

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WA.NO. 658 OF 2015 () IN WP(C).23387/2014

AGAINST JUDGMENT IN WP(C) 23387 OF 2014 OF HIGH COURT OF KERALA
DATED 02-03-2015

APPELLANT(S)/PETITIONER:

T.MOHAMMED ASHRAF AGED 55 YEARS
S/O. HAJI K. ASSAINAR, LINK HEIGHTS, PANAMPILLY NAGAR
COCHIN - 683 036.

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH
SRI.RAAJESH S.SUBRAHMANIAN

RESPONDENT(S)/RESPONDENT:

1. STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY
HOME DEPARTMENT, SECRETARIAT, THRIUVANANTHAPURAM.

2. THE DIRECTOR OF PROSECUTION
OFFICE OF THE DIRECTOR OF PROSECUTION
KERALA HIGH COURT, ERNAKULAM.

3. THE UNION OF INDIA
REPRESENTED BY ITS JOINT SECRETARY
MINISTRY OF HOME AFFAIRS, NDCC - II, JAI SING ROAD
NEW DELGHI -110 001.

WA.NO. 658 OF 2015 () IN WP(C).23387/2014

4. M/S. ABRAHAM TRADING CORPORATION
REPRESENTED BY ITS MANAGING PARTNER
MRS. ANNIE ABRAHAM, MAMMOOTTIL, KALLUPURAM
MAVELIKKARA - 690 101.

R3 BY ADV. SRI.R.PRASANTH KUMAR, CGC
BY SPECIAL GOVERNMENT PLEADER SMT.GIRIJA GOPAL
R BY SRI.K.I.MAYANKUTTY MATHER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
19.03.2015, THE COURT ON 27-05-2015 DELIVERED THE FOLLOWING:

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

=====

W.A. No.658 of 2015

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Dated this the 27th day of May, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Appeal has been filed against the judgment dated 02.03.2015 in W.P.(C) No.23387 of 2014 dismissing the Writ Petition filed by the petitioner.

2. Brief facts giving rise to the Writ Appeal are: Appellant, who shall hereinafter referred to as the Writ Petitioner, was convicted under Section 138 read with Section 141 of the Negotiable Instruments Act by the learned Chief Judicial Magistrate, Pathanamthitta in C.C. No.437 of 2002 with imprisonment for one year and was further ordered to pay a sum of Rs.57,97,940/- by way of compensation to P.W.1, complainant. Petitioner filed Criminal Appeal No.363 of 2006 which was dismissed by

judgment dated 26.10.2007 by the learned District and Sessions Judge, Fast Track, Pathanamthitta. Criminal Revision Petition No.4154 of 2007 was filed by the petitioner in this Court. This Court vide order dated 25.06.2009 partly allowed the Revision Petition, the operative portion of which is quoted as follows:

(i) Substantive sentence awarded to the petitioner is modified as simple imprisonment till rising of the court.

(ii) Petitioner is granted six months' time from this day to deposit in the trial court Rs.57,97,940/- (Rupees Fifty Seven lakhs ninty seven thousand nine hundred and forty only) for payment to respondent No.1 by way of compensation under Sec.357(3) of the Code. In case of default, petitioner has to undergo simple imprisonment for three months".

3. Against the said judgment, petitioner filed SLP (Crl.) No.8479 of 2009 which was dismissed by the Supreme Court on 23.11.2009, however, time for payment was extended for a period of three months. After the above proceedings were over, petitioner

submitted a petition dated 27.03.2010 described as clemency petition before the President of India for pardon. Petition was forwarded to the Central Home Department. The Government of India, Ministry of Home Affairs sent a letter to the State Government for enquiring the genuineness of the petition. The Home Department, State of Kerala sent its report informing that the petitioner is residing with his wife and three sons at Panambilly Nagar, Kochi, Kerala. Petitioner filed W.P(C) No.14918 praying for a direction to the learned Chief Judicial Magistrate not to proceed with the steps in execution of the judgment in C.C. No.437 of 2002 till disposal of the petition submitted by the petitioner to the President of India under Article 72 of the Constitution of India.

