate back to the date on which it was originally taken. According to him, even assuming, without admitting, that the Hon'ble

Governor ought to have acted only after obtaining the aid and advice of the Council of Ministers, the subsequent approval and ratification accorded by the Council of Ministers cures the alleged defect. He therefore submitted that, in view of the subsequent ratification by the Council of Ministers, the recommendation made by the Hon'ble Governor to the Hon'ble President as well as the impugned order of suspension cannot be held to be invalid on the ground that there was no prior aid and advice of the Council of Ministers.

4.45. He refers to the decision of Hon'ble Apex Court in ***N.S. Giri v. Corpn. of City of Mangalore***[24]**,** more particularly para 12 thereof, which is reproduced hereunder for easy reference:

> ***12****. The abovesaid decision does support the proposition canvassed by the learned counsel for the appellant that an industrial settlement would operate even by overriding a statutory provision to the contrary. However, suffice it to observe that the Constitution Bench decision in New Maneck Chowk Spg. and Wvg. Co. Ltd. [AIR 1961 SC 867 : (1961) 3 SCR 1] and also the decision of this Court in Hindustan Times Ltd. [AIR 1963 SC 1332 : (1963) 1 LLJ 108] which is a four-Judge Bench decision, were not placed before the learned Judges deciding LIC of India case [(1981) 1 SCC 315 : 1981 SCC (L&S) 111 : AIR 1980 SC 2181] . A decision by the Constitution Bench and a decision by a Bench of more strength*

[24] (1999) 4 SCC 697

> *cannot be overlooked to treat a later decision by a Bench of lesser strength as of a binding authority; more so, when the attention of the Judges deciding the latter case was not invited to the earlier decisions available. Respectfully following the earlier two decisions referred to hereinabove, we are of the opinion that the award dated 11-1-1969 under Section 10-A of the ID Act appointing the age of retirement at 58, contrary to the provisions of the statutory rules appointing the age of retirement at 55, cannot be upheld and given effect to by issuing a writ for its implementation. In any case, the award stood superseded by the subsequent statutory rules of 1974 which too appointed the age of retirement at 55 and there is nothing wrong in the appellant having been asked to superannuate at the age of 55 consistently with the service rules as applicable on that day.*

4.46. By relying on **N.S. Giri's case,** learned Senior Counsel submitted that the Hon'ble Supreme Court has reiterated the well-settled principle that, where there is an apparent conflict between decisions of Benches of different strengths, the decision rendered by the larger Bench is binding and has to be followed in preference to the decision rendered by a smaller Bench. He submitted that this principle applies with greater force where the earlier decision of the larger Bench was not brought to the notice of the Bench deciding the later case. On that basis, he submitted that the decision in **Sayalee Sanjeev Joshi**, having been rendered

by a larger Bench, would prevail and is binding on this Court.

4.47. He relies on the decision of Hon'ble Apex Court in ***Babu Parasu Kaikadi v. Babu***[25]**,** more particularly paras 12, 14 & 18 thereof, which are reproduced hereunder for easy reference:

> ***12.*** *In the case of Dhondiram Tatoba Kadam [(1994) 3 SCC 366] however, a somewhat contrary view was taken by this Court while interpreting the said provision. This decision was rendered by a Bench of three Judges and one of them disagreed with the majority judgment. The majority held that any voluntary surrender would be a valid surrender. It was held that voluntary giving up of possession would not amount to dispossession unless the law provides for it and the provisions should be construed liberally. It may be pointed out that this Court while holding so, only considered the provisions of Section 32(1-B) of the Act and did not refer to Sections 15 and 29(2) of the Act which mandated its compliance for a valid surrender.*
>
> ***14.*** *Having given our anxious thought, we are of the opinion that for the reasons stated hereinbefore, the decision of this Court in Dhondiram Tatoba Kadam [(1994) 3 SCC 366] having not noticed the earlier binding precedent of a coordinate Bench and having not considered the mandatory provisions as contained in Sections 15 and 29 of the Act had been rendered per incuriam. It, therefore, does not constitute a binding precedent.*
>
> ***18.*** *Furthermore, this Court, while rendering judgment in Dhondiram Tatoba Kadam [(1994) 3 SCC 366] was bound by its earlier decision of a coordinate Bench in Ramchandra Keshav Adke [Ramchandra Keshav Adke v. Govind Joti Chavare, (1975) 1 SCC 559] . We are bound to follow the earlier judgment which is precisely on the point in preference to the later judgment which*

[25] (2004) 1 SCC 681

has been rendered without adequate argument at the Bar and also without reference to the mandatory provisions of the Act.

4.48. By relying on **Babu Parasu Kaikadi,** learned Senior Counsel submitted that the Hon'ble Supreme Court has held that where an earlier judgment of a Bench of equal strength has not been noticed by a later Bench, the earlier judgment would prevail and the later judgment rendered without noticing the earlier binding precedent would not have binding force. He submitted that the earlier binding decision is required to be followed in preference to the later decision. On that basis, he submitted that the observations made by the Hon'ble Supreme Court in **Sayalee Sanjeev Joshi**, approving the order of suspension passed by His Excellency the Hon'ble Governor before the Hon'ble President made a reference to the Hon'ble Supreme Court, lay down the correct legal position and are applicable to the facts of the present case.

4.49. Learned Senior Counsel further submitted that Article 163(1) of the Constitution itself recognises situations where the Hon'ble

Governor is required to exercise his constitutional functions in his discretion. According to him, where the circumstances require immediate action to protect a constitutional institution, the Hon'ble Governor can act without first obtaining the aid and advice of the Council of Ministers, subject to the action being subsequently placed before the Council of Ministers for approval or ratification. He submitted that, in the present case, the Council of Ministers has subsequently approved and ratified the action taken by the Hon'ble Governor. Therefore, according to him, the recommendation made to the Hon'ble President as well as the impugned order of suspension are valid in law.

4.50. He relies on the decision of Hon'ble Apex Court in ***Suganthi Suresh Kumar vs. Jagdeeshan***[26], more particularly para 9 thereof, which is reproduced hereunder for his reference;

> ***9.*** *It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that the Supreme Court laid down the legal*

[26] (2002) 2 SCC 420

> *position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India. It was pointed out by this Court in Anil Kumar Neotia v. Union of India [(1988) 2 SCC 587: AIR 1988 SC 1353] that* ***the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered*** *by the Supreme Court.*

4.51. By relying on **Suganthi Suresh Kumar,** learned Senior Counsel submitted that it is not open to the High Court to take a view contrary to the law declared by the Hon'ble Supreme Court. He submitted that the Hon'ble High Court cannot disregard or question the correctness of a judgment of the Hon'ble Supreme Court on the ground that a particular point or contention was not considered therein. According to him, Article 141 of the Constitution mandates that the law declared by the Hon'ble Supreme Court is binding on all Courts. Therefore, even if the petitioner contends that a particular aspect was not considered by the Hon'ble Supreme Court in the decisions relied upon by respondent No.1, this

Court is nevertheless bound to follow the law laid down therein.

4.52. He relies on the decision of Hon'ble Apex Court in ***Oriental Insurance Co. Ltd. v. Meena Variyal***[27]**,** more particularly para 26 thereof, which is reproduced hereunder for easy reference:

> ***26.*** *Learned counsel for the respondent contended that there was no obligation on the claimant to prove negligence on the part of the driver. Learned counsel relied on Gujarat SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234 : 1987 SCC (Cri) 482] in support. In that decision, this Court clarified that the observations in Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] are in the nature of obiter dicta. But, this Court only proceeded to notice that departures had been made from the law of strict liability and the Fatal Accidents Act by introduction of Chapter VII-A of the 1939 Act and the introduction of Section 92-A providing for compensation and the expansion of the provision as to who could make a claim, noticing that the application under Section 110-A of the Act had to be made on behalf of or for the benefit of all the legal representatives of the deceased. This Court has not stated that on a claim based on negligence there is no obligation to establish negligence. This Court was dealing with no-fault liability and the departure made from the Fatal Accidents Act and the theory of strict liability in the scheme of the Act of 1939 as amended. This Court did not have the occasion to construe a provision like Section 163-A of the Act of 1988 providing for compensation without proof of negligence in contradistinction to Section 166 of*

[27] (2007) 5 SCC 428

> *the Act. We may notice that Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] was decided by three learned Judges and the Gujarat SRTC case [(1987) 3 SCC 234 : 1987 SCC (Cri) 482] was decided only by two learned Judges.* ***An obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court****. But as far as this Court is concerned, though not binding, it does have clear persuasive authority. On a careful understanding of the decision in Gujarat SRTC [(1987) 3 SCC 234 : 1987 SCC (Cri) 482] we cannot understand it as having held that in all claims under the Act proof of negligence as the basis of a claim is jettisoned by the scheme of the Act. In the context of Sections 166 and 163-A of the Act of 1988, we are persuaded to think that the so-called obiter observations in Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] govern a claim under Section 166 of the Act and they are inapplicable only when a claim is made under Section 163-A of the Act. Obviously, it is for the claimant to choose under which provision he should approach the Tribunal and if he chooses to approach the Tribunal under Section 166 of the Act, we cannot see why the principle stated in Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] should not apply to him. We are, therefore, not in a position to accept the argument of learned counsel for the respondents that the observations in Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] deserve to be ignored.*

4.53. By relying on **Meena Variyal,** learned Senior Counsel submitted that the Hon'ble Supreme Court has observed that, in the absence of any direct pronouncement on a particular issue, even an obiter dictum of the Hon'ble Supreme Court is binding on the Hon'ble High Courts.

According to him, therefore, even assuming that the observations made by the Hon'ble Supreme Court in paragraph 2 of **Sayalee Sanjeev Joshi**, regarding the validity of the order of suspension are in the nature of obiter dicta, the said observations are nevertheless binding on this Court. He therefore submitted that this Court is bound to follow the view expressed by the Hon'ble Supreme Court in **Sayalee Sanjeev Joshi** while deciding the issues arising in the present writ petition.

4.54. He relies on the decision of Hon'ble Apex Court in ***South Central Railway Employees Coop. Credit Society Employees Union v. B. Yashodabai***[28]**,** more particularly para 15 thereof, which is reproduced hereunder for easy reference:

> ***15.*** *If the view taken by the High Court is accepted, in our opinion, there would be total chaos in this country because in that case there would be no finality to any order passed by this Court. When a higher court has rendered a particular decision, the said decision must be followed by a subordinate or lower court* ***unless it is distinguished or overruled or set aside****. The High Court had considered several provisions which, in its opinion, had not been*

[28] (2015) 2 SCC 727

> *considered or argued before this Court when CA No. 4343 of 1988 was decided [South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies, (1998) 2 SCC 580 : 1998 SCC (L&S) 703] . If the litigants or lawyers are permitted to argue that something what was correct, but was not argued earlier before the higher court and on that ground if the courts below are permitted to take a different view in a matter, possibly the entire law in relation to the precedents and ratio decidendi will have to be rewritten and, in our opinion, that cannot be done. Moreover, by not following the law laid down by this Court, the High Court or the subordinate courts would also be violating the provisions of Article 141 of the Constitution of India.*

4.55. By relying on **B. Yashodabai,** learned Senior Counsel submitted that the Hon'ble Supreme Court has reiterated that once a higher Court has declared the law on a particular issue, the same is binding on all subordinate Courts and must be followed unless it is distinguished on facts or is overruled or set aside by a competent Court. He submitted that it is not open to a subordinate Court to refuse to follow a binding decision merely on the ground that a particular argument was not advanced or a particular provision was not considered by the higher Court. According to him, the decision of the Hon'ble Supreme Court in **Sayalee Sanjeev Joshi**, has neither been overruled nor

set aside and continues to hold the field. He therefore submitted that the said decision is binding on this Court and is required to be followed while deciding the present writ petition.

4.56. He relies on the decision of Hon'ble Apex Court in ***Prof. B.B. Patil Okaly v. Y.K. Puttasome Gowda***[29]**,** more particularly paras 6, 8, 9, 10 thereof, which are reproduced hereunder for easy reference:

> ***6.*** *A careful perusal of the pleadings in this petition and a close look at the contentions advanced by the petitioner would in substance indicate that the petitioner is seeking this Court to find out whether any advice was tendered by the Cabinet to the Governor in the matter of appointment of Chairman of the KPSC and whether any advice was tendered by the Chief Minister alone and not by the Cabinet.*
>
> ***8****. Article 163(3) of the Constitution reads as follows:*
>
> *"Art. 163(3), The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any Court."*
>
> *This Article consists of two propositions, (i) the question whether any advice was tendered to the Governor by the Ministers shall not be inquired into by any Court. It would not be therefore correct to say that action was taken by*

[29] 1995 SCC OnLine Kar 80

the Governor without taking any advice from or consulting the Ministers and as such inquiry is open in that regard; (ii) the question as to what advice was tendered by the Ministers to the Governor shall not be inquired into in any Court. The resultant position is that as a legal consequence of this provision that the resolution or other deliberations at the meetings of the Council of Ministers or advice finally tendered in pursuance of such deliberation to the Governor are immune from inquiry in any court irrespective of the provisions of the Evidence Act. The Government is not obliged to furnish any information in that regard nor can the Court make inquiry into the question of ministerial advice tendered or as to the nature of such advice. On the scope and ambit of Article 163(3), it has been held by several decisions is the same as Article 74 of the Constitution with reference to the President and Council of Ministers of the Union Government, while the former is in relation to the Governor and Council of Ministers of a State Government. On this question, the Supreme Court in S.R. Bommai v. Union of India, AIR 1994 SC 1918 : (1994 AIR SCW 2946), had occasion to consider the scope in relation to imposition of President Rule under Article 356 of the Constitution and in that context the ministerial advice tendered to the President and the scope of scrutiny thereof was considered. The unanimous opinion rendered by the learned Judges is to the effect that in the matter of imposition of President's Rule question as to whether any advice was tendered to the President is not open to scrutiny though not as to the material on the basis of which such advice is tendered which could be looked into and in relation to such documents privilege under Section 123 of the Evidence Act could be claimed subject to the limitations thereto. In explaining the extent of bar under Article 74(2), it is stated that inquiring into question whether any, and if so, what advice was tendered by the Ministers to the President is barred. Thus the

object of Article 163(3) is not to exclude any material or documents from the scrutiny of the courts, but to provide that an order issued by or in the name of the President could not be questioned on the ground that it was either contrary to the advice tendered by the Ministers or was issued without obtaining any advice from the Ministers. Its object was to make the question whether the President had followed the advice of the Ministers or acted contrary thereto, non-justiciable. What advice, if any, was tendered by the Ministers to the President was thus to be beyond the scrutiny of the court. The actual advice tendered by the Council of Ministers gets immunity from production and the court shall not inquire into the question whether and if so what advice was tendered by the Ministers. In other words, the material other than the advice tendered by the Minister to the Governor, if found necessary, may be looked into. Thus the Cabinet decision authorising the Chief Minister or the Chief Minister tendering any advice to the Governor cannot be looked into or examined by this Court in view of the clear bar under Article 163(3) of the Constitution of India.

***9**. The argument articulated on behalf of the petitioner is that this Court is enquiring into a stage anterior to the tendering of advice that is, at the stage of formulation of advice by the Cabinet, the action of the Cabinet having been disclosed already, it is not impermissible for this Court to examine the same. As stated earlier, the Constitutional bar is clear as to the consideration of the question as to whether any advice was tendered at all by the Cabinet or only tendered by a Minister and therefore, I find it difficult to accept the contention advanced on behalf of the petitioner in this regard that it is still open for this Court to inquire into the same to give a finding that the action of the Governor is ultra vires the Business Rules. If the Business Rules alone held the field, perhaps an enquiry*

could have been made into and a finding given thereof. But, in view of the constitutional immunity in regard to inquiry contained in Article 163(3), I find no hesitation in refusing to inquire into the question whether any advice was tendered by the Cabinet or by the Chief Minister alone to the Governor.

10. *In such matters, when a question arises as to a case where a Cabinet is charged with responsibility, but advice is tendered in that regard by the Chief Minister or any other Minister alone to the Governor, it is the Governor alone who can decide such a matter and not the court before which such question is raised for it cannot enquire into such a question. Under Article 163(1) the Governor is to be aided and advised by Council of Ministers with the Chief Minister at the head and under Article 167 it is the duty of the Chief Minister to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation and to furnish information called for by him and if the Governor so requires, to submit for consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. In case if the Governor thinks that the Rules of Business have been violated, it is certainly open to him to call upon the Cabinet to take a decision in the matter. Therefore, I find it hard to accept the contention advanced on behalf of the petitioner that in such cases the court also has power to enquire into the same. In view of the constitutional position as explained above, this petition is liable to and is dismissed. Rule discharged.*

4.57. By relying on **Prof. B.B. Patil Okaly,** learned Senior Counsel submitted that Article 163(3) of the Constitution places a complete bar on any

Court enquiring into the question whether any advice was tendered by the Council of Ministers to the Hon'ble Governor or as to the nature of such advice. According to him, the advice tendered by the Council of Ministers enjoys constitutional immunity and cannot be made the subject matter of judicial enquiry. He submitted that, therefore, the petitioner cannot seek to contend that the Hon'ble Governor acted without the aid and advice of the Council of Ministers or invite this Court to enquire into whether such advice was tendered, by whom it was tendered, or at what stage it was tendered. He further submitted that these are matters which are expressly excluded from judicial scrutiny by Article 163(3) of the Constitution and, therefore, the challenge on that ground is not maintainable.

4.58. He relies on the decision of Hon'ble Apex Court in ***S.R. Bommai v. Union of India***[30]**,** more particularly paras 320 and 321 thereof, which are reproduced hereunder for easy reference:

> ***320.*** *Articles 74 and 77 are in a sense complementary to each other, though they may*

[30] (1994) 3 SCC 1

operate in different fields. Article 74(1) deals with the acts of the President done "in exercise of his functions", whereas Article 77 speaks of the executive action of the Government of India which is taken in the name of the President of India. Insofar as the executive action of the Government of India is concerned, it has to be taken by the Minister/official to whom the said business is allocated by the rules of business made under clause (3) of Article 77 for the more convenient transaction of the business of the Government of India. All orders issued and the instruments executed relatable to the executive action of the Government of India have to be authenticated in the manner and by the officer empowered in that behalf. The President does not really come into the picture so far as Article 77 is concerned. All the business of the Government of India is transacted by the Ministers or other officials empowered in that behalf, of course, in the name of the President. Orders are issued, instruments are executed and other acts done by various Ministers and officials, none of which may reach the President or may be placed before him for his consideration. There is no occasion in such cases for any aid and advice being tendered to the President by the Council of Ministers. Though expressed in the name of the President, they are the acts of the Government of India. They are distinct from the acts of the President "in the exercise of his functions" contemplated by Article 74. Of course, even while acting in exercise of his functions, the President has to act in accordance with the aid and advice tendered by the Council of Ministers with the Prime Minister at its head. He is thus rendered a constitutional, or a titular head. [The proviso to clause (1) no doubt empowers him to require the Council of Ministers to reconsider such advice, either generally or in any particular case, but if and when the Council of Ministers tenders the advice on such reconsideration, he is bound by it.] Then comes clause (2) of Article

74 which says that the question "whether any, and if so, what advice was tendered by the Ministers to the President shall not be inquired into in any court". The idea behind clause (2) is this: The court is not to enquire, it is not concerned with, whether any advice was tendered by any Minister or Council of Ministers to the President, and if so, what was that advice. That is a matter between the President and his Council of Ministers. What advice was tendered, whether it was required to be reconsidered, what advice was tendered after reconsideration, if any, what was the opinion of the President, whether the advice was changed pursuant to further discussion, if any, and how the ultimate decision was arrived at, are all matters between the President and his Council of Ministers. They are beyond the ken of the court. The court is not to go into it. It is enough that there is an order/act of the President in appropriate form. It will take it as the order/act of the President. It is concerned only with the validity of the order and legality of the proceeding or action taken by the President in exercise of his functions and not with what happened in the inner councils of the President and his Ministers. No one can challenge such decision or action on the ground that it is not in accordance with the advice tendered by the Ministers or that it is based on no advice. If, in a given case, the President acts without, or contrary to, the advice tendered to him, it may be a case warranting his impeachment, but so far as the court is concerned, it is the act of the President. (We do not wish to express any opinion as to what would be the position if in the unlikely event of the Council of Ministers itself questioning the action of the President as being taken without, or contrary, to their advice.)

321. *Clause (2) of Article 74, understood in its proper perspective, is thus confined to a limited aspect. It protects and preserves the secrecy of the deliberations between the President and his*

Council of Ministers. In fact, clause (2) is a reproduction of sub-section (4) of Section 10 of the Government of India Act, 1935. [The Government of India Act did not contain a provision corresponding to Article 74(1) as it stood before or after the amendments aforementioned]. The scope of clause (2) should not be extended beyond its legitimate field. In any event, ***it cannot be read or understood as conferring an immunity upon the Council of Ministers*** *or the Minister/Ministry concerned to explain, defend and justify the orders and acts of the President done in exercise of his functions. [The orders and acts of the President of India made and taken in exercise of his functions are generally expressed as having been ordered or taken by the President of India whereas the executive action of the Government of India is expressed to have been ordered or taken by the Government of India in the name of the President of India. This difference in form is only indicative, and not obligatory or mandatory.] The limited provision contained in Article 74(2) cannot override the basic provisions in the Constitution relating to judicial review. If and when any action taken by the President in exercise of his functions is questioned in a court of law, it is for the Council of Ministers to justify the same, since the action or order of the President is presumed to have been taken in accordance with Article 74(1). As to which Minister or which official of which Ministry comes forward to defend the order/action is for them to decide and for the court to be satisfied about it. Where, of course, the act/order questioned is one pertaining to the executive power of the Government of India, the position is much simpler. It does not represent the act/order of the President done/taken in exercise of his functions and hence there is no occasion for any aid or advice by the Ministers to him. It is the act/order of Government of India, though expressed in the name of the President. It is for the Minister or Ministry*

> *concerned, to whom the function is allocated under the rules of business to defend and justify such action/order.*

4.59. By relying on **S.R. Bommai** learned Senior Counsel submitted that the Hon'ble Supreme Court has explained the scope of Articles 74(2) and 163(3) of the Constitution. According to him, the constitutional bar is limited to preventing the Court from enquiring into whether any advice was tendered to the Hon'ble President or the Hon'ble Governor and, if so, what that advice was. He submitted that the deliberations between the Hon'ble Governor and the Council of Ministers, as well as the nature and contents of the advice tendered, are protected from judicial scrutiny. At the same time, the validity of the order passed by the Hon'ble Governor can always be examined by the Court, and it is for the State Government to justify such action. He therefore submitted that the petitioner cannot seek an enquiry into the advice tendered to the Hon'ble Governor or contend that no such advice was tendered, since such an enquiry is expressly barred by Article 163(3) of the Constitution.

