

IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

PUBLIC INTEREST LITIGATION No.31 OF 2015
WRIT PETITION No.5394 OF 2015
WRIT PETITION No.5433 OF 2015
AND
WRIT PETITION No.5415 OF 2015

Between:

Sarasani Satyam Reddy ... Petitioner
and

1. The Union of India, rep. by its Secretary,
Ministry of Law and Justice, New Delhi-110001,
and others. ... Respondents

JUDGMENT PRONOUNCED ON : 29-04-2016

**THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

1. Whether Reporters of : Yes
Local newspapers
may be allowed to see
the Judgment ?

2. Whether the copies of : Yes
judgment may be
marked to
Law Reporters/Journals ?

3. Whether Their Ladyship/ : No
Lordship wish to see the
fair copy of the judgment ?

*** THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B. BHOSALE
AND
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% 29.04.2016

Sarasani Satyam Reddy ... Petitioner

Vs.

\$1. The Union of India, rep. by its Secretary,
Ministry of Law and Justice, New Delhi-110001,
and others. ... Respondents

!Counsel for the petitioner : Sri Sarasani Satyam
Reddy
(Party-in-Person) in PIL No.31
of 2015

counsel Sri G. Vidya Sagar, senior
In WP Nos.5394 & 5415 of
2015

counsel for Sri M. Rajender Reddy,
Petitioner in WP No.5433 of
2015

^Counsel for the Respondent No.1 : Sri K. Nataraj,
Addl.Solicitor General of
India for B. Narayana Reddy,
Assistant Solicitor General of
India

Counsel for the Respondent No.2 : Sri C.U. Singh, senior
counsel
for Sri S. Sri Ram(SC for High
Court)
Sri J. Anil Kumar(SC for
High Court)

Counsel for Respondent No.3 : Sri K. Ramakrishna
Reddy
Advocate General for State of
Telangana

Counsel for Respondent No.4 : Sri D. Srinivas,
Addl. Advocate General for State of
A.P.

Counsel for the Intervener : Sri S. Niranjan Reddy,
Advocate
for Sri Tarun G. Reddy

<Gist :

>Head Note:

?Cases Referred:

- [1] (2008) 17 SCC 703
- ² (2014) 8 SCC 883
- ³ (1998) 4 SCC 409
- ⁴ (2011) 6 SCC 216
- ⁵ (2010) 11 SCC 694
- ⁶ (2016) 1 SCC 397
- ⁷ (2008) 10 SCC 1
- ⁸ AIR 1963 SC 996
- ⁹ (1991) 4 SCC 406
- ¹⁰ (1988) 2 SCC 602
- ¹¹ (1991) 4 SCC 584
- ¹² (1989) 3 SCC 396
- ¹³ 1980 (Supp) SCC 524
- ¹⁴ (1977) 1 SCC 486
- ¹⁵ AIR 1956 SC 285
- ¹⁶ (2003) 9 SCC 336
- ¹⁷ (2006) 3 SCC 330
- ¹⁸ (2000) 4 SCC 640
- ¹⁹ (2015) 5 SCC 479
- ²⁰ AIR 1955 SC 123
- ²¹ (1995) 1 SCC 745
- ²² AIR 1966 SC 1987
- ²³ (2014) 10 SCC 1
- ²⁴ (1973) 4 SCC 225
- ²⁵ (2000) 1 SCC 168
- ²⁶ (2004) 6 SCC 689
- ²⁷ 1994 Supp (1) SCC 44
- ²⁸ (2006) 3 SCC 620
- ²⁹ (2013) 15 SCC 1
- ³⁰ (2007) 11 SCC 522
- ³¹ (1990) 3 SCC 157
- ³² AIR 1970 SC 1742
- ³³ (2003) 8 SCC 40
- ³⁴ 1951 SCR 682
- ³⁵ (2006) 3 SCC 643
- ³⁶ (1974) 2 SCC 33

**THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

**PUBLIC INTEREST LITIGATION No.31 OF 2015
WRIT PETITION No.5394 OF 2015
WRIT PETITION No.5433 OF 2015**

AND
WRIT PETITION No.5415 OF 2015

Dated: 29.04.2016

In PIL No.31 of 2015:

Sarasani Satyam Reddy ... Petitioner

And

1. The Union of India, rep. by its Secretary,
Ministry of Law and Justice, New Delhi-110001,
and others. ... Respondents

In W.P. No.5394 of 2015:

M. Chandra Sekhar Reddy	...	Petitioner
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And

1. High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, Hyderabad, rep. by its Registrar (Recruitment), and others. ...

Respondents

In W.P. No.5433 of 2015:

M. Shashikanth ... Petitioner

And

1. High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, Hyderabad, rep. by its Registrar (Recruitment), and others. ...

Respondents

In W.P. No.5415 of 2015:

C. Srinivas Reddy ... Petitioner

And

1. High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, Hyderabad, rep. by its Registrar (Recruitment), High Court Buildings, Hyderabad, and others. ... Respondents

THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

PUBLIC INTEREST LITIGATION No.31 OF 2015

WRIT PETITION No.5394 OF 2015

WRIT PETITION No.5433 OF 2015
AND
WRIT PETITION No.5415 OF 2015

COMMON JUDGMENT: (per Hon'ble The Acting Chief Justice Dilip B.Bhosale)

These petitions, under Article 226 of the Constitution of India, raise common questions of law, relating to the filling up of vacancies in the cadre of Civil Judges (Junior Division) pursuant to the notifications issued by the High Court for direct recruitment, and hence are being disposed of by this common judgment.

2. The first petition (PIL No.31 of 2015) is filed by a designated Senior Advocate practicing in this Court. The 2nd and 3rd petitions (W.P. Nos.5394 & 5433 of 2015) are filed by two advocates, and the fourth petition (W.P. No.5415 of 2015) is filed by a Superintendent in the Rangareddy District Court.

3. In the PIL, petitioner has prayed for a writ of Mandamus declaring action of the respondent - High Court in not bifurcating subordinate judiciary and for notifying 97 vacancies of the posts of Civil Judges (Junior Division) for the year 2014 vide Notification No.15/2014-RC, dated 9.1.2014, and consequential Notification No.15/2014-RC, dated 1.2.2014, inviting applications for recruitment to the said 97 posts (for short, "2014 Notification"); and so also similar Notification bearing No.54/2015-RC, dated 5.2.2015, notifying 34 vacancies of the posts of Civil Judges (Junior Division) for the year 2015, and consequential Notification No.54/2015-RC, dated 9.2.2015, inviting applications for recruitment to the said 34 posts (for short, "2015 Notification") as null and void, arbitrary, illegal and

violative of Articles 233 and 234 of the Constitution of India and so also Part-VIII of the Andhra Pradesh Reorganization Act, 2014. Further he prays for a consequential direction to the respondent - High Court to undertake the process of appointment of District Judges, and recruitment to Judicial Service in both the States only after bifurcation of subordinate judiciary into the Andhra Pradesh State Judicial Service and the Telangana State Judicial Service.

4. In the remaining three writ petitions, the petitioners have challenged the very same notifications issued by the respondent - High Court contending that the notifications are illegal and violative of Article 234 of the Constitution of India and contrary to Telangana State Judicial Service Rules, 2015 notified vide G.O.Ms.No.3, dated 11.2.2015 (for short, '2015 Rules'). The impugned Notifications are under Andhra Pradesh State Judicial Service Rules, 2007 (for short, "2007 Rules").

5. In order to understand the controversy and to address the questions of law raised in these petitions, a detailed reference to the facts/sequence of events would be necessary.

5.1 The Andhra Pradesh Reorganisation Act, 2014 (Act No.6 of 2014) (for short, 'the Act') received the assent of the President of India on 1st March, 2014. The Act provides for reorganization of the then existing State of Andhra Pradesh and the matters connected therewith. The Act created a separate State of Telangana for the betterment of social, economic, political and other aspirations in view of the longstanding demand of the people in the said region. The

Act was published in the Gazette of India on the 1st March, 2014. The 'appointed day', as defined under Section 2 (a) is "2nd of June, 2014". By operation of the Act, two Separate States have been formed splitting the composite State of Andhra Pradesh into the State of Telangana and the residuary State of Andhra Pradesh. The city of Hyderabad in the composite State of Andhra Pradesh as provided for in Section 5 of the Act shall be the common capital of the State of Telangana and the State of Andhra Pradesh for such period not exceeding ten years.

5.2 Section 30 of the Act states that on and from the appointed day the High Court of Judicature at Hyderabad shall be the common High Court for the State of Telangana and the State of Andhra Pradesh till a separate High Court for the State of Andhra Pradesh is constituted under Article 214 of the Constitution read with Section 31 of the Act. It further provides that the Judges of the High Court at Hyderabad for the then existing State of Andhra Pradesh holding office immediately before the appointed day shall become on that day the Judges of the common High Court. Sub-section (2) of Section 30 provides that the expenditure in respect of salaries and allowances of the Judges of the common High Court shall be allocated amongst the State of Andhra Pradesh and Telangana on the basis of population ratio. Section 31 of the Act provides that subject to the provisions of Section 30, there shall be a separate High Court for the State of Andhra Pradesh and the High Court of Judicature at Hyderabad shall become the High Court for the State of Telangana. Sub-section (2) thereof provides that the principal seat of the High Court of Andhra Pradesh shall be at such place as the President may, by notified

order, appoint. Sub-section (3) provides that notwithstanding anything contained in sub-section (2), the Judges and division courts of the High Court of Andhra Pradesh may sit at such other place or places in the State of Andhra Pradesh other than its principal seat as the Chief Justice may, with the approval of the Governor of Andhra Pradesh, appoint.

5.3 Some more provisions of the Act are relevant for our purpose to which we propose to make reference in the course of judgment at appropriate stage/s.

5.4 At this stage, a reference to the judgment of the Supreme Court in **Malik Mazhar Sultan (3) and another v.**

U.P. Public Service Commission and others ^[1] (for short,

'Malik Mazhar') is necessary. The Supreme Court, while issuing certain directions to High Courts to fill up the existing vacancies in the Subordinate Courts in all States, observed that

“an independent and efficient judicial system is one of the basic structure of our Constitution. If sufficient number of Judges are not appointed, justice would not be available to the people thereby undermining the basic structure.” It was further observed that *“the judicial system has been facing the problem arising out of delay in dispensation of justice for which one of the major causes is insufficient number of judges when compared to either a large number of cases pending or in relation to the average judge population ratio going by number of judges available in various other democracies in the world.”* The further observations made by the Supreme Court in paragraphs-3 and 5 are relevant for our purpose which read thus:

3. In this matter, by judgment and order dated 3-4-2006, it

was observed that **it is absolutely necessary to evolve a mechanism to speedily determine and fill vacancies of Judges at all levels. For this purpose, timely steps are required to be taken for determination of vacancies, issue of advertisement, conducting of examinations, interviews, declaration of final results and issue of orders of appointment. It was further directed that for all these above and other steps, it is necessary to provide to fix the time schedule so that the system works automatically and there is no delay in filling up of the vacancies.** The dates for taking up these steps can be provided for on the pattern similar to filling up of vacancies in some other services. **Adherence to strict time schedule can help in ensuring timely filling up of vacancies.** In this view, all the State Governments, Union Territories and/or High Courts were directed to give suggestions regarding the time schedule to be fixed so that every year vacancies that may occur are filled. This Court also requested Mr Vijay Hansaria, Senior Advocate, to assist the Court.

5. Before we issue general directions and the time schedule to be adhered to for filling vacancies that may arise in subordinate courts and District Courts, it is necessary to note that selections are required to be conducted by the authorities concerned as per the existing Judicial Service Rules in the respective States/Union Territories. **We may, however, note that, progressively, the authorities concerned would consider, discuss and eventually may arrive at a consensus that the selection process be conducted by the High Court itself or by the Public Service Commission under the control and supervision of the High Court.** In this regard, considerable progress has already been made. Reference can be made to the decision taken in a conference held between the Chief Justices and Chief Ministers, minutes whereof show that in some of the States, selection of subordinate judicial officers at all levels of Civil Judges is already being made by the High Courts. Some States, where selection is still being made by the Public Service Commission, were agreeable to entrust the selection to the High Courts whereas Chief Ministers/Ministers of Himachal Pradesh, West Bengal, Punjab and Kerala were of the view that the present system may continue but the decision taken jointly was that in the said States (Himachal Pradesh, West Bengal, Punjab and Kerala) setting up of question papers and evaluation of answer sheets be entrusted to the High Court. **Further decision taken was that in other States where selection of subordinate judicial officers is not being done by the High Courts, such selection be entrusted to the High Courts by amending the relevant rules.** In this connection, with the affidavit filed on behalf of the Calcutta High Court, a copy of the letter dated 15-9-2006, addressed by the Registrar General of the said Court to the Secretary, Judicial Department, Government of West Bengal, has also been annexed. That letter refers to the aforesaid decision taken in the conference of Chief Ministers and Chief Justices held on 11-3-2006 requesting the State Government for

effecting suitable amendment in the recruitment rules in terms of the decision in the conference aboveresferred. At this stage, however, these are not the issues for our consideration. As already indicated, the selection is to be conducted by authorities empowered to do so as per the existing rules.

(emphasis supplied)

5.5 Then, in paragraph-7 of the Judgment, the Supreme Court issued directions in four parts: **Part-A**, for filling up of vacancies in the cadre of District Judge in respect of 25% vacancies to be filled by direct recruitment from the Bar; and 25% by promotion through limited competitive examination of Civil Judges (Senior Division) not having less than five years of qualifying service; **Part-B**, for filling up of vacancies in the cadre of District Judge in respect of 50% vacancies to be filled by promotion; **Part-C**, for filling up of vacancies in the cadre of Civil Judge (Senior Division) to be filled by promotion; and **Part-D**, for appointment to the posts of Civil Judge (Junior Division) by direct recruitment.

5.6 Insofar as vacancies in Part-A, Part-B and Part-C are concerned, the time to complete the recruitment stipulated by the Supreme Court starts from 31st March, notifying vacancies by the High Court and completing the process of recruitment by 31st October of every year. Insofar as vacancies in Part-D are concerned, procedure for recruitment as per the judgment, requires to commence on 15th January of every year and to complete the same on 1st December with the issue of appointment letters by the competent authority for all existing vacant posts as on date.

5.7 After issuing directions as aforementioned, the

Supreme Court in paragraph-9 of the judgment requested the Chief Justice of each High Court to constitute a Committee of two or three judges to monitor and oversee that timely selection and appointments of judicial officers are made. Other consequential directions were also issued in the said judgment by the Supreme Court. In paragraph-10 of the judgment, the Supreme Court also issued a direction that Registrar of the aforesaid selection and appointment committee shall send to the Registrar General of the Supreme Court by 31st January of every year as regards filling up of vacancies with copies to the Minister for Law & Justice in the Central Government and the Law Minister of the State concerned.

6. In this backdrop, we now make a detailed reference to the steps taken by the High Court, for filling up of vacancies in light of the judgment in *Malik Mazhar* and other relevant facts/events that occurred in the process of recruitment for 2014 and 2015.

6.1 In view of the schedule prescribed in the judgment of the Supreme Court in *Malik Mazhar*, the respondent - High Court issued the impugned "2014 Notification" under 2007 Rules on 9.1.2014 notifying 97 vacancies in the cadre of Civil Judges (Junior Division) for the year 2014, of which 78 were notified for direct recruitment and 19 were notified for recruitment by transfer. Consequential notification was also issued on the 1st February, 2014 inviting applications for the said 97 posts. The last date for receiving applications was 1st March, 2014. In response thereto, the High Court received 7,624 applications from both the States. In the notification, a break-up of 78

vacancies of direct recruitment showing reservations in favour of the candidates belonging to SC, ST, BC, Women and Physically Handicapped {Orthopedically Handicapped (lower portion of body)} as per Rule 7 of the A.P. State Judicial Service Rules, 2007 was also given.

6.2 In pursuance of 2014 Notification, the High Court conducted screening test on 8.3.2015; written examination on 25.10.2015 and viva voce between 14.12.2015 and 22.12.2015.

6.3 The High Court thereafter, as per the schedule prescribed in *Malik Mazhar* for filling up vacancies in the cadre of District Judges and Civil Judges (Senior Division) issued notifications starting with Notification No.94/2014-RC, dated 27th March, 2014, notifying 6 vacancies of District Judge (Entry Level) under 25% quota for the year 2014. The other notifications issued were the Notification No.619-B.Spl., dated 29.3.2014 notifying 34 vacancies of District Judge (Entry Level) under 65% quota for the year 2014; Notification No.620-B.Spl., dated 1.4.2014 notifying 25 vacancies in the cadre of Civil Judge (Senior Division) by promotion from the cadre of Civil Judge (Junior Division) for the year 2014; Notification dated 15.4.2014 inviting applications for the recruitment to 6 posts of District Judge (Entry Level) under 25% quota for the year 2014 and Notification dated 15.4.2014 inviting applications for recruitment to two posts of District Judge (Entry Level) under 10% quota by transfer for the year 2014. It is necessary to notice that though in the PIL and in the writ petitions, the notifications in respect of vacancies in the cadre of District Judges and Civil Judges (Senior Division)

have not been challenged, the petitioner-in-person filed Miscellaneous Petition No.208 of 2015 in PIL No.31 of 2015 raising challenge to these notifications.

6.4 On 28.3.2014, i.e., after Notification No.94/2014-RC, dated 27.3.2014 was issued by the High Court, one S. Bhooma Rao and 32 others of Telangana Advocates Joint Action Committee submitted a representation to stop the recruitment process of the Civil Judge (Junior Division), since the appointed day for formation of the State of Telangana was fixed as 2.6.2014. In response to the representation, the then Chief Justice of this High Court, directed to place the said representation before the Committee of the Hon'ble Judges of this Court, constituted to give effect to the Act. The Committee considered the representation dated 28.3.2014 and passed the following resolution:

“Dispatch and issue of identity cards to the eligible applicants will be put on hold till this Court gets clarification or suitable order granting extension of time from the Supreme Court.”

6.5 The High Court in view thereof, filed an interlocutory application before the Supreme Court in Civil Appeal No.1867 of 2006 (*Malik Mazhar*) seeking clarification whether the High Court can reschedule and proceed with the recruitment process to the cadre of Civil Judges (Junior Division) that had already commenced on 9.1.2014 or to keep the same in abeyance. The Interlocutory application filed by the High Court was numbered as I.A.No.126 of 2014. The Supreme Court on 25.4.2014 passed the following order on the said application:

“All proceedings relating to recruitment process for Civil Judges (Junior Division) which has commenced on 9.1.2014 shall be kept in abeyance till 15.6.2014.

Interlocutory application for direction is disposed of.”

6.6 In the meanwhile, one Dumpala Dharma Rao, who at the relevant time was working as II-Additional Metropolitan Sessions Judge, Hyderabad, on 5.5.2014 filed a writ petition bearing W.P. (Civil) No.403 of 2014 in the Supreme Court for the following relief:

“... .. declare the impugned proposed action of the High Court of Andhra Pradesh in calling for options of the judicial officers in the State of Andhra Pradesh as illegal, arbitrary and quash the same by issuing appropriate writ or order.”

6.7 All the aforementioned events occurred before the appointed day (2.6.2014), on which day a new State to be known as the State of Telangana and the residuary State of Andhra Pradesh as per Sections 3 & 4 of the Act were formed, consisting of 10 and 13 districts respectively and/or the territories mentioned therein.

6.8 The Committee of the Hon’ble Judges, constituted to give effect to the Act, considered the order dated 25.4.2014 passed by the Supreme Court in I.A.No.126 of 2014 and resolved to approach the Supreme Court with suitable application giving all relevant facts and figures for appropriate and suitable orders with regard to the decision not only in relation to filling up of vacancies in the cadre of District Judges, either by direct recruitment or by promotion, but even promotions from the cadre of Civil Judges (Junior Division) to the cadre of Civil Judges (Senior Division). Accordingly, two Interlocutory Applications bearing I.A. Nos.127 & 128 of 2014 were filed in Civil Appeal No.1867 of 2006 (*Malik Mazhar case*).