4. The learned Single Judge by judgment dated 18.05.2010 dismissed the Writ Petition against which W.A. No.829 of 2010 was filed where an interim order was

granted subject to deposit of one half of the compensation ordered. The clemency petition filed by the petitioner was subsequently rejected by the President of India which was communicated to the Home Department of the Government of Kerala as well as to the petitioner on 21.07.2014. W.A. No.829 of 2010 filed by the petitioner against the judgment of the learned Single Judge dated 18.05.2010 was dismissed by the Division Bench on 15.12.2014 as infructuous noticing the fact that the basis of filing the Writ Petition, i.e., pendency of the clemency petition has been knocked out on account of dismissal of the clemency petition and the Writ Appeal has become infructuous.

5. Thereafter petitioner filed W.P(C) No.23387 of 2014 giving rise to this Writ Appeal praying for the following reliefs:

"i. To issue a writ, direction or order in the nature of certiorari calling for the records leading to Exhibit P9, communication dated 21st July, 2014

issued by the 3rd respondent.

ii. To issue a writ, direction or order in the nature of mandamus commanding the Chief Judicial Magistrate, Pathanamthitta not to proceed with the steps for apprehending the petitioner in furtherance of the judgment in C.C. No.437 of 2002 till the disposal of the clemency petition, Exhibit P1, judgment modified by Exhibit P3 judgment till the disposal of the clemency petition, Exhibit P10 petition in accordance with law.”

6. The learned Single Judge by judgment dated 02.03.2015 dismissed the Writ Petition. The learned Single Judge took the view that the conviction having become final upto the Apex Court, this Court in exercise of the jurisdiction under Article 226 of the Constitution of India cannot stay the execution proceedings.

7. Learned counsel for the petitioner in support of the Writ Appeal submits that the observation of the learned Single Judge that no proceeding is pending consideration before any competent authority is incorrect. It was further submitted that the learned

Single Judge ignored the challenge of the petitioner to Ext.P9, i.e., communication dated 21.07.2014 informing rejection of the clemency petition. It is submitted that power of President of India conferred under Article 72 of the Constitution of India is subject to judicial review. Learned counsel placed reliance on the judgments of the Supreme Court in **Epuru Sudhakar v. Govt. of A.P.** ([2006] 8 SCC 161) and **Mohammed Ishaq v. S.Kazam Pasha** (AIR 2009 SCW 3705).

8. Shri R.Prasanth Kumar, learned Central Government Counsel and the learned Government Pleader refuting the submissions of learned counsel for the petitioner contended that conviction of the petitioner having been confirmed by the Apex Court, the petitioner is not entitled to any relief in the Writ Petition. It is submitted that the Writ Petition is nothing but a device for delaying the execution of sentence although conviction has been confirmed upto the Apex Court. It is submitted

that the President of India in exercise of the power under Article 72 of the Constitution of India has rejected the petition of the petitioner for pardoning after considering all relevant aspects including the report received from the State Government. He submitted that there is no ground to interfere with the decision of the President of India declining the prayer of the petitioner to pardon the petitioner.

9. We have considered the submissions of learned counsel for the parties and perused the records.

10. Article 72 of the Constitution of India provides for power of the President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases. Article 72 of the Constitution of India is quoted as under:

"72. Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.- (1) The President shall have the power to grant pardons, reprieves, respites or

remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence-

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter which the executive power of the Union extends;

(c) In all cases where the sentence is sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law or any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force."

11. Power given to the President of India under Article 72 is high prerogative power conferred on the head of the State which is part of the Constitutional Scheme. The Apex Court in **Epuru Sudhakar's case** (supra) has elaborately considered the nature of the

power of the President. It is useful to refer to paragraphs 16 to 20 which are quoted as under:

"16. The philosophy underlying the pardon power is that "every civilized country recognizes, and has therefore provided for, the pardoning power to be exercised as an act of grace and humanity in proper cases. Without such a power of clemency, to be exercised by some department or functionary of a government, a country would be most imperfect and deficient in its political morality, and in that attribute of Deity whose judgments are always tempered with mercy." (See 59 American Jurisprudence 2d, page).