4.60. On the basis of the aforesaid submissions and the decisions relied upon, learned Senior Counsel submitted that the recommendation made by the Hon'ble Governor to the Hon'ble President under Article 317(1) of the Constitution and the impugned order of suspension passed under Article 317(2) of the Constitution are fully in accordance with the constitutional scheme and do not suffer from any illegality or lack of jurisdiction.

4.61. He submitted that the Hon'ble Governor was justified in taking immediate action having regard to the nature of the allegations made against the petitioner, the office held by him and the need to preserve the credibility, independence and integrity of the Karnataka Public Service Commission.

4.62. Learned Senior Counsel submitted that the petitioner's contention that an order of suspension could not have been passed before the Hon'ble President made a reference to the Hon'ble Supreme Court under Article 317(1) is contrary to the law declared by the Hon'ble Supreme Court in **Sayalee Sanjeev Joshi**, and

Ram Kumar Kashyap v. Union of India. According to him, those decisions clearly recognise the power of the Hon'ble Governor to place the Chairman or a Member of the Public Service Commission under suspension after requesting the Hon'ble President to take action under Article 317(1). He submitted that this Court is bound by the law declared by the Hon'ble Supreme Court and cannot take a contrary view.

4.63. Learned Senior Counsel further submitted that the contention regarding absence of aid and advice of the Council of Ministers is also without merit. According to him, in the facts and circumstances of the present case, the Hon'ble Governor was justified in exercising the constitutional power vested in him to protect the credibility of the Public Service Commission. He submitted that, in any event, the subsequent approval and ratification by the Council of Ministers validates the action taken by the Hon'ble Governor and removes any alleged procedural defect. He further submitted that the petitioner cannot invite this Court to enquire into whether any advice was tendered

or the nature of such advice, in view of the express constitutional bar contained in Article 163(3) of the Constitution.

4.64. Learned Senior Counsel also submitted that the reliance placed by the petitioner on the judgment of the Hon'ble Division Bench of this Court in **Dr. (Smt.) Mangala Sridhar** is misplaced. According to him, in view of the binding decisions of the Hon'ble Supreme Court relied upon by respondent No.1, this Court is required to follow the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution. He submitted that judicial discipline requires this Court to follow the binding precedents of the Hon'ble Supreme Court and not to adopt an interpretation which is inconsistent with those decisions.

4.65. Learned Senior Counsel therefore submitted that none of the grounds urged by the petitioner make out a case for interference with the recommendation made by the Hon'ble Governor or with the impugned order of suspension. According to him, no violation of Article 317 or Article 163 of the Constitution

has been established. He submitted that the action taken by the Hon'ble Governor is legal, constitutional and bona fide, and has been taken solely to protect the integrity of the constitutional institution. He therefore prayed that the writ petition be dismissed with costs.

5. Sri. Reuben Jacob, learned Senior Counsel for respondent No.2 submitted that:

5.1. At the outset, learned Senior Counsel sought to make elaborate submissions on the merits of the allegations against the petitioner and on the alleged violations committed by the petitioner and his daughters in relation to the recruitment conducted by the Karnataka Public Service Commission. However, he was informed by this Court that the present writ petition is confined to examining the constitutional validity of the recommendation made by the Hon'ble Governor under Article 317(1) of the Constitution and the order of suspension passed under Article 317(2).

5.2. This Court also made it clear that it is not examining the correctness or otherwise of the allegations against the petitioner or the legality

of the appointments allegedly secured by his daughters, as those issues do not arise for consideration in the present proceedings. Accordingly, the submissions made by learned Senior Counsel relating to the merits of the allegations against the petitioner and his daughters are not being recorded or considered in this judgment.

5.3. He relies on the decision of Hon'ble Supreme Court in ***Jitendra Kumar and Ors. v. State of Harayana and Another***[31]**,** more particularly para 37 thereof, which is reproduced hereunder for easy reference:

> ***37.*** *It would be relevant to place on record that seven writ applications were filed by the unsuccessful candidates. Serious allegations had been levelled therein against the then Chief Minister Shri Om Prakash Chautala and the then Chairman of the Commission Shri K.C. Bangar. Some selected candidates have also been impleaded as party respondents therein. Purity of process of conducting of examination as an issue was raised therein. Even allegations of favouritism and use of political influence in favour of near and dear of the high-ups of the Government and the politicians were made. The matter indisputably is pending investigation by the Vigilance Bureau. The High Court, we are informed, has also directed to carry out an investigation. It may also be placed on record that the Commission was asked by the Vigilance Bureau to hand over the records. Such*

[31] (2008) 2 SCC 161

an action on the part of the Vigilance Bureau was the subject-matter of a writ petition filed by the Commission. The said writ petition has been disposed of by a judgment dated 12-8-2005, in which one of us (H.S. Bedi, J.) was a member. The said decision was reported in Haryana Public Service Commission v. State of Haryana, paras 14 and 22 whereof read as under: (PLR pp. 491 & 494)

"14. … It is not in dispute that the enquiries now being conducted by the Vigilance Bureau pertain to certain past selections. From the communication received by the petitioner Commission, it appears that the action of the past Secretary, the past Chairman and certain other officers/officials of the Commission, are being probed with regard to the serious charges. Under any circumstances, the aforesaid enquiries ***cannot be taken to mean any erosion of the authority of the Commission or its independence****. Even an expert and constitutional body like the Commission is supposed to perform its duties fearlessly and carry out selections on the basis of the best merit available. However, if the aforesaid selections are alleged to be tainted and based upon consideration other than merit, the Commission cannot, in such circumstances, claim any immunity. Nobody has a vested right to perpetuate illegality or hide a scandal. All selections made by public servants are supposed to be based upon competence, merit and integrity. The allegations to be contrary would not only erode the public confidence in the Commission but would also result in merit being a casualty. …*

***

22. … It is, thus, apparent that an effort has been made by the Commission to protect its Chairman and the members, who for undisclosed reasons have chosen not to directly approach this Court. The Commission which is a constitutional body has unnecessarily filed the present petition to watch

> *the interest of the Chairman and the member, who have chosen to remain behind the curtain. The Commission cannot equate itself, nor under the Constitution of India can it be so equated, with its Chairman and its members. The Commission has a distinct and a constitutional identity, independent of its Chairman and members. It is, thus apparent that the present petition has been filed at the instance of the Chairman and the members, although in the name of the Commission. We cannot put any seal of approval to this act of the Commission."*

5.4. By relying on **Jitendra Kumar,** learned Senior Counsel submitted that the Hon'ble Supreme Court has recognised that, where serious allegations are made against the Chairman or Members of a Public Service Commission in relation to the recruitment process, the Commission cannot claim immunity from investigation merely because it is a constitutional body. According to him, the constitutional status of the Commission does not prevent a competent authority from examining allegations of misconduct against its Chairman or Members. He further submitted that the Hon'ble Supreme Court has also recognised that the Commission is a constitutional institution distinct from its Chairman and Members, and that the interests of the institution must be kept separate from

the personal interests of those holding office. He therefore submitted that, in the present case also, the constitutional status of the Karnataka Public Service Commission does not bar the exercise of powers under Article 317 of the Constitution or the initiation of proceedings against the petitioner in his capacity as the Chairman of the Commission.

5.5. He relies on the decision of the Hon'ble Apex Court in ***Mehar Singh Saini, In re,***[32] more particularly para 122 thereof, which is reproduced hereunder for easy reference:

> *122. It will be useful to refer to the relevant part of this order of the High Court wherein certain observations were made against the Chairman and members of the Commission and their claim of absolute immunity was not accepted, which reads as under: (PLR pp. 489, 491-92 & 494, paras 11, 14-15, 18 & 22)*
>
> *"11. At the outset we may notice that the petitioner Commission has tried to drag political considerations by insinuations at least. It has been pleaded that the present Chairman and the members of the Commission are appointees of the previous 'Indian National Lok Dal' Government and that after the elections, a new 'Congress Government' has assumed office. Although it has been asserted that all the persons i.e. the Chairman and the members of the Commission are non-political persons but the insinuations and the*

[32] (2010) 13 SCC 586

attempt to politicise the whole controversy is loud and clear. The aforesaid attempt cuts at the very root of the various arguments raised by the Commission. As a constitutional body, it is not expected of the Commission to bring in politics or rely upon the fact that the ruling party in the State had changed. We can only express our disapproval for the aforesaid attempt made by the Commission.

***

14. … It is not in dispute that the enquiries now being conducted by the Vigilance Bureau pertain to certain past selections. From the communication received by the petitioner Commission, it appears that the action of the past Secretary, the past Chairman and certain other officers/officials of the Commission, are being probed with regard to the serious charges. Under any circumstances, the aforesaid enquiries ***cannot be taken to mean any erosion of the authority of the Commission or its independence****. Even an expert and constitutional body like the Commission is supposed to perform its duties, fearlessly and carry out selections on the basis of the best merit available. However, if the aforesaid selections are alleged to be tainted and based upon consideration other than merit, the Commission cannot, in such circumstances, claim any immunity. No body has a vested right to perpetuate illegality or hide a scandal. All selections made by public servants are supposed to be based upon competence, merit and integrity. The allegations to the contrary would not only erode the public confidence in the Commission but would also result in merit being a casualty.…*

15. … Therefore, if a formal FIR is registered, then even as per the learned counsel, the holding of the vigilance inquiries could be justified. In our considered view, it would embarrass the Commission, its Chairman and its members more rather than protect. Holding of the vigilance

inquiry without registration of any formal FIR, in our view is in the nature of a fact-finding exercise. If after the aforesaid exercise is undertaken, the commission of any criminal offence is made out, the law will take its own course. …

***

18. We find that the aforesaid contention of the learned counsel is also without any merit. There is no dispute with the preposition (sic) of law that while exercising the power of judicial review this Court would be slow in making competitive comparison of the selected candidates vis-à-vis the unsuccessful candidates. To this extent reliance placed by the petitioner on the judgment of Jasjit Singh Sidhu case [Jasjit Singh Sidhu v. State of Punjab, (1989) 4 SLR 403 (P&H)] is wholly justified. However, we express our inability to extend the aforesaid analogy any further to hold that even in the case of corruption charges, tainted selections, or any illegality, no investigation in the matter of selection, could be made. Accepting the aforesaid argument would be perpetuating the tainted selections. …

***

22. … It is, thus, apparent that an effort has been made by the Commission to protect its Chairman and the members, who for undisclosed reasons have chosen not to directly approach this Court. The Commission which is a constitutional body has unnecessarily filed the present petition to watch the interest of the Chairman and members, who have chosen to remain behind the curtain. The Commission cannot equate itself, nor under the Constitution of India can it be so equated, with its Chairman and its members. The Commission has a distinct and a constitutional identity, independent of its Chairman and members. It is, thus, apparent that the present petition has been filed at the instance of the Chairman and members, although in the name of the Commission. We cannot put

any seal of approval to this act of the Commission."

5.6. By relying on **Mehar Singh Saini**, his submission is that the Hon'ble Supreme Court has approved the observations made by the Punjab and Haryana High Court in ***Jasjit Singh Sidhu v State of Punjab,*** [(1989) 4 SLR 403 (P&H)] regarding the functioning of the Public Service Commission and the accountability of its Chairman and Members. According to him, the Hon'ble Supreme Court has recognised that although the Public Service Commission is a constitutional body, it cannot claim immunity from investigation where serious allegations of corruption, favouritism, abuse of office or other illegalities are made against its Chairman or Members. He submitted that the constitutional status of the Commission is intended to ensure its independence in the discharge of its functions, but it does not place its Chairman or Members above the Constitution or beyond the reach of law.

5.7. He further submitted that the Hon'ble Supreme Court has also approved the view that the Commission has an independent constitutional

identity, separate and distinct from its Chairman and Members, and therefore the interests of the institution cannot be equated with the personal interests of those holding office. According to him, if serious allegations are made against the Chairman of the Commission, appropriate constitutional action can be initiated against such Chairman without it being treated as an attack on the independence of the Commission itself.

5.8. On that basis, he submitted that the action taken by the Hon'ble Governor under Article 317 of the Constitution was intended to preserve the purity, credibility and public confidence in the Karnataka Public Service Commission, and not to interfere with its constitutional independence. According to him, the object of the impugned action was to ensure that public confidence in the constitutional institution was maintained pending the enquiry contemplated under Article 317 of the Constitution. He submitted that where serious allegations are made against the Chairman of a Public Service Commission, it is necessary that the institution continues to

function without any cloud over its credibility and impartiality. The order of suspension, according to him, was only an interim measure intended to protect the integrity of the constitutional institution until the constitutional process under Article 317 reaches its conclusion.

5.9. As regards the power of the Hon'ble Governor to suspend the Chairman or a Member of the Karnataka Public Service Commission, his submission is that such power can be exercised even before the Hon'ble President makes a reference to the Hon'ble Supreme Court under Article 317(1) of the Constitution. According to him, Article 317(2) does not require that the Hon'ble President should first make a reference to the Hon'ble Supreme Court before the Hon'ble Governor can pass an order of suspension. His submission is that once the Hon'ble Governor has made a request to the Hon'ble President to initiate proceedings under Article 317(1), the power under Article 317(2) can be exercised in appropriate cases to suspend the Chairman or Member concerned in order to safeguard the functioning of the

Commission and to maintain public confidence in the institution pending further constitutional action.

5.10. He refers to Article 316 which is reproduced hereunder for easy reference:

> ***316. Appointment and term of office of members***
>
> (1) *The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State:*
>
> *Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.*
>
> (1A) *If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some persons appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and*

the Governor of the State in the case of a State in the case of a State Commission, may appoint for the purpose.

(2) *A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty-two years, whichever is earlier:*

Provided that—

(a) *a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office;*

(b) *a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 317.*

(3) *A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.*

5.11. By referring to Article 316, he submitted that the Chairman and Members of a State Public Service Commission are appointed by the Hon'ble Governor. He submitted that the constitutional scheme recognises the Hon'ble Governor as the appointing authority in respect of the Chairman and Members of the State Public Service Commission. He further

submitted that Article 316 also provides for the resignation of a Member or the Chairman to the Hon'ble Governor and contains a reference to removal in the manner provided under Article 317 of the Constitution.

5.12. On that basis, he contended that the Hon'ble Governor, being the constitutional authority empowered to appoint the Chairman and Members of the State Public Service Commission, is also the constitutional authority empowered to initiate action under Article 317 and to exercise the power of suspension under Article 317(2), pending the enquiry contemplated under Article 317(1). According to him, the power of suspension is an incidental constitutional power expressly conferred upon the Hon'ble Governor and is intended to ensure that the constitutional process of enquiry is not defeated and that the credibility of the Public Service Commission is preserved during the pendency of such proceedings.

5.13. By referring to Article 317(2) of the Constitution, his submission is that the Hon'ble Governor has ample constitutional power to

suspend the Chairman or a Member of the Karnataka Public Service Commission pending the proceedings contemplated under Article 317. According to him, such power is available from the stage when the Hon'ble Governor forwards a proposal to the Hon'ble President seeking initiation of proceedings under Article 317(1), and it is not necessary that the Hon'ble President should first make a reference to the Hon'ble Supreme Court before the power of suspension can be exercised. He further submitted that the power of suspension would also continue during the pendency of the enquiry before the Hon'ble Supreme Court and until the Hon'ble President passes appropriate orders on the basis of the report submitted by the Hon'ble Supreme Court.

5.14. He submitted that if the contention of the learned Senior Counsel for the petitioner is accepted, it would lead to an anomalous and impractical situation. According to him, although the Hon'ble Governor is the constitutional authority empowered to appoint the Chairman and Members of the State Public Service Commission and is also the authority

required to initiate action by making a recommendation to the Hon'ble President under Article 317, the Hon'ble Governor would nevertheless be powerless to suspend the concerned Chairman or Member until the Hon'ble President makes a reference to the Hon'ble Supreme Court. He submitted that such an interpretation would defeat the very object of Article 317(2).

5.15. He further submitted that before forwarding a proposal to the Hon'ble President, the Hon'ble Governor necessarily has to apply his mind to the available material and form an opinion that the allegations are of such a nature as to warrant an enquiry under Article 317(1). Once the Hon'ble Governor reaches such a prima facie satisfaction, it is also for the Hon'ble Governor to consider whether the facts of the case require the Chairman or Member concerned to be kept under suspension pending further proceedings. According to him, the constitutional power of suspension is inherent in Article 317(2) itself and does not depend upon the Hon'ble President first making a reference to the Hon'ble Supreme Court.

5.16. He further submitted that if the Hon'ble Governor is held to have no power to suspend the Chairman or a Member until a reference is made by the Hon'ble President to the Hon'ble Supreme Court, it would seriously prejudice public interest. According to him, during the intervening period the Chairman or Member against whom serious allegations have been made would continue to discharge the functions of the Public Service Commission, which could adversely affect the credibility, impartiality and functioning of the Commission. He submitted that Article 317(2) has been enacted precisely to avoid such a situation and to ensure that the integrity of the constitutional institution is protected while the constitutional process under Article 317(1) is being set in motion.

5.17. He adopted the submissions advanced by Sri Udaya Holla, learned Senior Counsel appearing for respondent No.1, based upon the decisions of the Hon'ble Supreme Court in **Sayalee Sanjeev Joshi** and **Ram Kumar Kashyap**. By placing reliance on those decisions, he reiterated that the Hon'ble Supreme Court has recognised the power of the Hon'ble Governor

to suspend the Chairman or a Member of a State Public Service Commission pending proceedings under Article 317, and therefore the impugned order of suspension cannot be held to be without jurisdiction merely because the Hon'ble President had not, on that date, made a reference to the Hon'ble Supreme Court under Article 317(1).

5.18. He relies on **Ahmedabad St.Xavier's College Society,** more particularly para 109 thereof, which is reproduced hereunder for easy reference:

> ***"109.*** *…The opinion expressed by this Court in* Re Kerala Education Bill *(supra) was of an advisory character and though great weight should be attached to it because of its persuasive value, the said opinion cannot override the opinion subsequently expressed by this Court in contested cases. It is the law declared by this Court in the subsequent contested cases which would have a binding effect…"*

5.19. By relying on **Ahmedabad St.Xavier's College Society**, his submission is that although an opinion rendered by the Hon'ble Supreme Court in a Presidential Reference under Article 143 of the Constitution is advisory in nature, such an opinion nevertheless carries

great persuasive value and continues to hold the field unless it is displaced or overruled by a subsequent judgment of the Hon'ble Supreme Court rendered in a contested proceeding. He submitted that the law subsequently declared by the Hon'ble Supreme Court in a contested case alone would prevail over such an advisory opinion.

5.20. Applying the said principle, he submitted that even assuming that the observations made by the Hon'ble Supreme Court in **Sayalee Sanjeev Joshi**, were made while dealing with a reference under Article 317 of the Constitution and are in the nature of an opinion or report, the same would nevertheless continue to bind this Court unless a subsequent judgment of the Hon'ble Supreme Court in a contested matter has taken a contrary view. According to him, no subsequent judgment of the Hon'ble Supreme Court has overruled or diluted the observations made in paragraph 2 of **Sayalee Sanjeev Joshi**. Therefore, he submitted that the observations of the Hon'ble Supreme Court approving the suspension of a Member of the Public Service Commission

pending proceedings under Article 317 continues to hold the field and are binding on this Court under Article 141 of the Constitution.

5.21. He relies on the decision of Hon'ble Apex Court in ***State of Gujarat v. R.A. Mehta***[33]***,*** more particularly para 90 thereof, which is reproduced hereunder for easy reference:

> ***90.*** *In M.P. Special Police Establishment [(2004) 8 SCC 788 : 2005 SCC (Cri) 1 : AIR 2005 SC 325] this Court held as under : (SCC p. 798, para 12)*
>
> *"12. … Thus, as rightly pointed out by Mr Sorabjee, a seven-Judge Bench [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : AIR 1974 SC 2192] of this Court has already held that the normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. But there are exceptions under which the Governor can act in his own discretion. Some of the exceptions are as set out hereinabove. It is, however, clarified that the exceptions mentioned in the judgment are not exhaustive. It is also recognised that the concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. It is recognised that there may be situations where by reason of peril to democracy or democratic principles, an action may be compelled which from its nature is not amenable to ministerial advice. Such a situation may be where bias is inherent and/or manifest in the advice of the Council of Ministers.*
>
> *(emphasis added)*

[33] (2013) 3 SCC 1

> *In fact the five-Judge Bench of this Court in M.P. SPE case [(2004) 8 SCC 788 : 2005 SCC (Cri) 1 : AIR 2005 SC 325] has explained the judgment of a seven-Judge Bench in Samsher Singh [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : AIR 1974 SC 2192] observing that in exceptional circumstances the Governor may be justified in acting in his discretion and that the exceptions enumerated in Samsher Singh [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : AIR 1974 SC 2192] are not exhaustive. Thus, the view taken by the third learned Judge, in which it has been stated that it had become absolutely essential for the Governor to exercise her discretionary powers under Article 163 of the Constitution, must be read in light of the abovementioned explanation.*

5.22. By relying on **R.A. Mehta,** his submission is that although the general constitutional rule is that the Hon'ble Governor acts on the aid and advice of the Council of Ministers, the Hon'ble Supreme Court has recognised that there are exceptional situations in which the Hon'ble Governor may validly exercise his constitutional powers in his own discretion. According to him, the Hon'ble Supreme Court, while referring to the earlier Constitution Bench decision in **Samsher Singh**, has clarified that the exceptions recognised therein are not exhaustive and that the Constitution does contemplate situations where the Hon'ble Governor may be required to act independently

in order to protect constitutional governance and democratic principles.