6.9 In the meanwhile, Writ Petition filed by Dharma

Rao [W.P. (Civil) No.403 of 2014] came up for hearing before the Supreme Court on 7.7.2014, when, while issuing notice, the Supreme Court passed the following order:

**“Notice.
Parties shall maintain status quo as of
today, until further orders.”**

6.10 On 25.7.2014 the applications (I.A. Nos.127-128 of 2014) filed by the High Court were placed before the Supreme Court for hearing, when the following order was passed”

**“List I.A. Nos.127-128 of 2014 after two weeks.
In the meanwhile, order dated April 25, 2014
passed by this Court shall remain operative.”**

6.11 In the meanwhile, one G. Srinivasa Rao and 16 others, Senior Civil Judges working in the States of Telangana and Andhra Pradesh, on 25.8.2014 filed I.A. No.129 of 2014 before the Supreme Court seeking a direction to the High Court to fill up 34 vacancies notified on 29.3.2014 under 65% quota by promotion from the cadre of Senior Civil Judges to the post of District Judges (Entry Level) for the year 2014 and complete the process as per the schedule fixed by the Supreme Court in *Malik Mazhar*.

6.12 All the three applications bearing I.A. Nos.127, 128 and 129 of 2014 were heard and disposed of by the Supreme Court on 20.01.2015 by the following order:

“By our order dated 7.7.2014, while entertaining the Writ Petition (C) No.403 of 2014, we had granted “status quo” order as of that date.

Now, I.A. Nos.127 and 128 of 2014 have been filed on behalf of the High Court of Andhra Pradesh and Telangana. The prayer in these applications is to clarify the order passed by us on 7.7.2014 and further request the High Court to continue the process of recruitment of Civil Judges (both Senior and Junior Division) and also recruitment/promotions of District Judges (both direct as well as

promotions).

In our view, the subject matter of the writ petition has nothing to do with the proceedings initiated by the High Court for recruitment of Judicial Officers. Since there is some apprehension in the mind of the applications and the respondents, we clarify that the “status quo” order passed by us in the Writ Petition will not coming in the way of High Court initiating and also completing the process where proceedings are already initiated for recruitment of Judicial Officers in the States of Andhra Pradesh and Telangana by the High Court of Andhra Pradesh.

Now, it is brought to our notice by Mr. P.P. Rao, learned senior counsel that the State Government has issued a Government Order dated 16.5.2014 banning the recruitments/appointments/transfers/promotions etc.

In view of this subsequent development, we clarify that the order issued by the State Government will also not come in the way of the High Court in proceeding with the recruitment process which they have already initiated or which they would initiate in future.

Accordingly, we dispose of I.A.Nos.127, 128 and 129 of 2014.

The High Court is granted another six months’ from today to complete the recruitment process.”

In view of the above order dated 20.01.2015, passed by the Supreme Court, the High Court on 3.2.2015 decided to conduct a preliminary written examination (screening test) on 8.3.2015 at five centers in both the States for 97 posts of Civil Judges (Junior Division) notified for the year 2014.

6.13 In view of the judgment in *Malik Mazhar*, for the year 2015, the High Court on 5.2.2015 issued the impugned “2015 Notification” notifying 34 vacancies in the cadre of Civil Judges (Junior Division), of which 28 posts under direct recruitment and 6 under recruitment by transfer were to be filled up. The High Court then issued a consequential notification inviting applications for the said posts fixing 31.03.2015 as the last date for receiving applications. In response thereto, 6122 applications were received by the

High Court from the candidates in both the States.

6.14 At this stage, the petitioner in person filed the instant PIL (PIL No.31 of 2015) challenging “2014 Notification” and “2015 Notification” and also filed PILMP No.47 of 2015 seeking stay of all further proceedings in pursuance of these notifications. 6.15 The High Court on 26.2.2015 filed I.A.No.134 of 2015 in Civil Appeal No.1867 of 2006 (*Malik Mazhar*). This Application was placed before the Supreme Court when the writ petition filed by Dharma Rao was also before the Court on 26.2.2015. When this application was heard and disposed of, the State of Telangana was represented by Senior Advocate Mr. Mukul Rohatgi and three others. It appears that the prayers in the application were not opposed by any respondents. The Supreme Court disposed of the said application with the following order:

“Prayers made in this application read as under:

- (i) Clarify whether the High Court can go ahead with the process of transfer of judicial officers under the control of the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh;**
- (ii) Clarify whether promotion of judicial officers to higher posts i.e., Civil Judges (Jr. Grade) to Civil Judge (Sr. Grade) and Civil Judges (Sr. Grade) to District Judge can be taken up as a part of recruitment process;**
- (iii) Direct the Government of Telangana, Government of Andhra Pradesh and Central Government for issuing necessary orders in this regard; and**

... ..”

Shri Vijay Hansaria, learned Amicus Curiae would submit that he has no objection for grant of such prayers. Accordingly, I.A. No.134 is allowed.”

6.16 PILMP No.47 of 2015 in PIL No.31 of 2015 along with WPMP No.7180 of 2015 in W.P. No.5394 of 2015 and WPMP Nos.7205 and 7206 of 2015 in W.P. No.5415 of 2015 was placed for hearing on 6.3.2015. The Division bench

presided over by the then Chief Justice after referring to the back ground facts in detail and the orders passed by the Supreme Court, in particular the order dated 20.01.2015 in I.A. Nos.127, 128 & 129 of 2014 and order dated 26.2.2015 in I.A. No.134 of 2015, disposed of both the miscellaneous petitions with the following observations in the concluding paragraph:

“In view of the aforesaid factual scenario borne out by the records, namely, the orders of the Hon’ble Supreme Court, **we feel that the screening test, which is scheduled to be held on 08.03.2015, should not be put on hold, as, we think, if we pass interim order as prayed for by the petitioners herein, we shall be acting contrary to the direction of the Hon’ble Supreme Court, which is absolutely impermissible in the field of judicial indiscipline. According to us, the prayer made by the petitioners and as supported by the learned Advocate General for stalling the screening test is a contemptuous suggestion under the guise of the judicial order.** If we accept the prayer of the learned Advocate General for the State of Telangana, the aforesaid orders of the Hon’ble Supreme Court are to be ignored. In our view, when orders are passed by the Court having jurisdiction and competency to deal with the matter binding the parties to the lis particularly at the interim stage keeping the matter pending, the same has to be accepted by the parties and cannot be ignored. If such an order is allegedly contrary to law, one has to approach the same very Court or to approach the supreme forum, if available for discharging or quashing the same. The aforesaid judgment cited by Mr. Advocate General, in our view, has no manner of application in this case at present. **However, we take notice of the fact that State of Telangana has made an application for postponing the recruitment process and the same is yet to be heard on any day by the Hon’ble Supreme Court.** Keeping in view of the balance of convenience and inconvenience we think the following interim order will sub-serve the interest of justice for the time being.

We feel if we grant stay of holding the screening test scheduled to be held on 08.03.2015, as it is correctly contended by the learned Standing counsel for the High Court, there will be seriously irreparable loss and injury to a large number of candidates, who are appearing from outside of both the States, for this appointment under the rules is to be made, not confining to any region, but from and among the eligible candidates from citizen of India, neither of the petitioners nor any of the parties do not stand to suffer by this interim order, as if it is found by this Court in the final hearing that the pleas taken by the respective petitioners deserve merit, the recruitment process, which has been undertaken

pursuant to the aforesaid first notification, will be cancelled. On the other hand, if the matters are dismissed ultimately it would be impossible to maintain time schedule fixed by the Hon'ble Supreme Court re-notifying the matter. **Therefore, we allow the High Court to proceed with the screening test scheduled to be held on 08.03.2015. However, the answer scripts shall be kept in a sealed cover and to be preserved and the same shall not be evaluated until further orders of this Court or the Hon'ble Supreme Court, whichever is earlier."**

(emphasis supplied)

6.17 Thereafter, the High Court issued three notifications dated 31st March, 2015 notifying 4 vacancies of District Judge (Entry Level) under 10% quota; 29 vacancies of District Judge (Entry Level) under 65% quota; and 31 vacancies of Civil Judge (Senior Division) by promotion from the cadre of Civil Judge (Junior Division) for the year 2015. On 15.4.2015 another notification was issued inviting applications for 4 posts of District Judge (Entry Level) under 10% quota for the year 2015. Thereafter, the High Court conducted written examinations on 28.6.2015 and 5.7.2015 for the posts of District Judge notified for the years 2014 and 2015 respectively. Similarly, preliminary written examination (screening test) was conducted on 12.7.2015 at five centers for 34 posts of Civil Judges (Junior Division) notified for the year 2015.

6.18 On 2.6.2015 the High Court filed PILVMP No.194 of 2015 in PILMP No.47 of 2015 in PIL No.31 of 2015 for vacating of the order dated 6.3.2015 passed in PILMP No.47 of 2015. Similarly, on 11.6.2015 the petitioner-in-person in PIL filed PILMP No.208 of 2015 in PIL No.31 of 2015 seeking stay of all further proceedings pursuant to 2014 Notification and 2015 Notification. PILMP No.208 of 2015 was heard by the High Court on 25.6.2015 when by consent of learned counsel for the parties following *ad-interim*

order, pending hearing and final disposal of the petitions and miscellaneous petitions, was passed.

“The High Court of Judicature at Hyderabad is allowed to proceed with the screening test scheduled to be held on 12.07.2015 for the post of Civil Judge (Junior Division) and the written tests to be held on 28.06.2015 and 05.07.2015 for the posts of District and Sessions Judge (Entry Level), by Direct Recruitment, and Accelerated Recruitment by Transfer. However, the answer scripts shall be kept in a sealed cover, to be preserved and the same shall not be evaluated until further orders of this Court or the Hon’ble Supreme Court, whichever is earlier.”

6.19 Thereafter, on 28.6.2015 and 5.7.2015 the High Court conducted written examination for the post of District Judge in pursuance of the notifications for the years 2014 and 2015 respectively. The number of candidates appeared for these examinations were 676 and 45 respectively. Since the High Court was finding it difficult to complete the process of recruitment within the time prescribed in *Malik Mazhar*, filed two Interlocutory Applications bearing I.A. Nos.138 & 139 of 2015 in Civil Appeal No.1867 of 2006 (*Malik Mazhar*) on 07.07.2015, seeking extension of six months to complete the recruitment process. In the meanwhile, High Court conducted screening test for the recruitment of Civil Judge (Junior Division) notified for the year 2015 at five centers on 12.7.2015. 5,336 candidates from both the States appeared for screening test.

6.20 On 21.7.2015, I.A. Nos.138 & 139 of 2015 filed by the High Court were placed before the Supreme Court along with several similar applications filed by different High Courts when the following order was passed:

“Applications for extension of time to complete the recruitment process to the cadre of Civil Judges (Junior Division) for the year 2014 are dismissed.”

6.21 In this backdrop, the High Court on 10.8.2015 heard PILMP No.194 of 2015 in PILMP No.47 of 2015 and PILMP No.208 of 2015 in PIL No.31 of 2015. The Division Bench, after having considered the background facts including the orders passed from time to time by the Supreme Court, disposed of the said petitions in PIL with the following observations made in the concluding paragraph No.14.

14. Having regard to the submissions made by the learned counsel for the parties, we may state that the PIL and connected matters cannot be heard immediately, since all respondents so far have not filed their counters. Till this date the Union has not made its stand clear by filing their counter affidavit. Even the Government of Andhra Pradesh has not filed their counter affidavit in all matters. In this backdrop and having considered the sequence of events, in particular the orders passed by the Supreme Court, we have no option but to allow the High Court to proceed with the recruitment process, atleast, till the selection of candidates for the posts of Civil Judges (Junior Division). While passing this order, we are conscious of the fact that even if the recruitment process in respect of Civil Judges (Junior Division) on the basis of the notifications dated 01.02.2014 and 9.2.2015 proceed further, the stage of declaration of final select list itself would take little more than four months. Similarly, recruitment of District Judge (Entry Level), both under Direct Recruitment and Recruitment by Transfer, notified for the years 2014 and 2015 also would take not less than three months from now to complete the process. In the meanwhile, our endeavor would be decide the PIL and connected matters finally. Thus, we are satisfied that the following order shall meet the ends of justice.

“We allow the High Court to proceed with the recruitment process insofar as the posts of Civil Judges (Junior Division), both under Direct Recruitment and Recruitment by Transfer notified in 2014 and 2015, till the stage of making final selection list ready. The High Court, however shall not declare the final select list and forward it to the appointing authority until further orders. Insofar as the recruitment of District Judges (Entry Level) both under Direct Recruitment and Recruitment by Transfer pursuant to the notifications issued in 2014 and 2015 for 12 posts, High Court may complete the process. However, the appointments would be subject to outcome of PIL and connected writ petitions.”

6.22 In view of the above order, the order of posting of the District Judges, by promotion under 65% quota were issued vide Notification No.1131-B.Spl., dated 22.9.2015. On 23.9.2015 preliminary examination (screening test) answer scripts of the candidates appearing for the vacancies notified for the year 2014 were evaluated and the results were declared. On 26.9.2015 answer scripts of the written examination held for the candidates appearing for the post of District Judges in the year 2014 were also evaluated and the results were declared. Similarly, preliminary written examination (screening test) answer scripts of the candidates appeared for the vacancies notified for the year 2015 were also evaluated and results were declared on 5.10.2015. On 6.10.2015 answer scripts of the written examination held for candidates applied for the posts of District Judge for the year 2015 were evaluated and results were declared. Then on 12.10.2015 and 13.10.2015 interviews of 18 qualified candidates for 8 posts of District Judge notified for the year 2014 (under both categories) were conducted. On 25.10.2015 written examination was conducted of the candidates who had applied for 97 posts of Civil Judge (Junior Division) notified for the year 2014. 1060 candidates appeared for the said written examination. On 26.10.2015 the High Court provisionally selected four candidates under direct recruitment and two candidates under recruitment by transfer as District Judges in the vacancies notified for the year 2014. Two posts meant for ST category were ordered to be carried forward as none qualified for the said post. Between 27.10.2015 and 6.11.2015 interviews for 4 posts of District Judge notified for the year 2015 were conducted.

Thirteen qualified candidates appeared for interview. On 31.10.2015 list of provisional selected candidates for 4 posts of District Judge (Entry Level) under direct recruitment and 2 posts of District Judge (Entry Level) by transfer, for the vacancies notified in the year 2014 were placed in the official website of High Court. On 3.11.2015 orders of posting of the Civil Judges (Senior Division) were issued vide Notification No.1248-B.Spl. On 8.11.2015 written examination was conducted for the candidates who had applied for 34 posts of Civil Judge (Junior Division) notified for the year 2015 for which 354 candidates appeared. On 12.11.2015 the High Court provisionally selected 4 candidates as District Judges under recruitment by transfer to the vacancies notified for the year 2015. Between 13.11.2015 and 16.11.2015 answer scripts of the candidates who appeared for written examination held on 25.10.2015 and 8.11.2015 for the vacancies notified in the cadre of Civil Judge (Junior Division) for the year 2014 and 2015 were evaluated.

6.23 Thus, on 18.11.2015 the High Court addressed letters to both the State Governments with a request to issue appointment orders to six provisionally selected candidates as District Judges (under both categories) notified for the year 2014 with a request to incorporate a clause in the appointment orders that the appointments would be subject to outcome of PIL No.31 of 2015 and connected writ petitions. Accordingly, the Government of Telangana issued G.O.Ms.No.8, dated 22.1.2016 and amended G.O.Ms.No.11, dated 3.2.2016 appointing one Civil Judge (Senior Division) who was working in the State of Telangana as District Judge (Entry Level) under recruitment

by transfer. The appointment order of one Civil Judge (Senior Division) who was working in the State of Andhra Pradesh as District Judge (Entry Level) under recruitment by transfer has been issued by the Government of Andhra Pradesh vide G.O.Ms.No.9, dated 8.2.2016. Orders of appointment of 4 District Judges under direct recruitment are awaited from both the State Governments.

Accordingly, on 24.11.2015 list of provisionally selected candidates for 4 posts of District Judges (Entry Level) under recruitment by transfer were placed in the official website of the High Court.

6.24 On 24.11.2015 the High Court addressed letters to both the State Governments with a request to issue appointment orders to four provisionally selected candidates as District Judges (under recruitment by transfer category) notified for the year 2015 with a request to incorporate a clause in the appointment orders that the appointments would be subject to outcome of PIL No.31 of 2015. Accordingly, Government of Telangana issued G.O.Ms.No.7, dated 22.1.2016 and amended G.O.Ms.No.12, dated 3.2.2016 appointing 3 Civil Judges (Senior Division) who are working in the State of Telangana as District Judge (Entry Level) under recruitment by transfer. Appointment order of one Civil Judge (Senior Division) who was working in the State of Andhra Pradesh as District Judge (Entry Level) under recruitment by transfer has been issued by Government of Andhra Pradesh vide G.O.Ms.No.10, dated 8.2.2016.

6.25 On 28.11.2015 list of qualified candidates in the written examination held on 25.10.2015 for 97 posts of Civil

Judges (Junior Division) notified for the year 2014 for interview was placed in the official website of High Court. On the very same day, the High Court filed PILMP No.569 of 2015 in PILMP No.47 of 2015 in PIL No.31 of 2015 seeking permission to proceed further with the recruitments i.e., Civil Judge (Junior Division) notified for the year 2014 and 2015 by finalizing the selection list and forwarding recommendation to the Government as was directed in PILMP No.194 of 2015 in PIL No.31 of 2015 on 10.8.2015 pertaining to recruitment to the cadre of District Judges notified for the years 2014 and 2015. On 6.12.2015 list of qualified candidates, in the written examination held on 12.7.2015, for 34 posts of Civil Judges (Junior Division) notified for the year 2015 for interview was also placed in the High Court's official website.

6.26 On 8.12.2015 the High Court heard PILMP No.569 of 2015 in PILMP No.47 of 2015 in PIL No.31 of 2015. The Division Bench, after making brief reference to the earlier order dated 10.8.2015 passed in PILMP No.194 of 2015 and affidavit of the Registrar (Recruitment) dated 27.11.2015, passed the following order:

Therefore, having regard to the totality of circumstances and the time schedule required to be followed as per *Malik Mazhar Sultan's* case, we are satisfied that the following order shall meet the ends of justice.

"The High Court is permitted to complete the process of recruitment of Civil Judges (Junior Division) in terms of notifications issued in the years 2014 and 2015 and the appointments, if any, made would be made subject to outcome of PIL and connected writ petitions.

Liberty to be parties to mention the petitions for final hearing immediately after the ensuing Sankranti Vacation."

6.27 In the meanwhile, W.P. (C) No.403 of 2014 filed by Dharma Rao was placed before the Supreme Court on

9.12.2015 when the following order was passed.

“Learned counsel for the petitioner submits that since the writ petitioner has already retired from service, this petition has become infructuous and may be dismissed as such. Hence, the writ petition is dismissed as infructuous.

Interim order dated 7.7.2014 shall stand vacated.”

6.28 The High Court in view of dismissal of the writ petition filed by Dharma Rao, on 9.12.2015 constituted a Committee of the Hon’ble Judges for bifurcation of the subordinate judiciary and after holding several meetings including the meeting with Kamalnathan Committee, framed guidelines and invited options from the judges in both States, in terms of the guidelines. We refrain from making further reference to the guidelines and the steps taken by the High Court since that may not be relevant for our purpose. However, *suffice* it to say that a statement on behalf of the High Court was made that it would complete the process of the bifurcation as expeditiously as possible and preferably before Summer Vacation, 2016.