17. The rationale of the pardon power has been felicitously enunciated by the celebrated Justice Holmes of the United States Supreme Court in the case of Biddle v. Perovich (71 L. Ed. 1161 at 1163) in these words :

"A pardon in our days is not a private act of grace from an individual happening to possess power. It is a part of the constitutional scheme. When granted, it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed." (emphasis added)

18. "Pardon and Parole" as per Corpus Juris Secundum (Vol.67-A) reads as follows: (Pages 16

and 17)

"The pardoning power is founded on considerations of the public good, and is to be exercised on the ground that the public welfare, which is the legitimate object of all punishment, will be as well promoted by a suspension as by an execution of the sentence. It may also be used to the end that justice be done by correcting injustice, as where after discovered facts convince the official or board invested with the power that there was no guilt or that other mistakes were made in the operation or enforcement of the criminal law. Executive clemency also exists to afford relief from undue harshness in the operation or enforcement of criminal law."

Interests of society and convict

(1) Acts of leniency by pardon are administered by the executive branch of the government in the interests of society and the discipline, education, and reformation of the person convicted. Ill - People v. Nowak, 35, N.E. 2d 63, 387 III, II.

(2) A pardon is granted on the theory that the convict has seen the error of his ways, that society will gain nothing by his further confinement and that he will conduct himself in the future as an upright, law - abiding citizen.

Matter known to counsel

The pardoning power is set up to prevent injustice to a person who has been convicted, especially when the facts of such injustice were not properly produced in the Trial Court, but such power is not a proper remedy on account of failure to use any matter which was known to defendant or his counsel and was available at time of new trial motion.

19. "Pardon and Parole" as stated in AMERICAN JURISPRUDENCE (Second Edition) (Volume 59) reads as follows:

I. INTRODUCTORY

1. History of pardoning power.

Every civilized country recognizes, and has therefore provided for, the pardoning power to be exercised as an act of grace and humanity in proper cases. Without such a power of clemency, to be exercised by some department or functionary of a Government, a country would be most imperfect and deficient in its political morality, and in that attribute of Deity whose judgments are always tempered with mercy. In England, this power has been exercised from time immemorial, and has always been regarded as a necessary attribute of sovereignty. In the United States, this power is extended to the President by the United States Constitution, and in

the various states and territories it is either conferred by constitutional provision or organic act, or provided for by statute, the power usually being conferred upon the governor or upon a board of which the governor is a member. In some instances, however, the governor's power is so limited as to render an arbitrary exercise impossible.

2. Validity of contract to procure pardon; criminal liability. *While the earlier cases uniformly held agreements to secure a pardon, parole, or commutation of sentence illegal irrespective of the services rendered or contemplated, the more recent decisions take the view that such contracts are valid or invalid according to the character of the services contemplated. Although there is some conflict of opinion, contracts entered into to obtain a pardon, parole, or commutation of sentence have generally been upheld where the services contemplated are not other than the proper presentation of the case before the pardoning power."*

Reprieve

A reprieve, from the French word "reprendre," to take back, is the withdrawing of a sentence for an interval of time, whereby the execution is suspended. It is merely the postponement of the execution of a sentence for a definite time, or to a day certain. It does not and cannot defeat the

ultimate execution of the judgment of the court, but merely delays it temporarily. Reprieves at common law are of three kinds:

1. ex mandato regis, from the mere pleasure of the Crown;

2. ex arbitrio judicis, the power to grant which belongs of common right to every tribunal which is invested with authority to award execution; and

3. ex necessitate legis, required by law to be granted under certain circumstances, as when a woman convicted of a capital offence alleges pregnancy of a quick child in delay of execution, or when a prisoner has become insane between the time of sentence and the time fixed for execution.