5.23. He submitted that the Hon'ble Supreme Court has specifically recognised that where circumstances disclose an exceptional situation, or where the nature of the matter is such that it is not amenable to ministerial advice, the Hon'ble Governor may be justified in exercising his discretion under Article 163 of the Constitution. According to him, the constitutional position of the Chairman of the Karnataka Public Service Commission, the serious allegations made against the petitioner, the necessity to maintain public confidence in the functioning of the Commission, and the need to protect the integrity of the constitutional institution constituted such an exceptional situation.

5.24. On that basis, he contended that the emergent circumstances prevailing in the present case justified the Hon'ble Governor in exercising the power under Article 317(2) to suspend the petitioner without waiting for prior aid and advice of the Council of Ministers. He further

submitted that, in any event, the subsequent ratification by the Council of Ministers fully supported and validated the action taken by the Hon'ble Governor.

5.25. He relies on the decision of the Hon'ble Apex Court in ***Union of India v. Ashok Kumar Aggarwal,***[34] more particularly para 21 and 27 thereof, which are reproduced hereunder for easy reference:

> ***21.*** *The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.*
>
> ***27.*** *Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered.* ***Suspension is an interim measure in the aid of disciplinary proceedings*** *so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not*

[34] (2013) 16 SCC 147

> *desirable that the court may find out as to which version is true when there are claims and counterclaims on factual issues. The court cannot act as if it is an appellate forum de hors the powers of judicial review.*

5.26. By relying on **Ashok Kumar Aggarwal,** his submission is that the power of suspension is intended to ensure that a person against whom serious allegations have been made does not continue in office in a manner that may hamper, obstruct or influence the enquiry. He submitted that the Hon'ble Supreme Court has held that suspension is justified where there exists a strong prima facie case involving grave misconduct or moral turpitude, and where the competent authority is satisfied that permitting the person to continue in office is likely to prejudice the enquiry or frustrate the proceedings.

5.27. He submitted that in the present case, the Hon'ble Governor has passed a detailed order after considering all the material available on record and, upon such consideration, formed a prima facie opinion that the petitioner should not be permitted to continue as the Chairman of the Karnataka Public Service Commission

pending the constitutional proceedings under Article 317. According to him, the Hon'ble Governor was justified in concluding that the petitioner's continuance in office was likely to affect the credibility and functioning of the Commission and could also hamper or frustrate the proposed enquiry.

5.28. He further submitted that suspension is only an interim measure and is not a punishment. According to him, the recommendation made by the Hon'ble Governor to the Hon'ble President for initiating proceedings under Article 317(1), followed by the proposed enquiry before the Hon'ble Supreme Court, constitutes the constitutional process contemplated for examining the allegations against the petitioner. The order of suspension under Article 317(2), according to him, is merely an interim measure in aid of those proceedings so as to ensure that the enquiry can be conducted fairly and without any interference.

5.29. He also submitted that, as held by the Hon'ble Supreme Court in **Ashok Kumar Aggarwal**, while examining the validity of an order of

suspension, the Court is not expected to decide which of the rival versions is correct or to adjudicate upon disputed questions of fact. The Court, in exercise of its power of judicial review, is only required to examine whether the competent authority had the jurisdiction to pass the order and whether the decision suffers from arbitrariness, mala fides or any other legal infirmity. According to him, this Court cannot, at this stage, undertake an exercise as though it were an appellate authority examining the merits of the allegations which are yet to be enquired into by the Hon'ble Supreme Court under Article 317(1).

5.30. On the above grounds, he submitted that the impugned order of suspension does not suffer from any legal infirmity warranting interference under Article 226 of the Constitution. He therefore prayed that the writ petition be dismissed with costs.

6. Learned Advocate General appearing for respondent No.3-State made the following submissions:

6.1. Learned Advocate General submitted that it is not in every situation that the Hon'ble Governor

is required to act only after obtaining prior aid and advice of the Council of Ministers. According to him, there may arise exceptional situations requiring immediate action where it may not be possible to convene a meeting of the Council of Ministers, obtain its decision and thereafter place the same before the Hon'ble Governor.

6.2. He submitted that the constitutional scheme must be interpreted in a practical manner so as to ensure smooth and effective functioning of the Government. According to him, there must necessarily be some "play in the joints" to deal with situations requiring immediate constitutional action.

6.3. He submitted that the present case was one such exceptional situation. According to him, serious allegations had arisen that the petitioner's daughter had secured, or attempted to secure, public employment by producing false income and caste related certificates. Since the petitioner was holding the constitutional office of Chairman of the Karnataka Public Service Commission, the

allegations directly affected the credibility and integrity of the Commission itself. He submitted that the Chairman occupies the highest position in the Public Service Commission, which is entrusted with inviting applications, conducting examinations, selecting candidates and recommending appointments to various services under the State. Therefore, allegations affecting the integrity of the Chairman inevitably cast a serious shadow over the functioning and credibility of the entire institution.

6.4. He submitted that, having regard to the seriousness of the allegations and the possible erosion of public confidence in the Karnataka Public Service Commission, the Hon'ble Governor formed an opinion that immediate constitutional action was necessary in order to safeguard the reputation and integrity of the Commission. It was in those circumstances that the Hon'ble Governor recommended to the Hon'ble President that proceedings under Article 317 of the Constitution be initiated and, pending consideration of the matter by the Hon'ble President, Hon'ble Governor exercised

the power under Article 317(2) to suspend the petitioner.

6.5. Learned Advocate General further submitted that although the constitutional requirement that the Hon'ble Governor ordinarily acts on the aid and advice of the Council of Ministers is an important constitutional safeguard, there may be exceptional situations where immediate action cannot await the formal decision of the Council of Ministers. According to him, in such cases the Hon'ble Governor may act first in the larger public interest, subject to the action subsequently being placed before the Council of Ministers for its consideration.

6.6. He submitted that if the Council of Ministers approves and ratifies the action taken by the Hon'ble Governor, such ratification validates the action from its inception. If, on the other hand, the Council of Ministers declines to approve the action, the order passed by the Hon'ble Governor would not survive. Thus, according to him, the constitutional requirement of aid and advice is ultimately satisfied through the subsequent approval of the Council of Ministers.

6.7. Applying the said principle to the facts of the present case, he submitted that both the Hon'ble Governor and the Council of Ministers acted with the common objective of protecting the integrity and credibility of the Karnataka Public Service Commission, which is an important constitutional institution of the State. He submitted that the Council of Ministers has subsequently ratified the recommendation made by the Hon'ble Governor under Article 317 as well as the order of suspension. According to him, such ratification relates back to the date on which the Hon'ble Governor originally acted and, therefore, the impugned actions must be treated as having been taken on the aid and advice of the Council of Ministers from the very beginning.

6.8. He submitted that having regard to the serious nature of the allegations made against the petitioner, the Hon'ble Governor was fully justified in taking immediate action in order to protect the credibility of the constitutional institution, and therefore no interference with the impugned order is called for.

6.9. The learned Advocate General relies on the decision of the Hon'ble Supreme Court in the case of ***Reference under Article 317(1) of the Constitution of India, In re***[35], more particularly Paras 21 and 31 thereof, which are reproduced hereunder for his reference:

> ***21.*** *It has been argued on behalf of the respondent that the complaint petition of the Chairman and the joint letter of the other three Members of the Commission were not drafted at Patiala and came into existence later at Chandigarh after a deliberation by all the collaborators of the conspiracy. As has been mentioned earlier, the argument is that while the Governor was away on leave, the matter should have awaited his return and should not have been rushed through by sending the complaint to the President of India for immediate action. It has also been said that the issue was not placed even before the Cabinet before taking these steps and it was only belatedly that a post facto resolution in this regard was got passed by the Cabinet. We have given our anxious consideration to all these aspects and we do not find any merit in the argument of the learned counsel for the respondent that the theory of conspiracy is fit to be accepted. We, therefore, reject the case of Sri G.K. Saini of a conspiracy to get him removed from the office of a Member of the Commission.*
>
> ***31.*** *Now the question is whether Sri Saini deserved to be removed on account of his conduct. Persons occupying high public offices should maintain irreproachable behaviour. A certain minimum standard of code of conduct is expected of them. What may be excusable for an*

[35] (1990) 4 SCC 262

> *uneducated young man cannot be tolerated if a Member of a Public Service Commission is involved. Besides, it has to be remembered that the respondent and the Chairman were not thrashing out a personal matter or a private dispute. They were discussing a question involving their office and this in broad daylight in the open corridor of the Commission's building. Whatever the provocation offered by the Chairman, the respondent was not justified in losing his cool to the extent of indulging in physical violence. That the violence should have been directed against a lady makes his conduct all the more reprehensible. In our view, Sri Saini miserably failed in maintaining the standard of conduct expected of a Member of the Commission and thereby brought great disrepute to his office. Hence our answer to the question referred by the President is that Sri Saini's conduct amounted to misbehaviour within the meaning of Article 317(1) of the Constitution and it rendered him liable to be removed from his office of the Member of the Punjab Public Service Commission.*

6.10. By relying upon **Reference under Article 317(1) of the Constitution of India, In re,** the learned Advocate General submitted that the Hon'ble Supreme Court has emphasised that persons occupying high constitutional offices are expected to maintain an irreproachable standard of conduct. According to him, the Chairman and Members of a Public Service Commission occupy positions of great constitutional responsibility and public trust. Therefore, a much higher standard of integrity,

fairness and conduct is expected from them than from ordinary public servants.

6.11. He submitted that the Hon'ble Supreme Court has observed that the office of a Member of the Public Service Commission demands conduct which inspires public confidence and that any conduct bringing disrepute to the office would amount to misbehaviour within the meaning of Article 317(1) of the Constitution. According to him, the principles laid down by the Hon'ble Supreme Court apply with equal force to the office of the Chairman of the Karnataka Public Service Commission.

6.12. He further submitted that, in the present case, widespread reports had emerged alleging that the petitioner and members of his family had acted in a manner which raised serious doubts regarding the integrity and impartiality expected of the holder of such a constitutional office. According to him, irrespective of the ultimate outcome of the proposed enquiry, the very nature of the allegations had the potential to seriously erode public confidence in the Karnataka Public Service Commission. In such

circumstances, it became necessary for the Hon'ble Governor to act promptly to safeguard the dignity and credibility of the constitutional institution.

6.13. He therefore submitted that the Hon'ble Governor was fully justified in recommending to the Hon'ble President that proceedings be initiated under Article 317(1) of the Constitution and, pending such proceedings, in exercising the power under Article 317(2) to suspend the petitioner. According to him, the impugned action was intended to preserve the integrity and public confidence in the constitutional institution and cannot be faulted on any legal ground.

6.14. With regard to the decision in **Dr. (Smt.) Mangala Sridhar,** the learned Advocate General submitted that the said decision is distinguishable on facts and does not govern the present case. According to him, the principal issue considered in **Dr. (Smt.) Mangala Sridhar** was whether a Member of the Public Service Commission could be suspended without the aid and advice of the

Council of Ministers. He submitted that the said decision did not consider the effect of subsequent ratification by the Council of Ministers, which is one of the principal issues arising in the present case.

6.15. He further submitted that there is another distinguishing feature between the two cases. In **Dr. (Smt.) Mangala Sridhar**, the person concerned was a Member of the Public Service Commission, whereas in the present case the petitioner was the Chairman of the Karnataka Public Service Commission. According to him, the Chairman occupies a substantially different constitutional position, exercises administrative supervision over the Commission, has access to all records relating to the functioning of the Commission and exercises overall control over its administration. In view of the serious allegations levelled against the petitioner and members of his family, the Hon'ble Governor considered it necessary to suspend the petitioner so as to ensure that the proposed enquiry proceeds independently, fairly and without any possibility of interference. He therefore submitted that the ratio in **Dr. (Smt.)**

Mangala Sridhar, cannot be applied to the facts of the present case.

6.16. Insofar as the decision of the Hon'ble Supreme Court in **Nabam Rebia,** is concerned, the learned Advocate General submitted that the factual and constitutional context in that case was entirely different. According to him, the challenge in **Nabam Rebia,** arose at the instance of the Council of Ministers itself, which had objected to the Hon'ble Governor acting without its aid and advice. He submitted that the observations made therein must be understood in that context.

6.17. According to the learned Advocate General, the constitutional requirement of aid and advice exists for regulating the constitutional relationship between the Hon'ble Governor and the Council of Ministers. Therefore, it is primarily for the Council of Ministers to contend that the Hon'ble Governor has acted without its advice or contrary to its advice. Where the Council of Ministers itself has accepted, approved and ratified the action taken by the Hon'ble Governor, a third party, such as the

petitioner, cannot invoke the alleged absence of prior aid and advice as a ground to challenge the action.

6.18. He further submitted that in the present case the Council of Ministers has expressly ratified both the recommendation made by the Hon'ble Governor to the Hon'ble President under Article 317(1) as well as the order of suspension passed under Article 317(2). The Hon'ble Chief Minister has also approved and ratified the action taken by the Hon'ble Governor. According to him, such ratification relates back to the date on which the Hon'ble Governor originally acted. Therefore, even assuming that there was any procedural defect at the initial stage on account of the absence of prior aid and advice, the same stood completely cured by the subsequent ratification of the Council of Ministers.

6.19. The learned Advocate General submitted that there has never been any disagreement or conflict between the Hon'ble Governor and the Council of Ministers in relation to the impugned action. On the contrary, both constitutional

authorities have consistently taken the same view that the circumstances warranted initiation of proceedings under Article 317 and suspension of the petitioner pending such proceedings. In such circumstances, according to him, the petitioner cannot complain of any prejudice arising out of the internal constitutional procedure adopted between the Hon'ble Governor and the Council of Ministers. He therefore submitted that the petitioner has no locus to challenge the impugned action on the ground that the Hon'ble Governor acted without prior aid and advice of the Council of Ministers. According to him, in any event, such an objection, even if available, would relate only to a curable procedural irregularity and not to a jurisdictional defect rendering the impugned action void.

6.20. The learned Advocate General relies on the memo filed by the State on 20.07.2026. The memo is reproduced hereinunder for easy reference::

Memo

The undersigned Counsel for the Respondent No.3, State is herewith producing the following documents are as under:-

1	*A Copy of the Letter dated 16.07.2026 Issued by the Chief Secretary to the Governor of Karnataka*
2	*A Copy of the Cabinet Note Dated 18.07.2026*
3	*A Copy of the Cabinet Resolution dated 19.07.2026 passed by the Hon'ble Chief Minister of Karanataka*

6.21. Letter dated 16.07.2026 Issued by the Chief Secretary to the Hon'ble Governor of Karnataka reads as follows:

Dr. SHALINI RAJNEESH, I.A.S.,
Chief Secretary
D.O. No. CSO/548/2026 Dated 16.07.2026

Dear Mr Shankar,
With reference to the order no. GS 28 ADM 2026, dated: 10.07.2026 the Hon'ble Governor placing Sri. Shivashankrappa S. Sahukar, Chairman, Karnataka Public. Service Commission, under suspension until further orders in view of the allegations of misconduct and misbehavior under the spirit of Article 317(2) of the Constitution of India, pending inquiry by the Hon'ble President of India, and ordering that the next senior-most Member of the Commission shall act as the Chairman of the Karnataka Public Service Commission until further orders, the State Government concurs with the orders passed by the Hon'ble Governor.
The same may kindly be brought to the notice of the Hon'ble Governor.

With warm regards,

Yours sincerely,

Sd/-
(Dr.Shalini Rajneesh)

To,
Sri. R. Prabhu Shankar,
Special Secretary to Governor,
Lok Bhavan, Karnataka.

6.22. Cabinet Note dated 18.07.2026 reads as under:-

File. No: DPAR/147/SLA/2026(P-1)
CABINET NOTE

C.No: 393/2026

***Department**: Department of Personnel & Administrative Reforms*

Subject: Suspension of the Chairman of Karnataka Public Service Commission.

1. PROPOSAL:

1.1 The Chairman, Karnataka Public Service Commission, Shri Shivashankarappa S. Sahukar, is involved in allegations relating to the recruitment process for the posts of Industrial Extension Officer in the Department of Commerce and Industries, notified by the Commission, where both daughters of the Chairman's are eligible candidates in the recruitment process. His elder daughter, Smt. Anuradha S.S., is selected under the General Merit (Women) [GM/W] category for the 13 (Hyderabad-Karnataka) Industrial Extension Officer posts, whereas his younger daughter, Kum. Suma S. Sahukar, allegedly submitted an application for the 50 (RPC) Industrial

Extension Officer posts under the 3B/W reservation category with false documents.

1.2 Consequently, through Order No. GS 28 ADM 2026 dated 10.07.2026, the Hon'ble Governor has, under Article 317(2) of the Constitution of India, placed Shri Shivashankarappa S. Sahukar, Chairman of the Karnataka Public Service Commission (KPSC), under suspension with immediate effect, pending further orders from the Hon'ble President of India. The Hon'ble Governor has also directed that the next senior-most Member of the Commission shall discharge the functions of the Chairman until further orders. Accordingly, Dr. B. Prabhudev has assumed charge as the acting Chairman of the Commission until further orders. The said letter of Hon'ble Governor is placed at Annexure-1.

1.3 Mean while, in this regard, since Writ Petition No. 21376/2026 has been filed before the Hon'ble High Court, the Hon'ble Chief Minister accorded concurrence on 16.07.2026 to the Hon'ble Governor's Order No. GS 28 ADM 2026 dated 10.07.2026, subject to ratification by the cabinet. Accordingly, the Chief Secretary to the Government has written a letter to the office of the Hon'ble Governor. A copy of the said letter is enclosed as Annexure-2.

1.4 The above matter is placed before the cabinet for its perusal and post facto concurrence.

2 JUSTIFICATION:

2.1 In the recruitment process notified by Karnataka Public Service Commission for 50 (RPC) + 13 (Hyderabad-Karnataka) posts of Industrial Extension Officer, both daughters of the Chairman, Shri Shivashankarappa Sahukar, submitted their applications. Among them, the elder daughter, Smt. Anuradha S.S., who applied under the General Merit (Women) category for the 13 Hyderabad-Karnataka posts is selected in the provisional selection list published on 10.06.2026 under the GM/W category.

2.2 Further, another daughter of the Chairman, Kumari Suma S. Sahukar, applied for the 50 (RPC) posts under the 3B/W reservation category, but while applying for the said post she declared that she is not employed in any Government service and applied in the 3B reservation category by attaching the relevant certificate (Form-F) (Certificate RD5018440579619). Her family income is shown as Rs.40,000 per annum found during the original document verification conducted on 19.02.2026. Based on these facts, Karnataka Public Service Commission, through its letter dated 06.07.2026, has conveyed to the Government regarding the resolution against Shri Shivashankarappa S. Sahukar, Chairman, for dereliction of duty.

2.3 The candidate's father, Shri Shivashankarappa S. Sahukar was appointed as a Member of Karnataka Public Service Commission on 03.09.2019, drawing a basic salary of Rs.2,05,100 per month along with other allowances and is appointed as Chairman on 01.04.2021, drawing a basic salary of Rs.2,25,000 per month along with other allowances. Further, on examination of the movable and immovable property statements recently submitted by the Chairman to the Hon'ble Governor, it is found that he possessed assets substantially exceeding what was reflected in the income certificate used for obtaining the 3B reservation.

2.4 Under the Karnataka Civil Services (General Recruitment) Rules, 1977, the recruitment notification dated 15.03.2024 states that, candidates furnishing false information would render them liable to criminal proceedings and disciplinary action.

2.5 In the meeting chaired by the senior-most Member, Dr. B. Prabhudev, Karnataka Public Service Commission held on 19.06.2026, passed the following resolutions and requested the Government to take action under the Karnataka Public Service Commission (Conduct of Business and Additional Functions) Act, 1959:

1. It is decided to reject the application under reservation, cancel the candidature and to initiate criminal proceedings against Kumari Suma S. Sahukar.

2. Shri Shivashankarappa S. Sahukar, Chairman, Karnataka Public Service Commission, has himself admitted to the fact of Kumari Suma S. Sahukar, his daughter appearing for the exam in the note given by him on 19.06.2026 and since it prima facie appears that the Chairman misused his official position and stated false income details in the caste/income certificate submitted by Kumari Suma S. Sahukar. In order to preserve the dignity of the Commission, and to ensure an impartial inquiry, it is resolved that Shri Shivashankarappa S. Sahukar, Chairman, Karnataka Public Service Commission, should resign from his office taking moral responsibility.

3. To ensure that the Commission's work continues without interruption, it was unanimously resolved that recruitment processes should be conducted under the leadership of the next senior-most Member.

2.6 In the letter submitted to the Government dated: 07.07.2026, Shri Shivashankarappa S. Sahukar Chairman, Karnataka Public Service Commission, has given explanation which is as follows:

"Smt. Anuradha is married and resides separately with her family. Since she resides in the Hyderabad-Karnataka region, she was selected under the Hyderabad-Karnataka quota.

Further, Kumari Suma S. Sahukar has also appeared for the competitive examination held for the post of Industrial Extension Officer and secured place in the Commission's 1:3 eligibility list. In this regard during the document verification, the Secretary of the Commission discussed with me regarding the lower income shown in her caste and income certificate and informed that the certificate submitted by their daughter would be rejected. Therefore, to enable the

Members of the Commission to take decision regarding the matter during the meeting held on 19.06.2026, I remained absent and have given a note to that effect.

When enquired regarding the lower income shown in the caste and income certificate, my daughter stated that she was unaware that the caste certificate also included an income certificate and that she had not brought to the notice of her parents the income figures stated in the certificate."

2.7 The explanation given by KPSC on 10.07.2026, Shri Shivashankarappa S. Sahukar cannot be accepted since, he himself signed and issued recruitment notification on 15.03.2024. He participated in Commission's meetings held on 08.07.2025 and 05.08.2025 regarding the examination and he has approved the list of examination centers.

2.8 Further, the approval of the Commission for 1:3 eligibility list was obtained through circulation and the Chairman has signed the list on 20.01.2026 and 31.01.2026 respectively. Original documents of candidates in 1:3 eligibility list were verified, in the verification the list of candidates whose reservation was rejected was approved by the Commission through circulation, for this the Chairman has signed on 27.04.2026.