6.29 Between 14.12.2015 and 22.12.2015 interviews of 290 candidates were conducted for the post of Civil Judges (Junior Division) as per “2014 Notification”. Between 29.12.2015 and 31.12.2015 interviews of 102 candidates were conducted for the post of Civil Judges (Junior Division) as per the “2015 Notification”. On 6.1.2016 provisional selection list of 97 candidates for the post of Civil Judges (Junior Division), notified for the year 2014, was declared by placing it in the High Court’s official website. On 19.1.2016 interviews were conducted for 3 candidates to fill up one post meant for ST category as the candidate interviewed earlier was selected in 2014 recruitment

process. On 25.1.2016 the High Court addressed letters to both State Governments to issue appointment orders of 97 candidates as Civil Judges (Junior Division) with a request to make appointments subject to outcome of PIL and connected writ petitions. Till the petitions were heard, appointment orders were not issued. Similarly, on 29.1.2016 list of 33 candidates provisionally selected for the post of Civil Judges (Junior Division) notified for the year 2015 was also placed in the official website of the High Court. On 3.2.2016 letters were addressed to both State Governments to issue appointment orders of 33 candidates as Civil Judges (Junior Division) with a request to make appointments subject to outcome of PIL and connected writ petitions. Till the petitions were heard and closed for judgment, appointment orders were not issued by the State Governments.

6.30 It is also necessary to make reference to Review PILMP No.577 of 2015 filed by the petitioner-in-person in PILMP No.569 of 2015 in PIL No.31 of 2015. The High Court dismissed the review petition with a reasoned order. Concluding paragraph of the order dated 30.12.2015 reads thus:

“This Court vide order dated 10.08.2015 allowed the High Court to proceed with the recruitment process insofar as the posts of Civil Judges (Junior Division) both under Direct Recruitment and Recruitment by Transfer notified in the years 2014 and 2015 till the stage of making final selection list ready. That order (10.08.2015) was not carried further in appeal and as a result thereof the question whether the High Court can proceed to hold interviews from 14.12.2015 cannot be raised in the instant review petition. In other words, in view of the order dated 10.08.2015 there is absolutely no hurdle in the way of High Court to conduct interviews as scheduled for the posts of Civil Judges (Junior Division). The contention urged by the petitioner-in-person that the PIL would render infructuous if the appointment orders are made, in our opinion, deserves to be rejected outright, since in the order dated 8.12.2015, we have made it clear that the appointments, that will be made, would be subject to outcome of the PIL and connected writ petitions.

In the circumstances, we find no merit in the Review PILMP. No ground for review is made out. The review petition is dismissed. Liberty to the petitioner-in-person and others to seek fixed date of hearing of the PIL and connected writ petitions for final hearing in the first week of January, 2016."

7. In this backdrop, we have heard learned counsel for the parties at length and with their assistance gone through the entire materials placed before us and the judgments of the Supreme Court and High Courts. At the outset, we would like to consider the question whether, on administrative side, the High Court had any choice but to proceed with the recruitment process, more particularly on account of specific directions issued by the Supreme Court in *Malik Mazhar* and on interim applications filed therein? and, if the High Court was constrained to proceed with the recruitment process on account of specific directions issued by the Supreme Court, are these petitions maintainable, or does the remedy of the petitioners lie before the Supreme Court or whether the reliefs as prayed for can be granted?

7.1.1 We have heard learned counsel for the parties at considerable length. Mr. G.Vidya Sagar, learned senior counsel for the petitioners in W.P.Nos.5394 & 5415 of 2015 submitted that the judgment of the Supreme Court in *Malik Mazhar* and various orders, in particular, the order dated 25.07.2014 in I.A.Nos.127 & 128 of 2014 in Civil Appeal No.1867 of 2006 (*Malik Mazhar*) cannot be construed to mean that the High Court can deviate from the statutory rules i.e., 2015 Rules framed for recruitment of judicial officers in exercise of powers conferred under Articles 233, 234 & 237 read with Article 309 of the Constitution and the scheme and provisions of the Act. He further submitted

that the High Court cannot overlook the principal judgment in *Malik Mazhar* and proceed with the recruitment merely relying upon the interlocutory orders passed on different applications filed by the High Court. The directions of the Supreme Court in interlocutory applications are to be construed in consonance with the principal judgment (i.e., *Malik Mazhar* in the present case) and not at variance therewith, unless so expressly indicated or except when the judgment is reviewed or if further directions are issued by the Supreme Court pursuant to Article 142 of the Constitution. The principal judgment in *Malik Mazhar*, he submitted, holds that appointments to subordinate judiciary ought to be made in accordance with the relevant applicable State Rules and in the present case '2015 Rules' being the rules applicable to the State of Telangana, there cannot be any recruitment in accordance with '2007 Rules' which were applicable to the composite State before its bifurcation. Moreover, he submitted that the Act does not permit such recruitment before bifurcation of subordinate judiciary and allocation of judicial officers as contemplated by Section 77 of the Act.

7.1.2 Mr. S. Niranjan Reddy, learned counsel for the intervener submitted that in view of the provisions of the Act it became impossible and impermissible in law to make appointments, commonly to the subordinate judiciary, until final allocation of judicial officers to the successor State Judicial Services was completed. He submitted that this aspect was not brought to the notice of the Supreme Court and perhaps that is the reason why it was not considered while issuing directions in different Interlocutory Applications filed by the High Court in *Malik Mazhar*, in

particular, I.A.Nos.127 & 128 of 2014. He submitted that the interlocutory orders must be construed in furtherance of the judgment in *Malik Mazhar*, requiring appointments to be done in a timely manner and in accordance with the Act and 2015 Rules. He further submitted that interlocutory orders of the Supreme Court should be construed to mean that if existing legal position or the rules did not permit common appointments to be made, then, the orders of the Supreme Court, by its very nature and character cannot be implemented unless it becomes possible to do so.

7.1.3 Mr. S. Niranjan Reddy, then, submitted that the Supreme Court while considering interlocutory applications filed in *Malik Mazhar* was not dealing with the aspects and complexities including effect of the provisions of the Act, in particular, Sections 77 & 78 thereof, being limited in their application to only personnel serving on the appointed day. He submitted that the Supreme Court while passing interlocutory orders had not directly or substantially considered relevant issues arising in the present case. The said issues did not even arise collaterally or incidentally.

7.1.4 Mr. S. Niranjan Reddy further submitted that the orders of the Supreme Court passed on interlocutory applications filed by the High Court in *Malik Mazhar* are not a law as declared under Article 141 of the Constitution since no general principles of law were considered or were declared therein. He submitted that there is difference between law declared under Article 141 and directions under Article 142 of the Constitution. In support of this proposition, he placed reliance upon the judgment of the Supreme Court in **State of Punjab v. Rafiq Masih**^[2]. Even

otherwise, he submitted that the directions of the Supreme Court in interlocutory applications cannot be treated as law declared under Article 141, since if the Supreme Court, after considering the effect of existing law, intended a departure therefrom for doing complete justice, the order would have so indicated. In the present case, there is no such indication. In support, he placed reliance upon the judgment of the Supreme Court in **Supreme Court Bar Association v. Union of India**^[3]. He submitted that, in view of the aforementioned position of law, the directions issued by the Supreme Court in the interlocutory applications in *Malik Mazhar* case, must be read in conjunction with the principal judgment and must be understood as directions to act in accordance with law. In support, he placed reliance upon a judgment of the Supreme Court in **CBI v. Keshub Mahindra**^[4] and **State of West Bengal v. Subhas Kumar Chatterjee**^[5]. Lastly, he submitted that the requirement to act in accordance with law would mean to act in terms of the prevalent legal provisions, namely, in the present case, provisions of the Act and 2015 Rules.

7.1.5 The contentions urged by Mr. Satyam Reddy, petitioner-in-person, are similar as urged by Mr. G. Vidya Sagar and Mr. S. Niranjana Reddy and, therefore, we are not making specific reference thereto.

7.1.6 On the other hand, Mr. C.U. Singh, learned senior counsel, at the outset, submitted that the High Court on its administrative side had no option but to proceed with the recruitment process in view of the directions issued by the

Supreme Court in *Malik Mazhar* case including specific directions/orders passed on interlocutory applications filed by the High Court, and in view of the interlocutory order of status quo passed in Dharma Rao's petition. He submitted that chronology of events reveal that the High Court was prompt in taking steps not only for recruitment but even to seek options of judicial officers for bifurcation of the subordinate judiciary into Telangana State Judicial Service and Andhra Pradesh State Judicial Service. The process of bifurcation of subordinate judiciary, however, was interdicted for the period between 7.7.2014 and 9.12.2015 in view of the order of *status quo* passed by the Supreme Court in Dharma Rao's petition filed under Article 32 of the Constitution. He submitted that while the resolution of the Committee constituted by the Chief Justice to seek options was bound by the order of *status quo*, at the same time interlocutory order/directions issued by the Supreme Court in *Malik Mazhar* were required to be complied.

7.1.7 Mr. C.U. Singh invited our attention to the averments made in interlocutory applications in *Malik Mazhar* as well as in the writ petition filed by Dharma Rao and the application filed therein to contend that all the relevant facts and issues were before the Supreme Court and it cannot be stated that the Supreme Court did not directly or substantially consider the relevant issues arising in the present case. He also invited our attention to the orders of the Supreme Court to point out that the State of Telangana was represented before the Supreme Court, in particular in I.A.No.134 of 2015. They had engaged Attorney General of India, who appeared with Advocate General of the State when the order was passed on this application. He

submitted that diligent efforts were made by the High Court as well as other interested parties, including the State of Telangana, which had engaged the Attorney General of India to move the Supreme Court for clarification/modifications, but after hearing all concerned the Supreme Court directed that the order of status quo granted in Dharma Rao's writ petition had nothing to do with compliance of the continuing Mandamus in *Malik Mazhar*, and that neither the said status quo order, nor the stay on the recruitments by the predecessor State of Andhra Pradesh, would come in the way of the High Court in complying with the recruitment schedule. He further submitted that Article 141 makes *Malik Mazhar* only binding upon the High Court. Article 141 of the Constitution, just, cannot be overlooked while referring to Article 142. The orders in the interlocutory applications were in the nature of the directions and the High Court cannot overlook the directions issued by the Supreme Court.

7.1.8 In reply to the submissions advanced by the learned counsel for the petitioners, it was submitted that the interlocutory orders passed by the Supreme Court in *Malik Mazhar* being specific directions issued to the High Court, the High Court had no option but to follow those directions as a mandate under Article 144 of the Constitution. The High Court on the administrative side undoubtedly, is bound by the directions issued by the Supreme Court. On the judicial side, comity of Courts and judicial discipline requires that the High Court does not go behind the orders of the Supreme Court in quest of the ratio of the judgment, or the context to be imparted to it. Such a course, he submitted, is not available. In support, a

reliance was placed upon the judgment of the Supreme Court in **Sunil Kumar Verma v. State of U.P.** ^[6]. It was further submitted that the issue as regards Dharma Rao's writ petition and the status quo order passed therein was specifically pleaded in I.No.129 of 2014 filed by Senior Civil Judges, and therefore, no words can be added to the order of the Supreme Court nor can in context be interpolated contrary to the express terms of the order of the Supreme Court. If the petitioners felt aggrieved, he submitted, by the action of the High Court in proceeding with the recruitment they ought to have approached the Supreme Court for appropriate interlocutory order. Having failed to do so, he submitted, the petitioners cannot now state that the High Court cannot either proceed with the recruitment or complete it on the basis of 2014 and 2015 Notifications. He submitted that sequence of events and the steps that were taken by the High Court from time to time clearly show the *bona fides* of the High Court to secure clearance from the Supreme Court for taking every further step not only in respect of recruitment but even bifurcation of subordinate judiciary.

7.2 We have in-depth stated the sequence of events in paragraph Nos.6 to 6.30 in order to bring on record the facts and circumstances starting which the steps taken by High Court in April, 2014 for bifurcation of subordinate judiciary with constitution of a Committee of Judges to give effect to the Act and for recruitment starting with issuance of notification for 97 posts of Civil Judge (Junior Division). We have also noticed the orders passed by the Supreme Court in I.A.No.126/2014, I.A.No.127-128 of 2014 and I.A.No.134 of 2015 and the order dated 9.12.2015 passed by

the Supreme Court dismissing the writ petition filed by Dharma Rao. Further, we have also perused the interlocutory orders passed in these petitions dated 6.3.2015 in PILMP No.47/2015, WPMP No.7180/2015, WPMP Nos.7205 & 7206 of 2015; dated 25.6.2015 in PILMP No.208/2015; dated 10.6.2015 passed in PILMP No.194/2015; dated 8.12.2015 in PILMP No.569/2015 in PILMP No.47/2015; and dated 9.12.2015. Then, we have noticed the steps taken by the High Court, in view of the orders passed by the Supreme Court as well as this Court for recruitment under challenge. Lastly, we have noticed the steps taken by the High Court for bifurcation of the subordinate judiciary immediately after the order dated 9.12.2015, passed by the Supreme Court whereby the writ petition filed by Dharma Rao came to be dismissed.

7.2.1 The sequence of events clearly reveal that the High Court in April, 2014 itself took immediate steps to seek options for allotment of judicial officers, but the process was interdicted from 7.7.2014 to 9.12.2015 in view of the order of status quo dated 07.07.2014 passed by the Supreme Court in *Dumpala Dharma Rao's* writ Petition. While the Resolution to seek options was bound by the order of status quo, at the same time the Supreme Court directed strict compliance with the schedules laid down in *Malik Mazhar Sultan*. Diligent efforts were made by the High Court as well as other parties, including the State of Telangana, which engaged the Attorney General for India as well as the Advocate General of the State to move the Supreme Court for clarifications/modifications. After hearing all concerned, the Supreme Court clarified that the *status quo* granted in D. Dharma Rao's writ

petition had nothing to do with compliance of the continuing *mandamus* in *Malik Mazhar Sultan*, and that neither the said status quo order, nor the stay on recruitments by the predecessor State of Andhra Pradesh, would come in the way of the High Court in complying with the recruitment schedule. It is also pertinent to note that there has been no modification in the orders passed by the Supreme Court, nor any clarification was sought by the petitioners from the Supreme Court. It is against this backdrop, we would like to consider the questions as formulated in the seventh paragraph.

7.3 Before we proceed further, we would like to have a look at the judgments relied upon by learned counsel for the parties and that are relevant for our purpose. In ***Sunil Kumar Verma*** (supra), the Supreme Court in paragraphs-20 and 21 observed thus:

20. In the obtaining factual matrix, we are disposed to think that it was absolutely inappropriate on the part of the High Court to go in search of ratio of the judgment rendered by the Single Judge on the earlier occasion, when the controversy had really been put to rest by this Court. **The Division Bench, we are disposed to think, should not have entered the arena which was absolutely unwarranted. The decision rendered by this Court inter se parties was required to be followed in the same fact situation. When the factual matrix was absolutely luminescent and did not require any kind of surgical dissection, there was no necessity to take a different view.** Needless to say, this kind of situation procrastinate the litigations and the litigants, as has been stated, though in a different context in *Koppisetty Venkat Ratnam v. Pamarti Venkayamma*(2009) 4 SCC 244 is extremely expensive and time-consuming.

21. In this regard, a few lines from *Sundarjas Kanyalal Bhatija v. Collector* (1989) 3 SCC 396 is worth reproducing: (SCC p. 406, para 8)

“8. ... One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. **In a multi-Judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority.**”

(emphasis supplied)

7.3.1 In **Official Liquidator v. Dayanand**^[71] the Supreme Court in paragraph-78 observed thus:

“78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. **In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches.** These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system.”

(emphasis supplied)

7.3.2 In **Supreme Court Bar Association** (supra) while dealing with the powers of the Supreme Court under Article 142 of the Constitution, the Supreme Court in paragraphs-47 & 48 observed thus:

47. **The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers.** This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, *to prevent injustice in the process of litigation and to do complete justice between the parties.* **This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law.** There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent “clogging or obstruction of the stream of justice”. It, however, needs to be remembered that **the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to “supplant” substantive law**

applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available *only* to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. **The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., to do complete justice between the parties.** It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.

48. **The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice “between the parties in any cause or matter pending before it”. The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by “ironing out the creases” in a cause or matter before it.** Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a “problem-solver in the nebulous areas” (see *K. Veeraswami v. Union of India* (1991) 3 SCC 655 but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be *controlled* by any statutory provisions but at the same time **these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject.**

(emphasis

supplied)

Further, in paragraph-56 of the judgment, the Supreme Court observed thus:

56. It is one thing to say that “prohibitions or limitations in a statute” cannot come in the way of exercise of jurisdiction under Article 142 to do complete justice between the parties in the pending “cause or matter” arising out of that statute, but quite a different thing to say that while exercising jurisdiction under Article 142, this Court can altogether *ignore* the substantive provisions of a statute, dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. This Court did not say

so in *Union Carbide Corpn. v. Union of India* (1991) 4 SCC 584 either expressly or by implication and on the contrary it has been held that **the Apex Court will take note of the express provisions of any substantive statutory law and regulate the exercise of its power and discretion accordingly**. We are, therefore, unable to persuade ourselves to agree with the observations of the Bench in *Vinay Chandra Mishra, Re* (1995) 2 SCC 584 that the law laid down by the majority in *Prem Chand Garg v. Excise Commissioner* (AIR 1963 SC 996) is "no longer a good law".

(emphasis supplied)

7.3.3 In **Prem Chand Garg v. Excise Commissioner, U.P.** ^[8] while dealing with Article 142 of the Constitution, the Supreme Court observed that "*it may be pertinent to point out that wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court, for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, this Court would not be bound by relevant provisions of the procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties*".

7.3.4 In **Delhi Judicial Service Association v. State of Gujarat** ^[9] the Supreme Court in paragraph-51 observed that "*no enactment made by Central or State legislature can limit or restrict power of this Court under Article 142 of the Constitution, though while exercising power under Article 142 of the Constitution, the Court must take into consideration the statutory provisions regulating the matter in dispute*".

7.3.5 In **A.R. Antulay v. R.S. Nayak** ^[10] the Supreme Court observed that "*however wide and plenary the language*

of the article, the directions given by the Court should not be inconsistent with, the repugnant to or in violation of the specific provisions of any statute". In **Union Carbide Corpn. v. Union of India** ^[11], while dealing with the power under Article 142 of the Constitution, the Supreme Court observed that "it will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing idea is that in exercising powers under Article 142 and in assessing the needs of the complete justice of a cause or matter, the Apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly." In **Keshub Mahindra** (supra), the Supreme Court observed that "no decision by any court, this Court not excluded, can be read in a manner as to nullify the express provisions of an Act or the Code".

7.3.6 In **Subhas Kumar Chatterjee** (supra), the Supreme Court stated that "neither the Government can act contrary to the rules nor the court can direct the Government to act contrary to rules. No mandamus lies for issuing directions to a Government to refrain from enforcing a provision of law. No court can issue mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law."

7.3.7 In **Rafiq Masih** (supra), the Supreme Court in paragraph-12 observed thus:

12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. **It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. "Declaration of law" as contemplated in Article 141 of the Constitution:** is the speech express or necessarily implied by the highest court of the land. This Court in *Indian Bank v. ABS Marine Products (P) Ltd.* (2006) 5 SCC 72, *Ram Prवेश Singh v. State of Bihar* (2006) 8 SCC 381 and in *State of U.P. v. Neeraj Awasthi* (2006) 1 SCC 667 has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that **the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India.** The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. **This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.** (emphasis supplied)

7.4 Article 141 states that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The Supreme Court is not only Constitutional Court, it is also the Highest Court in the Country, final Court of Appeal. By virtue of this Article, what the Supreme Court lays down is the law of the land. All courts in India are bound to follow the decisions of the Supreme Court. Having regard to this Article, the judgment of the Supreme Court in *Malik Mazhar* undoubtedly binds this Court in all respects. In other words, directions issued by the Supreme Court in *Malik Mazhar* to complete the recruitment process within the time stipulated therein is binding on this High Court.

7.5 Insofar as Article 142 is concerned, powers of the Supreme Court thereunder are inherent and are complementary. The Supreme Court under this Article has the power to make such order as is necessary for doing complete justice between the parties in any case or matter pending before it. The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities, as observed in **Supreme Court Bar Association** (supra). The Supreme Court in **Delhi Judicial Service Association** (supra) has observed that no enactment made by Central or State Legislature can limit or restrict power of the Supreme Court under Article 142 of the Constitution, though while exercising power under this article, the Supreme Court must take into consideration statutory provisions regulating the matter in dispute. Article 144 of the Constitution provides that all authorities, civil or judicial, in the territory of India shall act in aid of the Supreme Court. Under this article, all authorities in the country, civil or judicial, are bound by the directions of the Supreme Court and have to act in aid of the Supreme Court.