20. In Sir William Wades' Administrative Law (Ninth Edition) the position relating to pardon is stated as follows:

"The royal prerogative

The prerogative powers of the Crown have traditionally been said to confer discretion which no court can question; and there was long a dearth of authority to the contrary. But it may be that this was because the decided cases involved discretions which are, as has been laid down in the House of Lords, inherently unsuitable for judicial review, 'such as those relating to the making of treaties, the defence of the realm, the prerogative of mercy, the grant of

honours, the dissolution of Parliament and the appointment of ministers as well as others'. But at the same time the House of Lords held that the court could review a ministers action (forbidding trade union membership by certain civil servants) under authority delegated to him by prerogative Order in Council, so that the principles of natural justice would apply. Administrative action was held to be reviewable in proceedings against the responsible minister without distinction as to the origin of the power, whether statute or common law. In later cases it was held that the dismissal of a civil servant involved 'a sufficient public law element' to be subject to Judicial review and that an unfair compensation award by the civil service appeal board should be quashed. So now it may be said that the royal prerogative does not per se confer unreviewable discretion, but that many of the powers contained in it will be of a kind with which the courts will not concern themselves. It may be the prerogative acts of the Crown itself though taken on the advice of ministers are immune from review, whereas the action of ministers, though authorised by delegation of prerogative power, is reviewable. But this is an artificial distinction, and if the case were strong enough even an Order in Council might prove to be reviewable in a declaratory judgment.

These propositions are founded on the wide definition of prerogative which has been criticized earlier. The making of treaties, for example, has no effect on the law of this country, so that there is no exercise of power which can concern the courts. It might be called prerogative without power, while the employment of civil servants might be called power without prerogative. A case where there may be neither prerogative nor power is the grant and refusal of passports, which has been claimed to be wholly within the prerogative and discretion of the Crown. A passport is merely an administrative device, the grant or cancellation of which probably involves no direct legal consequences, since there appears to be no justification for supposing that, in law as opposed to administrative practice, a citizen's right to leave or enter the country is dependent upon the possession of a passport. The arbitrary power claimed by the Crown has now been made subject to judicial review along with various other non legal powers discussed later. Other countries were ahead of Britain in protecting this necessary civil right.

At least it is now judicially recognised that prerogative power is as capable of abuse as is any other power, and that the law can sometimes find means of controlling it. The prerogative has many times been restricted both by judicial decision and by

statute. It is for the court to determine the legal limits of the prerogative, and they may include the same requirement of reasonable and proper exercise as applies to statutory powers though with this difference, that it cannot be based upon the presumed intention of Parliament. In one unusual case, where a Parliamentary basis could be found because action taken by a minister under a treaty was held to be impliedly prohibited by a statute," Lord Denning MR discussed the nature of the prerogative and said:

Seeing that the prerogative is a discretionary power to be exercised for the public good, it follows that its exercise can be examined by the courts just as any other discretionary power which is vested in the executive.

Then after citing cases of abuse of statutory power he concluded:

Likewise it seems to me that when discretionary powers are entrusted to the executive by the prerogative in pursuance of the treaty making power the courts can examine the exercise of them so as to see that they are not used improperly or mistakenly.

Although this last remark was said in the House of Lords to be 'far too wide', in today's atmosphere it seems clear that the court would entertain a

complaint that, for example, a royal pardon had been obtained by fraud or granted by mistake or for improper reasons. The High Court has gone so far as to review a decision of the Home Secretary not to recommend a posthumous free pardon for a youth hanged for murder forty years previously, on the ground that he considered only an unconditional pardon and failed to take account of other possibilities. Although the court made no order or declaration and merely invited the Home Secretary to look at the matter again, it clearly took a long step towards judicial review of the prerogative of mercy. For example it was clear that the Home Secretary had refused to pardon someone solely on the ground of their sex, race or religion, the courts would be expected to interfere and our judgment would be entitled to do so.

In New Zealand the Court of Appeal has held that the prerogative power of pardon is not reviewable 'at any rate at present', but that the position might change if justice so required; that the prerogative character of the power did not exempt it from review; but that the existing legal and administrative safeguards were adequate so that an extension of judicial review was unnecessary.