2.9 Approval of the list rejecting reservation claims was also obtained through circulation, and the Chairman signed it on 27.04.2026, approval of the 1:1 provisional selection list for the 13 Hyderabad-Karnataka posts was similarly obtained through circulation, and the Chairman signed it on 05.06.2026.

2.10 Shri Shivashankarappa S. Sahukar challenged the validity of the resolutions passed under Additional Agenda Item No. 01 in the Commission meeting dated 19.06.2026 by filing Writ Petition No. 20949/2026

before the Hon'ble High Court. The Hon'ble High Court granted an interim stay order on 10.07.2026.

2.11 Meanwhile, by Order No. GS 28 ADM 2026 dated 10.07.2026, the Hon'ble Governor, exercising powers under Article 317(2) of the Constitution of India, placed Shri Shivashankarappa S. Sahukar, Chairman of KPSC, under suspension with immediate effect until further orders from the Hon'ble President of India. The Governor also directed that the senior-most Member should function as Chairman until further orders. Accordingly, KPSC reported that the Chairman has been placed under suspension; and the next senior-most Member, Dr. B. Prabhudev, has assumed charge as Acting Chairman until further orders. The said letter of Hon'ble Governor's is placed at Annexure-1.

2.12 In this regard, since Writ Petition No. 21376/2026 has been filed before the Hon'ble High Court, the Hon'ble Chief Minister, subject to ratification by the Cabinet, accorded concurrance on 16.07.2026 to the Hon'ble Governor's Order No. GS 28 ADM 2026 dated 10.07.2026. Accordingly, the Chief Secretary to the Government has addressed a letter to the Office of the Hon'ble Governor. A copy of the said letter is enclosed as Annexure-2.

3. FINANCIAL IMPLICATIONS:

Not Applicable.

4. INTER-MINISTERIAL CONSULTATIONS:

Not Applicable.

5. RESPONSE OF THE ADMINISTRATIVE DEPARTMENT TO THE OPINION GIVEN BY OTHER DEPARTMENTS:

Not Applicable.

6. APPROVAL OF THE MINISTER-IN-CHARGE:

The Hon'ble Chief Minister has approved the said proposal.

7. APPROVAL PARAGRAPH:

Under Rule 20(1)(b) of the Karnataka Government (Transaction of Business) Rules, 1977, the following matters are submitted for the perusal and concurrence:

"By Order No. GS 28 ADM 2026 dated 10.07.2026, the Hon'ble Governor has, under Article 317(2) of the Constitution of India, placed Shri Shivashankarappa S. Sahukar, Chairman of the Karnataka Public Service Commission (KPSC), under suspension with immediate effect, pending further orders from the Hon'ble President of India. The Hon'ble Governor has also directed that the next senior-most Member of the Commission shall discharge the functions of the Chairman until further orders."

Sd/-
(Dr. Jagadeesha K.G)
Secretary to Government,
Department of Personnel and
Administrative Reforms

6.23. Cabinet Resolution dated 19.07.2026 which reads as under:-

ಸಚಿವ ಸಂಪುಟದ ಸಭೆಯಲ್ಲಿ ಪರಿಗಣಿಸಲಾದ ವಿಷಯ

ವಿಷಯ ಹಾಳೆ

ಇಲಾಖೆ ಸಂಖ್ಯೆ: C.A.SU.E. 147 SLA 2026 (Part-1) (C.No.2227883)

ಸಚಿವ ಸಂಪುಟ ಟಿಪ್ಪಣಿಯನ್ನು *ಸಚಿವ ಸಂಪುಟದ ಸಭೆ ಸಂಖ್ಯೆ : 16*
ಕಳುಹಿಸಿದ ದಿನಾಂಕ : 18.07.2026 *ಪ್ರಕರಣ ಸಂಖ್ಯೆ: C.393/2026*

ವಿಷಯ : ಕರ್ನಾಟಕ ಲೋಕಸೇವಾ ಆಯೋಗದ ಅಧ್ಯಕ್ಷರನ್ನು ಅಮಾನತ್ತಿನಲ್ಲಿರಿಸಿರುವ ಬಗ್ಗೆ.

ಸಚಿವ ಸಂಪುಟದ ಸಭೆಯ ದಿನಾಂಕ	*ಕಾರ್ಯಸೂಚಿಯಲ್ಲಿರುವ ಕ್ರಮ ಸಂಖ್ಯೆ.*
19.07.2026	*16*

ಸಚಿವ ಸಂಪುಟದ ನಿರ್ಣಯ

ಸಚಿವ ಸಂಪುಟ ಟಿಪ್ಪಣಿಯ ಕಂಡಿಕೆ 7ರಲ್ಲಿ ಒಳಗೊಂಡಿರುವ ಪ್ರಸ್ತಾವನೆಯನ್ನು ಸಚಿವ ಸಂಪುಟವು ಅನುಮೋದಿಸಿತು.

(ಡಿ.ಕೆ. ಶಿವಕುಮಾರ್)
ಮುಖ್ಯಮಂತ್ರಿ
19.07.2026

<u>ಉದ್ಧೃತ ಭಾಗ</u>
ಮೇಲ್ಕಂಡ ಸಚಿವ ಸಂಪುಟದ ನಿರ್ಣಯವನ್ನು ಮಾಹಿತಿ ಹಾಗೂ ಮುಂದಿನ ಸೂಕ್ತ ಕ್ರಮಕ್ಕಾಗಿ ತಮಗೆ ಕಳುಹಿಸಲಾಗಿದೆ.

Sd/-
(ಆರ್. ಚಂದ್ರಶೇಖರ್)
ಸರ್ಕಾರದ ಅಪರ ಕಾರ್ಯದರ್ಶಿ
(ಸಚಿವ ಸಂಪುಟ)

ಡಾ|| ಜಗದೀಶ ಕೆ.ಜಿ.
ಸರ್ಕಾರದ ಕಾರ್ಯದರ್ಶಿ,
ಸಿಬ್ಬಂದಿ ಮತ್ತು ಆಡಳಿತ ಸುಧಾರಣೆ ಇಲಾಖೆ.

6.24. Learned Advocate General also placed reliance on the Cabinet Note dated 18.07.2026 and the Cabinet Resolution dated 19.07.2026 to contend that the action taken by the Hon'ble Governor had received the approval of the executive Government. According to him, the Cabinet Note records in detail the background facts, the allegations against the petitioner, the action taken by the Karnataka Public Service

Commission, the explanation submitted by the petitioner, the order of suspension passed by the Hon'ble Governor under Article 317(2), the concurrence granted by the Hon'ble Chief Minister on 16.07.2026 subject to Cabinet ratification, and the proposal seeking post facto approval of the Cabinet. He submitted that the Cabinet Note also records the reasons which weighed with the Government in supporting the action taken by the Hon'ble Governor and demonstrates that the matter was independently examined by the executive before being placed before the Cabinet.

6.25. Learned Advocate General further referred to the Cabinet Resolution dated 19.07.2026, whereby the Cabinet approved the proposal contained in paragraph 7 of the Cabinet Note and accorded its concurrence to the order passed by the Hon'ble Governor under Article 317(2) of the Constitution. He submitted that the Cabinet Resolution clearly evidences that the Council of Ministers, after considering the matter, approved the action already taken by the Hon'ble Governor and thereby adopted the same as the decision of the State Government.

6.26. By referring to the Cabinet Note, the approval granted by the Hon'ble Chief Minister on 16.07.2026 and the subsequent Cabinet Resolution dated 19.07.2026, the learned Advocate General submitted that there has been substantial compliance with the constitutional requirement of aid and advice under Article 163 of the Constitution. According to him, the Hon'ble Chief Minister, who was also the Minister in charge of the Department of Personnel and Administrative Reforms, had examined the matter and accorded concurrence even before the issue was placed before the Cabinet. Thereafter, the Council of Ministers formally approved and ratified the action taken by the Hon'ble Governor.

6.27. He submitted that the constitutional requirement is that the Hon'ble Governor should ultimately act on the aid and advice of the Council of Ministers. Where immediate constitutional action is required in public interest, and the action is thereafter approved by the Hon'ble Chief Minister and ratified by the Council of Ministers, the constitutional requirement stands substantially satisfied.

According to him, the subsequent ratification relates back to the date of the original decision of the Hon'ble Governor and, therefore, the recommendation made to the Hon'ble President as well as the order of suspension must be treated as having been taken with the aid and advice of the Council of Ministers from the very inception.

6.28. The learned Advocate General relies on the decision of the Hon'ble Kerala High Court in ***Xavier Residency v. State of Kerala,***[36] more particularly Paras 87 and 88 of the said decision reads as under:-

> ***87.*** Article 156 *of the Constitution deals with term of office of Governor, which reads as follows:-*
>
> *156. Term of office of Governor.--(1) The Governor shall hold office during the pleasure of the President.*
>
> *(2) The Governor may, by writing under his hand addressed to the President, resign his office.*
>
> *(3) Subject to the foregoing provisions of this Article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:*
>
> *Provided that a Governor shall, notwithstanding the W.P.(C) Nos.22195/2014 & Conn. cases*

[36] WP(C).No. 22195 of 2014

expiration of his term, continue to hold office until his successor enters upon his office.

As per the above provision, even if the term of office of the Governor expires, the person in office shall hold office until his successor takes charge. The above provision ensures that, no administrative vacuum is created by the contingency, pointed out by the petitioners. Article 160 *empowers the President to act in an unforeseen emergency not provided for by the Constitution.* Article 160 *reads as follows:-*

160. Discharge of the functions of the Governor in certain contingencies.--

The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

Since sufficient provisions are available in the Constitution to remedy the situation created by the resignation of the Governor and to ensure continuity in office, I do not consider it necessary to dwell on the above aspect in any further detail. No material or evidence is placed before me to justify a conclusion that any contingency of the nature pointed out was actually in W.P.(C) Nos.22195/2014 & Conn. cases existence. On the contrary, the presumption as to official acts under Section 114 *of the Evidence Act, only supports the conclusion that the amendments were enacted and published properly. A further contention has been put forward regarding violation of the Rules of Business in Government. According to the counsel for the petitioners, the Abkari Policy was issued without the backing of a decision of the Council of Ministers. It is pointed out, by placing reliance on the statements in Paragraph 7 of the counter affidavit filed, that the Council of Ministers had ratified the decision on 27.08.2014. According to the counsel, such a procedure, of the Council of Ministers ratifying a decision is unknown to the Constitutional Law.*

> ***88.*** *It is true that,* Article 163 *mandates the existence of a Council of Ministers to aid and advice the Governor in the exercise of his functions. The case of the State is that, the policy had been ratified 27.08.2014 by the Council of Ministers. The said statement only shows that, the formal decision of the Council of Ministers W.P.(C) Nos.22195/2014 & Conn. cases though taken subsequently, the policy had the tacit approval of the Council of Ministers. Otherwise, the Council of Ministers would not have ratified the same. Procedural intricacies in the manner of functioning of a Government machinery need not be scrutinized with a hawk's eye to cull out lapses for the purpose of invalidating them. The practical difficulties in the working of the Government has to be given a sufficient elbow room, without which the smooth functioning of the Government would become impossible. No materials have also been placed before me to justify the conclusion that the policy announced on 22.08.2014 was not supported by a decision of the Council of Ministers. In the absence of any such materials, the said contention is also negatived.*

6.29. By referring to Paras 87 and 88 of **Xavier Residency,** the submission of the learned Advocate General is that the Constitution itself makes adequate provisions to ensure continuity in governance and that the functioning of the Government cannot be tested on unrealistic procedural standards. He submitted that the Hon'ble Kerala High Court, while considering a challenge based on the alleged absence of prior

approval of the Council of Ministers, held that although Article 163 mandates that the Hon'ble Governor acts on the aid and advice of the Council of Ministers, the subsequent ratification by the Council of Ministers indicated that the decision had the tacit approval of the Council of Ministers even at the time when it was taken.

6.30. According to him, the Hon'ble Kerala High Court in **Xavier Residency,** further held that procedural aspects relating to the internal functioning of the Government should not be examined with excessive technicality merely to discover procedural lapses and invalidate governmental action. The Hon'ble Kerala Court observed that sufficient latitude must be given to the functioning of the Government so that the administration can function smoothly and effectively.

6.31. Relying upon the above observations, the learned Advocate General submitted that Article 163 requires the Hon'ble Governor to act on the aid and advice of the Council of Ministers, but it does not invariably require that such advice should, in every case and under all

circumstances, formally precede the action of the Hon'ble Governor. According to him, where the circumstances require immediate action, the Hon'ble Governor can act first and the decision can thereafter be approved by the Council of Ministers. The subsequent approval, according to him, establishes that the decision originally taken by the Hon'ble Governor had the tacit support of the Council of Ministers.

6.32. He submitted that the post facto ratification by the Council of Ministers cannot be treated as an empty formality. On the contrary, such ratification demonstrates that the Council of Ministers, after independently considering the matter, accepted and adopted the action already taken by the Hon'ble Governor. According to him, once such approval is granted, the constitutional requirement of aid and advice stands substantially fulfilled.

6.33. The learned Advocate General further submitted that procedural rules are intended to facilitate justice and good governance and should not be applied in a manner that defeats substantive constitutional objectives. According

to him, procedural requirements governing the internal functioning of the Government are handmaidens of justice and are not intended to invalidate governmental action on mere technicalities. He submitted that unless a procedural lapse causes prejudice or violates a substantive constitutional mandate, the Court should lean in favour of sustaining the action rather than striking it down.

6.34. Learned Advocate General reiterated that the practical realities of governance require the Government to be afforded sufficient flexibility for taking urgent decisions. According to him, if every decision of the Hon’ble Governor were required to await the convening of the Council of Ministers and a formal Cabinet decision in every case, the smooth and effective functioning of the Government would become difficult, particularly in situations demanding immediate constitutional action.

6.35. He further submitted that there is absolutely no material placed on record by the petitioner to show that the Council of Ministers disagreed with or opposed the action taken by the Hon'ble

Governor. On the contrary, the documents produced along with the memo dated 20.07.2026, including the Cabinet Note, the concurrence accorded by the Hon'ble Chief Minister and the subsequent Cabinet Resolution, clearly establish that the Council of Ministers fully supported the recommendation made to the Hon'ble President and the order of suspension passed by the Hon'ble Governor.

6.36. On the basis of the aforesaid facts, the learned Advocate General submitted that this is a fit case where this Court, while exercising its jurisdiction under Article 226 of the Constitution, should recognise the practical necessities of constitutional governance, uphold the subsequent ratification by the Council of Ministers as sufficient compliance with Article 163 of the Constitution, and decline to interfere with the impugned action of the Hon'ble Governor.

6.37. The learned Advocate General refers to Article 74 of the Constitution, which is reproduced hereunder for easy reference:

> ***74. Council of Ministers to aid and advise President***
>
> (1) *There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:*
>
> *Provided that the President may require the Council of Ministers to reconsider such advice; either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.*
>
> (2) *The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.*

6.38. Learned Advocate General further referred to Article 74 of the Constitution of India, which provides that there shall be a Council of Ministers with the Hon'ble Prime Minister at its head to aid and advise the Hon'ble President in the exercise of his functions. Article 74 also provides that the Hon'ble President shall act in accordance with such aid and advice, subject to the limited power to require the Council of Ministers to reconsider its advice. After such reconsideration, however, Hon'ble President is constitutionally bound to act in accordance with the advice so tendered. Clause (2) of Article 74 further provides that the question whether any, and if so what, advice was tendered by the

Ministers to the Hon'ble President shall not be inquired into by any Court.

6.39. By referring to Article 74, the learned Advocate General submitted that the constitutional scheme relating to the Hon'ble President is substantially similar to that governing the Hon'ble Governor under Articles 163 and 164 of the Constitution. According to him, Article 74 recognises that although executive action is formally taken in the name of the Hon'ble President, such action is based upon the aid and advice of the Council of Ministers. The constitutional protection contained in clause (2) makes it clear that the advice tendered by the Council of Ministers forms part of the confidential decision-making process of the executive and is therefore immune from judicial inquiry.

6.40. He submitted that the embargo contained in Article 74(2) is absolute insofar as the Court is concerned. Neither this Court, while exercising jurisdiction under Article 226 of the Constitution, nor the Hon'ble Supreme Court while exercising jurisdiction under Article 32 of

the Constitution, can enquire into whether any advice was tendered to the Hon’ble President or examine the nature, contents or adequacy of such advice. According to him, the constitutional prohibition is intended to preserve the confidentiality of deliberations between the executive head of the Union and the Council of Ministers and to maintain the separation between the executive and judicial branches of the State.

6.41. The learned Advocate General further submitted that the same constitutional principle applies while considering the scope of Article 163(3), which similarly prohibits any judicial inquiry into the advice tendered by the Council of Ministers to the Hon'ble Governor. Therefore, according to him, once it is shown that the constitutional function has been exercised by the Hon’ble Governor in accordance with the constitutional scheme, the Court cannot embark upon an enquiry as to whether advice had in fact been tendered, the stage at which such advice was tendered, the deliberations preceding such advice, or whether the Hon’ble

Governor acted upon one form of advice in preference to another.

6.42. On that basis, he submitted that the challenge made by the petitioner, which requires this Court to enquire into the existence, timing and nature of the aid and advice allegedly tendered to the Hon'ble Governor, is itself barred by the constitutional prohibition contained in Article 163(3), read in the light of the principles embodied in Article 74(2). According to him, such an enquiry is constitutionally impermissible and therefore cannot constitute a ground to invalidate the impugned recommendation or the order of suspension.

6.43. The learned Advocate General refers to Article 163 which is reproduced hereunder for easy reference:

> ***163. Council of Ministers to aid and advise Governor***
>
> *(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.*
>
> *(2) If any question arises whether any matter is or is not a matter as respects which the Governor*

> *is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.*
>
> *(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.*

6.44. Learned Advocate General further referred to Article 163 of the Constitution of India, which provides that there shall be a Council of Ministers with the Chief Minister at its head to aid and advise the Hon'ble Governor in the exercise of his functions, except insofar as the Constitution requires the Hon'ble Governor to exercise any of his functions in his discretion. He also referred to clause (2) of Article 163, which provides that if any question arises as to whether any matter is one in respect of which the Hon'ble Governor is required by or under the Constitution to act in his discretion, the decision of the Hon'ble Governor shall be final and the validity of anything done by the Hon'ble Governor cannot be questioned on the ground that he ought or ought not to have acted in his discretion. He also referred to clause (3) of Article 163, which provides that the question

whether any, and if so what, advice was tendered by the Ministers to the Hon’ble Governor shall not be inquired into by any Court.

6.45. By referring to Articles 74 and 163, the learned Advocate General submitted that there is a clear constitutional distinction between the manner in which the Hon'ble President exercises constitutional powers and the manner in which the Hon'ble Governor exercises constitutional powers.

6.46. According to him, Article 74(1) mandates that the Hon’ble President shall act in accordance with the aid and advice of the Council of Ministers headed by the Hon’ble Prime Minister. Though the proviso enables the Hon’ble President to require the Council of Ministers to reconsider its advice, after such reconsideration the Hon’ble President is constitutionally bound to act in accordance with the advice so tendered.

6.47. In contrast, Article 163(1) expressly recognises that the Hon’ble Governor may, in certain situations, exercise his functions in his

discretion. The learned Advocate General submitted that this express recognition of the Hon'ble Governor's discretionary power is absent in Article 74. According to him, the constitutional scheme itself makes a distinction between the offices of the Hon'ble President and the Hon'ble Governor by specifically incorporating the discretionary jurisdiction of the Hon'ble Governor under Article 163(1).

6.48. He further submitted that Article 163(2) reinforces the above distinction by providing that where a question arises as to whether the Hon'ble Governor is required by or under the Constitution to act in his discretion, the decision of the Hon'ble Governor is final and the validity of such action cannot be questioned on the ground that the Hon'ble Governor ought or ought not to have acted in his discretion. According to him, the constitutional finality attached to such decision indicates that the Constitution deliberately intended to confer upon the Hon'ble Governor a limited area of independent constitutional judgment.

6.49. The learned Advocate General also submitted that unlike Article 74, Article 163 does not contain any provision requiring the Hon'ble Governor to seek reconsideration of the advice of the Council of Ministers or thereafter mandatorily act in accordance with such reconsidered advice. According to him, this difference in language is significant and demonstrates that the constitutional position of the Hon'ble Governor cannot be equated in every respect with that of the Hon'ble President.

6.50. On the basis of the above constitutional provisions, the learned Advocate General submitted that Article 163 recognises that in appropriate and exceptional situations the Hon'ble Governor can exercise constitutional powers in his discretion. He submitted that where circumstances demand immediate action in order to protect constitutional institutions or public interest, the Hon'ble Governor is not rendered powerless merely because a formal decision of the Council of Ministers has not yet been obtained.

6.51. According to him, the present case is one such exceptional situation. Serious allegations had arisen against the Chairman of the Karnataka Public Service Commission, affecting the credibility and integrity of a constitutional institution entrusted with recruitment to public services. In such circumstances, the Hon'ble Governor was justified in immediately recommending to the Hon'ble President that an enquiry be initiated under Article 317(1) and, pending such enquiry, in exercising the power of suspension under Article 317(2).

6.52. The learned Advocate General submitted that the position would have been materially different if the Council of Ministers had subsequently disagreed with or declined to approve the action taken by the Hon'ble Governor. However, in the present case, the Council of Ministers has expressly ratified both the recommendation made to the Hon'ble President and the order of suspension. Therefore, according to him, the constitutional requirement of aid and advice stands fully satisfied.

6.53. He further submitted that the concurrence initially accorded by the Hon'ble Chief Minister, followed by the Cabinet Note dated 18.07.2026 and the Cabinet Resolution dated 19.07.2026 approving the proposal, clearly demonstrate that the elected Government fully supports the decision taken by the Hon'ble Governor. Thus, there is no conflict whatsoever between the constitutional head of the State and the elected executive.

6.54. On that basis, the learned Advocate General submitted that the recommendation made by the Hon'ble Governor under Article 317(1), the order of suspension passed under Article 317(2), and the subsequent ratification by the Council of Ministers together constitute a complete and valid constitutional exercise. According to him, no legal infirmity survives in the impugned action warranting interference by this Court under Article 226 of the Constitution. He therefore submitted that the writ petition deserves to be dismissed.