7.6 Having regard to these articles, it is clear to us that apart from the fact that directions issued by the Supreme Court in *Malik Mazhar* are binding on all Courts, specific directions/orders passed from time to time on interlocutory applications filed by the High Court are equally binding on this High Court, more particularly in view of the fact that all aspects and complexities including the effect of provisions of the Act, in particular, Sections 77

and 78 thereof, were before the Supreme Court when the directions were issued. It cannot be stated that the Supreme Court issued the impugned directions unmindful of the provisions of the Act. It would not be correct to state that interlocutory orders/directions issued by the Supreme Court on the applications filed by the High Court is not a law declared under Article 141 of the Constitution merely because there is no specific reference to general principles of law. The directions/ orders passed after the main judgment in *Malik Mazhar* cannot be read in isolation and, in our opinion, deemed to have formed a part of the main judgment. The orders/directions issued on the applications, were passed in pursuance of the judgment in *Malik Mazhar* case. Moreover, as observed earlier, all facts and circumstances were placed before the Supreme Court and were also brought to its notice by learned counsel appearing for the parties, including the Attorney General, who appeared, on occasions, on behalf of the State of Telangana along with the Advocate General. It is also clear from the facts that the issue as regards Dharma Rao's writ petition and the *status quo* order passed therein, was specifically pleaded in I.A.No.129 of 2014 filed by the Senior Civil Judges, and therefore, no words can be added to the order of the Supreme Court nor can in context be interpolated contrary to the express terms of the order of the Supreme Court. In any case, directions issued by the Supreme Court in *Malik Mazhar* and on the applications filed by the High Court thereafter, the High Court had no option but to follow those directions as mandate under Articles 141, 142 and 144 of the Constitution. On the judicial side, comity of Courts and judicial discipline requires that the

High Court does not go behind the orders of the Supreme Court in quest of the ratio of the judgment, or context to be imparted to it. Such a course of action is not available. The Supreme Court in **Sundarjas Kanyalal Bhatija v. Collector**^[12] has observed that in a multi-Judge Court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. Similarly, in **Official Liquidator** (supra) the Supreme Court has deprecated the practice of non-adherence to the rule of judicial discipline which is *sine qua non* for sustaining the system. In **Sunil Kumar Verma** (supra) the Supreme Court reiterated the principle of judicial discipline. We, therefore, find force in the submissions advanced on behalf of the High Court that the action of the High Court in proceeding with the recruitment was fully justified, and if the petitioners felt aggrieved they ought to have approached the Supreme Court for appropriate interim order. Thus, we hold that the High Court, on administrative side, had no choice but to proceed with the recruitment process on account of specific directions issued by the Supreme Court in *Malik Mazhar* and on the interim applications filed therein and that the petitioners ought to have approached the Supreme Court, if they felt aggrieved by those directions.

7.7 Before going to the next question, we observe that the question whether compliance of continuing *mandamus* in *Malik Mazhar* by the High Court was contrary to or in disregard to 2015 Rules, will be addressed, while examining these rules in the light of Articles 233, 234 and 235 of the Constitution.

8. Next, we would like to consider the questions whether the judicial officers in the State of Telangana and the State of Andhra Pradesh continue to be governed by the 2007 Rules, and that the High Court is required to follow the same in effecting recruitment pursuant to the impugned notifications of vacancies?; and/or if 2007 Rules stand validly adapted by the adaptation order dated 11.2.2015, does that *ipso facto* invalidate the recruitment process or necessitate cancellation of the impugned recruitment notifications? In other words, whether the judicial officers in the State of Telangana and the State of Andhra Pradesh are governed by 2007 Rules or the judicial officers in the State of Telangana are governed by 2015 Rules, which were adapted vide order dated 11.2.2015 in exercise of the powers under Section 101 of the Act and whether such adaptation have retrospective effect from 2.6.2014? While dealing with these questions, we would also like to consider the question whether the Act contained any statutory prohibition against recruitment to the posts of District Judges or to the judicial officers subordinate to the District Judges during the period between June 2, 2014 and the date on which bifurcation of subordinate judiciary is complete with the allocation of existing judicial officers is made either to the Telangana State Judicial Service or to the Andhra Pradesh State Judicial Service, with or without fixing the cadre strength and identifying State-wise vacancies? All these questions are interconnected and, in our opinion, answer to these questions would set the controversy based on the provisions of the Act, 2015 Rules and Articles 233, 234 and 235 of the Constitution at rest.

8.1 In short, it was urged on behalf of the petitioners that under any circumstances the High Court had no authority in law to proceed with the recruitment in accordance with 2007 Rules, in view of the provisions of the Act, in particular Sections 77 and 78 thereof, and that it ought to have issued fresh notifications for the years 2014 and 2015 under 2015 Rules for recruitment in the Telangana State Judicial Service. It was submitted that the State of Telangana in exercise of powers under Section 101 of the Act, made 2015 Rules applicable with retrospective effect from 2nd June, 2014. On the other hand, it was urged on behalf of the High Court that 2015 Rules are not binding since they were not made in consultation with the High Court as contemplated by Article 234 of the Constitution and therefore the process of recruitment, commenced with 2014 and 2015 notifications issued under 2007 Rules, was perfectly valid and cannot be interfered with in these writ petitions.

8.2 It is not in dispute that 2007 Rules were in force on and before the appointed day and they continued to be in force till 2015 Notification for recruitment was issued and in any case till those Rules were adapted vide adaptation order/notification dated 11.02.2015. The petitioners and the respondent – State of Telangana claim that 2007 rules were adapted by the State of Telangana vide Notification, dated 11.02.2015, in exercise of the powers under Section 101 of the Act, and made applicable with effect from 2nd of June, 2014 and hence the impugned notifications of 2014 and 2015, issued under 2007 Rules, are illegal and the recruitment process initiated on the basis thereof cannot

proceed. It is also not in dispute that 2015 Rules were adapted after both the notifications namely 2014 and 2015 were issued by the High Court. From the undisputed facts, it is clear that when the impugned notifications of 2014 and 2015 were issued, 2007 Rules were in force. Thus, *prima facie*, issuance of those notifications and steps taken in pursuance thereof cannot be faulted. The question, however, remains whether 2015 Rules, which were given retrospective effect, would affect the recruitment process?; and whether State of Telangana in exercise of its powers under Section 101 of the Act could have given retrospective effect to 2015 Rules? Further, we would have to consider the consequential question whether the petitioners are right in contending that the directions issued by the Supreme Court in *Malik Mazhar* and on the applications filed by the High Court from time to time are contrary to the provisions of the Act and 2015 Rules? and if so whether such direction would have a binding effect?

9. We will have to consider all these questions in the light of the provisions contained in Articles 233, 234 and 235 of the Constitution and in the light of the fact that though the States are bifurcated by virtue of the provisions of the Act, the subordinate judiciary, for whatever reason, continued to be common for both the States and it continues to be common even today. In this backdrop, we now proceed to make reference to the submissions advanced by learned counsel for the parties on the aforementioned questions. Before we proceed further, we may also, at the cost of repetition, observe that if we hold that 2015 Rules were not made in accordance with the provisions contained in Article 234 of the Constitution,

perhaps that will set the controversy raised by learned counsel for the petitioners, based on Articles 141 and 142 of the Constitution at rest. Similarly if we hold that there is no provision in the Act which would make the steps taken by the High Court void and/or illegal in initiating and proceeding with the recruitment process on the basis of the notifications 2014 and 2015 under 2007 Rules, that will also set the controversy at rest and the petitions will have to be dismissed.

9.1 Mr. G. Vidya Sagar, learned counsel for the petitioner submitted that although the Act does not contain any statutory prohibition for proceeding with the recruitment to the post of District Judges or the judicial officers, fixing of cadre strength and number of persons occupying the said posts is relevant for identifying the vacancies in the two successive States before proceeding with the recruitment by the common High Court on the administrative side and that is possible only after bifurcation of subordinate judiciary into Telangana State Judicial Service and Andhra Pradesh State Judicial Service. Identification of vacancies, he, submitted, is the first step in any recruitment process. Unless vacancies are identified for both the States separately, recruitment process cannot be initiated and/or continued. He submitted in view of the provisions contained in Articles 233, 234 and 235 of the Constitution a State is required to have its own State Judicial Service Rules in relation to the subordinate judiciary. Once the composite State of Andhra Pradesh came to be bifurcated and new State was created, it was not open to the High Court, though it is a common High Court, to undertake the exercise of recruitment without

identification of vacancies independently in the two successive States. Since subordinate judiciary continued to be common, for both the States in view of the order of status quo granted by the Supreme Court in Dharma Rao's writ petition, the High Court ought to have waited for bifurcation of subordinate judiciary before undertaking the recruitment process. Lastly, he submitted that in any case recruitment cannot proceed on the basis of 2007 Rules, which do not apply to Telangana State Judicial Service, once 2015 Rules were brought into force. In support of this contention, he placed heavy reliance upon judgments of the Supreme Court in **B.S. Yadav v. State of Haryana**^[13]; **Mani Subrat Jain v. State of Haryana**^[14]; and **Pradyat Kumar Bose v. The Hon'ble Chief Justice of Calcutta High Court**^[15].

9.2 Mr. S. Niranjan Reddy, learned counsel for the intervener, in addition to the submissions made by Mr. G. Vidya Sagar, invited our attention to few provisions of the Act and the Constitution and submitted that Section 77 of the Act proceeds on the premise of separate State Services, including Judicial Service, and, thereafter allotment to the successor States. This provision is recognized and amplified by the fact that after the Act came into force, promotions within the subordinate judiciary have not been made Inter-State but have only be made Intra State i.e., within the State of Telangana and the State of Andhra Pradesh after the appointed day. Final allotment under Section 77 (2) of the Act, he submitted, can be of persons working on or before the appointed day as provided for under Section 77 (1) of the Act. He further submitted even

in States where there are common High Courts, separate notifications have been issued for recruitment to separate judicial services in both the States. In support, he made reference to the notifications issued by the Punjab & Haryana High Court, the Gauhati High Court and the High Court of Meghalaya. He then submitted that even if the subordinate judiciary were held to be common, it is not legally permissible to have one common appointment process. Once the Act came into force, recruitment process must yield to the changed circumstances brought about by the Act. Further, he submitted that recruitment process initiated with 2014 Notification i.e., prior to bifurcation of the composite State, is not binding on the successor State. In support of this contention, he placed reliance upon the judgment of the Supreme Court in **State of Uttarakhand v. Nitya Kant**^[16] and **State of Uttar Pradesh v. Rajkumar Sharma**^[17]. He then submitted that Section 77 unequivocally use the expression “every person who immediately before the appointed day, is serving on substantive basis in connection with the affairs of the existing State of Andhra Pradesh” and, therefore, the provisions contained in this Section and in Section 79, wherein similar language is employed cannot be extended to persons not functioning on or before the appointed day. The final allotment contemplated under Section 77 (2) of the Act, he submitted, also used the expression “determine the successor State to which every person referred to in Section 77 (1) shall be finally allotted supports”. The entire Part-VIII of the Act pertaining to services also relates to only such persons working on or before the appointed day. Thus, he submitted in the scheme of the Act, it would be

impermissible to make new appointments after the appointed day without bifurcation of the subordinate judiciary in both the States. Any new appointments made cannot be brought within the ambit of final allotment in the absence of the statutory sanction under the Act similar to the provision under Section 77 (2) relating to the allotment of prior serving personnel. The provisions of Sections 77 and 78 are similar to the corresponding provisions under the previous Reorganization Acts where by convention and in practice there has always been a ban on fresh recruitment before the existing serving personnel or finally allocated to the successor States. This clearly indicates the manifest intention of the Legislature to confine such final allotment to the existing serving personnel. He, therefore, submitted that the High Court ought not to have undertaken the exercise of recruitment before final allocation of the judicial officers in both the States.

9.3 Mr. S. Satyam Reddy, petitioner-in-person, submitted that the first notification dated 1st February, 2014 was not followed up by the High Court itself, and on the contrary an application was made before the Supreme Court asking for stay of holding of the recruitment process. The Supreme Court, as a matter of fact, granted stay of the recruitment process, and hence the High Court thereafter ought not to have turned around and acted upon the same. He submitted, in view of the bifurcation of the erstwhile State, necessary steps ought to have been taken under Section 77 of the Act for fixing the cadre strength of the judicial officers and also final allotment of the officers in both the States and since that was not undertaken at all although State of Telangana stood bifurcated as on

2nd of June, 2014, the High Court ought not to have proceeded with the recruitment process on the basis of the notification issued prior to the date on which the Act was brought into force. In short, he submitted that the recruitment undertaken by the High Court is absolutely illegal, inasmuch as by operation of the Act two separate States have been formed splitting undivided Andhra Pradesh and two separate, independent State Governments are functioning. He submitted that the action taken by the High Court is in conflict with the provisions of Articles 233 and 234 of the Constitution of India. He then submitted that the notifications issued for the recruitment in 2014 and 2015 were issued under the provisions of 2007 Rules, and therefore, the said process ought not to have been pursued since '2015 Rules' were made by the State of Telangana with retrospective effect. In any case, he submitted that without fixing cadre strength of the judicial officers in both the States and consequently without working out number of vacancies, the High Court should not to have undertaken the recruitment.

9.4 Mr. K. Ramakrishna Reddy, learned Advocate General for the State of Telangana in support of the petitioners, submitted that without bifurcation of the State Judiciary being completed, the recruitment process is totally contrary to Articles 233 and 234 of the Constitution of India. Merely because the Supreme Court passed the order of *status quo* in the writ petition filed by Dharma Rao does not mean that the High Court could have undertaken the recruitment process on the basis of the Notifications of 2014 and 2015, which are clearly flawed in law. In short, he submitted that the orders of the Supreme Court allowing

the High Court to proceed with the recruitment are not binding as it is contrary to the provisions of the Constitution and the said order ought to have been ignored in view of the law laid down by the Supreme Court in case of *Keshub Mahindra* (supra).

9.5 Mr. C.U. Singh, learned senior counsel for the High Court, on the other hand, submitted that there is no provision in the Act which would prevent the High Court from proceeding with the recruitment especially in view of the directions issued in *Malik Mazhar* and the orders passed by the Supreme Court from time to time on different applications filed by the High Court, including I.A. Nos.127 & 128 of 2014. He submitted that it was not open to the High Court to flout the directions of the Supreme Court on the ground that the statute requires otherwise. He submitted that the petitioners have miserably failed to point out any such mandatory provision. He, therefore, submitted that the High Court could not have disobeyed the directions of the Supreme Court on the ground that statutes require otherwise, when on basis of all pleadings including the provisions of the Act, and on the status quo order in Dharma Rao's case, the Supreme Court categorically passed directions for the recruitment to continue.

9.6 Mr. C.U. Singh submitted that the Constitution has made separate provisions regarding recruitment and appointment to the cadre of District Judges as well as subordinate judiciary in Chapter-VI in Part-VI of the Constitution and these provisions are conspicuously not included in Part-XIV dealing in general services under the

Union and the States. He submitted that Article 309 is expressly made subject to other provisions of the Constitution. Moreover, any regulation framed governing the recruitment and appointment of subordinate judiciary have to be done after the mandatory consultation with the High Court under Article 234 of the Constitution. Though the State of Telangana adapted '2007 Rules' by issuing notification/ adaptation order dated 11.2.2015, in exercise of powers under Section 101 of the Act, it did not consult the High Court as provided for in Article 234 of the Constitution and in view thereof '2015 Rules' will not have any binding effect on the High Court. In other words, he submitted that '2015 Rules' made by the State of Telangana are nullity in the eyes of law, and therefore cannot be acted upon for any purpose whatsoever much less in support of the contentions, as advanced by the learned counsel for the petitioners.

9.7 Mr. C.U. Singh submitted that Articles 233 and 234 of the Constitution represent a well-knit and complete scheme regulating appointments at the level of the District Judiciary, namely, District Judges on one hand and subordinate judges at the grass root level of the judiciary subordinate to the District Court. Article 234 lays down the procedure and method of recruitment to judicial officers at the grass root level being subordinate judges. In view of this Article, he submitted, appointments cannot be made to the subordinate judiciary at grass root level unless rules are framed by the Governor in consultation with the High Court and since that has not been done in the present case, '2015 Rules' will not have any binding effect in law. In other words, '2015 Rules' cannot be acted upon they being

unconstitutional and/or *ultra vires* Article 234 of the Constitution in particular. He submitted that the recruitment to the judicial service of the State, being provided for specifically in Chapter-VI under Articles 233 to 237 of the Constitution, it is those provisions of the Constitution which would override any law made by the appropriate Legislature in exercise of the power under Article 309 of the Constitution or in exercise of the powers under Section 101 of the Act for that matter. Article 234, he submitted that State Legislature does not possess the power to make law so far as recruitment to the judicial service of the State is concerned and if any law is made without following mandate of Article 234 of the Constitution, such law will not have any binding effect. In support of this contention, Mr. C.U. Singh placed heavy reliance upon the judgments of the Supreme Court in **State of Bihar v. Bal Mukund Sah**^[18] (for short, '*Bal Mukund*'); **Nawal Kishore Mishra v. High Court of Judicature of Allahabad**^[19]; **Behram Khurshid Pesikaka v. State of Bombay**^[20] and **Chandigarh Administration v. Jagjit Singh**^[21].

10. In the course of arguments, Articles 233, 234, 235 and 309 of the Constitution of India detained us for quite sometime. So far as recruitment to the posts of subordinate judiciary is concerned, Articles 233 and 234, which find place in Chapter-VI of Part-VI in the Constitution, are relevant. It would be advantageous, before we proceed further, to reproduce both these Articles for better appreciation and for considering the questions that fall for our consideration, in particular the question whether the

rules framed by the State of Telangana being “2015 Rules” would operate in the absence of consultation with the High Court, as argued by learned senior counsel for the High Court, in the light of the provisions contained in Article 234 of the Constitution. Articles 233 and 234 read thus:

233. Appointment of District Judges:- (1) Appointment of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

234. Recruitment of persons other than District Judges to be judicial service:- Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

10.1 A glance at these two articles would show that while Article 233 relates to recruitment of District Judges, Article 234 relates to recruitment of Member of Judicial Service of the State, other than District Judges. The object of these articles is to secure independence of Judiciary from the Executive and to that extent to effect separation of power as observed by the Supreme Court in **Chandra Mohan v. State of U.P.** [\[221\]](#).

10.2 Article 233, dealing with appointment of District Judges, of its own express terminology, projects a complete scheme regarding the appointment of persons to the district judiciary as District Judges apart from laying down the eligibility criterion for candidates to be appointed from the bar as direct District Judges. The said provision is hedged by the condition that only those recommended by

the High Court for such appointment could be appointed by the Governor of the State. Similarly, for recruitment of judicial offices other than District Judges to the judicial service at lower level, a complete scheme is provided by Article 234 wherein the Governor of the State can make such appointments in accordance with "rules" framed by him after consulting with the High Court exercising jurisdiction in relation to such State. In our case, it is not in dispute that selection of subordinate judicial officers requires to be done by the High Court. It is pertinent to note that even if Public Service Commission is to undertake recruitment, as observed by the Supreme Court in *Bal Mukund* (supra), it requires to act in consultation with the High Court so far as recruitment to the posts in subordinate judiciary are concerned. The Supreme Court in this case has observed that *"of course, it will be for the High Court to decide how many vacancies in the cadre of District Judges and Subordinate Judges are required to be filled in by direct recruitment so far as district judiciary is concerned and necessarily only by direct recruitment so far as subordinate judiciary is concerned."*

10.3 It would be relevant to notice the provisions contained in Article 235 also which deals with control over subordinate courts. Article 235 reads thus:

235. Control over subordinate Courts:- The control over District Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but nothing in this Article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

10.4 Under this Article, in particular, of its first part,

the High Court is to control district courts and courts subordinate thereto and in exercise of that control, regulation of posting and promotions and granting of leave to persons belonging to the judicial service has to be made by the High Court. It is, of course, as observed by the Supreme Court in *Bal Mukund* (supra), true that in the second part of Article 235 judicial officers appointed to the services for their statutory right of appeal and the right to be dealt with regarding other service conditions as laid down by any other law for the time being in force, expressly protected. But these provisions of second part of Article 235 only enable the Governor under Article 309, in the absence of any statutory enactment made by competent Legislature for regulating the conditions of service of judicial officers who are already recruited and have entered and become part and parcel of the State service, to promulgate appropriate rules on the subject. But so far as entry points are concerned, namely, recruitment and appointment to the post of presiding officers of the Courts, subordinate to the High Courts, only Articles 233 and 234 would govern the field.