A further question is whether the law should concern itself with the Crown's exercise of the

ordinary powers and liberties which all persons possess, as in the making of contracts and the conveyance of land. It has hitherto been assumed that in this area the Crown has the same free discretion as has any other person. But where such powers are exercised for governmental purposes it is arguable that the courts should be prepared to intervene, as a matter of public ethics, as a safeguard against abuse. They do not allow local authorities to act arbitrarily or vindictively in evicting tenants, letting sports grounds or placing advertisements, for example. Those are technically statutory powers (since all local authorities are statutory), but they correspond to ordinary powers and liberties. If, as the House of Lords holds, the source of power is irrelevant, it would not seem impossible for judicial review to be extended to this 'third source' of public power which is neither statutory nor prerogative but is a remnant from the days of personal government. But the 'grotesquely undemocratic idea that public authorities have a private capacity is deeply embedded in our legal culture, and such judicial authority as there is, is not encouraging.

12. As noted above, two main submissions have been pressed by the learned counsel for the petitioner.

The first submission is that the observation of the learned Single Judge that no proceeding is pending is incorrect. It is submitted that after receiving the communication dated 21.07.2014 informing the petitioner that the petition submitted by the petitioner under Article 72 has been dismissed, he sent a further petition dated 04.08.2014 for reconsideration as Ext.P10, hence the proceeding is to be treated as pending. As noted above, conviction of the petitioner has already been confirmed by the Apex Court and the clemency petition having been dismissed by the President, the learned Single Judge has rightly observed that no proceedings are pending on the basis of which proceeding for execution of sentence can be stayed by this Court in exercise of the Writ jurisdiction under Article 226 of the Constitution of India.

13. The second prayer in the Writ Petition was to issue a writ of mandamus commanding the Chief

Judicial Magistrate not to proceed with the steps for apprehending the petitioner in furtherance of the judgment in C.C. No.437 of 2002 till the disposal of the clemency petition. The conviction having been confirmed by the Apex Court and the clemency petition having been rejected as per communication dated 21.07.2014, petitioner was not entitled to the above prayer in the Writ Petition and no error has been committed by the learned Single Judge in refusing to grant the prayers.

14. Now we come to the second submission that although petitioner has prayed for quashing the decision of the President of India refusing his application to commute the sentence, the learned Single Judge has not adverted to the above.

15. We have perused the Writ Petition and the grounds taken. In none of the grounds there was any challenge to the decision of the President rejecting the petitioner's application for pardon, nor any grounds were

raised in the Writ Petition on the basis of which this Court could have reviewed the decision of the President in exercising its power of judicial review.

16. The Apex Court in **Epuru Sudhakar's case** (supra) had also considered the issue as to upto what extent the decision of the President of India under Article 72 and the Governor under Article 161 can be subjected to judicial review under Article 226 of the Constitution of India. The Apex Court held that although decision of the President or Governor are not immune from the power of judicial review, only very limited judicial power is available in certain cases. It is useful to quote paragraphs 22 to 33 where the Apex Court has discussed the scope of judicial review.

22. It is fairly well settled that the exercise or non exercise of pardon power by the President or Governor, as the case may be, is not immune from judicial review. Limited judicial review is available in certain cases.

23. In Maru Ram's case (supra) it was held

that all public power, including constitutional power, shall never be exercisable arbitrarily or mala fide and, ordinarily, guidelines for fair and equal execution are guarantors of the valid play of power.

24. It is noteworthy that in Kehar Singh's case (supra) the contention that the power of pardon can be exercised for political consideration was unequivocally rejected. In Maru Ram's case (supra) it was held that consideration of religion, caste, colour or political loyalty are totally irrelevant and fraught with discrimination.

25. In Kehar Singh's case (supra) it was held that the order of the President cannot be subjected to judicial review on its merits except within the strict limitations delineated in Maru Ram's case (supra). The function of determining whether the act of a constitutional or statutory functionary falls within the constitutional or legislative conferment of power, or is vitiated by self denial on an erroneous appreciation of the full amplitude of the power is a matter for the court.