7. In rejoinder, Shri Arun Shyam, learned Senior Counsel appearing for the petitioner, made the following submissions:

7.1. At the outset, he addressed the reliance placed by the learned Senior Counsel appearing for respondent No.1 on the decision of the Hon'ble Supreme Court in **Sayalee Sanjeev Joshi,** according to him, the said decision does not constitute a binding precedent within the meaning of Article 141 of the Constitution.

7.2. He submitted that the proceedings in **Sayalee Sanjeev Joshi** arose out of a reference made by the Hon'ble President of India under Article 317(1) of the Constitution seeking the opinion of the Hon'ble Supreme Court on the question whether the concerned Member of the Maharashtra Public Service Commission was liable to be removed from office on the ground of misbehaviour. According to him, while answering such a reference, the Hon'ble Supreme Court was not exercising its ordinary judicial jurisdiction for adjudicating disputes between contesting parties, but was merely rendering its opinion to the Hon'ble President as

contemplated under Article 317 of the Constitution.

7.3. His submission is that such a report cannot be equated with a judgment rendered by the Hon'ble Supreme Court in the exercise of its judicial jurisdiction deciding rights of parties. According to him, observations made while answering a constitutional reference under Article 317 cannot automatically be treated as declarations of law binding upon all Courts under Article 141 of the Constitution.

7.4. He therefore submitted that the observation contained in paragraph 2 of **Sayalee Sanjeev Joshi**, on which heavy reliance has been placed by the respondents for contending that the Hon’ble Governor can suspend a Member of the Public Service Commission even before the Hon’ble President makes a reference to the Hon'ble Supreme Court, cannot be treated as laying down a binding ratio decidendi. According to him, the said observation was made only while narrating the factual background of the reference and was neither directly in issue nor decided after considering

rival submissions on the scope and interpretation of Article 317(2).

7.5. On that basis, he submitted that **Sayalee Sanjeev Joshi** cannot be treated as a binding precedent governing the controversy involved in the present writ petition, and consequently, the respondents cannot rely upon the said decision to contend that the impugned order of suspension is constitutionally valid.

7.6. He relies upon ***High Court of Judicature for Rajasthan v. P.P. Singh***[37]**,** more particularly para 42 thereof, which is reproduced hereunder for easy reference.

> ***42.*** *In any view of the matter, even in a case where the initial action is illegal, the same can be ratified by a body competent therefor. This aspect of the matter has not been considered by the High Court at all. In Parmeshwari Prasad Gupta v. Union of India [(1973) 2 SCC 543] this Court held: (SCC pp. 546-47, para 14)*
>
> *"Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorized to terminate the services of the appellant, he was acting on behalf of the Company*

[37] (2003) 4 SCC 239

in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorized, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953."

[See also Marathwada University v. Seshrao Balwant Rao Chavan [(1989) 3 SCC 132 : 1989 SCC (L&S) 436] (SCC para 28), Babu Verghese v. Bar Council of Kerala [(1999) 3 SCC 422] (SCC para 35) and Barnard v. National Dock Labour Board [(1953) 1 All ER 1113 : (1953) 2 QB 18 : (1953) 2 WLR 995 (CA)] .]"

7.7. Learned Senior Counsel for the petitioner submits that the reliance placed by respondent No.1 on **P.P. Singh,** is wholly misplaced and misconceived.

7.8. According to him, the decision in **P.P. Singh** did not arise in the context of the exercise of constitutional powers or the interpretation of constitutional provisions. The controversy before the Hon'ble Supreme Court related to the recommendation made by a Committee consisting of two Hon'ble Judges constituted by the Hon'ble Acting Chief Justice regarding the grant of selection grade to judicial officers, which recommendation was subsequently

approved by the Hon'ble Full Court. The issue, therefore, arose in the context of the interpretation of the relevant service rules governing grant of selection grade and the effect of subsequent approval by the Full Court.

7.9. He submitted that the rule which fell for consideration in **P.P. Singh** did not prescribe prior approval of the Full Court as a mandatory condition precedent before the Hon’ble Chief Justice or the Committee could take the initial decision. It was in that factual and statutory background that the Hon'ble Supreme Court held that the subsequent approval accorded by the Full Court was sufficient and that such approval related back to the date of the original action.

7.10. Learned Senior Counsel submitted that the present case stands on an entirely different footing. According to him, the controversy here concerns the exercise of constitutional powers by the Hon'ble Governor under Articles 163 and 317 of the Constitution. The Constitution itself prescribes the manner in which such powers are to be exercised and, according to him,

where the Constitution requires the Hon'ble Governor to act on the aid and advice of the Council of Ministers, such aid and advice constitutes a mandatory constitutional precondition for the exercise of the power itself.

7.11. He submitted that unlike the statutory rule considered in **P.P. Singh**, the constitutional provisions involved in the present case do not contemplate that a constitutional defect arising from the absence of prior aid and advice can subsequently be cured by post facto ratification. According to him, once the constitutional requirement is not complied with at the time the power is exercised, the action becomes constitutionally invalid and cannot subsequently be validated by applying principles of ratification evolved in the context of statutory or administrative powers.

7.12. It was therefore submitted that the principle relating to retrospective ratification laid down in **P.P. Singh,** has no application to the facts of the present case, which concerns compliance with mandatory constitutional requirements

governing the exercise of power under Articles 163 and 317 of the Constitution.

7.13. As regard the submission of Shri Udaya Holla Learned Senior Counsel appearing for respondent No.1 – Hon'ble Governor, the submission of learned senior counsel for the Petitioner is that the report submitted under Article 317(1) of the Constitution of India is not a judgment rendered by the Hon'ble Apex Court as per Article 141 of the Constitution of India and as such is not binding on this Court. There is no discussion or finding given by the Hon'ble Apex Court in any case, stating that the action of the Hon'ble Governor under Article 317 (2) of the Constitution of India can be approved or ratified by the Council of Ministers of the State as *ex post facto* approval.

7.14. Learned Senior Counsel for the Petitioner next dealt with the reliance placed by the learned Advocate General on the decision of the Hon'ble Kerala High Court in **Xavier Residency**. According to him, the said decision arose in an entirely different factual and legal context and has no application to the present case.

7.15. He submitted that **Xavier Residency** concerned the validity of the Abkari Policy framed by the State Government and the challenge therein was to a policy decision taken in the exercise of the executive powers of the State. The issue before the Hon'ble Kerala High Court was whether the subsequent ratification of the policy by the Council of Ministers could sustain the policy decision. According to him, the exercise of executive power in relation to a Government policy stands on a completely different footing from the exercise of constitutional powers under Article 317 of the Constitution.

7.16. He submitted that Article 317 deals with the suspension and removal of the Chairman or Members of a Public Service Commission, who occupy constitutional offices protected by specific constitutional safeguards. The constitutional requirements governing the exercise of power under Article 317 cannot be equated with executive decisions taken in the ordinary course of governmental administration. Therefore, according to him, the principle applied in **Xavier Residency** in

relation to a Government policy cannot be extended to validate the exercise of constitutional power under Article 317.

7.17. He therefore submitted that the reliance placed upon **Xavier Residency** by the learned Advocate General is misplaced and does not advance the case of the respondents.

7.18. Learned Senior Counsel for the petitioner thereafter dealt with the submissions advanced by Shri Reuben Jacob, learned Senior Counsel appearing for respondent No.2-KPSC. He submitted that the contention of respondent No.2 that, in exceptional circumstances, the Hon'ble Governor can exercise powers under Article 317 without the aid and advice of the Council of Ministers is legally unsustainable.

7.19. In this regard, he sought to distinguish the decision of the Hon'ble Supreme Court in **Justice R.A. Mehta (Retired).** According to him, the respondents have placed undue reliance upon certain observations made therein regarding exceptional situations in which the Hon’ble Governor may exercise discretion.

7.20. He submitted that the Constitution Bench decision in **Samsher Singh** and the subsequent Constitution Bench decision in **Nabam Rebia** have categorically laid down that, except in those situations where the Constitution expressly provides otherwise, the Hon’ble Governor is bound to act only on the aid and advice of the Council of Ministers. According to him, these Constitution Bench decisions authoritatively settle the constitutional position and continue to govern the field.

7.21. He further submitted that the observations made in **Justice R.A. Mehta** regarding exceptional circumstances were rendered in an entirely different context. The Hon'ble Supreme Court referred to constitutional provisions such as Articles 200, 239(2), 371-A(1)(b), 371-A(1)(d), 371-A(2)(b), 371-A(2)(f) and paragraph 9(2) of the Sixth Schedule, where the Constitution itself either expressly or by necessary implication recognises the discretionary powers of the Hon’ble Governor.

7.22. According to him, there is no discussion whatsoever in **Justice R.A. Mehta** regarding the scope or interpretation of Article 317 of the Constitution. Therefore, the observations regarding exceptional situations cannot be read as extending to the exercise of powers under Article 317.

7.23. On that basis, learned Senior Counsel submitted that the exceptional situations referred to in **Justice R.A. Mehta** do not include the exercise of powers under Article 317 of the Constitution. According to him, Article 317 does not carve out any exception enabling the Hon'ble Governor to act independently of the aid and advice of the Council of Ministers.

7.24. He submitted that the law laid down by the Constitution Benches in **Samsher Singh** and **Nabam Rebia** makes it clear that the Hon’ble Governor is bound to act on the aid and advice of the Council of Ministers unless he is acting as a “persona designata” or “eo nomine” under a particular statute or unless the Constitution

itself expressly confers discretionary powers in relation to the subject-matter concerned.

7.25. According to him, Article 317 contains no such express exception. Therefore, the power of suspension under Article 317(2) and the recommendation under Article 317(1) can be exercised by the Hon'ble Governor only after obtaining the aid and advice of the Council of Ministers. Since no such constitutional exception exists in relation to Article 317, the respondents cannot justify the impugned action by invoking the theory of exceptional circumstances or inherent discretion vested in the Hon’ble Governor.

7.26. Learned Senior Counsel therefore submitted that the entire defence sought to be put forward by the respondents is based on an incorrect interpretation of Articles 163 and 317 of the Constitution. According to him, the respondents have attempted to justify an action which was admittedly taken without the aid and advice of the Council of Ministers on the date on which the recommendation under Article 317(1) and the order of suspension under

Article 317(2) were issued. Such a constitutional defect, according to him, goes to the very root of the exercise of power and cannot be cured by subsequent approval or ratification.

7.27. He submitted that the constitutional scheme does not recognise the concept of post facto aid and advice. Aid and advice, by its very nature, has to precede the exercise of the constitutional power. The Hon'ble Governor is required to consider the advice tendered by the Council of Ministers before arriving at his constitutional satisfaction. Once the constitutional function has already been performed, subsequent concurrence or ratification by the Council of Ministers cannot retrospectively create the constitutional satisfaction which was absent when the decision was originally taken.

7.28. Learned Senior Counsel further submitted that acceptance of the respondents' contention would render the constitutional safeguards contained in Articles 163 and 317 illusory. If actions taken without the constitutionally mandated aid and advice are permitted to be

validated subsequently, every constitutional requirement could be bypassed initially and complied with only after a legal challenge is mounted. Such an interpretation, according to him, would defeat the constitutional balance between the constitutional head of the State and the elected executive.

7.29. He submitted that the judgments relied upon by the respondents relating to ratification, administrative approvals, policy decisions and exceptional circumstances either arise in completely different statutory contexts or concern provisions of the Constitution where discretion has been expressly recognised. None of those decisions, according to him, lay down that the Hon'ble Governor can exercise powers under Article 317 independently of the aid and advice of the Council of Ministers or that the absence of such aid and advice can subsequently be cured by ratification.

7.30. Learned Senior Counsel reiterated that the Constitution Bench decisions in **Samsher Singh** and **Nabam Rebia** constitute the binding declaration of law under Article 141 of

the Constitution. Those decisions, according to him, clearly establish that save in the limited situations expressly provided by the Constitution, the Hon’ble Governor is bound to act only on the aid and advice of the Council of Ministers. Since Article 317 does not create any such exception, the impugned recommendation and the consequential order of suspension are constitutionally unsustainable.

7.31. He therefore submitted that the recommendation made by the Hon'ble Governor to the Hon'ble President under Article 317(1) and the order of suspension passed under Article 317(2), having admittedly been made without the prior aid and advice of the Council of Ministers, are unconstitutional, void and liable to be quashed. He submitted that the subsequent concurrence accorded by the Hon'ble Chief Minister and the subsequent ratification by the Council of Ministers cannot validate actions which were constitutionally invalid on the date they were taken.

7.32. On all the above grounds, learned Senior Counsel submitted that the writ petition

deserves to be allowed, the impugned recommendation made under Article 317(1) of the Constitution and the impugned order of suspension passed under Article 317(2) of the Constitution are liable to be set aside, and all consequential reliefs prayed for by the petitioner deserve to be granted.

8. Heard Shri Arun Shyam, learned Senior Counsel appearing for the petitioner; Shri Udaya Holla, learned Senior Counsel appearing for respondent No.1 – Hon'ble Governor; Shri Reuben Jacob, learned Senior Counsel appearing for respondent No.2 - KPSC; and Shri Shashi Kiran Shetty, learned Advocate General appearing for respondent No.3-State.

9. The Court has carefully considered the elaborate submissions advanced on behalf of all the parties, perused the pleadings, statement of objections, rejoinder, documents produced on record, the constitutional provisions relied upon, and the judgments cited at the Bar.

10. The Points that would arise for determination are:

(i) Whether the Hon'ble Governor, while exercising powers under Articles 317(1) and 317(2) of the Constitution of India, is constitutionally required to act only on the aid and advice of the Council of Ministers under Article 163 of the Constitution, or whether the Hon’ble Governor can exercise such powers independently in the facts and circumstances of the present case?

(ii) Whether the power of suspension under Article 317(2) of the Constitution can be exercised by the Hon'ble Governor immediately upon forwarding a recommendation to the Hon'ble President under Article 317(1), or whether such power can be exercised only after the Hon'ble President has made a reference to the Hon'ble Supreme Court for enquiry under Article 317(1)?

(iii) Whether the expression "in respect of whom a reference has been made to the Supreme Court under clause (1)" occurring in Article 317(2) requires an actual reference by the Hon'ble President to the Hon'ble Supreme Court as a condition precedent for the exercise of the power of suspension?

(iv) Whether the subsequent concurrence accorded by the Hon'ble Chief Minister and the post facto ratification by the Council of Ministers can validate the recommendation made by the Hon'ble Governor under Article 317(1) and the consequential order of suspension passed under Article 317(2),

if such actions were initially taken without the aid and advice of the Council of Ministers?

(v) Whether the doctrine of ratification and the principle that ratification relates back to the date of the original act are applicable to the exercise of constitutional powers under Articles 163 and 317 of the Constitution of India?

(vi) Whether the constitutional protection available to the Chairman of a State Public Service Commission under Article 317 can be diluted by invoking principles of administrative necessity, institutional integrity, public interest, or emergent circumstances?

(vii) Whether the impugned recommendation dated 09.07.2026 made to the Hon'ble President under Article 317(1), the order dated 10.07.2026 placing the petitioner under suspension under Article 317(2), and the subsequent concurrence of the Hon'ble Chief Minister and ratification by the Council of Ministers are constitutionally and legally sustainable?

(viii) Whether the petitioner has made out a case for interference under Article 226 of the Constitution of India?

(ix) What order?

11. Before turning to each Point, this Court records that the scope of these proceedings is a narrow but important one. Learned Senior Counsel for

respondent No.2 wished to argue the merits of the allegations, but this Court made it clear during the hearing that the correctness of the allegations and the legality of the selection of the petitioner's daughters do not arise for consideration, let alone decision, here.

12. What arises for consideration is a pure question of constitutional law, namely, whether the recommendation made by the Hon'ble Governor under Article 317(1) and the order of suspension passed under Article 317(2) were made in the manner the Constitution requires. This Court decides only that question, and nothing more.

13. **<u>Answer to Point No.(i):</u> Whether the Hon'ble Governor, while exercising powers under Articles 317(1) and 317(2) of the Constitution of India, is constitutionally required to act only on the aid and advice of the Council of Ministers under Article 163 of the Constitution, or whether the Hon'ble Governor can exercise such powers independently in the facts and circumstances of the present case?**

13.1. Sri Arun Shyam, learned Senior Counsel for the petitioner, submitted that under our constitutional scheme, the Hon'ble Governor is the constitutional head of the State and acts only on the aid and advice of the Council of

Ministers under Article 163 of the Constitution. He contended that Article 317 does not confer any independent discretion upon the Hon'ble Governor. Consequently, the recommendation under Article 317(1) as well as the order of suspension under Article 317(2) ought to have been preceded by the aid and advice of the Council of Ministers. Since no such advice existed when the impugned actions were taken, the exercise of power was unconstitutional is his submission.

13.2. Learned Senior Counsel relied principally on the seven-Judge Bench decision of the Hon'ble Supreme Court in ***Samsher Singh v. State of Punjab*** [(1974) 2 SCC 831] (paragraph 30), where the Hon'ble Supreme Court expressly held that Article 317 is one of the constitutional provisions in which the satisfaction required is not the personal satisfaction of the Hon'ble Governor, but constitutional satisfaction, namely, satisfaction arrived at on the aid and advice of the Council of Ministers. Reliance was also placed on paragraphs 5, 31, 88, 89, 130, 138 and 154, which reaffirm that the Hon'ble President and the Hon'ble Governor exercise

their constitutional powers on the aid and advice of their respective Councils of Ministers except in a few well-recognised situations where the Constitution expressly permits otherwise.

13.3. Learned Senior Counsel next relied upon the Constitution Bench decision of the Hon'ble Supreme Court in ***Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly*** [(2016) 8 SCC 1] where the Hon'ble Supreme Court following **Samsher Singh** (paragraph 153), reiterated that Article 317 is a provision requiring constitutional, and not personal, satisfaction. Paragraphs 154, 155, 166, 176, 177 and 183 explain that the discretionary powers of the Hon'ble Governor are confined to situations where the Constitution expressly so provides or where such intention necessarily follows from the constitutional scheme. Paragraph 387 reiterates the same principle. It was submitted that Article 317 contains no such indication.

13.4. Reliance was also placed on ***State of Gujarat and Anr. v. Justice R.A. Mehta***

(Retired),[(2013) 3 SCC 1] particularly paragraphs 33, 34, 41, 57 and 70, to contend that the Hon'ble Governor is ordinarily bound by the aid and advice of the Council of Ministers unless acting as a "persona designata" under a statute or where the Constitution expressly provides otherwise. Paragraph 34 enumerates the constitutional provisions conferring such discretion, and Article 317 is not one among them.

13.5. Learned Senior Counsel also relied upon the judgment of the Hon'ble Division Bench of this Court in ***Dr. (Smt.) Mangala Sridhar v. The State of Karnataka*** [ILR 2017 KAR 1404], (paragraphs 11 and 12) wherein, following **Samsher Singh**, (paragraph 30) it was held that while exercising powers under Article 317(2), the Hon'ble Governor acts on the aid and advice of the Council of Ministers and not in his personal discretion.

13.6. In rejoinder, Sri Arun Shyam submitted that the Constitution Bench decisions in **Samsher Singh** (paragraphs 30, 88, 130, 138 and 154) and **Nabam Rebia** (paragraphs 153, 154, 155,

166 and 387) constitute binding declarations of law under Article 141 of the Constitution. According to him, the decisions relied upon by the respondents arise in different constitutional or statutory contexts and do not support the proposition that the absence of prior aid and advice under Article 317 can subsequently be cured by ratification.

13.7. Shri Udaya Holla, learned Senior Counsel appearing for respondent No.1, the Hon'ble Governor, submitted that Article 163(1) itself recognises that the Hon'ble Governor may act in his discretion wherever the Constitution so permits. He contended that maintaining the credibility and integrity of the Karnataka Public Service Commission required immediate intervention. He further submitted that the action was subsequently approved and ratified by the Council of Ministers, including the Hon'ble Chief Minister. Reliance was placed on ***Prof. B.B. Patil Okaly v. Y.K. Puttasome Gowda*** [1995 SCC OnLine Kar 80] (paragraphs 8, 9 and 10) and ***S.R. Bommai v. Union of India*** [(1994) 3 SCC 1] (paragraphs 320 and 321) to contend that Articles 74(2) and 163(3)

prohibit the Court from enquiring into whether any advice was tendered to the Hon'ble Governor or into the contents of such advice.

13.8. Shri Reuben Jacob, learned Senior Counsel appearing for respondent No.2, Karnataka Public Service Commission, relied upon **Justice R.A. Mehta (Retired),** (paragraph 90) wherein reference is made to **M.P. Special Police Establishment v. State of M.P. and others** (paragraph 12) reiterating **Samsher Singh** (paragraph 154). He submitted that the exceptions recognised in **Samsher Singh** are not exhaustive and that the Constitution contemplates situations in which the Hon'ble Governor may act independently. According to him, the serious allegations against the petitioner and the need to preserve public confidence in the Commission constituted such an exceptional circumstance, making it permissible for the Hon'ble Governor to act first, subject to subsequent ratification by the Council of Ministers.

13.9. The learned Advocate General, appearing for respondent No.3-State, relied upon Articles 74

and 163 of the Constitution. He argued that Article 163(1) preserves the discretionary powers of the Hon'ble Governor, while Article 163(2) makes the decision of the Hon'ble Governor regarding the existence of such discretion final. He further submitted that, unlike Article 74, Article 163 does not contain any provision requiring the Hon'ble Governor to act upon advice tendered after reconsideration. According to him, where immediate action is necessary to protect a constitutional institution, the Hon'ble Governor may act first and obtain the approval of the Council of Ministers thereafter, thereby satisfying the constitutional requirement of aid and advice.