10.5 Let us have a glance at Article 309. It is in Part-XIV of the Constitution which deals with service under Union and States. Article 309 reads thus:

309. Recruitment and conditions of service of persons serving the Union or a State:- Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such a person as he may direct in the case of services and post in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until

provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

10.6 A mere look at this Article would show that subject to other provisions of the Constitution, the appropriate Legislature or the Governor can regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the State concern. The proviso to this Article permits the Governor of the State to fill up the gap, if there is no such statutory provision governing the aforesaid topics. For that purpose, as observed by the Supreme Court in *Bal Mukund* (supra) the Governor may make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by and under the Act of competent Legislature which may intervene and enact appropriate statutory provision for the same. The manner of recruitment to the services contemplated by Article 309 is provided by Chapter-II in Part-XIV of the Constitution dealing with Public Service Commission as observed earlier. Article 320 deals with functions of Public Service Commissions enjoining them to conduct examinations for appointment to the services of Union and the services of a State respectively. That naturally has a direct linkage with the types of service contemplated by Article 309.

10.7 Articles 233 and 234 of the Constitution fell for consideration of the Supreme Court in *Bal Mukund* (supra). While dealing with the question whether the Legislature of the State of Bihar was competent to enact the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward

Classes) Act, 1991 (for short, ' Bihar Reservation Act'), insofar as Section 4 thereof sought to impose reservation for direct recruitment to the post in the judiciary of the State, subordinate to the High Court of Patna, being posts of District Judges as well as the posts in the lower judiciary at the grass root level, governed by the provisions of Bihar Reservation (Recruitment) Rules, 1955 (for short, 'Bihar Recruitment Rules'). While dealing with this question, the Supreme Court also considered, in the light of the provisions contained in Articles 233, 234 & 235, the question whether the provisions contained in Section 4 of Bihar Reservation Act, inserted therein, without consulting High Court, as contemplated by Article 234, would bind the High Court. It would be advantageous to reproduce the points formulated by the Supreme Court in *Bal Mukund* (supra) for determination, which read thus:

1. Whether the impugned Act of 1991 on its express language covers "Judicial Service" of Bihar State.

2. If the answer to Point 1 is in the affirmative, whether the provisions of the impugned Act, especially, Section 4 thereof in its application to the Subordinate Judiciary would be ultra vires Articles 233 and 234 of the Constitution of India and hence cannot be sustained.

3. In the alternative, whether the aforesaid provisions of the Act are required to be read down by holding that Section 4 of the Act will not apply to direct recruitment to the posts comprised in the Bihar Superior Judicial Service as specified in the Schedule to the Bihar Superior Judicial Service Rules, 1951 as well as to the Bihar Judicial Service governed by the Bihar Judicial Service (Recruitment) Rules, 1955, comprising of the posts of Subordinate Judges and Munsiffs under the District Judiciary.

10.8 The observations made by the Supreme Court in paragraphs-28 to 32, 36, 44 & 47 are relevant for our purpose, which read thus:

28. Since it is held that Section 4 of the impugned Act, on its express terms, covers direct recruitment to posts in the cadre of the District Judiciary as well as to the Subordinate Judiciary in the State of Bihar, **the moot question arises as to whether Section 4 can be sustained on the**

touchstone of the relevant constitutional scheme governing the recruitment and appointments to these posts. For coming to grips with this problem, we have to keep in view the salient features of the Constitution emanating from the Directive Principles of State Policy as laid down by Article 50 which underscores the felt need of separation of the Judiciary from the Executive. For achieving that purpose, the Constitution has made separate provisions regarding the recruitment and appointment to the cadre of District Judges as well as the Subordinate Judiciary as found in Chapter VI of Part VI of the Constitution and, as seen earlier, these provisions are conspicuously not included in Part XIV dealing in general with services under the Union and the States. Article 309 itself, which is of a general nature, dealing with regulation of recruitment and conditions of service of persons serving in the Union or a State is expressly made subject to other provisions of the Constitution.

29. The first part of **Article 235** itself lays down that it is for the High Court to control the District Courts and courts subordinate thereto and in exercise of that control vesting in the High Court, regulation of posting and promotions and granting of leave to persons belonging to the Judicial Services has to be done by the High Court. It is, of course, true that in the second part of Article 235 judicial officers already appointed to the service have their statutory right of appeal and the right to be dealt with regarding other service conditions as laid down by any other law for the time being in force, expressly protected. But these provisions of the second part only enable the Governor under Article 309, in the absence of any statutory enactment made by the competent Legislature for regulating the conditions of service of judicial officers who are already recruited and have entered and become part and parcel of the State service, to promulgate appropriate rules on the subject. But so far as the entry points are concerned, namely, recruitment and appointment to the posts of Presiding Officers of the courts subordinate to the High Courts, only **Articles 233 and 234** would govern the field. Article 234 lays down the procedure and the method of recruiting judicial officers at grass-root level being Subordinate Judges and Munsiffs as laid down by the 1955 Rules. **These Rules are also framed by the Governor of Bihar in exercise of his powers under Article 234 obviously after the consultation of the High Court and the Public Service Commission.** Rules regarding the procedure of selection to be followed by the State Public Service Commission as found in Rules 4 to 17 deal with the method to be adopted by the Public Service Commission while selecting candidates who offer their candidature for the posts advertised to be filled in. These Rules obviously require consultation with the Commission on the procedural aspect of selection process. But so far as the High Court is concerned, its consultation becomes pivotal and relevant by the thrust of

Article 233 itself as it is the High Court which has to control the candidates, who ultimately on getting selected, have to act as Judges at the lowest level of the Judiciary and whose posting, promotion and grant of leave and other judicial control would vest only in the High Court, as per Article 235 first part, once they enter the Judicial Service at grass-root level. **Thus consultation of the Governor with the High Court under Article 234 is entirely of a different type as compared to his consultation with the Public Service Commission about the procedural aspect of selection.** So far as direct recruitment to the posts of District Judges is concerned, Article 233 sub-article (2) leaves no room for doubt that unless the candidate is recommended by the High Court, the Governor cannot appoint him as a District Judge. **Thus Articles 233 and 234, amongst them, represent a well-knit and complete scheme regulating the appointments at the apex level of the District Judiciary, namely, District Judges on the one hand and Subordinate Judges at the grass-root level of the Judiciary subordinate to the District Court.** Thus the Subordinate Judiciary represents a pyramidal structure. At the base level i.e. grass-root level are the Munsiffs and Magistrates whose recruitment is governed by Article 234. That is the first level of the Judiciary. The second level represents already recruited judicial officers at grass-root level, whose working is controlled by the High Court under Article 235 first part. At the top of this pyramid are the posts of District Judges. Their recruitment to these posts is governed by Article 233. It is the third and the apex level of the Subordinate Judiciary.

30. **It has also to be kept in view that neither Article 233 nor Article 234 contains any provision of being subject to any enactment by the appropriate Legislature as we find in Articles 98, 146, 148, 187, 229(2) and 324(5).** These latter articles contain provisions regarding the rule-making power of the authorities concerned subject to the provisions of the law made by Parliament or the Legislature. Such a provision is conspicuously absent in Articles 233 and 234 of the Constitution of India. Therefore, **it is not possible to agree with the contention of learned counsel for the appellant State that these articles only deal with the rule-making power of the Governor, but do not touch the legislative power of the competent Legislature. It has to be kept in view that once the Constitution provides a complete code for regulating recruitment and appointment to the District Judiciary and to the Subordinate Judiciary, it gets insulated from the interference of any other outside agency.** We have to keep in view the scheme of the Constitution and its basic framework that the Executive has to be separated from the Judiciary. Hence, the general sweep of Article 309 has to be read subject to this complete code regarding appointment of District Judges and Judges in the Subordinate Judiciary.

31. In this connection, we have also to keep in view Article 245 which, in its express terms, is made subject to other provisions of the Constitution which would include Articles 233 and 234. Consequently, as these twin articles cover the entire field regarding recruitment and appointment of District

Judges and Judges of the Subordinate Judiciary at base level *pro tanto* the otherwise paramount legislative power of the State Legislature to operate in this field clearly gets excluded by the constitutional scheme itself. **Thus both Articles 309 and 245 will have to be read subject to Articles 233 and 234 as provided in the former articles themselves.**

32. It is true, as submitted by learned Senior Counsel, Shri Dwivedi for the appellant State that under Article 16(4) the State is enabled to provide for reservations in services. But so far as “Judicial Service” is concerned, such reservation can be made by the Governor, in exercise of his rule-making power only after consultation with the High Court. The enactment of any statutory provision dehors consultation with the High Court for regulating the recruitment to the District Judiciary and to the Subordinate Judiciary will clearly fly in the face of the complete scheme of recruitment and appointment to the Subordinate Judiciary and the exclusive field earmarked in connection with such appointments by Articles 233 and 234. It is not as if that the High Courts being constitutional functionaries may be oblivious of the need for a scheme of reservation if necessary in appropriate cases by resorting to the enabling provision under Article 16(4). The High Courts can get consulted by the Governor for framing appropriate rules regarding reservation for governing recruitment under Articles 233 and 234. But so long as it is not done, **the Legislature cannot, by an indirect method, completely bypassing the High Court and exercising its legislative power, circumvent and cut across the very scheme of recruitment and appointment to the District Judiciary as envisaged by the makers of the Constitution. Such an exercise, apart from being totally forbidden by the constitutional scheme, will also fall foul on the concept relating to “separation of powers between the Legislature, the Executive and the Judiciary” as well as the fundamental concept of an “independent Judiciary”.** Both these concepts are now elevated to the level of basic structure of the Constitution and are the very heart of the constitutional scheme.

36. It becomes, therefore, obvious that no recruitment to the post of a District Judge can be made by the Governor without recommendation from the High Court. Similarly, **appointments to the Subordinate Judiciary at grass-root level also cannot be made by the Governor save and except according to the rules framed by him in consultation with the High Court and the Public Service Commission.** Any statutory provision bypassing consultation with the High Court and laying down a statutory fiat as is tried to be done by enactment of Section 4 by the Bihar Legislature has got to be held to be in direct conflict with the complete code regarding recruitment and appointment to the posts of the District Judiciary and the Subordinate Judiciary as permitted and envisaged by Articles 233 and 234 of the Constitution. The impugned Section 4, therefore, cannot operate in the clearly earmarked and forbidden field for the State Legislature so far as the topic of recruitment to the District Judiciary and the Subordinate Judiciary is concerned. That field is carved out and taken out from the operation of the

general sweep of Article 309.

44. However, leaving aside that question, it can easily be visualised that the aforesaid observations in the Constitution Bench judgment in ***B.S. Yadav v. State of Haryana (1980 Supp. SCC 524)*** may, in a general sense, refer to the concept of “recruitment” as laid down by the proviso under Article 309 in view of the settled legal position that, in exercise of their powers under the said article, the authorities concerned can form cadres of service in the Subordinate Judiciary and can also create sanctioned posts in these cadres. The said exercise of creation of posts may also get covered by the concept of “recruitment”. It is only in this broad sense that the term “recruitment” can be said to have been mentioned by the Constitution Bench in the aforesaid observations but they can certainly not go any further nor can be treated to have ruled anything contrary to the express scheme of Articles 233 and 234. This is the additional reason why the aforesaid general observations have to be confined to the limited scope and ambit of Article 309, as indicated therein. For all these reasons, therefore, the decision in *B.S. Yadav* case cannot be of any real assistance to learned counsel for the appellant State.

47. Dr Dhavan next contended that on the express language of Article 233, only the rule-making power of the Governor is fettered but not the legislative power of the State. This submission is misconceived as the legislative power is coterminous with the Governor’s rule-making power. For regulating the conditions of service of members of public service as found in Article 309, as the proviso to Article 309 itself shows, what the Legislature can enact in connection with the topic mentioned therein can be done by the Governor in exercise of his rule-making power as a stopgap arrangement till the very same field is covered by the statutory enactment. Thus the earmarked field is the same, namely, conditions of service of employees of the State public service. Employees of a public service are a genus of which Members of the Judicial Service are a species. **So far as the appointment to the Judicial Service is concerned, the said topic is carved out from the general sweep of Article 309 on account of the words in its opening part, read with Articles 233 and 234. The Governor’s rule-making power in this connection is separately dealt with under Article 234 and it is the procedure laid down therein which will govern the said rule-making power of the Governor and cannot draw any sustenance independently from Article 309 which gets excluded in its own terms so far as Members of the Judicial Service are concerned.** A limited play available to the Legislature to deal with unexpected and open categories of conditions of service of judicial officers as found in the second part of Article 235, therefore, cannot be read backwards to govern even by implication the method of appointment of Members of the Subordinate Judiciary even at the grass-root level. For that purpose, **Article 234 is the only repository of the power available to the constitutional authority concerned which has to follow the gamut of the procedure laid down therein.** Dr Dhavan tried to salvage

the situation by submitting that if this view is taken, the greatest anomaly that would arise is that there would be a total ouster of legislative interference as per Article 234. There will be a definite permissible interference of legislative power on topics mentioned in the second part of Article 235. While so far as appointments of District Judges under Article 233 are concerned, there is no express ouster of legislative interference at all. He, therefore, submitted that a totally anomalous situation would emerge, as at the grass-root level i.e. the lowest rung of regulating the recruitment and appointment to the Judiciary, there will be total exclusion of legislative interference while at the apex level i.e. at the district level there will be no ouster of legislative interference. Even this argument of despair cannot be countenanced for the simple reason that on the topic of appointment of direct recruits to the District Judiciary at the District Court level or even at the grass-root level of Munsiffs and Civil Judges, Junior Division or Senior Division, as the case may be, both under Article 234 as well as under Article 233 interference by the State Legislature is totally excluded. **If appointments at the grass-root level in the Subordinate Judiciary is taken as base Level 1 in the pyramid of the Subordinate Judiciary, as indicated earlier, then the express language of Article 234 lays down a complete procedure which cannot be tinkered with by any outside agency like the Legislature.** For regulating the service conditions of already-appointed judicial officers which will be treated as Level 2, to the extent to which the conditions of service can be regulated by law as laid down by the second part of Article 235 a limited field is kept open for legislative play. It is only because of the permissible field indicated by the very same article that the Governor under Article 309 or even the State Legislature can be permitted to operate in that field. While at the apex level of the pyramid of the Subordinate Judiciary, which is Level 3, for recruiting District Judges a complete code is furnished by Article 233 excluding outside interference, as indicated earlier. Thus neither at the base level i.e. at the grass-root level of controlling the entry point to the Subordinate Judiciary nor at the entry point at the apex level of the pyramid for appointing District Judges any State Legislature's interference is contemplated or countenanced. On the contrary, it is contraindicated by necessary implication. Thus, neither at the first level nor at the third level, both dealing with entry points to the Subordinate Judiciary, has the State Legislature any say and at the second level it has a limited say to the extent permitted by the very same Article 235 second part and which does not pertain to recruitment or appointments at all. Thus, it cannot mean that because of this limited independent play at the joint is available to the authorities functioning under Article 309 at the second level to frame rules or legislation for permissively regulating the conditions of service of the Members of the Judiciary who have already entered the Judicial Service at the grass-root level, or even at the district level, any anomalous situation emerges.

(emphasis supplied)

10.9 It would also be advantageous to reproduce the

relevant portion of paragraph-65 and the relevant observations in paragraph-66 of the judgment in *Bal Mukund* (supra).

65. It is to be borne in mind that in the constitutional scheme in Chapter VI the Founding Fathers have dealt with the question of recruitment and not other conditions of service, such as the age of superannuation, pay, pension and allowances, so on and so forth. While Article 309 deals with recruitment and conditions of service of persons serving the Union or the State, a particular category of posts forming the judicial wing has been carved out in Chapter VI in Articles 233 to 235 so far as the question of recruitment is concerned. When Article 309 itself uses the expression “subject to the provisions of this Constitution” it necessarily means that if in the Constitution there is any other provision specifically dealing with the topics mentioned in the said Article 309, then Article 309 will be subject to those provisions of the Constitution. **In other words, so far as recruitment to the Judicial Services of the State is concerned, the same being provided for specifically in Chapter VI under Articles 233 to 237, it is those provisions of the Constitution which would override any law made by the appropriate Legislature in exercise of power under Article 309 of the Constitution.** The State Legislature undoubtedly can make law for regulating the conditions of services of the officers belonging to the judicial wing but cannot make law dealing with recruitment to the Judicial Services since the field of recruitment to the Judicial Service is carved out in the Constitution itself in Chapter VI under Articles 233 to 236 of the Constitution.

66. **The very fact that the framers of the Constitution in enacting Article 234 have made the provision, not subject to any acts of the appropriate Legislature is the clearest indication of the Constitution-makers that so far as the recruitment to the Judicial Service of the State is concerned, the State Legislatures do not possess the necessary power to make law. At the cost of repetition, it may be stated that the expression “recruitment” and the expression “other conditions of service” are two distinct connotations in service jurisprudence and the framers of the Constitution have also borne that in mind while engrafting Articles 234 and 309 of the Constitution.** It is true that Article 233 dealing with appointment of District Judges does not indicate conferment of power to make rules for appointment. But the language of Article 233 indicates that the entire matter of recruitment to the post of District Judge, either by way of direct recruitment or by promotion is left to the High Court and it is the Governor of the State who is required to make such appointment in consultation with the High Court. So far as direct recruitment is concerned, the Constitution itself lays down certain criteria for making a person eligible for being appointed/recruited as a District Judge. The entire field of recruitment is left to the two constitutional consultees and obviously, the opinion of the High Court in such matter must be of binding effect. For direct recruitment to the post of District

Judges in sub-article (2) of Article 233, the Constitution itself has indicated the eligibility criteria and the source of recruitment, leaving the manner of final selection with the High Court itself. The argument of Dr Rajeev Dhavan, in this context that it would be anomalous that whereas for the Subordinate Judiciary, the Legislature has no power to make law to deal with the recruitment, whereas for District Judges, the Legislature has such power, is devoid of substance inasmuch as under Article 233, both under clause (1) as well as clause (2) though the appointment has to be made by the Governor but it is the High Court, which has to decide as to who would be appointed and this also fits in with the underlying principles under Article 235 of the Constitution.

(emphasis supplied)

10.10 Paragraphs-124 & 125 are also relevant for our purpose, which read thus:

124. The inclusion of Chapter VI in the Constitution as a matter of fact records a distinct intention of the framers of the Constitution as regards the supremacy and separateness of the Judiciary from the Legislature and the Executive. If Article 309 is subject to be a general provision, Articles 233 to 235 ought to be treated as specific provisions for appointment of judicial officers and by reason thereof, the specific field of legislation thus stands completed and obviously the framers of the Constitution having provided Articles 233 to 235, introduced in Article 309, the words “subject to the provisions of this Constitution”. As a matter of fact the submission in support of the appeal does not stand to further scrutiny by reason of the fact that in the event of there being any contraindication of the framers, the same would have found an expression in Article 234 itself. The appointment of District Judges, in my view, without any hesitation rests with two constitutional functionaries namely, the Governor and the High Court and thus withdrawing the same from the purview of the general power as conferred under Article 309.

125. In the wake of the aforesaid, Judicial Service thus, cannot be termed to be covered under Article 309 as regards the appointment thereto though however, other conditions of service specifically left open and thus the authorisation to legislate under Article 309 is available in regard to conditions of service and other incidentals thereto subsequent to the appointment. It may also be noted that the general legislative powers of Parliament as well as the State Legislature under Article 245 is expressly made subject to other provisions of the Constitution which would obviously include Articles 233 to 235.