26. In Kehar Singh's case (supra), placing reliance on the doctrine of the division (separation) of powers it was pleaded, that it was not open to the judiciary to scrutinize the exercise of the "mercy" power. In dealing with this submission this Court held that the question as to the area of the

President's power under Art.72 falls squarely within the judicial domain and can be examined by the court by way of judicial review.

27. As regards the considerations to be applied to a petition for pardon / remission in Kehar Singh's case (supra) this Court observed as follows:

"As regards the considerations to be applied by the President to the petition, we need say nothing more as the law in this behalf has already been laid down by this Court in Maru Ram."

28. In the case of Swaran Singh v. State of U.P. (1998 (4) SCC 75) after referring to the judgments in the cases of Maru Ram's case (supra) and Kehar Singh's case (supra) this Court held as follows:

"we cannot accept the rigid contention of the learned counsel for the third respondent that this Court has no power to touch the order passed by the Governor under Art.161 of the Constitution. If such power was exercised arbitrarily, mala fide or in absolute disregard of the finer canons of the constitutionalism, the byproduct order cannot get the approval of law and in such cases, the judicial hand must be stretched to it."

29. The factual scenario in Swaran Singh's case (supra) needs to be noted. One Doodh Nath was found guilty of murdering one Joginder Singh

and was convicted to imprisonment for life. His appeals to the High Court and Special Leave Petition to this Court were unsuccessful. However, within a period of less than 2 years the Governor of Uttar Pradesh granted remission of the remaining long period of his life sentence. This Court quashed the said order of the Governor on the ground that when the Governor was not posted with material facts, the Governor was apparently deprived of the opportunity to exercise the powers in a fair and just manner. Conversely, the impugned order, it was observed "fringes on arbitrariness".

30. The Court held that if the pardon power "was exercise arbitrarily, mala fide or in absolute disregard of the finer canons of the constitutionalism, the byproduct order cannot get the approval of law and in such cases, the judicial hand must be stretched to it". The Court further observed that when the order of the Governor impugned in these proceedings is subject to judicial review within the strict parameters laid down in Maru Ram's case (supra) and reiterated in Kehar Singh's case (supra): "we feel that the Governor shall reconsider the petition of Doodh Nath in the light of those materials which he had no occasion to know earlier.", and left it open to the Governor of Uttar Pradesh to pass a fresh order in the light of the

observations made by this Court.

31. In Satpal and Another v. State of Haryana and Others (JT 2000 (5) SC 566), this Court observed that the power of granting pardon under Art.161 is very wide and does not contain any limitation as to the time at which and the occasion on which and the circumstances in which the said powers could be exercised.

32. Thereafter the Court held as follows:

"...the said power being a constitutional power conferred upon the Governor by the Constitution is amenable to judicial review on certain limited grounds. The Court, therefore, would be justified in interfering with an order passed by the Governor in exercise of power under Art.161 of the Constitution if the Governor is found to have exercised the power himself without being advised by the Government or if the Governor transgresses the jurisdiction in exercising the same or it is established that the Governor has passed the order without application of mind or the order in question is mala fide one or the Governor has passed the order on some extraneous consideration."

The principles of judicial review on the pardon power have been restated in the case of Bikas Chatterjee v. Union of India (2004 (7) SCC 634).

33. In Mansukhlal Vithaldas Chauhan v. State

of Gujarat (JT 1997 (7) SC 695) it was inter alia held as follows:

"25. This principle was reiterated in Tata Cellular v. Union of India JT 1994 (4) SC 532; in which it was, inter alia, laid down that the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made particularly as the Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The Court pointed out that the duty of the Court is to confine itself to the question of legality. Its concern should be:

- 1. Whether a decision making authority exceeded its powers?;*
- 2. committed an error of law;*
- 3. committed a breach of the rules of natural justice;*
- 4: reached a decision which no reasonable tribunal would have reached; or*
- 5. abused its powers.*

26. In this case, Lord Denning was quoted as saying:

"Parliament often entrusts the decision of a matter to a specified person or body, without providing for any appeal. It may be a judicial

decision, or a quasi judicial decision, or an administrative decision. Sometimes Parliament says its decision is to be final. At other times it says nothing about it. In all these cases the courts will not themselves take the place of the body to whom Parliament has entrusted the decision. The courts will not themselves embark on a rehearing of the matter. See Healey v. Minister of Health (1955 (1) QB 221)."