13.10. The controversy must be examined in the light of Article 163 of the Constitution, which governs the relationship between the Hon'ble Governor and the Council of Ministers. For convenience, the provision is reproduced below:

163. Council of Ministers to aid and advise Governor

(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the

Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

13.11. Article 163 makes the constitutional position clear. Clause (1) lays down the general rule that the Hon'ble Governor acts on the aid and advice of the Council of Ministers. The exception applies only where the Constitution expressly requires, or by necessary implication requires, the Hon'ble Governor to act in his discretion. Clause (2) does not enlarge that field of discretion. It merely provides that where a constitutional discretion already exists, the decision of the Hon'ble Governor on whether a particular matter falls within that field shall be final. Likewise, clause (3) does not confer any substantive power upon the Hon'ble

Governor. It merely protects the confidentiality of ministerial advice. Neither clause (2) nor clause (3) creates a discretionary power where none exists under the Constitution.

13.12. In **Samsher Singh**, (paragraph 30) a seven-Judge Bench of the Hon'ble Supreme Court expressly identified Article 317 as one of the provisions where the satisfaction required is not the personal satisfaction of the Hon'ble Governor, but constitutional satisfaction, namely, satisfaction reached on the aid and advice of the Council of Ministers. The reasoning proceeds on the principle that, except in the limited situations recognised by the Constitution, the Hon'ble Governor exercises constitutional powers only on ministerial advice. Once the Constitution Bench has specifically referred to Article 317, it is not open to this Court to interpret that provision as conferring an independent discretion upon the Hon'ble Governor.

13.13. The same principle was reaffirmed by the Constitution Bench of the Hon'ble Supreme Court in **Nabam Rebia** (paragraphs 153, 154

and 155). The Hon'ble Supreme Court again included Article 317 among the provisions requiring constitutional satisfaction and explained that the Hon'ble Governor may act independently only where the Constitution expressly provides for such discretion or where such an intention necessarily flows from the constitutional scheme. The judgment repeatedly emphasises that the discretionary powers of the Hon'ble Governor are narrow and exceptional. Article 317 neither employs the expression "*in his discretion*" nor contains any indication that the Hon'ble Governor is expected to act independently of the Council of Ministers.

13.14. The reliance placed by respondent No.1 on Article 163(1) does not advance the respondents' case. Article 163 preserves only those discretionary powers which the Constitution itself confers. It does not create new areas of discretion. In **Justice R.A. Mehta (Retired)**, (paragraphs 34 and 57) the Hon'ble Supreme Court identified the constitutional provisions where such discretion is expressly recognised. Article 317 does not find a place in

that list. The same decision also reiterates that the Hon'ble Governor ordinarily acts on the aid and advice of the Council of Ministers unless acting as a persona designata under a statute or under an express constitutional exception. The power under Article 317 is undoubtedly a constitutional power exercised by the Hon'ble Governor as the constitutional head of the State and not as a persona designata.

13.15. The submission advanced on behalf of respondent No.2, based on paragraph 90 of **Justice R.A. Mehta (Retired)**, also does not persuade this Court. That paragraph, while observing that the exceptions referred to in **Samsher Singh** (paragraph 154) are not exhaustive, immediately explains the nature of the additional situations contemplated. They are exceptional cases where constitutional governance itself would be compromised if the Hon'ble Governor were required to act on ministerial advice, such as where democratic institutions are under threat or where the Council of Ministers is itself disqualified by reason of an inherent conflict of interest.

13.16. The present case does not come within the purview of those exceptional situations. The Council of Ministers was in existence and fully capable of advising the Hon'ble Governor. There is no allegation that it suffered from bias, conflict of interest or any constitutional disability. On the contrary, the State itself relies upon the subsequent approval of the Council of Ministers in support of the impugned action. If the Council of Ministers was competent to ratify the decision later, there is no reason why it could not have advised the Hon'ble Governor before the action was taken. The facts, therefore, disclose no constitutional necessity that justified dispensing with the ordinary requirement of prior aid and advice.

13.17. Equally unpersuasive is the reliance placed on Article 163(3). That provision merely prohibits a Court from enquiring into whether advice was tendered to the Hon'ble Governor and, if so, into the contents of such advice. It does not place executive action beyond judicial scrutiny. As explained by the Hon'ble Supreme Court in **S.R. Bommai**, (paragraphs 320 and 321) Article 74(2) preserves the confidentiality of

discussions between the Hon'ble President and the Council of Ministers; it does not immunise the resulting decision from judicial review. **Prof. B.B. Patil Okaly** (paragraph 8) reiterates that the principles laid down in respect to Article 74(2) are equally applicable to Article 163(3).

13.18. In the present case, this Court is not called upon to enquire into any confidential ministerial advice. The State itself has produced the Cabinet Note dated 18.07.2026, the concurrence of the Hon'ble Chief Minister dated 16.07.2026 and the Cabinet Resolution dated 19.07.2026. All these documents are subsequent to the order of the Hon'ble Governor dated 10.07.2026. The Cabinet Note itself seeks post facto approval of the action already taken. Once these documents have been voluntarily placed on record, there is no question of this Court compelling disclosure of confidential advice. The chronology emerging from the State's own record is sufficient to determine whether the constitutional requirement of prior aid and advice was

satisfied. Article 163(3), therefore, has no application.

13.19. The learned Advocate General also relied upon Article 163(2) and contrasted it with Article 74. This submission cannot be accepted. Article 163(2) operates only where the Constitution has already conferred a discretionary power upon the Hon'ble Governor. It does not enlarge that field of discretion. Since Article 317 does not vest any independent discretion in the Hon'ble Governor, the finality clause contained in Article 163(2) is not attracted.

13.20. The distinction sought to be drawn between Articles 74 and 163 is equally misplaced. Although Article 74 contains a proviso requiring the Hon'ble President to act upon advice tendered after reconsideration, Article 163 contains no corresponding provision. In the present case there is no reconsideration by the Council of Ministers, there was no advice rendered prior to the Hon’ble Governor exercising his powers. The issue before this Court is not whether the Hon'ble Governor was required to accept the post facto advice. The

question is whether the Hon'ble Governor could act without first obtaining the aid and advice of the Council of Ministers. The absence of a reconsideration clause in Article 163 cannot be construed as dispensing with that primary constitutional requirement.

13.21. The remaining observations in **Samsher Singh** (paragraphs 5, 30, 31, 88, 89, 130, 138 and 154), **Nabam Rebia** (paragraphs 166, 176, 177, 183 and 387), **Justice R.A. Mehta (Retired)** (paragraphs 33, 34, 41, 57, 70 and 90), and the judgment of the Hon'ble Division Bench in **Dr. (Smt.) Mangala Sridhar** (paragraphs 11, 12, 17, 18, 19, and 20) uniformly reinforce the same constitutional principle, namely, that the Hon'ble Governor ordinarily exercises constitutional powers only on the aid and advice of the Council of Ministers, save in those exceptional situations expressly recognised by the Constitution. None of those decisions supports the proposition advanced by the respondents in the facts of the present case.

13.22. Before examining Article 317, it is useful to briefly notice the constitutional framework within which the Hon'ble Governor functions. India has adopted the Cabinet system of government. Under this system, the Hon'ble Governor is the constitutional head of the State, while the real executive authority is exercised by the elected Council of Ministers headed by the Hon'ble Chief Minister. Article 163 gives constitutional recognition to this arrangement by requiring the Hon'ble Governor to act on the aid and advice of the Council of Ministers except in those limited situations where the Constitution itself provides otherwise. Thus, the general rule is ministerial advice; personal discretion is the exception. Unless the Constitution expressly or by necessary implication creates such an exception, the Hon'ble Governor cannot act independently of the Council of Ministers.

13.23. Tested on this constitutional touchstone, Article 317 does not disclose any intention to confer an independent discretion upon the Hon'ble Governor. Unlike several other constitutional provisions, it does not employ the expression

"in his discretion". Nor does the nature of the power indicate that the Hon'ble Governor is expected to function as an independent constitutional authority detached from the Council of Ministers. The ultimate decision to remove a Member rests with the Hon'ble President upon a report of the Hon'ble Supreme Court, while the power of suspension conferred upon the Hon'ble Governor under clause (2) of Article 317 is merely incidental to that process. Nothing in the language of Article 317 suggests that the Hon'ble Governor can exercise this power independently of ministerial advice.

13.24. This conclusion also finds support in the scheme of Articles 316 and 317. Article 316 provides that a Member of the Public Service Commission may be removed only in the manner specified in Article 317. Article 317 is, therefore, a provision prescribing the constitutional procedure governing suspension and removal. It is not intended to create an independent discretionary authority in the Hon'ble Governor. Such a construction would require the Court to read into the Constitution words which are conspicuously absent.

13.25. There is yet another reason supporting this conclusion. The Karnataka Public Service Commission is an independent constitutional institution entrusted with important public functions. The Constitution has, therefore, provided safeguards governing the appointment, suspension and removal of its Chairperson and Members. Requiring the Hon'ble Governor to act on the aid and advice of the Council of Ministers is one such safeguard. It ensures that a decision affecting the tenure of a constitutional functionary is taken through the collective responsibility of an elected Government rather than by the unilateral decision of a single constitutional authority. Far from weakening the independence of the Commission, this requirement reinforces the constitutional balance contemplated by the Constitution.

13.26. For all these reasons, this Court is unable to accept the contention that Article 317 confers an independent or personal discretion upon the Hon'ble Governor. The constitutional text, the scheme of Articles 163 and 317, and the binding decisions of the Hon'ble Supreme Court

all point to the same conclusion that while exercising powers under Articles 317(1) and 317(2), the Hon'ble Governor acts as the constitutional head of the State and is bound by the aid and advice of the Council of Ministers. The present case discloses no constitutional or factual circumstance that would justify departure from that settled rule.

13.27. Accordingly, this Court answers Point No. (i) by holding that the Hon'ble Governor, while exercising powers under Articles 317(1) and 317(2), was constitutionally required to act on the aid and advice of the Council of Ministers under Article 163, the Hon’ble Governor cannot act without such aid and advice. Article 317 does not confer any independent discretion upon the Hon'ble Governor, and the facts of the present case disclose no exceptional circumstance that could justify the exercise of those powers without prior aid and advice.

14. **<u>Answer to Point No. (ii):</u> Whether the power of suspension under Article 317(2) of the Constitution can be exercised by the Hon'ble Governor immediately upon forwarding a recommendation to the Hon'ble President under Article 317(1), or whether such power can be**

exercised only after the Hon'ble President has made a reference to the Hon'ble Supreme Court for enquiry under Article 317(1)?

And

Answer to Point No. (iii): Whether the expression "in respect of whom a reference has been made to the Supreme Court under clause (1)" occurring in Article 317(2) requires an actual reference by the Hon'ble President to the Hon'ble Supreme Court as a condition precedent for the exercise of the power of suspension?

14.1. Both the above points being connected to each other are answered together.

14.2. Sri Arun Shyam, learned Senior Counsel for the petitioner, submitted that the power of suspension under Article 317(2) can be exercised only in respect of a Member *"in respect of whom a reference has been made to the Supreme Court under clause (1)."* He contended that the reference contemplated by Article 317(1) is made only by the Hon'ble President. A recommendation made by the Hon'ble Governor to the Hon'ble President is merely a request to initiate the constitutional process; it is not the reference contemplated by

Article 317(1). According to him, unless and until the Hon'ble President actually refers the matter to the Hon'ble Supreme Court, the condition precedent under Article 317(2) remains unsatisfied and the Hon'ble Governor has no authority to suspend the Member.

14.3. In support of this submission, learned Senior Counsel relied heavily upon the judgment of the Hon'ble Division Bench of this Court in **Dr. (Smt.) Mangala Sridhar** (paragraph 18). He submitted that the facts of that case were substantially similar to those before this Court. The Hon'ble Division Bench held that the power of suspension under Article 317(2) becomes available only after the Hon'ble President has referred the matter to the Hon'ble Supreme Court under Article 317(1). The Hon'ble Division Bench observed that the language of Article 317 is clear and admits of no addition by judicial interpretation. Reliance was also placed on paragraphs 20 and 21, where the order of suspension was set aside because, on the date of suspension, no reference had been made by the Hon'ble President to the Hon'ble Supreme Court.

14.4. Learned Senior Counsel also relied upon **Ram Kumar Kashyap *v. Union of India*** [(2009) 9 SCC 378], (paragraphs 11 and 12). He submitted that even in that case the order of suspension was passed only after the Hon'ble President had referred the matter to the Hon'ble Supreme Court. Paragraph 12 specifically records that the suspension orders were issued after such reference. According to him, the decision therefore supports the petitioner's interpretation rather than that of the respondents.

14.5. To answer the reliance placed by the respondents on ***Sayalee Sanjeev Joshi, Member, Maharashtra Public Service Commission*** [(2007) 11 SCC 547] (paragraph 2) learned Senior Counsel referred to ***Ahmedabad St. Xavier's College Society v. State of Gujarat*** [(1974) 1 SCC 717], (paragraphs 51 and 109). He submitted that an opinion rendered by the Hon'ble Supreme Court while answering a Presidential Reference is advisory in nature. Although such an opinion carries considerable persuasive value, it does not amount to a declaration of law under Article

141 capable of overriding the ratio of a contested decision rendered by the Division Bench of this Court in **Dr. (Smt.) Mangala Sridhar** (paragraphs 17 and 18).

14.6. Shri Udaya Holla, learned Senior Counsel appearing for respondent No.1, submitted that the making of a reference by the Hon'ble President to the Hon'ble Supreme Court is not a condition precedent for the exercise of the power of suspension. He relied upon **Sayalee Sanjeev Joshi**, (paragraphs 1 and 2), where the Hon'ble Supreme Court observed that once a request had been made to the Hon'ble President to act under Article 317(1), the suspension of the Member under Article 317(2) was proper. According to him, that observation was made even though the Hon'ble President had not, at that stage, referred the matter to the Hon'ble Supreme Court. Reliance was also placed on **Ram Kumar Kashyap**, **(**paragraph 11) which approved the reasoning in **Sayalee Sanjeev Joshi**, and on ***Reference under Article 317(1), In re***, [(1990) 4 SCC 262] **(**paragraph 8) where the Hon'ble Supreme Court recognised the power of the Hon'ble

Governor to suspend a Member pending inquiry.

14.7. Learned Senior Counsel further relied upon a number of decisions, including ***U.P. Avas Evam Vikas Parishad v. Rajendra Kumar Aggarwal*** [(2008) 3 SCC 672] (paragraph 6), ***Sagar Sharma v. Phoenix ARC (P) Ltd.*** [(2019) 10 SCC 353] (paragraph 3)**,** ***State of Punjab v. Bhag Singh*** [(2004) 1 SCC 547] (paragraph 5)**,** ***Palitana Sugar Mills (P) Ltd. v. State of Gujarat*** [(2004) 12 SCC 645] (paragraph 62)**,** ***Som Mittal v. Government of Karnataka*** [(2008) 3 SCC 574] (paragraph 12)**,** ***Suganthi Suresh Kumar v. Jagdeeshan*** [(2002) 2 SCC 420.] (paragraph 9)**,** ***Oriental Insurance Co. Ltd. v. Meena Variyal*** [(2007) 5 SCC 428] (paragraph 26)**,** ***South Central Railway Employees Co-operative Credit Society v. B. Yashodabai*** [(2015) 2 SCC 727] (paragraph 15) **and** ***Panchaxari Shidramappa Yeligar v. Shiggaon Taluka Shikshana Samithi*** [ILR 1998 Kar 3748] (paragraphs 12 and 14). He submitted that Article 141 requires every Court to follow the law declared by the Hon'ble Supreme Court,

irrespective of whether a particular point was expressly argued. He further contended that a Single Judge of the High Court is bound by the decisions of the Hon'ble Supreme Court. Reliance was also placed on **N.S. Giri *v. Corpn. of City of Mangalore*** [(1999) 4 SCC 697] (paragraph 12) and **Babu Parasu Kaikadi *v. Babu*** [(2004) 1 SCC 681] **(**paragraphs 12, 14 and 18) to submit that where there is any apparent conflict, the decision of the larger or higher Bench must prevail and that in the present case, **Sayalee Sanjeev Joshi** therefore governs the issue.

14.8. Shri Reuben Jacob, learned Senior Counsel appearing for respondent No.2, adopted these submissions. He further argued that Articles 316 and 317 indicate that the Hon'ble Governor appoints the Chairman and Members of the State Public Service Commission and also initiates action under Article 317. It would therefore be anomalous to hold that while the Hon'ble Governor may recommend action against a Chairman or Member, he remains powerless to suspend that Chairman or Member until the Hon'ble President makes a reference

to the Hon'ble Supreme Court. According to him, Article 317(2) should be construed as conferring the power of suspension from the stage at which the Hon'ble Governor forwards the recommendation under Article 317(1), since any other interpretation would permit a person facing serious allegations to continue in office and potentially affect the functioning of the Commission.

14.9. The language employed in Article 317(2) undoubtedly provides that the power of suspension may be exercised only in respect of a Member *"in respect of whom a reference has been made to the Supreme Court under clause (1)."* Read literally and in isolation, these words are capable of supporting the interpretation advanced by the petitioner, namely that the reference by the Hon'ble President to the Hon'ble Supreme Court must first be made before the power of suspension can be exercised. However, this precise question has already been considered by the Hon'ble Supreme Court. Once the Hon'ble Supreme Court has interpreted the provision, this Court is bound by that interpretation under Article

141. The issue, therefore, is not one that falls for fresh interpretation on first principles. This Court is required to apply the law declared by the Hon'ble Supreme Court.

14.10. The decision directly dealing with this question is **Sayalee Sanjeev Joshi** (paragraph 2). In that case the Hon'ble Governor of Maharashtra requested the Hon'ble President to initiate action under Article 317(1) and simultaneously placed the concerned Member under suspension until appropriate orders were passed by the Hon'ble President under Article 317(1). Thus, the suspension preceded any reference by the Hon'ble President to the Hon'ble Supreme Court. The Hon'ble Supreme Court nevertheless held that, once a request had been made to the Hon'ble President to act under Article 317(1), the order of suspension under Article 317(2) was "proper". The approval accorded by the Hon'ble Supreme Court to a suspension made before any reference was forwarded to the Hon'ble Supreme Court necessarily leads to the conclusion that such reference is not a condition precedent for the exercise of the power of suspension.

14.11. The petitioner sought to distinguish **Sayalee Sanjeev Joshi** (paragraphs 1 and 2) by relying upon **Ahmedabad St. Xavier's College Society** (paragraphs 51 and 109) and contending that the former was rendered while answering a Presidential Reference and therefore has only advisory value. This submission cannot be accepted. The observations made in **Sayalee Sanjeev Joshi** (paragraph 2) did not remain confined to that Reference. They were expressly reproduced and approved by the Hon'ble Supreme Court in the contested decision in **Ram Kumar Kashyap** (paragraphs 11 and 12). Once the reasoning in **Sayalee Sanjeev Joshi** (paragraph 2) was adopted in a contested proceeding, it acquired the character of law declared by the Hon'ble Supreme Court under Article 141. The distinction sought to be drawn on the basis of **Ahmedabad St. Xavier's College Society** (paragraphs 51 and 109) therefore loses significance.

14.12. Even otherwise, the petitioner's submission cannot be accepted. Assuming that the observations in **Sayalee Sanjeev Joshi**

(paragraph 2) are treated as obiter dicta, they would nevertheless bind this Court. In **Meena Variyal**, (paragraph 26) the Hon'ble Supreme Court held that an obiter dictum of the Hon'ble Supreme Court is binding upon the High Courts unless there is a direct decision to the contrary. Likewise, in **Suganthi Suresh Kumar**, (paragraph 9) the Hon'ble Supreme Court made it clear that a High Court cannot refuse to follow a decision of the Hon'ble Supreme Court on the ground that a particular aspect was not argued or considered. In **B. Yashodabai**, (paragraph 15) it was reiterated that a decision of the Hon'ble Supreme Court must be followed unless it has been distinguished, overruled or set aside. The observations in **Sayalee Sanjeev Joshi** (paragraph 2) have not suffered any of those consequences. The other decisions relied upon by the respondents, namely **Sagar Sharma** (paragraph 3) **, Bhag Singh** (paragraph 5) **, Palitana Sugar Mills** (paragraph 62) **, Som Mittal** (paragraph 12) **and Panchaxari Shidramappa Yeligar** (paragraphs 12 and 14) , all reiterate the same constitutional principle flowing from Article 141,

namely that every Court is bound by the law declared by the Hon'ble Supreme Court. Whether the observations in **Sayalee Sanjeev Joshi** (paragraph 2) are treated as the ratio or as obiter, they bind this Court.

14.13. This necessarily affects the correctness of the view expressed by the Hon'ble Division Bench of this Court in **Dr. (Smt.) Mangala Sridhar** (paragraphs 17, 18 and 20). The Hon'ble Division Bench proceeded on the footing that an actual reference by the Hon'ble President to the Hon'ble Supreme Court is a condition precedent for the exercise of the power under Article 317(2). With great respect, that view cannot be accepted in the light of the binding declaration of law by the Hon'ble Supreme Court in **Sayalee Sanjeev Joshi** (paragraph 2), as adopted in **Ram Kumar Kashyap** (paragraphs 11 and 12). Under Article 141, this Court is bound to follow the law declared by the Hon'ble Supreme Court, and any contrary view expressed by this Court must necessarily yield. Consequently, to the extent that **Dr. (Smt.) Mangala Sridhar** (paragraphs 17, 18 and 20) holds that suspension under Article 317(2) can

be ordered only after the Hon'ble President has referred the matter to the Hon'ble Supreme Court, can no longer be regarded as laying down the correct law.

14.14. The interpretation adopted by the Hon'ble Supreme Court is also consistent with the object of Article 317(2). The purpose of the power of suspension is to protect the integrity of the Public Service Commission while the constitutional process for removal is underway. Once the Hon'ble Governor has requested the Hon'ble President to initiate proceedings under Article 317(1), that process has effectively commenced. Requiring the authorities to wait until the Hon'ble President formally refers the matter to the Hon'ble Supreme Court would unnecessarily delay the operation of the safeguard provided under Article 317(2). Such a construction would undermine rather than advance the purpose of the provision. It must, however, be emphasised that this conclusion is confined to the interpretation of Article 317(2). It does not dilute the independent constitutional requirement, discussed while answering Point No. (i), that the Hon'ble

Governor must act on the aid and advice of the Council of Ministers. The two requirements operate in different fields and must not be confused.