10.11 The Supreme Court in **Nawal Kishore Mishra** (supra) also had an occasion to deal with Articles 233, 234, 235 and 309 of the Constitution of India. In this case, while

dealing with these Articles, the Supreme Court also considered the judgment in *Bal Mukund* (supra) in depth. The questions that fell for consideration of the Supreme Court read thus:

8.2. (ii) Whether the High Court could have validly adopted the Reservation Act of 1994 by relying upon Rule 7 of the High Court Rules?

8.3. (iii) Whether the Reservation Act of 1994 or any of the orders of the Government providing for reservation was validly adopted by the High Court as claimed by it?

The observations made by the Supreme Court in paragraphs-19 & 20 are relevant for our purpose, which read thus:

19. Since the **Constitution Bench (*State of Bihar v. Bal Mukund*)** of this Court has dealt with the larger question as to how the constitutional mandate as provided under Articles 16(1) and (4) qua Article 335 on the one hand and Articles 233 to 235 on the other is to be reconciled made it clear that while the scheme of Article 16(1) read with Article 16(4) may be treated to be forming part of the basic feature of the Constitution, by Articles 233 to 235 of the Constitution, full control of the judiciary having been entrusted with the High Court is also equally a basic feature of the Constitution and both can be reconciled only by way of a consultation of the Governor with the High Court and by making appropriate rules to provide for a scheme of reservation and unless such a provision is made by following the constitutional scheme under Articles 233 to 235, it would be well-nigh possible to thrust upon the rule of reservation by the State Legislature even by way of a legislation. Inasmuch as the Constitution Bench has dealt with this vital issue in an elaborate manner and laid down the principles relating to application of reservation in the matter of appointments to be made to the post of direct recruit District Judges, in fitness of things, it will be profitable for us to note the salient principles laid down therein as that would throw much light for us to resolve the question raised in these appeals.

20. Such principles can be culled out and stated as under:

20.1. **Neither Article 233 nor Article 234 contain any provision of being subject to any enactment by the appropriate legislature as is provided in certain other articles of the Constitution.**

20.2. **Articles 233 and 234 of the Constitution are not subject to the provisions of law made by Parliament or the legislature as no such provision is found in Articles 233 and 234 of the Constitution.**

20.3. **Articles 233 to 235 provide a complete code for regulating recruitment and appointment to the District Judiciary and the Subordinate Judiciary and thereby it gets insulated from interference of any other outside agency.**

20.4. The general sweep of Article 309 has to be read subject to the complete code regarding appointment of District Judges and Judges in the Subordinate Judiciary governed by Articles 233 and 234.

20.5. Even under Article 245, it is specifically provided that the same would be subject to other provisions of the Constitution which would include Articles 233 and 234.

20.6. As the twin articles cover entire field regarding recruitment and appointment of District Judges and Judges in the Subordinate Judiciary at base level pro tanto the otherwise paramount legislative power of the State Legislature to operate in this field clearly gets excluded by the constitutional scheme itself.

20.7. Both Articles 309 and 245 will have to be read subject to Articles 233 and 234 as provided in the former articles themselves.

20.8. **Though under Article 16(4), the State is enabled to provide for reservations in services, insofar as judicial service is concerned such reservation can be made by the Government in exercise of its rule-making power only after consultation with the High Court.**

20.9. **The enactment of any statutory provision dehors consultation with the High Court for regulating the recruitment to the District Judiciary and the Subordinate Judiciary will clearly fly in the face of complete scheme of recruitment and appointment to the Subordinate Judiciary and the exclusive field earmarked in connection with such appointments under Articles 233 and 234.**

20.10. Realising the need for a scheme of reservation in appropriate cases by resorting to the enabling provision under Article 16(4), the High Court can be consulted by the Government for framing appropriate rules regarding reservation for governing recruitment under Articles 233 and 234. But so long as it is not done, **the legislature cannot by an indirect method completely bypass the High Court and by exercising its legislative power circumvent and cut across the very scheme of recruitment and appointment to the District Judiciary as envisaged by the makers of the Constitution.**

20.11. **Any such attempt by the legislature would be forbidden by the constitutional scheme as that was found on the concept relating to separation of powers between the legislature, the executive and the judiciary as well as the fundamental concept of an independent judiciary as both the concepts having been elevated to the level of basic structure of the Constitution and are the very heart of the constitutional scheme.**

20.12. Having regard to Article 16(4), the High Court being a high constitutional functionary would also be alive to its social obligations and the constitutional guideline for having a scheme

of reservation to ameliorate the lot of deprived reserved categories like SC, ST and OBC. But for that the Governor in consultation with the High Court should make appropriate rules and provide for a scheme of reservation for appointments at grassroots level and even at the highest level of District Judiciary. If that was not done, the State Legislature cannot upset the entire apple cart and by bypassing the constitutional mandate of Articles 233 and 234 lay down a statutory scheme of reservation governing all State services including judiciary.

20.13. Even in that respect it is obvious that maintenance of efficiency of judicial administration is entirely within the control and jurisdiction of the High Court as laid down by Article 235.

20.14. If the proper course of formulating the scheme in the form of a rule by the High Court to provide for reservation is not made, that would deprive of the right to suggest the consultative process by way of its own expertise that for maintenance of the efficiency of administration of judicial service controlled by it 50% reservation may not be required and/or and even lesser reservation may be required or even may not be required at all.

20.15. To give Article 335 its full play for enacting a scheme of reservation, the High Court entrusted with the full control of the Subordinate Judiciary as per Article 235 of the Constitution has got to be consulted and cannot be treated to be a stranger to the said service by trying to apply the whole of the Reservation Act.

(emphasis

supplied)

10.12 The Supreme Court in **Pradyat Kumar Bose** (supra) observed that a scrutiny of the provisions in Chapter I of Part XIV of the Constitution relating to the services shows that the various Articles in this chapter designate the services to which the Articles relate by a variety of terminology. Under Article 309, the appropriate Legislature is vested with the power to regulate recruitment and conditions of service of the persons appointed of public services and posts in connection with the affairs of the Union or any State. The Supreme Court further observed that officers and members of the staff attached to a High Court clearly fall within the scope of the phrase “persons appointed to public services and posts in connection with the affairs of the State” and also of the phrase “a person who is a member of a Civil Service of a

State” as used in Articles 310 and 311.

10.13 In **B.S. Yadav v. State of Haryana** (supra), on which a heavy reliance was placed on behalf of the petitioners, the controversy involved for consideration of the Supreme Court was two-fold: One, as to the rules governing seniority between direct recruits and promotees appointed to the superior judicial service of Punjab & Haryana; and two, between the control over the District Courts and Subordinate Courts vested in the High Court by Article 235 and the power conferred upon the Governor by proviso to Article 309 of the Constitution to make rules regulating the recruitment and conditions of service of persons appointed, *inter alia* to judicial service of the State.

10.13.1 After dealing with Articles 235 and 309 of the Constitution, in paragraph-46, which is relevant for our purpose, the Supreme Court observed thus:

46. **It is true that the power conferred by Article 309 is “subject to” the provisions of the Constitution. But it is fallacious for that reason to contend that the Governor cannot frame rules regulating the recruitment and conditions of service of the judicial officers of the State. In the first place, the power of control conferred upon High Courts by the first part of Article 235 is expressly made subject, by the second part of that Article, to laws regulating conditions of service of its judicial officers.** The first part of Article 235 is, as it were, subject to a proviso which carves out an exception from the area covered by it. Secondly, the Governor, in terms equally express, is given the power by the proviso to Article 309 to frame rules on the subject. A combined reading of Articles 235 and 309 will yield the result that though the control over subordinate courts is vested in the High Court, the appropriate legislature, and until that legislature acts, the Governor of the State, has the power to make rules regulating the recruitment and the conditions of service of judicial officers of the State. The power of the legislature or of the Governor thus to legislate is subject to all other provisions of the Constitution like, for example. Articles 14 and 16. The question raised before us is primarily one of the location of the power, not of its extent. **The second part of Article 235 recognises the legislative power to**

provide for recruitment and the conditions of service of the judicial officers of the State. The substantive provision of Article 309, including its proviso, fixes the location of the power. The opening words of Article 309 limit the amplitude of that power.

(emphasis supplied)

10.14 The judgment of Supreme Court in *B.S. Yadav* (supra) was considered in *Bal Mukund* (supra). The Supreme Court observed that the concept of “recruitment” as laid down by the proviso under Article 309 in view of the settled legal position is that, in exercise of their powers under the said article, the authorities concerned can form cadres of service in the Subordinate Judiciary and can also create sanctioned posts in these cadres. The said exercise of creation of posts may also get covered by the concept of “recruitment”. It is only in this broad sense that the term “recruitment” can be said to have been mentioned by the Constitution Bench [*B.S. Yadav* (supra)] in the aforesaid observations, but they can certainly not go any further nor can be treated to have ruled anything contrary to the express scheme of Articles 233 and 234. Thus, the decision in *B.S. Yadav* (supra) case cannot be of any real assistance to learned counsel for the petitioners to take their case further.

10.15 The enactment of any statutory provision *de hors* consultation with the High Court for regulating the recruitment to the District Judiciary and the Subordinate Judiciary will clearly fly in the face of the complete scheme of recruitment and appointment to the Subordinate Judiciary and the exclusive field earmarked in connection with such appointments by Articles 233 and 234 of the Constitution. The Governor can consult High Court for framing appropriate rules for governing recruitment under

these Articles. But so long as it is not done, the Governor or the Government in the name of Governor cannot, by an indirect method, completely bypassing the High Court and in exercise of its legislative power or executive power, such as conferred under Section 101 of the Act, circumvent and cut across the very scheme of the recruitment and appointment to the District Judiciary or the Subordinate Judiciary at grass root level, as envisaged by makers of the Constitution and frame Rules governing recruitments without consulting the High Court. Such an exercise, apart from being totally forbidden by the constitutional scheme, will also fall foul the concept relating to “separation of powers between the Legislature, the Executive and the Judiciary” as well as the fundamental concept of an “independent judiciary”. Such power is carved out from the general sweep of Article 309 on account of the words in its opening part (i.e., subject to the provisions of this Constitution”), read with Articles 233 and 234. The Governor’s rule making power in this connection is separately dealt with under Article 234 and it is the procedure laid down therein which will govern the said rule making power of the Governor and cannot draw any sustenance independently from Article 309 which gets excluded in its own terms so far as the members of judicial service are concerned. This is what has been laid down in the judgments of the Supreme Court in *Bal Mukund* (supra) and *Nawal Kishore Mishra* (supra).

10.16 The Supreme Court has repeatedly held that even an amendment to the provisions of the Constitution would not be sustainable if it violates “basic structure” of the Constitution, even though the amendment had been carried

out by following the procedure contemplated under Part-XI of the Constitution. This leads to the determination that the basic structure is inviolable. The Supreme Court in **Madras Bar Association v. Union of India**^[23] has reiterated this principle, further observing that this principle would apply to all other legislations, even other than amendments to the Constitution as well, even though the legislation had been enacted by following prescribed procedure and was within the domain of the enacting Legislature, any infringement of the “basic structure” would be unacceptable.

10.17 In **Kesavananada Bharati v. State of Kerala**^[24] it was held that even constitutional amendments which offended the basic structure of the Constitution would be *ultra vires* the basic structure. In **Indra Sawhney v. Union of India**^[25] the Supreme Court has observed that the Parliament and the Legislature in this country cannot transgress the basic feature of the Constitution.

11. In this backdrop, we would like to have a glance at Section 101 of the Act on which a heavy reliance was placed by learned counsel appearing for the petitioners to contend that in view of the provisions contained in this section a mere adaptation of ‘2007 Rules’ was sufficient and it was not necessary for the State of Telangana while adapting those Rules vide G.O.Ms.No.3, dated 11.2.2015 to consult the High Court as contemplated by Article 234 of the Constitution. In other words, it was submitted, that the State of Telangana in exercise of its powers under Section 101 of the Act has simply adapted ‘2007 Rules’, only with

the change of name so as to facilitate its application to the State of Telangana and did not make any other amendment. It was further submitted that since '2007 Rules' were made in consultation with the High Court, it was not necessary to consult the High Court again for its adaptation under Section 101 of the Act. It would be necessary to reproduce the relevant portion of G.O.Ms.No.3, dated 11.2.2015 which reads thus:

"In exercise of the powers conferred by section 101 of the A.P. Reorganisation Act, 2014, the Government of Telangana hereby adapt the Andhra Pradesh State Judicial Service Rules, 2007 as it stood on 1.6.2014 so as to facilitate its application to the State of Telangana, with the following modifications,-

1 . Throughout the Andhra Pradesh State Judicial Service Rules, 2007 for the words "Andhra Pradesh" (occurring otherwise than in a citation or description or title of other laws including the Rules as the case may be), the word "Telangana" shall be substituted.

2. In rule 2, clause (i), shall be substituted with the following:

"(i) High Court means, the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh."

3 . It shall be deemed to have come into force w.e.f. 02.06.2014."

11.1 The Act defines 'Law' which includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having immediately before the appointed day, force of law in the whole or in part of the existing State of Andhra Pradesh. It is not in dispute that 2007 Rules do fall within the definition of the word 'law'. Sections 100 and 101 of the Act are relevant for our purpose, which read thus:

100. Territorial extent of laws:- The provisions of Part II shall not be deemed to have affected any change in the territories to which the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (Andhra Pradesh Act No.1 of 1973) and any other law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Andhra Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories

within the existing State of Andhra Pradesh before the appointed day.

101. Power to adapt laws:- For the purpose of facilitating the application in relation to the State of Andhra Pradesh or the State of Telangana of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation.- In this section, the expression “appropriate Government” means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects of any other law in its application to a State, the State Government.

11.2 Sections 3 to 6 of the Act which form part of Part-II provide for the formation of the new States namely State of Telangana and the State of Andhra Pradesh. The territories specified in Section 3 constitute new State of Telangana and the remaining territories fall within the territory of the State of Andhra Pradesh. However, Section 100 of the Act, in express terms provide that the provisions of the Part-II shall not be deemed to have effect any change in the territories to which any law in force immediately before the appointed day extended or applied and the territorial reference in any such law to the State of Andhra Pradesh shall, until otherwise provided by the competent Legislature or other competent authority be construed as meaning the territories within the existing State of Andhra Pradesh before the appointed day. Section 101 provides that for the purpose of facilitating the application in relation to the State of Andhra Pradesh or State of Telangana of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, making such adaptations and modifications of the law, whether by way of repeal or

amendment as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by the competent Legislature or other competent authority. The language in these sections is clear and unambiguous. These sections provide that the laws which were applicable to the undivided State of Andhra Pradesh would continue to apply to the new States created by the Act. The laws that operated continue to operate notwithstanding the bifurcation of the erstwhile State of Andhra Pradesh and creation of new State of Telangana. They continue in force until and unless altered, repealed or amended. A conjoint reading of both these provisions make it abundantly clear that the territorial reference in any law in force immediately before the appointed day must be construed as meaning the territories within the existing State of Andhra Pradesh before the appointed day. To facilitate their application in respect of State of Andhra Pradesh or Telangana, the appropriate Government may, before expiration of two years from that day by order, making such adaptations and modifications of the law as may consider necessary or expedient by way of repeal or amendment. Till such law is so repealed or amended in accordance with law, it shall have effect. After their amendment or alterations, they shall have effect subject to the adaptations and modifications. (See **CCT v. Swarn Rekha Cokes and Coals (P) Ltd.** [\[26\]](#))

11.3 Thus, 2007 Rules and the notification issued by the State of Telangana dated 11.2.2015, adapting those

rules being 2015 Rules, are the laws as defined by Section 2 (f) of the Act. In other words, 2015 Rules is also a law.

Whether the law made by the State of Telangana in exercise of the powers under Section 101 of the Act would have binding effect since it was not made in consultation with the High Court as provided for under Article 234 of the Constitution is the question.

11.4 The enactment of any provision or adaptation of any law for that matter, having regard to the scheme of Chapter-VI of Part-VI of the Constitution in general and Articles 233, 234 and 235 in particular, *de hors* consultation with the High Court for regulating the “recruitment” to the District Judiciary and to the Subordinate Judiciary would render such provision/law unconstitutional. Merely because 2007 Rules were adapted in exercise of powers under Section 101 with mere change of name would not mean that 2015 Rules will have independent force of law. Adaptation of any law, in exercise of the powers under Section 101, would also amounts to making a law and making of the law in respect of recruitment of persons other than District Judges to the judicial service, as contemplated under Article 234, without consultation with the High Court would be *ultra vires* Article 234 of the Constitution and will not have effect of law. Neither the Legislature nor the Government in exercise of the powers under Section 101 of the Act can by indirect method completely bypass the High Court and by exercising legislative or executive power or the power under Section 101 circumvent and cut across the very scheme of recruitment and appointment to the District Judiciary as envisaged by makers of the Constitution. [See: *Bal Mukund* (supra) and *Nawal Kishore Mishra* (supra)]

11.5 In the present case, in exercise of the executive powers under Section 101 of the Act, the State Government has, undoubtedly, transgressed the basic feature of the Constitution, namely, separation of powers between the Legislature, the Executive and the Judiciary as well as the fundamental concept of an “Independent Judiciary”, enshrined in Articles 233 and 234 of the Constitution. The State Government for no valid reason assumed that for bare adaptation of 2007 Rules, without substantial changes therein, consultation with the High Court, as provided for under Article 234, was not necessary. We have no hesitation in holding that 2015 Rules are *ultra vires* the basic structure of the Constitution and the petitioners cannot built up any rights under it. It is well settled that where a law/statute is adjudged to be unconstitutional or *ultra vires*, rights cannot be built up under it. It confers no right, imposes no duties, it affords no protection, it is in legal contemplation as inoperative as if it had never been passed.

11.6 In our considered opinion, the judicial officers in the State of Telangana and the State of Andhra Pradesh continue to be governed by 2007 Rules, and that the High Court is obliged to follow the same in effecting the recruitments pursuant to the impugned notifications of 2014 and 2015. We hold that 2007 Rules, adapted in exercise of the powers under Section 101 of the Act, cannot be stated to be validly adapted and, therefore, would not *ipso facto* invalidate the recruitment process or necessitate cancellation of the impugned recruitment notifications.

12. We would also like to examine these questions, on

the assumption that 2015 Rules are applicable with retrospective effect. From the language of the provisions of Sections 100 and 101 of the Act, and having regard to the provisions of Articles 233 to 235 of the Constitution, in our opinion, it is clear that the Legislature never intended to allow the State Government to adapt any law with retrospective effect. If retrospective effect is allowed to be given to such adapted law, perhaps that will create very strange anomaly. Section 100 clearly provides that the law existing as on the appointed day “shall extend or applies to the newly created State of Telangana” until, as provided for in Section 101, the State of Telangana before expiry of two years adapts and modifies any law whether by way of repeal or amendment. The language employed in these provisions is clear and unambiguous and susceptible to only one meaning i.e., till any law is adapted, it would apply as it is to the State of Telangana. If this interpretation is not accepted, that would only mean that both the laws i.e., the law existed before its adaptation and the very same law with amendment, after adaptation, would apply, if it is adapted with retrospective effect. In other words, 2007 Rules and 2015 Rules, both for the period between 2.6.2014 and the date of adaptation would operate. This is not the intent of the Legislature.

12.1 It is well settled that Rules ordinarily operate prospectively. ‘Retrospectivity’ is an exception. Even where the statute permits framing of rule with retrospective effect, as observed by the Supreme Court in **K. Narayanan v. State of Karnataka** [\[27\]](#), that exercise of the power must not operate discriminately or in violation of

any constitutional right so as to affect vested right. The rule-making authority should not be permitted normally to act in the past. Section 101 of the Act does not have express power to make adaption/modification of law, whether by way of repeal or amendment, with retrospective effect. As a matter of fact, from the scheme of, and the language employed in, Sections 100 and 101, as observed earlier, give clear indication that the laws adapted in exercise of the powers under Section 101 of the Act would have prospective effect. It is also clear from the word “thereupon” employed in Section 101 of the Act, which clearly indicates that adaption and modifications of law, whether by way of repeal or amendment, as may be necessary or expedient and upon such adaption and modification the law shall have effect until altered/repealed or amended by the competent Legislature. Even language of Section 102 of the Act also has an indication that the adapted and modified law under Section 101 would have prospective effect.