27. Lord Denning further observed as under: (p. 682)

"If the decision making body is influenced by considerations which ought not to influence it; or fails to take into account matters which it ought to take into account, the court will interfere. See Padfield v. Minister of Agriculture, Fisheries and Food (1968 AC 997). (emphasis supplied)"

28. In Sterling Computers Ltd. v. M and N Publications Ltd. JT 1993 (1) SC 187 it was pointed out that while exercising the power of judicial review, the Court is concerned primarily as to whether there has been any infirmity in the decision making process? In this case, the following passage from Professor Wade's Administrative Law was relied upon:

"The doctrine that powers must be exercised reasonably has to be reconciled with the no less

important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which legislature is presumed to have intended."

29. It may be pointed out that this principle was also applied by Professor Wade to quasi judicial bodies and their decisions. Relying upon decision in *R. v. Justices of London* (1895 1 QB214). Professor Wade laid down the principle that where a public authority was given power to determine matter, mandamus would not lie to compel it to reach some particular decision.

30. A Division Bench of this Court comprising *Kuldip Singh and B. P. Jeevan Reddy, JJ.* in *U.P. Financial Corpn. v. Gem Cap (India) (P) Ltd.* JT1993 (2) SC 226 observed as under:

"11. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This

doctrine is complementary to the principles of natural justice which the quasi judicial authorities are bound to observe. It is true that the distinction between a quasi judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A. K. Kraipak v. Union of India 1970 (1) SCR 457, even so the extent of judicial scrutiny / judicial review in the case of administrative action cannot be larger than in the case of quasi judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi judicial authorities it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, if more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have 'a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred. (Lord Diplock in Secy, of State for Education and Science v. Tameside Metropolitan Borough Council 1977 AC 1014 at p. 1064.) The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no

reasonable person would have taken that action, can the Court intervene." (emphasis supplied)

17. In paragraph 34 also the Supreme Court has enumerated certain grounds on which power of judicial review can be exercised. Paragraph 34 is quoted below:

34. The position, therefore, is undeniable that judicial review of the order of the President or the Governor under Art.72 or Art.161, as the case may be, is available and their orders can be impugned on the following grounds:

(a) that the order has been passed without application of mind;

(b) that the order is mala fide;

(c) that the order has been passed on extraneous or wholly irrelevant considerations;

(d) that relevant materials have been kept out of consideration;

(e) that the order suffers from arbitrariness.

18. In the Writ Petition as well as before us no ground has been made out which may come within the limited scope of judicial review by this Court in exercise of Article 226 of the Constitution.

19. From the materials on record it does appear that on the petition submitted under Article 72 of the Constitution of India, the Central as well as the State Governments sent reports and after considering the reports, decision was taken by the President. There is no material or any pleading to come to a conclusion that any of the limited grounds on the basis of which decision taken by the President of India under Article 72 are made out. We thus do not find any error in the decision of the President rejecting the petitioner's application under Article 72 which may warrant interference by this Court in exercise of the jurisdiction under Article 226 of the Constitution.

20. Thus the learned Single Judge committed no error in rejecting the prayers made in the Writ Petition.

21. Judgment of the Apex Court relied on by the petitioner in **Mohammed Ishaq v. S.Kazam Pasha's case** (supra) also does not help the petitioner in any

manner.

22. Learned Government Pleader also placed reliance on the decision of this Court in **Moideen Koya v. Secretary to Government** (2008 [4] KLT 257) wherein the same proposition has been laid down as laid down in **Epuru Sudhakar's case** (supra).

23. None of the submissions raised by the learned counsel for the petitioner has any substance. There is no merit in the Writ Appeal.

The Writ Appeal is dismissed.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**