14.15. The reliance placed by the respondents upon **Reference under Article 317(1), In re (**paragraph 8) also supports this limited conclusion. In that decision, the Hon'ble Supreme Court recognised the existence of the power of the Hon'ble Governor to suspend a Member pending inquiry. Although that decision does not deal with the separate issue of aid and advice under Article 163, it is consistent with the view that the power of suspension becomes available once the constitutional process has been set in motion by the request made to the Hon'ble President under Article 317(1).

14.16. The decision in **Rajendra Kumar Aggarwal** (paragraph 6) does not take the matter any further. Like the other authorities relied upon by the respondents, it merely reiterates the settled principle that the law declared by the Hon'ble Supreme Court is binding upon all Courts under Article 141. It therefore reinforces

the conclusion that the interpretation adopted in **Sayalee Sanjeev Joshi** (paragraph 2), and subsequently approved in **Ram Kumar Kashyap** (paragraphs 11 and 12), must prevail over any contrary interpretation adopted by this Court.

14.17. The anomaly pointed out by Shri Reuben Jacob also deserves notice. Articles 316 and 317 contemplate that the Hon'ble Governor appoints the Chairman and Members of the State Public Service Commission and initiates proceedings under Article 317. It would indeed appear incongruous if the Hon'ble Governor, after initiating that constitutional process, were nevertheless powerless to suspend the concerned Member until the Hon'ble President completed the next procedural step. The interpretation adopted by the Hon'ble Supreme Court avoids such a result. Once the Hon'ble Governor has requested the Hon'ble President to act under Article 317(1), the power under Article 317(2) becomes available and no constitutional vacuum arises. In any event, this consideration merely supports the interpretation already placed upon the provision

by the Hon'ble Supreme Court; it is not the foundation of this Court's conclusion.

14.18. The reason underlying this interpretation is also evident. The power of suspension exists to protect the functioning and credibility of the Public Service Commission during the period in which the constitutional process is underway. If the Hon'ble Governor were required to wait until the Hon'ble President formally referred the matter to the Hon'ble Supreme Court, there would inevitably be an intervening period during which the Member concerned would continue to discharge official functions despite the initiation of proceedings for removal. Such a construction could defeat the very object of Article 317(2). The interpretation adopted by the Hon'ble Supreme Court avoids that consequence by recognising that the power of suspension becomes available once the Hon'ble Governor has invoked the constitutional process by making a request under Article 317(1).

14.19. Sitting as a Single Judge of a High Court, this Court is bound by the discipline of judicial precedent. Once the Hon'ble Supreme Court

has authoritatively interpreted a constitutional provision, this Court cannot substitute its own interpretation merely because another view appears possible or an argument to that effect is made. Article 141 leaves no room for such an exercise. The duty of this Court is to apply the law declared by the Hon'ble Supreme Court, and it is for that reason that this Court has followed the interpretation adopted in **Sayalee Sanjeev Joshi** (paragraph 2) and **Ram Kumar Kashyap** (paragraphs 11 and 12).

14.20. Accordingly, this Court answers Point No. (ii) by holding that the power of suspension under Article 317(2) becomes available once the Hon'ble Governor has forwarded a recommendation or request to the Hon'ble President under Article 317(1). An actual reference by the Hon'ble President to the Hon'ble Supreme Court is not a condition precedent for the exercise of that power of suspension.

14.21. Accordingly, this Court answers Point No. (iii) by holding that the expression *"in respect of whom a reference has been made to the*

Supreme Court under clause (1)" in Article 317(2) does not require the Hon'ble President to have actually referred the matter to the Hon'ble Supreme Court before the Hon'ble Governor exercises the power of suspension. It is sufficient that the Hon'ble Governor has requested the Hon'ble President to initiate proceedings under Article 317(1). Consequently, the fact that no formal reference had been made by the Hon'ble President to the Hon'ble Supreme Court on 10.07.2026 does not, by itself, invalidate the order of suspension.

15. **Answer to Point No. (iv): Whether the subsequent concurrence accorded by the Hon'ble Chief Minister and the post facto ratification by the Council of Ministers can validate the recommendation made by the Hon'ble Governor under Article 317(1) and the consequential order of suspension passed under Article 317(2), if such actions were initially taken without the aid and advice of the Council of Ministers?**

And

Answer to Point No. (v): Whether the doctrine of ratification and the principle that ratification relates back to the date of the original act are

applicable to the exercise of constitutional powers under Articles 163 and 317 of the Constitution of India?

15.1. Both points being related to each other are answered together.

15.2. Sri Arun Shyam, learned Senior Counsel for the petitioner, submitted that the requirement of aid and advice under Article 163 must necessarily exist before the Hon'ble Governor exercises the powers under Article 317. According to him, the constitutional satisfaction of the Hon'ble Governor is not a personal satisfaction but one that is required to be formed on the aid and advice of the Council of Ministers. If such aid and advice is absent when the constitutional power is exercised, the constitutional requirement itself remains unfulfilled. He submitted that Article 163 does not recognise the concept of post facto aid and advice. The very fact that the Council of Ministers subsequently approved and ratified the recommendation and the order of suspension shows that no aid and advice existed when those actions were taken.

15.3. Learned Senior Counsel relied upon a number of decisions in support of this submission. In ***Sunny Abraham v. Union of India*** [(2021) 20 SCC 12] (paragraphs 14 and 15), the Hon'ble Supreme Court held that where prior approval is a condition for the exercise of power, an instrument issued without such approval is non est in the eye of law and cannot subsequently be validated by obtaining approval after the event. In ***Marathwada University v. Seshrao Balwant Rao Chavan*** [(1989) 3 SCC 132], (paragraphs 25, 26 and 27) the Hon'ble Supreme Court explained that the doctrine of ratification, which is recognised in private law, does not ordinarily apply to the exercise of statutory powers and that an act done without authority cannot subsequently be validated by ratification. Reliance was also placed upon ***Babu Verghese v. Bar Council of Kerala*** [(1999) 3 SCC 422] (paragraphs 31 and 32), ***Shri Khereshwar Mahadev VA Dauji Maharaj Samiti v. State of U.P.*** [2025 SCC OnLine SC 774] (paragraph 15)**,** ***Harbinder Singh Sekhon & Ors. v. State of Punjab and Ors.*** [(2026) 5 SCC 107] (paragraphs 34,

40, 43, 44 and 45) **and** ***Vijay Kumar v. Central Bank of India and Ors.*** [2025 SCC Online SC 1442] (paragraphs 20, 21) referring to ***Indian Administrative Service (S.C.S.) Association U.P. v. Union of India*** [1993 Supp (1) SCC 730] (paragraph 26), which reiterate that where the law requires a mandatory procedure or safeguard before power is exercised, that safeguard cannot ordinarily be substituted by a later approval unless the governing law itself expressly permits retrospective validation. Learned Senior Counsel also relied upon ***Padma Sundara Rao v. State of T.N*** [(2002) 3 SCC 533] (paragraph 9) to submit that precedents dealing with ratification in different statutory contexts cannot automatically be extended to constitutional powers under Articles 163 and 317.

15.4. The doctrine of ratification, including the principle that ratification relates back to the date of the original act, belongs to the law of agency and company law. The doctrine proceeds on the basis that one person has acted on behalf of another who was competent

to authorise the act either before or after it was performed. According to learned Senior Counsel, those principles have no application to constitutional powers. Constitutional powers are created by the Constitution and can be exercised only in the manner prescribed by the Constitution. They cannot be enlarged or validated by importing principles evolved in private law.

15.5. Shri Udaya Holla, learned Senior Counsel appearing for respondent No.1, submitted that even if there was some defect at the initial stage, the defect stood cured when the Council of Ministers subsequently approved and ratified the action. He relied upon **High Court of Judicature for Rajasthan v. P.P. Singh** [(2003) 4 SCC 239] (paragraph 42) wherein reference is made to ***Parmeshwari Prasad Gupta v. Union of India*** [(1973) 2 SCC 543] (paragraph 14) to contend that ratification by the competent authority relates back to the date of the original act and validates it.

15.6. Shri Udaya Holla, Learned Senior Counsel submitted that ratification is a well-established

legal principle. Once the competent authority approves an earlier act, the approval relates back to the date on which the act was originally performed. The subsequent approval of the Council of Ministers validated the recommendation made under Article 317(1) and the order of suspension passed under Article 317(2) from their inception.

15.7. The learned Advocate General adopted the same submission. He relied upon **Reference under Article 317(1), In re,** (paragraph 21) where the Hon'ble Supreme Court noticed that a Cabinet resolution had been passed after the initial decision and did not express any disapproval on that account. He also relied upon the judgment of the Hon'ble Kerala High Court in ***Xavier Residency v. State of Kerala***, [WP(C).No. 22195 of 2014] (paragraph 88), where subsequent ratification by the Council of Ministers was treated as reflecting the approval of the Government. Reliance was also placed on the Chief Secretary's letter dated 16.07.2026, the Cabinet Note dated 18.07.2026 and the Cabinet Resolution dated 19.07.2026 to contend that the constitutional

requirement of aid and advice stood substantially satisfied.

15.8. The relevant facts are not in dispute because they emerge from the State's own records. The recommendation made by the Hon'ble Governor under Article 317(1) is dated 09.07.2026. The order of suspension under Article 317(2) was issued on 10.07.2026. The concurrence of the Hon'ble Chief Minister came only on 16.07.2026 and was expressly made subject to ratification by the Cabinet. The Cabinet Note is dated 18.07.2026 and, in clear terms, seeks post facto approval. The Cabinet Resolution approving the action was passed only on 19.07.2026. The chronology is therefore admitted. It is equally undisputed that, when the recommendation was made on 09.07.2026 and the order of suspension was issued on 10.07.2026, there was no aid and advice of the Council of Ministers. The only question is whether the subsequent concurrence of the Hon'ble Chief Minister and the later ratification by the Cabinet can cure that defect.

15.9. In the opinion of this Court, the answer must be in the negative. Article 163 requires the Hon'ble Governor to act on the aid and advice of the Council of Ministers. The constitutional satisfaction of the Hon'ble Governor is therefore not an independent satisfaction. It is a constitutional satisfaction formed upon the advice of the Council of Ministers. The advice is intended to assist the Hon'ble Governor in deciding whether the constitutional power should be exercised and, if so, in what manner. Advice can perform that constitutional function only if it exists before the decision is taken. Advice tendered after the decision has already been made cannot retrospectively become the basis of that decision. It may approve what has already been done, but it cannot be said that the decision was taken on that advice. The Constitution contemplates prior aid and advice, not subsequent approval.

15.10. The distinction between prior aid and advice and subsequent approval is therefore fundamental. Prior aid and advice guides the exercise of constitutional power. It enables the Council of Ministers to place relevant facts,

competing considerations and constitutional concerns before the Hon'ble Governor before the decision is made. Subsequent approval serves a different purpose. It merely expresses agreement with a decision that has already been taken. Once the decision has been made, the stage at which advice could influence that decision has already passed. A later approval cannot retrospectively become the constitutional foundation of an earlier decision. To hold otherwise would reduce the constitutional requirement of aid and advice to a mere procedural formality capable of being completed at any convenient time. Article 163 does not permit such a construction.

15.11. The decisions relied upon by the petitioner support this conclusion. In **Marathwada University**, (paragraphs 25, 26 and 27) the Hon'ble Supreme Court drew a clear distinction between acts capable of ratification in private law and the exercise of statutory powers. The Hon’ble Supreme Court explained that where a statute prescribes the source and limits of a power, an authority cannot enlarge that power by resorting to the doctrine of ratification. That

principle applies with even greater force to constitutional powers. Constitutional powers are created by the Constitution itself. Equally, the limitations imposed upon those powers are constitutional in character. If statutory powers cannot ordinarily be validated by ratification where the law does not permit it, constitutional powers cannot be placed on a lower footing.

15.12. The same principle emerges from **Sunny Abraham** (paragraphs 14 and 15). There, the Hon'ble Supreme Court held that where a foundational approval required by law is absent when an instrument is created, the instrument is non est and cannot subsequently be revived by obtaining approval after the event. The reasoning applies with equal force here. The aid and advice required by Article 163 is not an incidental procedural requirement. It is the constitutional foundation upon which the Hon'ble Governor is required to act. If that foundation did not exist on the date when the recommendation under Article 317(1) was made and the order of suspension under Article 317(2) was passed, the subsequent concurrence of the Hon'ble Chief Minister and

the later Cabinet Resolution cannot retrospectively create the constitutional satisfaction that was absent when those actions were taken.

15.13. The rule stated in **Babu Verghese** (paragraph 31) is equally applicable. Where the Constitution requires that a power be exercised in a particular manner, it must be exercised in that manner or not at all. Neither Article 163 nor Article 317 contains any provision permitting the constitutional requirement of prior aid and advice to be replaced by subsequent ratification. Likewise, **Harbinder Singh Sekhon** (paragraph 34) **and Vijay Kumar** (paragraph 21) recognise that where the law makes a prior safeguard mandatory, an ex post facto approval cannot ordinarily substitute for that safeguard unless the governing law expressly authorises retrospective validation. No such provision exists in the Constitution.

15.14. The authorities relied upon by the respondents do not alter this conclusion. **P.P. Singh** (paragraph 42) arose in an entirely different

statutory setting and did not concern the constitutional requirement of aid and advice under Article 163. As observed in **Padma Sundara Rao**, (paragraph 9) a precedent must be understood in the context of the facts and the statutory scheme in which it was rendered. **Reference under Article 317(1), In re** (paragraph 21) did not decide whether the absence of prior aid and advice under Article 163 could be cured by later ratification. The observation regarding a subsequent Cabinet Resolution was made in an altogether different context and cannot be treated as laying down any principle on the question now before this Court. Similarly, the judgment of the Hon'ble Kerala High Court in **Xavier Residency** (paragraphs 1, 2 and 88) arose in the context of executive policy and is, at best, of persuasive value. It cannot override either the constitutional scheme or the binding decisions of the Hon'ble Supreme Court.

15.15. There is, however, a more fundamental reason why the submission made on behalf of the respondents cannot be accepted. The authorities relied upon by them relate to

ordinary administrative or statutory action. In that field, depending upon the statutory scheme, the law may recognise the doctrine of ratification or permit certain procedural defects to be cured by subsequent approval. The present case stands on an entirely different footing. It concerns the exercise of powers conferred directly by the Constitution upon a constitutional authority. Principles applicable to ordinary administrative decisions cannot automatically be extended to constitutional powers. Such powers derive their authority exclusively from the Constitution and must be exercised strictly in the manner and subject to the limitations prescribed by it.

15.16. The Hon'ble Governor holds a constitutional office. The powers exercised under Articles 163 and 317 are constitutional powers. Equally, the restrictions placed upon those powers are constitutional restrictions. A constitutional authority can exercise only such powers as the Constitution confers, and only in the manner prescribed by it. The Constitution is not merely the source of the power; it also prescribes the conditions for its exercise. Those conditions

cannot be diluted by importing principles evolved in the field of administrative or private law unless the Constitution itself permits such a course.

15.17. Article 163 provides the answer. It mandates that the Hon'ble Governor shall act on the aid and advice of the Council of Ministers except where the Constitution expressly requires the Hon'ble Governor to act in his discretion. While considering Point No. (i), this Court has already held that Article 317 is not one of those exceptional provisions. Once that conclusion is reached, it necessarily follows that the power under Article 317 can be exercised only on the aid and advice of the Council of Ministers. The Constitution does not recognise any intermediate stage where the Hon'ble Governor may first exercise the power and obtain the constitutional sanction later.

15.18. Accepting the submission of the respondents would substantially alter the constitutional scheme. It would mean that the Hon'ble Governor could exercise a constitutional power without the aid and advice required by Article

163 and that such exercise could later be validated by the Council of Ministers through post facto approval. Such an interpretation would replace the constitutional requirement of prior aid and advice with a doctrine of subsequent ratification. The Constitution contains no such provision, and this Court cannot create one by interpretation.

15.19. The difference between prior aid and advice and subsequent ratification is not merely one of timing. It goes to the very source of the authority to act. Aid and advice given before the decision empowers the Hon'ble Governor to exercise the constitutional function. It informs the decision and forms the constitutional basis for the exercise of power. Ratification, on the other hand, merely signifies approval of a decision that has already been taken. It cannot retrospectively become the constitutional foundation of that decision because, at the time the power was exercised, the constitutional requirement had not been fulfilled.

15.20. If the respondents' interpretation were accepted, Article 163 would lose much of its

significance. In every case, the Hon'ble Governor could act first and seek the approval of the Council of Ministers later. The constitutional mandate that the Hon'ble Governor shall act on the aid and advice of the Council of Ministers would become a matter of convenience instead of a binding constitutional requirement. Such a construction would introduce an exception which the Constitution itself does not recognise. Courts cannot create exceptions to constitutional limitations merely because they appear convenient or administratively desirable.

15.21. The practical consequences of accepting the respondents' submission also demonstrate why it cannot be accepted. If post facto ratification were sufficient, the validity of the Hon'ble Governor's action would remain uncertain until the Council of Ministers subsequently decided whether to approve it. If approval were granted, the action would become valid. If approval were withheld, the same action would become invalid. The validity of a constitutional act would thus depend upon a future political decision. The Constitution does not contemplate

such uncertainty. Whether a constitutional authority has acted within the limits of the Constitution must be determined with reference to the date on which the power was exercised and not on the basis of events that occur subsequently.

15.22. This issue also raises a broader question, namely, whether the doctrine of ratification, including the principle that ratification relates back to the date of the original act, can at all be applied to the exercise of constitutional powers. In the opinion of this Court, it cannot.

15.23. The doctrine of ratification has its origin in the law of agency. It proceeds on the relationship between a principal and an agent. Where an agent acts without authority, the principal, who had the power to authorise the act in the first instance, may subsequently adopt it. Once adopted, the law treats the act as having been authorised from the beginning. The doctrine therefore rests upon two essential conditions. First, the act must have been done on behalf of a principal. Secondly, the principal must have had the legal authority to authorise the act

before it was performed. It is only because these conditions exist that the subsequent approval is treated as relating back to the date of the original act.

15.24. The same principle applies in company law. A Board of Directors may subsequently approve an act performed on behalf of the company because the Board itself is the repository of the company's powers. The approval relates back since the Board could lawfully have authorised the act at the outset. Thus, the doctrine operates only where the power already existed and the defect lies merely in the absence of prior authorisation.

15.25. Constitutional powers stand on an entirely different footing. The Hon'ble Governor does not exercise constitutional powers as an agent acting on behalf of a principal. Equally, the Council of Ministers does not occupy the position of a principal capable of subsequently adopting or rejecting the acts of the Hon'ble Governor. Both are constitutional authorities created by the Constitution. Their relationship is governed entirely by the Constitution, and

not by the principles of agency. Their respective powers, duties and limitations arise exclusively from constitutional provisions.

15.26. For this reason, the aid and advice contemplated under Article 163 cannot be equated with the prior authority recognised in the law of agency. The aid and advice of the Council of Ministers is not merely an authorisation. It is an integral part of the constitutional process by which executive power is exercised. The advice is intended to guide the constitutional decision before it is taken. Once the decision has already been made, that constitutional process stands exhausted. Advice tendered thereafter may amount to approval of the decision, but it cannot retrospectively become the constitutional basis on which that decision was originally made.

15.27. The distinction is therefore fundamental. In the law of agency, the authority already exists in the principal and may subsequently be adopted. Under Article 163, however, the Constitution itself requires the Hon'ble Governor to act on the aid and advice of the

Council of Ministers. The authority to exercise the power arises only in the manner prescribed by the Constitution. If that requirement is absent when the power is exercised, the defect is not merely procedural. It goes to the very existence of the constitutional authority to exercise the power.

15.28. This Court answers Point No. (iv) by holding that the principles governing ratification of ordinary administrative or statutory actions have no application where the Constitution itself prescribes the manner in which a constitutional power must be exercised. Since Article 163 required the Hon'ble Governor to act on the aid and advice of the Council of Ministers while exercising powers under Article 317, the absence of such aid and advice on 09.07.2026 and 10.07.2026 goes to the root of the exercise of power. That constitutional defect cannot be cured by the subsequent concurrence of the Hon'ble Chief Minister or by the post facto ratification of the Council of Ministers because the Constitution itself provides no such exception.

15.29. This Court accordingly answers Point No. (v) by holding that the doctrine of ratification, including the principle that ratification relates back to the date of the original act, has no application to the exercise of constitutional powers under Articles 163 and 317 of the Constitution. Where the Constitution requires the Hon'ble Governor to act on the prior aid and advice of the Council of Ministers, that requirement must exist when the constitutional power is exercised. Its absence goes to the root of the exercise of power and cannot be cured by subsequent concurrence, subsequent ratification or by invoking the doctrine of relation back.

16. **<u>Answer to Point No. (vi):</u> Whether the constitutional protection available to the Chairman of a State Public Service Commission under Article 317 can be diluted by invoking principles of administrative necessity, institutional integrity, public interest, or emergent circumstances?**

16.1. Shri Udaya Holla, Shri Reuben Jacob, learned Senior Counsel, and the learned Advocate General submitted that the Karnataka Public Service Commission is a constitutional

institution entrusted with maintaining fairness and integrity in public recruitment. They contended that public confidence in the Commission is of paramount importance and that the office of its Chairman carries with it the highest standards of integrity and probity. Reliance was placed upon **Reference under Article 317(1), In re** (paragraph 8), **Jitendra Kumar v. State of Haryana** [(2008) 2 SCC 161] (paragraph 37) and **Mehar Singh Saini, In re** [(2010) 13 SCC 586] (paragraph 122) to submit that the Commission has an existence independent of its Chairman and Members and cannot claim immunity from investigation merely because it is a constitutional body. Reliance was also placed upon **Union of India v. Ashok Kumar Aggarwal** [(2013) 16 SCC 147] (paragraphs 21 and 27) to contend that suspension is only an interim measure intended to ensure that a person facing serious allegations does not continue to occupy a position from which he may prejudice or obstruct the inquiry. The respondents further relied upon **Justice R.A. Mehta (Retired)** (paragraph 90) and the principle of "play in the

joints" to contend that the urgency of the situation justified immediate action.