12.2 It is equally true that the Legislature can make law retrospectively or prospectively subject to justifiability and acceptability within the constitutional parameter. A subordinate legislation can be given retrospective effect, if the power in this behalf is contained in the principal Act. In

Mahabir Vegetable Oils (P) Ltd. V. State of Haryana ^[28]

the Supreme Court observed that subordinate legislation can be given retrospective effect and retroactive operation if any power in this behalf is contained in the main Act. The rule-making power is a species of delegated legislation. A delegatee therefor can make rules only within the four corners thereof. It is a fundamental rule of law that no

statute can be considered retrospective operation unless such direction appears from it clearly in the terms of the Act, or arises by necessary and distinct implication. We do not find any such indication in the Act.

12.3 In this connection, it would be advantageous to reproduce the observations by the Supreme Court in paragraphs-25 & 30 in **State of Rajasthan v. Basant Agrotech (India) Limited**^[29]. The relevant paragraphs read thus:

25. On a perusal of the aforesaid authorities there can be no scintilla of doubt that if the power has been conferred under the main Act by the legislature, the State Government or the delegated authority can issue a notification within the said parameters. In the case at hand, the High Court interpreting Section 16 has opined that such a power has not been conferred on the State Government to issue a notification retrospectively and, therefore, it can only apply with prospective effect.

30. On a seemingly appreciation of the ratio laid down in *A. Thangal Kunju Musaliar (AIR 1956 SC 246)*, we have no trace of doubt in our mind that the said decision has no applicability to the facts in the case at hand. As is evident, the notification giving effect to the enactment was prior to the date of issue of notification but much after the legislature had passed the enactment and further the language employed in the Act was quite different. Hence, it can be stated with certitude that the said decision does not further the point urged by the learned counsel for the State.

12.4 Mr. G. Vidya Sagar placed heavy reliance upon the judgment of the Supreme Court in **Marripati Nagaraja v. Govt. of A.P.**^[30] in support of his contention that the State is entitled to make rules with retrospective effect and retroactive operation and if rules are brought with retrospective effect unless the same is set aside as being unconstitutional, the consequences flowing therefrom shall ensue. The relevant paragraph on which heavy reliance was placed in the judgment read thus:

16. The State, in exercise of its power conferred upon it

under the proviso appended to Article 309 of the Constitution of India, is entitled to make rules with retrospective effect and retroactive operation. Ordinarily, in absence of any rule and that too a rule which was expressly given a retrospective effect, the rules prevailing as on the date of the notification are to be applied. But if some rule has been given a retrospective effect which is within the domain of the State, unless the same is set aside as being unconstitutional, the consequences flowing therefrom shall ensue. In such an event, the applicable rule would not be the rule which was existing but the one which had been validly brought on the statute book from an anterior date. The Tribunal and the High Court, therefore, in our opinion, committed an error in opining otherwise, particularly when the constitutionality of the said rule was not in question.

12.5 In **N.T. Devin Katti v. Karnataka Public Service**

Commission^[31] the Supreme Court observed that generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement. However he has no absolute right in the matter. If the recruitment rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended rules. Whether the rules have retrospective effect or not, primarily depends upon the language of the rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication. In our case, we do not find any such intent either by express provision or by necessary implication and hence, even if the 2015 Rules are held to be valid and has application to the facts of the present case, it cannot be given retrospective effect. Reliance was also placed on the judgment of the Supreme Court in **Rattan Lal & Co. v. Assessing Authority, Patiala**^[32]. The relevant paragraph of the judgment reads thus:

12. We may now deal with some arguments which are

common to both sets of cases before considering the case of the Haryana amendment. It is argued that the reorganisation of the State took place on November 1, 1966 and the amendment in some of its parts seeks to amend the original Act from a date anterior to this date. In other words, the legislature of one of the States seeks to amend a law passed by the composite State. This argument entirely misunderstands the position of the original Act after the reorganisation. That Act applied now as an independent Act to each of the areas and is subject to the legislative competence of the legislature in that area. The Act has been amended in the new States in relation to the area of that State and it is inconceivable that this could not be within the competence. If the argument were accepted then the Act would remain unamendable unless the composite State came into existence once more. The scheme of the States Reorganization Acts makes the laws applicable to the new areas until superseded, amended or altered by the appropriate legislature in the new States. This is what the legislature has done and there is nothing that can be said against such amendment.

12.6 Thus, we have no hesitation in holding that 2015 Rules cannot operate since they were not made in consultation with the High Court as contemplated under Article 234 of the Constitution. In any case, 2015 Rules would not affect recruitment process that was commenced and continued under 2007 Rules since it commenced before the adaptation of 2015 Rules vide order dated 11.2.2015. In other words, even if it is assumed that the adaptation of 2015 Rules is valid, they would not operate with retrospective effect, and therefore, 2014 and 2015 notifications which were issued before adaptation of 2007 Rules vide adaptation order dated 11.2.2015 cannot be faulted.

13. At this stage, we would also like to consider the question, as raised on behalf of the petitioners, whether this Court without there being challenge to 2015 Rules can examine its legality and hold that the said Rules do not apply to the State of Telangana or to non-existent Telangana State Judicial Service and whether recruitment

under 2007 Rules is sustainable in law? It is true that there is no challenge to 2015 Rules on the ground that the said Rules are *ultra vires* Article 234 of the Constitution. It is equally true, the challenge raised in the writ petitions is to the recruitment process initiated and conducted in pursuance of 2014 and 2015 Notifications under 2007 Rules on the ground that 2015 Rules were brought into force with retrospective effect from 2nd of June, 2014, and therefore, the entire process under 2007 Rules is illegal and the High Court ought to have issued fresh notifications for recruitment of Civil Judges (Junior Division) for the years 2014 and 2015.

13.1 It is well settled that writ Courts are expected to decide petitions on the points raised in the petition and in rare case if any additional question is to be raised, then the concerned and affected parties should be put to notice on the additional points to satisfy the principles of natural justice. In short, parties cannot be taken by surprised [See: **V.K.Malhotra v. Union of India** [\[33\]](#)]. In the present case, we have considered the submissions of learned senior counsel for the High Court that 2015 Rules are invalid and cannot be acted upon since they are not made in consultation with the High Court, as provided for under Article 234 of the Constitution, not by surprise. As a matter of fact, we allowed learned counsel for the petitioners to make their submissions at length on the question.

13.2 The Supreme Court had an occasion to consider somewhat similar analogy in **Chandigarh Administration v. Jagjit Singh** (supra) wherein it was observed that

“illegal/unwarranted action must be corrected if it can be done according to law – indeed wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to say how it can be made a basis for its repetition.”

13.3 In **Behram Khurshid Pesikaka** (supra), the Supreme Court was dealing with the judgment in **State of Bombay v. F.N. Balsara** [\[34\]](#) which had declared the provisions of Section 13 (b) of the Bombay Prohibition Act, 1949, insofar as they apply to medicinal and toilet preparations, as unsustainable and the effect of the declaration was to engraft exception to the provision insofar as it concerns consumption of medicinal and toilet preparations, therefore, it was further observed that it is for the prosecution to show that the appellant had consumed liquor prohibited under the said Act. The case was heard by 3-Judge Bench consisting of Justice N.H. Bhagwati, Justice B.Jagannadha Das and Justice T.L. Venkatarama Ayyar. The appeal came to be dismissed in view of the majority opinion modifying the sentence imposed upon the appellant vide Judgment dated 19.02.1954 reported in AIR 1955 SC 123. In this case, review was filed. While granting review, the case was reopened and the question framed therein was referred to a Larger Bench for opinion on the constitutional question raised in the previously delivered judgment. The order passed in Review is dated 28.04.1954 and the question referred to Larger Bench was “what is the effect of the declaration in 1951 SCR 682 that clause (b) of Section 13 of Bombay Prohibition Act, 1949 is void under Article 13 (1) of the

Constitution insofar as it affects consumption or use of liquid medicinal or toilet preparations containing alcohol, on the ground that it infringes Article 19 (1) (f) of the Constitution. The larger bench presided over by the then Chief Justice of India, ultimately upheld minority view expressed by Justice N.H. Bhagwati vide its judgment and order dated 23.9.1954. Justice N.H.Bhagwati in the first judgment dated 19.2.1954 while answering the question that fell for its consideration with some quotations, in paragraph-11 observed thus:

11. The effect of the declaration of a statute as unconstitutional has been thus set out by *Cooley on Constitutional Limitations*, Vol. I, p. 382:

“Where a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it and no one can be punished for having refused obedience to it before the decision was made. And what is true of an Act void in toto is true also as to any part of an Act which is found to be unconstitutional and which consequently has to be regarded as having never at any time been possessed of any legal force....”

See also the dictum of Field, J. in *Norton v. Shelby County* (118 US 425)

“An unconstitutional Act is not law, it confers no rights, it imposes no duties, it affords no protection, it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.”

To the same effect are the passages from *Rottschaefer on Constitutional Law*, at p. 34:

“The legal status of a legislative provision insofar as its application involves violation of constitutional provisions, must however be determined in the light of the theory on which *courts ignore it as law* in the decision of cases in which its application produces unconstitutional results. That theory implies that the legislative provision *never had legal force* as applied to cases within that class.”

Willoughby on Constitution of the United States, 2nd Edn., Vol. I, p. 10:

“The court does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognise it, and determines the rights of the parties just as if such statute had no application.

The court may give its reasons for ignoring or disregarding the statute, but the decision affects the parties only, and there is no judgment against the statute. The opinion or reasons of the court may operate as a precedent for the determination of other similar cases, but it does not strike the statute from the

statute-book; it does not repeal ... the statute. The parties to that suit are concluded by the judgment, but no one else is bound. A new litigant may bring a new suit, based on the very same statute, and the former decision can be relied on only as a precedent,...."

It simply refuses to recognise it and determines the rights of the parties just as if such statute had no application...."

And *Willis on Constitutional Law*, at p. 89:

"A judicial declaration of the unconstitutionality of a statute neither annuls nor repeals the statute but has the effect of ignoring or disregarding it so far as the determination of the rights of private parties is concerned. **The courts generally say that the effect of an unconstitutional statute is nothing. It is as though it had never been passed...."**

(emphasis supplied)

13.4 Larger Bench presided over by the then Chief Justice of India while approving the view taken by Justice N.H. Bhagwati, in paragraph-10 held thus:

10. The meaning to be given to the expression "void" in Article 13(1) is no longer *res integra*. It stands concluded by the majority decision in *Kesava Madhava Menon v. State of Bombay* (1951 SCR 228). The minority view there was that the word "void" had the same meaning as "repeal" and therefore a statute which came into clash with fundamental rights stood obliterated from the statute-book altogether, and that such a statute was void ab initio. The majority however held that the word "void" in Article 13(1), so far as existing laws were concerned, could not be held to obliterate them from the statute-book, and could not make such laws void altogether, because in its opinion, Article 13 had not been given any retrospective effect. The majority however held that after the coming into force of the Constitution the effect of Article 13(1) on such repugnant laws was that it *nullified* them, and made them ineffectual and nugatory and devoid of any legal force or binding effect. **It was further pointed out in one of the judgments representing the majority view, that the American rule that if a statute is repugnant to the Constitution the statute is void from its birth, has no application to cases concerning obligations incurred or rights accrued in accordance with an existing law that was constitutional in its inception, but that if any law was made after 26th January, 1950, which was repugnant to the Constitution, then the same rule shall have to be followed in India as followed in America. The result therefore of this pronouncement is that the part of the section of an existing law which is unconstitutional is not law**, and is null and void. For determining the rights and obligations of citizens the part declared void should be notionally taken to be obliterated from the section for all intents and purposes, though it may remain written on the statute-book and be a good law when a question arises for determination of rights and obligations incurred prior

to 26th January, 1950 and also for the determination of rights of persons who have not been given fundamental rights by the Constitution. Thus, in this situation, there is no scope for introducing terms like “relatively void” coined by American Judges in construing a Constitution which is not drawn up in similar language and the implications of which are not quite familiar in this country.

(emphasis supplied)

13.5 Thus, in the light of the law laid down by the Supreme Court, we have no hesitation in holding that learned senior counsel for the High Court, in the course of hearing of the petitions, was justified in raising challenge to the adaptation of 2007 Rules.

14. It would be necessary to have a look at the judgments relied upon by Mr. G. Vidya Sagar, learned senior counsel for the petitioners, in support of his contention that the Act passed under the provisions of Articles 3 and 4 is plenary in nature and overrides all conflicting laws in effectuating the reorganization of States. He submitted that challenge to the adaptation of 2007 Rules is not amenable in law.

14.1 In **Mullaperiyar Environmental Protection Forum v. Union of India**^[35], the Supreme Court in paragraph-21 observed thus:

21. The contention urged is that the subject-matter of water is covered by Entry 17 of the State List under the Seventh Schedule of the Constitution and, therefore, Section 108 which, inter alia, provides that any agreement or arrangement entered into between the Central Government and one or more existing States or between two or more existing States relating to distribution of benefits, such as the right to receive and utilise water or electric power, to be derived as a result of the execution of such project, which was subsisting immediately before the appointed day shall continue in force, would be outside the legislative competence of Parliament for the same does not fall in List I of the Seventh Schedule, it falls in List II. The Act was enacted to provide for the reorganisation of the States of India and for matters connected therewith as stipulated by Article 3 of the Constitution. The said article, inter

alia, provides that Parliament may by law form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State. Article 4, inter alia, provides that any law referred to in Article 2 or 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule of the Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary. The creation of new States by altering territories and boundaries of existing States is within the exclusive domain of Parliament. The law-making power under Articles 3 and 4 is paramount and is not subjected to nor fettered by Article 246 and Lists II and III of the Seventh Schedule. The Constitution confers supreme and exclusive power on Parliament under Articles 3 and 4 so that while creating new States by reorganisation, Parliament may enact provisions for dividing land, water and other resources; distribute the assets and liabilities of predecessor States amongst the new States; make provisions for contracts and other legal rights and obligations. The constitutional validity of law made under Articles 3 and 4 cannot be questioned on the ground of lack of legislative competence with reference to the Lists of the Seventh Schedule. The new State owes its very existence to the law made by Parliament. It would be incongruous to say that the provision in an Act which gives birth to a State is ultra vires a legislative entry which the State may operate after it has come into existence. The power of the State to enact laws in List II of the Seventh Schedule are subject to parliamentary legislation under Articles 3 and 4. The State cannot claim to have legislative powers over such waters which are the subject of an inter-State agreement which is continued by a parliamentary enactment, namely, the States Organisation Act, enacted under Articles 3 and 4 of the Constitution. The effect of Section 108 is that the agreement between the predecessor States relating to irrigation and power generation, etc. would continue. There is a statutory recognition of the contractual rights and liabilities of the new States which cannot be affected unilaterally by any of the party States either by legislation or executive action. The power of Parliament to make law under Articles 3 and 4 is plenary and traverses over all legislative subjects as are necessary for effectuating a proper reorganisation of the States. We are unable to accept the contention as to the invalidity of Section 108 of the Act.

14.2 In **State of W.B. v. Subhas Kumar Chatterjee**

(supra), the Supreme Court in paragraph-30 observed thus:

30. **Yet another question that arises for our consideration is whether a writ of mandamus lies compelling the State to act contrary to law?** The State Government having accepted the recommendations of the successive Pay Commissions gave effect to those recommendations by framing statutory rules being the ROPA Rules and scales of the employees have been accordingly fixed. The respondents did not challenge the vires of the said Rules under which they were entitled to only a particular scale of pay. The State Government is under obligation to follow the

statutory rules and give only such pay scales as are prescribed under the statutory provisions. Neither the Government can act contrary to the rules nor the court can direct the Government to act contrary to rules. No mandamus lies for issuing directions to a Government to refrain from enforcing a provision of law. No court can issue mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law.

14.3 It is necessary to bear in mind that there is no challenge either direct or indirect to the provisions of the Act. In other words, the High Court has not challenged any provision of the Act. The contention urged on behalf of the High Court is that 2015 Rules, which were not made in consultation with the High Court as contemplated under Article 234 of the Constitution, are not binding on the High Court nor could they be acted upon or would operate since they are made in violation of the constitutional mandate under Article 234 of the Constitution. It is true that the Constitution confers supreme and exclusive power on the Parliament under Articles 3 and 4 so that while creating new States by reorganization, Parliament may enact law such as the provisions in the Act. Law making power under Article 3 and 4 is paramount and is not subjected to nor fettered by any other provision of the Constitution. It is equally true that the constitutional validity of law made under Articles 3 and 4 cannot be questioned on the ground of lack of legislative competence with reference to the Lists of the Seventh Schedule. The power of the State to enact laws in List-II of the Seventh Schedule are, however, subject to Parliamentary legislation under Articles 3 and 4.

14.4 Challenge is to 2015 Rules which were made in exercise of the powers under Section 101 of the Act. Challenge is made on the ground that 2015 Rules were not

made in consultation with the High Court as contemplated under Article 234 of the Constitution. As observed earlier, framing/ making of 2015 Rules without consulting the High Court is unconstitutional, and therefore, rights cannot be built up under the said Rules. In short, unconstitutional rules is not a law, it confers no rights, it imposes no duties, it affords no protection,; it is, in legal contemplation, as inoperative as if it had never been passed [See: *State of Bombay v. F.N. Balsara* (supra)]. If a law is repugnant to the Constitution, the law is void from its birth. The result, therefore, is that 2015 Rules are unconstitutional and not a law.

15. That takes us to consider the question, whether the Act contained any statutory prohibition against recruitment to the posts of District Judges or to judicial officers subordinate to the District Judges before bifurcation of subordinate judiciary or without fixing the cadre strength and identifying State-wise vacancies?

While dealing with this question, we may also have to consider whether Section 77 of the Act apply *proprio vigore* to allotment of members of the judicial hierarchy to either of the Post-Reorganization States, or is their allotment to be effected by the High Court *de hors* Section 77 albeit of principles analogous to those followed with regard to persons who were serving in connection with the affairs of the existing State of Andhra Pradesh?

15.1 By virtue of Section 3 of the Act, new State of Telangana was formed. Sections 77 & 78 of the Act which relate to the services other than All India Services are relevant for our purpose. It would be advantageous to

reproduce the provisions, which read thus:

77. Provisions relating to other services:- (1)

Every person who immediately before the appointed day is serving on substantive basis in connection with the affairs of the existing State of Andhra Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Andhra Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Telangana:

Provided that every direction under this sub-section issued after the expiry of a period of one year from the appointed day shall be issued with the consultation of the Governments of the successor States.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service, after consideration of option received by seeking option from the employees, and the date with effect from which such allotment shall take effect or be deemed to have taken effect:

Provided that even after the allocation has been made, the Central Government may, in order to meet any deficiency in the service, depute officers of other State services from one successor State to the other:

Provided further that as far as local, district, zonal and multi-zonal cadres are concerned, the employees shall continue to serve, on or after the appointed day, in that cadre:

Provided also that the employees of local, district, zonal and multi-zonal cadres which fall entirely in one of the successor States, shall be deemed to be allotted to that successor State:

Provided also that if a particular zone or multi-zone falls in both the successor States, then the employees of such zonal or multi-zonal cadre shall be finally allotted to one or the other successor States in terms of the provisions of this sub-section.

(3) Every person who is finally allotted under the provisions of sub-section (2) to a successor State shall, if he is not already serving therein, be made available for serving in the successor State from such date as may be agreed upon between the Governments of the successor States or, in default of such agreement, as may be determined by the Central Government:

Provided that the Central Government shall have the power to review any of its orders issued under this section.

78. Other provisions relating to services:- (1)

Nothing in this section or in section 77 shall be deemed to affect, on or after the appointed day, the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Andhra Pradesh or to the State of Telangana under section 77 shall not be varied to his disadvantage except with the previous approval of the Central Government.

(2) All services prior to the appointed day rendered by a person,-

(a) if he is deemed to have been allocated to any State under section 77 , shall be deemed to have been rendered in connection with the affairs of that State;

(b) if he is deemed to have been allocated to the Union in connection with the administration of the successor State of Telangana, shall be deemed to have been rendered in connection with the affairs of the Union, for the purposes of the rules regulating his conditions of service.

(3) The provisions of section 77 shall not apply in relation to members of any All-India Service.

15.2 The Government of India in exercise of powers conferred under Section 77 (1) and Section 79 of the Act vide “Order No.7” dated 31.5.2014 directed that the officers of the District Courts and the Courts subordinate thereto of the composite State of Andhra Pradesh shall continue to function in accordance with the provisions of these Sections and other provisions of the Act until further order is passed in accordance with the provisions of the said Act. It would be relevant to reproduce the Order No.7 which reads thus:

“ORDER No.7

In exercise of the powers conferred by sub-section (1) of section 77, and Section 79 of the Andhra Pradesh Reorganisation Act, 2014 (6 of 2014), the Central Government hereby directs that officers of the District Courts and Courts subordinate thereto of the existing State of Andhra Pradesh shall continue to function in accordance with the provisions of the aforesaid and sections of the said Act, until further orders is passed in accordance with the provisions of the said Act.”

15.3 Thus, the judicial officers who were working on the appointed day were provisionally allotted to the States where they were working irrespective of the State which they belonged to or they opt for and they continued to work at the same place till bifurcation of the subordinate judiciary is made. In other words, the provisional allocation was made, pending bifurcation of subordinate judiciary into Andhra Pradesh State Judiciary and Telangana State Judiciary. By Order No.7, the Government of India allocated

judicial officers to the States where they were functioning as on 02.06.2014.

15.4 In this connection, we would like to make it clear that though initially it was contended on behalf of the petitioners that Section 77 of the Act would apply to the judicial officers in the respective States, we are not entering into this controversy in view of the fact that there was a consensus that the High Court can independently work out modalities for bifurcation of the subordinate judiciary into Telangana State Judicial Service and Andhra Pradesh State Judicial Service by framing its own guidelines for final allocation of judicial officers to the respective State's Judiciary. Mr. K. Nataraj, learned Additional Solicitor General of India also made clear to which none of learned counsel for the parties objected to and fairly stated that the High Court can frame the guidelines/rules for bifurcation of the subordinate judiciary and for final allocation of judges after seeking options in terms of the guidelines.

15.5 We have also noticed that Kamalnathan Committee, while undertaking the allotment process, left out allotment of the subordinate judiciary for the reason that the High Court has the whole and sole control over the subordinate judiciary as has been laid down by the Supreme Court in *Bal Mukund* (supra). Though, it is open to the High Court to adopt the principle of allocation followed by the said Committees, under Chapter-VIII pertaining to State Civil Services, having regard to Article 50 of the Constitution, as interpreted in *Bal Mukund* (supra), it is not binding on the High Court to follow the said

principle/guidelines. The terms “in relation to the affairs of the State” *ipso facto* cannot be the test to determine whether the sequence and machinery under Section 77 of the Act, minus the High Court, would determine the bifurcation of subordinate judiciary. Once the High Court finalizes the options, it may send it to the Central Government for passing the consequential ministerial orders. The contention that Section 77 by itself, determines the process of allocation of judicial officers by the Central Government in accordance with the recommendations of the Kamalnathan Committee, would be inconsistent with the salutary constitutional norm of independence of judiciary, which extends to High Court’s control over subordinate judiciary, including in the matter of allocation of judicial officers post-bifurcation of the State.

15.6 The submission that Section 77 of the Act proceeds on the premise of separate State Services, including judicial services, and thereafter proceeds to make provisional allotment to the successor States, and this position being recognized and amplified by the fact that after the Act came into force promotions within the subordinate judiciary have not been made Inter-State but have only been made Intra State i.e., within the State of Telangana or the State of Andhra Pradesh, as the case may be after the appointed day deserves to be rejected outright. There is no indication in the Act which prohibits promotions or for that matter recruitment, as has been undertaken by the High Court in the present case. The promotions within the subordinate judiciary did not take place Inter-State in view of Order No.7 issued by the Central Government. The said order, it appears, was issued for

convenience and to enable the High Court to take steps for bifurcation of subordinate judiciary into two State's Judicial Services.

15.7 At the cost of repetition, we observe that there is absolutely no indication in the Act which prohibit recruitment such as the one undertaken in the present case, before bifurcation of the subordinate judiciary. It is also not possible to uphold the submission that it is impermissible to make new appointments after the appointed day without bifurcation of the subordinate judiciary in both the States. For final allotment, as contemplated under Section 77 of the Act, the cut off date would be the 2nd of June, 2014, that itself means that the High Court has powers to work out its modalities even for the allocation of judicial officers recruited/appointed after the cut off date. In any case the submission that till bifurcation of the Subordinate Judiciary or final allocation of judicial officers in terms of Section 77 (2), recruitment cannot be undertaken and/or proceed, in our opinion deserves to be rejected outright. If the Legislature had an intention to stop recruitment till final allocation of subordinate judiciary it would have so indicated in the Act. In the absence of any such indication, the submission that it is impermissible to make new appointments after the appointed day without bifurcation of the Subordinate Judiciary in both the States must be rejected.

16. 2007 Rules were brought into force on 1.1.2007 vide G.O.Ms.No.119, dated 2.8.2008. Preamble of the notification clearly states that the Rules were made in consultation with the High Court of Andhra Pradesh. Under

these rules, process of recruitment to the posts of District Judges and Civil Judges vested in the High Court. Rule 5 of 2007 Rules provide for eligibility criterion for the appointment to the category of District Judges and Civil Judges. It provides that no person shall be eligible for appointment to these categories if he is not a citizen of India. Rule 7 of 2007 Rules provides that Rules 22 and 22A of Andhra Pradesh State and Subordinate Service Rules, 1996 insofar as they relate to SC, ST, BC, Women and one percent for Physically Handicapped persons {Orthopedically Handicapped (lower portion of body)}, shall apply to the appointments to be made by direct recruitment and SCs & STs insofar as it relates to recruitment by transfer. These Rules (Andhra Pradesh State and Subordinate Service Rules), as of today, apply to both the States. Even if it is assumed that 2015 Rules would apply to State of Telangana while adapting 2007 Rules, no amendment whatsoever was made affecting reservations for different categories, as aforementioned. The State of Telangana though adapted 2007 Rules vide G.O.Ms.No.3, dated 11.2.2015, so far has not adapted Andhra Pradesh State and Subordinate Service Rules, 1996 with or without modification by way of amendment. Therefore, whatever reservations are provided in the Andhra Pradesh State and Subordinate Services would apply to the State of Telangana also.

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16.1 In this backdrop, we would like to examine whether the petitioners have been able to demonstrate with any degree of precision or certainty that even there chances of appointment/ selection/promotion will be reduced in any manner if the impugned recruitment

process and selections made in pursuance thereof before the allotment of the judicial officers to the respective States? And whether it is not a fact that though number of persons competing for appointment by transfer will be larger if the present selection proceeds, the number of posts available for recruitment by transfer will also be proportionately larger? While dealing with these questions, the well settled position of law will have to be borne in mind that whereas the right to be considered for appointment or promotion is justifiable right, or even a fundamental right, the chances of appointment or promotion is neither a condition of service or fundamental right nor indeed does a reduction in such chances give rise to any enforceable legal right. Therefore, question is whether the petitioners can claim that any injury has been suffered by them or lawful grievance exists merely because chances of appointment or promotion or selection may allegedly got reduced.

16.2 Mr. G. Vidya Sagar, learned senior counsel for the petitioners submitted that the issue raised in the writ petitions is with regard to the identification of vacancies available in the State of Telangana and the procedure to be followed by rule of reservation applicable in the State of Telangana. In the absence of specific determination of the vacancies in the State of Telangana, 2014 and 2015 Notifications ought not to have been issued and they deserved to be declared as vague and invalid. Further, he submitted that the vacancies by recruitment by transfer in the State of Telangana shall be from amongst employees working in the State of Telangana only. Hence the question as framed will have to be answered against the action of

the High Court and in favour of the petitioners. Similar submissions were advanced by Mr. S. Niranjan Reddy, learned counsel for the intervener and the petitioner-in-person.

16.3 On the other hand, Mr. C.U. Singh, learned senior counsel for the High Court submitted that even though number of persons competing for posts will be larger if the recruitment continues as per 2007 Rules, number of vacancies would also be proportionately higher. As regards the reserved categories are concerned, he submitted that the issue pertaining to change of reserved categories in both the States has not come up and in the absence of any change in the reserved categories, any averment with respect to the same is not tenable.

16.4 As seen earlier, that the power to undertake exercise for recruitment to the posts of District Judges and Civil Judges is vested in the High Court under 2007 Rules, providing citizenship of India as the principle criterion for appointment, it is clear that in response to 2014 and 2015 Notifications not only the persons from the State of Telangana or the State of Andhra Pradesh but even the persons from other States, right from Jammu & Kashmir to Kerala, had a right to apply for the posts notified. As a matter of fact, the High Court received applications from the other States also. We would like to give break-up of the applications received from both the States and from other States, which would demonstrate that issuance of notifications under 2007 Rules, the chances of persons in the State of Telangana of appointment/selection/promotion have not been reduced in any manner.

16.5 The applications received in response to 2014 Notification issued for recruitment of 97 posts of Civil Judges (Junior Division) under Direct Recruitment and Recruitment by Transfer were 7,624, of which, 120 applications were rejected and 7,504 Hall-tickets were issued to eligible candidates to appear for screening test. The candidates, who, actually appeared for screening test held on 8.3.2015 from 13 Districts of Andhra Pradesh were 2,920 and from the State of Telangana 3,155. The candidates qualified in the screening test at 1:10 ratio for the written examination from 13 Districts of Andhra Pradesh were 577 and from the State of Telangana 520 and from other States 45. The candidates who appeared for written examination held on 25.10.2015 were 1,060, of which 544 were from the State of Andhra Pradesh. The candidates qualified in the written examination at 1:3 ratio for interview were 291, of which, 143 were from Andhra Pradesh and 148 from Telangana. The candidates provisionally selected for 97 posts from Andhra Pradesh are 60 and 37 from the State of Telangana. Thus, the selection, from the facts and figures mentioned above in respect of 2014 Notification, would demonstrate that the chances of appointment, selection and promotion have not been reduced in any manner of the candidates from the State of Telangana.

16.6 Similarly, even in response to the 2015 Notification for recruitment of 34 posts of Civil Judges (Junior Division) under Direct Recruitment and Recruitment by Transfer 2,528 candidates appeared for screening test from 13 Districts of Andhra Pradesh and 2,808 candidates

appeared from the State of Telangana, including 1,104 candidates from the city of Hyderabad. The number of qualified candidates in the screening test from the State of Andhra Pradesh were 191 whereas from the State of Telangana, including Hyderabad, 160 and 18 from other States. The candidates, who appeared for the written examination held on 8.11.2015 were 187 candidates appeared from 13 Districts of Andhra Pradesh and 167 from the State of Telangana including 65 from Hyderabad. The candidates qualified in the written examination at 1:3 ratio for interview, from the State of Andhra Pradesh were 58 whereas from the State of Telangana and Hyderabad together were 43 and 4 from other States. The selected candidates for 34 posts from Andhra Pradesh are 23, whereas from the State of Telangana are 7 and from other States 3.

16.7 The facts and figures of the selected candidates would demonstrate that the chances of persons in the State of Telangana have not been affected and the ultimate selection is almost in the ratio of 60:40 in pursuance of both the Notifications. Insofar as the issue raised and the apprehension expressed with regard to identification of vacancies available in the State of Telangana and the procedure to be followed for the rule of reservation applicable in the State of Telangana is also in our opinion is baseless and would not detain us long. The question of considering the vacancies available in the State of Telangana only did not arise since in both the States judicial officers are working on the basis of provisional allotment. The final allocation as contemplated under the provisions of the Act has not yet taken place though the

High Court has commenced the process and has reached almost the final stage. The High Court was, therefore, justified while issuing 2014 and 2015 Notifications, in taking into consideration the vacancies available in both the States. This definitely has not affected or reduced the chances of appointment/selection/promotion of the persons, originally belong to or would be allocated to the State of Telangana in any manner. Insofar as applicability of the rule of reservation, as stated earlier, the State of Telangana has not adapted Andhra Pradesh State and Subordinate Service Rules, 1996 and hence they apply to the State of Telangana as they are. That apart, it will have to be borne in mind that bifurcation of the State did not result in automatic bifurcation of the subordinate judiciary. The High Court, having complete control of the subordinate judiciary, is the whole and sole authority to initiate bifurcation of the subordinate judiciary. In the absence of any such action, at the relevant time i.e., when the 2014 and 2015 Notifications were issued, the High Court was justified in law in issuing the Notifications under 2007 Rules. It is prerogative of the High Court to decide the cadre strength as per 2007 Rules. In view of the same and the orders of the Hon'ble Supreme Court passed on interlocutory applications, including the judgment in *Malik Mazhar*, to proceed with the recruitment process, the High Court went ahead and issued 2014 and 2015 Notifications. Thus, in our opinion, the petitioners cannot legitimately make the grievance with regard to recruitment channel of appointment or such matters since it was the prerogative of the High Court on the administrative side to go ahead with the recruitment. The petitioners are not justified in making grievance with regard to the method of recruitment to the

posts of Civil Judges (Junior Division), after formation of the State of Telangana, on the basis of common notifications issued by the High Court inviting applications without making any distinction between the applicants/persons from these two States. The submission that the High Court on the administrative side ought to have followed the law applicable for recruitment in the State of Telangana deserves to be rejected outright.

17. We would also like to consider the legal maxims pressed into service by Mr. C.U. Singh, learned senior counsel for the High Court. He raised the questions whether the legal maxims *Necessitas facit licitum quod alias non est licitum* i.e., necessity makes that lawful which otherwise would not be lawful; and *Necessitas non habet legem* i.e., necessity has no law; and *Necessitas publica major est quam private* i.e., public necessity is greater than private would not be applicable in a situation such as the situation fallen for our consideration, where the Supreme Court recognizing the pressing need for filling vacancies in the subordinate judiciary throughout the Nation has issued binding directions to all the High Courts and is continuously monitoring the implementation of those directions, with supplementary directions having been issued to the High Court of the States of Telangana and Andhra Pradesh, which the High Court is required to follow to the best of its ability.

17.1 In reply to this contention, it was submitted on behalf of the petitioners that the doctrine of necessity has no application in the present facts of the case inasmuch as the High Court has six months time to make the recruitment

to the States of Andhra Pradesh and Telangana by the Supreme Court. The High Court, therefore, ought to have conducted recruitment process by issuing fresh notification under 2015 Rules. He also submitted that the directions in I.A. Nos.127 and 128 of 2014, dated 20.01.2015 cannot be taken as final statement of law.

17.2 The argument of Mr. G. Vidya Sagar, learned senior counsel that the High Court had ample time of six months to make the recruitment to the States of Andhra Pradesh and Telangana to the posts of Civil Judges (Junior Division) is wrong and deserves to be rejected outright.

17.3 The Supreme Court in *Malik Mazhar* has given the calendar for completing the process of recruitment to the posts of Civil Judges starting from 15th January of every year and completing the same on 1st December. The calendar shows that the process of recruitment takes complete one year. Thus, having regard to the judgment of the Supreme Court in *Malik Mazhar*, in our opinion all the three legal maxims would have application to the facts of the present case. It is not in dispute that there was and is pressing need for filling vacancies in the subordinate judiciary in both the States. The process already got delayed in view of the bifurcation of the erstwhile State of Andhra Pradesh. That seems to be the reason why the Supreme Court on the applications made by the High Court in *Malik Mazhar* issued directions from time to time knowing fully well the fact situation in these States and the provisions of the Act and monitored the implementation of the directions. It is also clear from the order of the Supreme Court, rejecting application filed by the High

Court bearing I.A. Nos.138 & 139 of 2015, whereby the High Court sought six months' extension to complete the recruitment process, which had already commenced, was rejected.

17.4 The doctrine of necessity *Impotentia excusat legam* and *Lex non cogit ad impossibilia* fell for consideration of the Supreme Court in ***Presidential Poll Re,***^[36] wherein a Seven-Judge Bench speaking unanimously through the then Chief Justice Ray, in this context held as follows:

".....The maxim of law *impotentia excusat legam* is intimately connected with another maxim of law *lex non cogit ad impossibilia*. *Impotentia excusat legam* is that when there is a necessary or invincible disability to perform the mandatory part of the law that *impotentia* excuses. The law does not compel one to do that which one cannot possibly perform. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him". Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance of the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See *Broom's Legal Maxims* 10th Edn. at pp. 162-163 and *Craies on Statute Law* 6th Edn. at p. 268).

17.5 In the present case, the High Court had no option but to proceed with the recruitment initiated pursuant to 2014 and 2015 Notifications not only in view of the judgment of the Supreme Court in *Malik Mazhar* and the directions issued by the Supreme Court from time to time on the applications filed therein but also in view of the fact that when the Notifications were issued, 2007 Rules were in force and in any case 2015 Rules though were brought into force with effect from 2.6.2014, could not be acted upon in view of the mandate under Article 234 of the Constitution.

18. In the result, the Public Interest Litigation and the Writ Petitions are dismissed. The respondent – High Court shall complete the process of recruitment initiated in pursuance of 2014 and 2015 Notifications. The respondent – State Governments are directed to take all necessary steps for appointments of the selected candidates, recommended by the High Court at the earliest. 2015 Rules shall not be acted upon and shall not operate since they were not made in consultation with the High Court as provided for under Article 234 of the Constitution. It is open to the State of Telangana to take steps to adapt 2007 Rules afresh, in exercise of the powers under Section 101 of the Act, in consultation with the High Court.

Miscellaneous petitions, if any, pending shall stand closed.

DILIP B. BHOSALE, ACJ

**S.V. BHATT,
J**

Date: 29.04.2016
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[\[1\]](#) (2008) 17 SCC 703

[\[2\]](#) (2014) 8 SCC 883

[\[3\]](#) (1998) 4 SCC 409

[\[4\]](#) (2011) 6 SCC 216

[\[5\]](#) (2010) 11 SCC 694

[\[6\]](#) (2016) 1 SCC 397

[\[7\]](#) (2008) 10 SCC 1

- [\[8\]](#) AIR 1963 SC 996
- [\[9\]](#) (1991) 4 SCC 406
- [\[10\]](#) (1988) 2 SCC 602
- [\[11\]](#) (1991) 4 SCC 584
- [\[12\]](#) (1989) 3 SCC 396

- [\[13\]](#) 1980 (Supp) SCC 524
- [\[14\]](#) (1977) 1 SCC 486
- [\[15\]](#) AIR 1956 SC 285
- [\[16\]](#) (2003) 9 SCC 336
- [\[17\]](#) (2006) 3 SCC 330
- [\[18\]](#) (2000) 4 SCC 640
- [\[19\]](#) (2015) 5 SCC 479
- [\[20\]](#) AIR 1955 SC 123
- [\[21\]](#) (1995) 1 SCC 745
- [\[22\]](#) AIR 1966 SC 1987
- [\[23\]](#) (2014) 10 SCC 1
- [\[24\]](#) (1973) 4 SCC 225
- [\[25\]](#) (2000) 1 SCC 168
- [\[26\]](#) (2004) 6 SCC 689
- [\[27\]](#) 1994 Supp (1) SCC 44
- [\[28\]](#) (2006) 3 SCC 620
- [\[29\]](#) (2013) 15 SCC 1
- [\[30\]](#) (2007) 11 SCC 522
- [\[31\]](#) (1990) 3 SCC 157
- [\[32\]](#) AIR 1970 SC 1742
- [\[33\]](#) (2003) 8 SCC 40
- [\[34\]](#) 1951 SCR 682
- [\[35\]](#) (2006) 3 SCC 643
- [\[36\]](#) (1974) 2 SCC 33