16.2. Sri Arun Shyam, learned Senior Counsel for the petitioner, submitted that the respondents' argument overlooks the constitutional scheme. According to him, the importance of the office is precisely why the Constitution has placed special safeguards around the appointment, suspension and removal of the Chairman of a Public Service Commission. Those safeguards are found in Article 317 itself and cannot be ignored in the name of protecting the institution. Learned Senior Counsel submitted that the Constitution Bench decisions in **Samsher Singh** (paragraph 30) and **Nabam Rebia** (paragraphs 153, 154 and 155) make it clear that, while exercising powers under Article 317, the Hon'ble Governor acts on the aid and advice of the Council of Ministers. Neither public interest, institutional integrity nor administrative necessity can create an exception where the Constitution has not done so.

16.3. There is no dispute about the importance of the Karnataka Public Service Commission or the high standards expected from its Chairman and Members. The decisions relied upon by the respondents correctly emphasise that the Commission occupies an important place in the constitutional framework. Public confidence in the fairness and independence of the Commission is essential to the integrity of the public recruitment process. Equally, no constitutional office-holder is above the law or immune from investigation where serious allegations arise. Those principles are well settled and this Court has no hesitation in accepting them.

16.4. The real issue, however, is not whether the Chairman of the Commission should be investigated or whether the credibility of the institution should be protected. Those questions admit of only one answer. The issue before this Court is different. It is whether those objectives permit departure from the procedure expressly prescribed by the Constitution. In the opinion of this Court, they do not.

16.5. The Constitution itself has struck the balance between protecting the independence of the Commission and ensuring accountability of its Chairman and Members. That balance is reflected in Article 317. The Article protects the independence of the Commission by ensuring that its Chairman or Members cannot be removed or suspended at the pleasure of the Executive. At the same time, it provides a complete constitutional mechanism for taking action where circumstances so require. The Constitution entrusts different stages of that process to different constitutional authorities. The Hon'ble Governor initiates the process, the Hon'ble President decides whether a reference should be made, the Hon'ble Supreme Court conducts the inquiry and reports its findings, and the Hon'ble President passes the final order. The Constitution has therefore not sacrificed accountability in the interest of independence, nor independence in the interest of accountability. It has preserved both through a carefully structured constitutional procedure.

16.6. While answering Point No. (i), this Court has already held that the Hon'ble Governor, while

exercising powers under Article 317, acts on the aid and advice of the Council of Ministers. That requirement is not a procedural technicality. It is one of the constitutional safeguards forming part of the mechanism designed by the Constitution itself. To disregard that safeguard in the name of protecting the Commission would defeat the very constitutional arrangement that the framers deliberately enacted.

16.7. The respondents' argument proceeds on the assumption that constitutional safeguards may be relaxed where the object sought to be achieved is sufficiently important. Such an approach is inconsistent with the constitutional scheme. Constitutional powers are not measured by the importance of the object sought to be achieved. They are measured by the authority conferred by the Constitution. The Constitution itself determines both the object and the means by which that object is to be achieved. Courts cannot separate the two and hold that the objective may be pursued by means other than those chosen by the Constitution.

16.8. The plea of administrative necessity also cannot carry the respondents' case any further. Administrative necessity may explain why immediate action is desirable. It cannot enlarge constitutional power. Administrative convenience has never been recognised as a source of constitutional authority. If the Constitution prescribes the manner in which a power is to be exercised, considerations of urgency or convenience cannot justify exercising that power in a different manner. Necessity may justify prompt action, but it cannot justify unconstitutional action.

16.9. Similar is the position with regard to public interest and institutional integrity. They undoubtedly represent important constitutional values. However, they are constitutional objectives and not independent sources of constitutional power. They explain why action may be required; they do not determine how that action may lawfully be taken. The Constitution has itself answered that question by prescribing the procedure contained in Articles 163 and 317. Once the Constitution has spoken, neither the Executive nor the Court can

substitute another procedure on the ground that it appears more effective or more expedient.

16.10. The reliance placed upon **Union of India v. Ashok Kumar Aggarwal** (paragraphs 21 and 27) is also misplaced. That decision explains the nature of suspension under service jurisprudence and emphasises that suspension is ordinarily an interim measure pending inquiry. The present case does not concern the desirability of suspension or the standard required for placing a person under suspension. The issue before this Court is whether the constitutional power of suspension under Article 317(2) was exercised in the manner required by the Constitution. The source of the power and the conditions governing its exercise are in issue, not the wisdom of the decision itself.

16.11. The plea of emergent circumstances and the reliance placed upon **Justice R.A. Mehta (Retired)** (paragraph 90) have already been considered while answering Point No. (i). The exceptional situations referred to in that decision arise where the constitutional process

itself cannot effectively operate, such as where the Council of Ministers is disabled by a conflict of interest or where constitutional governance itself is endangered. No such circumstance existed in the present case. The Council of Ministers was functioning normally. Indeed, the respondents themselves rely upon its subsequent approval of the impugned action. If the Council of Ministers was available to approve the decision after it was taken, there is no apparent reason why it could not have advised the Hon'ble Governor before the decision was taken.

16.12. There is a broader constitutional principle which also supports this conclusion. The greater the importance of a constitutional institution, the greater is the obligation to follow the constitutional procedure governing it. Constitutional safeguards are not obstacles placed in the path of effective administration. They are the means by which the Constitution ensures that power is exercised fairly, impartially and within defined limits. To dilute those safeguards because the office is

important would be to defeat the very purpose for which the safeguards were created.

16.13. It is also important to remember that constitutional safeguards are tested most severely when there is a pressing public interest in taking immediate action. If constitutional requirements could be ignored whenever the objective was considered sufficiently important, those requirements would have little practical value. The true strength of a constitutional safeguard lies in its ability to withstand precisely those situations where the temptation to bypass it is the greatest. The rule of law requires that constitutional objectives be achieved through constitutional means. It does not permit constitutional means to be sacrificed even for constitutional ends.

16.14. The Constitution therefore does not compel a choice between protecting the integrity of the Commission and observing the constitutional procedure. The two are complementary. The Constitution protects the integrity of the Commission by insisting that action against its

Chairman or Members be taken only through the procedure prescribed by Article 317 and in conformity with Article 163. Fidelity to that procedure strengthens public confidence in the institution; departure from it weakens the constitutional safeguards that preserve its independence.

16.15. This Court therefore answers Point No. (vi) by holding that the constitutional protection available to the Chairman of a State Public Service Commission under Article 317 cannot be diluted by invoking administrative necessity, institutional integrity, public interest or emergent circumstances. These considerations may justify prompt action, but they do not authorise departure from the constitutional procedure prescribed by Articles 163 and 317. The Constitution protects the institution by insisting that action against its constitutional office-holders be taken strictly in the manner that it has itself prescribed.

17. **<u>Answer to Point No. (vii):</u> Whether the impugned recommendation dated 09.07.2026 made to the Hon'ble President under Article 317(1), the order dated 10.07.2026 placing the**

petitioner under suspension under Article 317(2), and the subsequent concurrence of the Hon'ble Chief Minister and ratification by the Council of Ministers are constitutionally and legally sustainable?

17.1. Sri Arun Shyam, learned Senior Counsel for the petitioner, submitted that both the recommendation dated 09.07.2026 and the order of suspension dated 10.07.2026 are constitutionally unsustainable. According to him, the recommendation was made and the suspension was ordered without the prior aid and advice of the Council of Ministers. He further submitted that the subsequent concurrence of the Hon'ble Chief Minister and the later ratification by the Council of Ministers cannot cure that constitutional defect. Learned Senior Counsel also contended that the petitioner was not given an opportunity of hearing before the order of suspension was passed, that the Hon'ble Governor acted merely on complaints and newspaper reports without any inquiry, and that reliance could not have been placed upon reports submitted by the Secretary of the Commission after the interim order passed in W.P. No.20949/2026.

17.2. The respondents submitted that the recommendation and the order of suspension are constitutionally valid. On the question of natural justice, Shri Udaya Holla relied upon **Ram Kumar Kashyap** (paragraph 12) to submit that no prior opportunity of hearing is required before an order of suspension under Article 317(2). Shri Reuben Jacob relied upon **Ashok Kumar Aggarwal** (paragraph 27) to contend that suspension is only an interim measure and that this Court, while exercising judicial review, should not examine the correctness of the allegations. The learned Advocate General submitted that the subsequent concurrence of the Hon'ble Chief Minister and the ratification by the Council of Ministers completed the constitutional process and removed any defect that may have existed at the earlier stage.

17.3. This Point brings together the conclusions already reached while answering the earlier Points. Those conclusions need not be repeated in detail. What remains is to apply them to the impugned recommendation and the order of suspension.

17.4. The petitioner's challenge based on the absence of a prior reference by the Hon'ble President to the Hon'ble Supreme Court cannot be accepted. For the reasons recorded while answering Points (ii) and (iii), this Court has held that a prior reference by the Hon'ble President is not a condition precedent for the exercise of the power under Article 317(2). To that extent, the respondents' submission is correct.

17.5. The challenge succeeds, however, on the more fundamental ground that both the recommendation under Article 317(1) and the order of suspension under Article 317(2) were made without the prior aid and advice of the Council of Ministers. As held while answering Point No. (i), Article 317 does not confer any independent discretion upon the Hon'ble Governor. The constitutional power under Article 317 can therefore be exercised only in accordance with Article 163. On the admitted facts, that constitutional requirement was not satisfied.

17.6. This is not a procedural irregularity capable of being overlooked. The requirement of prior aid

and advice goes to the very authority of the Hon'ble Governor to act. The constitutional satisfaction required under Article 317 must exist when the power is exercised. It cannot be supplied afterwards. For the reasons recorded while answering Points (iv) and (v), the subsequent concurrence of the Hon'ble Chief Minister and the later ratification by the Council of Ministers cannot retrospectively create the constitutional authority that was absent when the recommendation and the order of suspension were made. The defect therefore goes to the root of the exercise of power and renders the order constitutionally unsustainable.

17.7. The submission that no opportunity of hearing was given before the order of suspension cannot be accepted in view of the law declared by the Hon'ble Supreme Court in **Ram Kumar Kashyap** (paragraph 12), which holds that an order of suspension under Article 317(2) is an interim measure and does not require a prior hearing. Likewise, this Court does not propose to examine the sufficiency or correctness of the material which formed the basis of the

recommendation. As explained in **Ashok Kumar Aggarwal** (paragraph 27), judicial review is concerned with the legality of the exercise of power and not with an assessment of the truth of disputed allegations at this stage. Those questions properly belong to the constitutional process contemplated by Article 317 and not to these proceedings. They are therefore left open.

17.8. The recommendation dated 09.07.2026 under Article 317(1) also suffers from the same constitutional infirmity, as it was made without the prior aid and advice of the Council of Ministers. However, this Court considers it appropriate to exercise restraint while moulding the relief. The recommendation is only one stage in a constitutional process involving the Hon'ble President and, where considered necessary, the Hon'ble Supreme Court. The constitutional functions entrusted to those authorities are not directly before this Court. Respect for the constitutional distribution of powers requires this Court to confine its relief to the order which directly affects the petitioner, namely the order of suspension. It is

neither necessary nor appropriate for this Court to issue directions touching the constitutional functions of the Hon'ble President. The competent constitutional authorities will remain free to proceed afresh, if so advised, strictly in accordance with the Constitution.

17.9. The Court is conscious that, after the impugned action was taken, the Council of Ministers did concur with and ratify the decision. It may therefore be argued that setting aside the order serves little practical purpose or is an empty formality because the Council of Ministers may, upon fresh consideration, tender the very same advice. This possible criticism overlooks the nature of constitutional adjudication. When the Constitution prescribes the manner in which a power is to be exercised, compliance with that procedure is not an empty formality. The procedure is itself an integral part of the constitutional limitation upon the exercise of power. Courts are not concerned with whether the outcome may ultimately be the same. Their duty is to ensure that constitutional power is exercised only in the manner authorised by the Constitution.

17.10. The argument that no useful purpose would be served by insisting upon fresh aid and advice cannot therefore be accepted. Constitutional safeguards are not measured by the likelihood of a different outcome. They exist to ensure that each constitutional authority performs the role assigned to it by the Constitution. The Council of Ministers must tender its advice before the Hon'ble Governor acts because that is what Article 163 requires. The Hon'ble Governor must act upon that advice because that is the constitutional scheme. This Court must enforce those requirements because that is its constitutional duty. None of these steps becomes unnecessary merely because the result may eventually be the same.

17.11. Constitutional governance rests upon fidelity to constitutional process. The Constitution distributes powers among different constitutional authorities and prescribes the manner in which each is to exercise those powers. The legitimacy of governmental action depends not only upon the objective sought to be achieved but equally upon adherence to the constitutional procedure. Where the

Constitution requires a particular thing to be done in a particular manner, it must be done in that manner alone. Courts cannot excuse non-compliance on the ground that the omission appears technical or that the outcome might ultimately have been identical. To do so would weaken the constitutional safeguards which the framers of the constitution deliberately enacted.

17.12. This Court accordingly answers Point No. (vii) by holding that the order of suspension dated 10.07.2026 is constitutionally and legally unsustainable because it was issued without the prior aid and advice of the Council of Ministers as required by Articles 163 and 317 of the Constitution. In view of the fact that no relief has been sought for in regard to such recommendation and the constitutional process in which it forms a part. The subsequent concurrence of the Hon'ble Chief Minister and the post facto ratification by the Council of Ministers do not cure the constitutional defect or validate the impugned actions. The petitioner's remaining contentions relating to natural justice and the sufficiency of the

material are left open, as they do not form the basis of this decision.

18. **<u>Answer to Point No. (viii):</u> Whether the petitioner has made out a case for interference under Article 226 of the Constitution of India?**

18.1. Sri Arun Shyam, learned Senior Counsel for the petitioner, submitted that the impugned recommendation and the order of suspension suffer from a fundamental constitutional defect. According to him, the powers under Article 317 were exercised without complying with the mandatory requirement of Article 163 that the Hon'ble Governor must act on the aid and advice of the Council of Ministers. He submitted that when a constitutional authority acts without satisfying a mandatory constitutional requirement, the resulting action is without jurisdiction and is liable to be corrected in exercise of the writ jurisdiction under Article 226. He emphasised that the challenge is not directed against the truth of the allegations or the desirability of the suspension, but against the constitutional validity of the exercise of power itself.

18.2. Shri Udaya Holla, Shri Reuben Jacob, learned Senior Counsel, and the learned Advocate General submitted that the impugned order is only an interim order of suspension passed in aid of proceedings under Article 317. According to them, this Court should not interfere in exercise of its writ jurisdiction by examining the material on which the constitutional authorities acted or by substituting its own opinion for that of the Hon'ble Governor. They submitted that no case has been made out for interference under Article 226.

18.3. The answer to this Point assumes significance because this Court is dealing with the exercise of constitutional powers by high constitutional functionaries and the requirement of strict compliance with constitutional processes. It is for this reason that this Court has examined every submission advanced by the parties and every authority relied upon by them, so that no contention of substance can be said to have been overlooked or left unanswered. It is also for this reason that this Point has been separately framed and answered,

notwithstanding that some aspects overlap with the findings recorded on the earlier Points.

18.4. The scope of judicial review in the present case is narrow and clearly defined. This Court has not undertaken an examination of the allegations made against the petitioner. It has not considered whether those allegations are true. It has not examined whether they justify the initiation of proceedings under Article 317 or whether suspension was desirable on the facts of the case. Those are not the questions which arise for consideration in this writ petition. They are matters which fall within the constitutional process contemplated by Article 317 and are to be considered by the concerned constitutional authorities.

18.5. The only question which this Court has examined is whether the constitutional power under Articles 163 and 317 was exercised in the manner required by the Constitution. That is a question of constitutional competence. It is concerned not with the correctness of the decision, but with the authority to make the decision. There is an important distinction

between reviewing the merits of an administrative or constitutional decision and examining whether the authority possessed the constitutional power to make that decision in the first place. The former ordinarily falls outside the scope of judicial review. The latter is the heart of the matter.

18.6. The issue before this Court is therefore jurisdictional. Where the Constitution provides that a constitutional power may be exercised only upon the fulfilment of specified constitutional conditions, those conditions are not matters of procedure alone. They define the limits within which the power exists. If those conditions are absent, the question is no longer whether the authority exercised the power correctly. The question becomes whether the authority possessed the constitutional competence to exercise the power at all. That is a question which the constitutional courts are not merely empowered to examine but are under a constitutional duty to decide.

18.7. The determination of that question in the present case does not depend upon disputed

facts. The relevant chronology emerges from the State's own records. The dates on which the recommendation under Article 317(1) was made, the order of suspension under Article 317(2) was issued, the concurrence of the Hon'ble Chief Minister was obtained and the Council of Ministers granted its approval are all admitted. No oral evidence is required. No disputed factual issue falls for determination. The controversy turns entirely upon the interpretation of Articles 163 and 317 and upon the legal consequences of admitted facts. Such questions are particularly suited for determination in proceedings under Article 226.

18.8. Article 226 confers wide powers upon the High Courts to ensure that every authority exercising constitutional or statutory power acts within the limits prescribed by law. One of the principal purposes of judicial review is to ensure that constitutional authorities remain within the boundaries fixed by the Constitution. Judicial review is therefore concerned as much with the existence of power as with its exercise. Where a constitutional functionary acts beyond those limits or disregards a mandatory constitutional

requirement, the resulting action becomes amenable to correction under Article 226.

18.9. The respondents are right in submitting that this Court should not sit in appeal over the decision of the Hon'ble Governor. This Court has not done so. It has not substituted its opinion on the necessity of suspension. It has not examined whether the allegations disclose misconduct. It has not weighed the evidence. Nor has it expressed any opinion on whether proceedings under Article 317 ought ultimately to result in removal of the petitioner. Those matters remain entirely outside the scope of this judgment.

18.10. The interference by this Court rests upon a different and much narrower foundation. It rests upon the conclusion already recorded that the constitutional requirement of prior aid and advice of the Council of Ministers was not satisfied when the recommendation under Article 317(1) and the order under Article 317(2) were made. Once that conclusion is reached, the consequence follows as a matter of constitutional principle. An order made

without complying with a mandatory constitutional requirement is not merely an erroneous order. It is an order made without constitutional authority. Such an order falls squarely within the supervisory jurisdiction of this Court under Article 226.

18.11. The petitioner occupies a constitutional office protected by Article 317. The impugned order directly deprives him of the right to discharge the functions of that office pending the constitutional proceedings contemplated by Article 317. He is therefore directly affected by the impugned action and has sufficient legal standing to invoke the jurisdiction of this Court. The respondents have not pointed to any alternative remedy capable of effectively deciding the constitutional questions raised in this petition. The controversy concerns the interpretation of the Constitution itself and the legality of the exercise of constitutional power. Those are matters which appropriately fall within the jurisdiction of this Court under Article 226.

18.12. This Court has also been conscious of the limits of judicial review while moulding the relief. It has deliberately refrained from expressing any opinion upon the allegations made against the petitioner or upon the material relied upon by the respondents. It has equally refrained from expressing any opinion upon whether proceedings under Article 317 should or should not continue. Those questions remain entirely open. They are matters to be considered by the concerned constitutional authorities entrusted with that responsibility under the Constitution.

18.13. The relief granted by this Court is therefore confined to correcting the constitutional defect identified in this judgment. The judgment should not be understood as preventing the competent constitutional authorities from proceeding further in accordance with law. If fresh action is considered necessary, it remains open to the constitutional authorities to proceed afresh, strictly in accordance with the requirements of Articles 163 and 317 of the Constitution. This Court expresses no opinion on the merits of any such future action.

18.14. The power of judicial review under Article 226 is intended to preserve the supremacy of the Constitution by ensuring that every constitutional authority acts within the limits imposed upon it by the Constitution. The legitimacy of constitutional action depends not only upon the object sought to be achieved but equally upon adherence to the constitutional process prescribed for achieving it. Courts therefore do not interfere because they disagree with the decision that has been taken. They interfere because the Constitution requires that public power be exercised only in the manner which it authorises. Fidelity to constitutional procedure is itself an essential aspect of the rule of law.

18.15. This Court accordingly answers Point No. (viii) by holding that the petitioner has made out a clear case for interference under Article 226 of the Constitution. The interference is confined entirely to the jurisdictional and constitutional grounds recorded in this judgment. No opinion is expressed on the truth of the allegations against the petitioner or on the merits of the proceedings contemplated under Article 317, all

of which are expressly left open for consideration by the competent constitutional authorities in accordance with law.

19. <u>Answer to Point No. (ix):</u> What order?

19.1. For the reasons recorded above, and in terms of the Answers to the Points for Determination, this Court passes the following

ORDER:

(i) The writ petition is allowed in part.

(ii) The impugned order of suspension dated 10.07.2026 bearing No. GS 28 ADM 2026, passed in purported exercise of power under Article 317(2) of the Constitution of India and communicated by respondent No.2, is quashed.

(iii) Since the recommendation under Article 317(1) has not been challenged in these proceedings, no order has been passed in relation thereto keeping within the constitutional limits of this Court.

(iv) As a consequence, respondents are directed to reinstate the petitioner as

the Chairman of the Karnataka Public Service Commission, within 7 days of the receipt of a certified copy of this order, the petitioner on reinstatement is entitled to function and officiate as the Chairman of the Karnataka Public Service Commission, and is entitled to all consequential service and monetary benefits flowing from the quashing of the order of suspension.

(v) The Petitioner is, however, restrained from taking any decision or act or causing anyone to act in any particular manner in respect of the action proposed to be taken by the Commission against his daughters.

(vi) It is, however, made clear that this judgment decides only the constitutional validity of the impugned order of suspension and does not decide, one way or the other, the truth or otherwise of the allegations against the petitioner and/or his daughters. It will be open to the competent constitutional authorities to proceed

afresh, if so advised, strictly in accordance with the Constitution and the law declared in this judgment, that is, on the prior aid and advice of the Council of Ministers, that an order of suspension under Article 317(2) can be made.

(vii) All pending applications, if any, stand disposed of in the above terms.

This Court has been assisted by Mr Sourav, Law Clerk, in the formulation of this Judgment.

SD/-
(SURAJ GOVINDARAJ)
JUDGE

KTY,SR,LN,PRS
List No.: 2 Sl No.: 3