A POONAM VERMA AND ORS.

v.

DELHI DEVELOPMENT AUTHORITY

DECEMBER 13, 2007

B **[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]**

Urban Development:

C *Delhi Development Act, 1957—ss. 41 and 56—Direction by Central Government for creation of 'out of turn quota' for allotment of flats—Legality of—Held: Central Government could not issue such directions—It did not have any quota under the Act or the Scheme—s. 41 envisages that Central Government could issue directions having* D *nexus with efficient administration of the Act and not in the matter of allotment of flats—Moreso, Scheme was closed and could not be revived thereafter—Guidelines being advisory in character* **per se** *did not confer any legal right—Also doctrine of legitimate expectation was not invokable—Thus, purported decision being wholly without* E *jurisdiction is a nullity—Administrative law—Legitimate expectation.*

The respondents floated the Self Financing Registration Scheme, 1982 for the allotment of flats. The appellants got themselves registered under the Scheme, but were not successful in obtaining the flats. The F **Scheme was closed. Thereafter, public notice was issued for release of more flats and the unsuccessful registrants were given chance to apply. Appellants did not respond to the notice, however, were allotted flats in category III. Appellants did not make payments whereas raised a claim for including their names in VI and VI A Schemes. Respondents rejected** G **the claim. Aggrieved appellants filed complaint before the Consumer Forum on the ground of deficiency of service and unfair trade practice. They were unsuccessful in the first round of litigation. Appellants then approached the Ministry of Urban Affairs. The Joint Secretary (D & L) by letter dated 24.08.2000 addressed to Vice Chairman, DDA**

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directed that the VC, DDA would cover the case of pending registrants (three in number) under the out of Turn Allotment Quota, being hard cases and action would be taken to allot flats. Despite availability of flats, the Ministry's orders were not complied with. Appellant's application before the State Commission was dismissed. Appellants then filed application before Lok Adalat. Lok Adalat held that the DDA did not accept the recommendations since SFS Scheme had become defunct and the scheme of OTA was no longer in existence and thus, directed the appellants to approach appropriate forum. Both the Writ Petitions as also Letter Patent appeals thereagainst were dismissed. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. Section 41 of the Delhi Development Act, 1957 only envisages that the respondent would carry out such directions that may be issued by the Central Government from time to time for the efficient administration of the Act. It speaks about policy decision. Any direction issued must have a nexus with the efficient administration of the Act. The same does not take within its fold an order which can be passed by the Central Government in the matter of allotment of flats by the Authority in respect of a particular scheme.

[Para 12] [560-G; 561-A, B]

1.2. The Central Government does not have any quota under the Act. It did not have any quota under the Scheme. The Central Government had no say in the matter either on its own or under the Act. In terms of the Brochure, Section 41 of the Act does not clothe any jurisdiction upon the Central Government to issue such a direction.

[Paras 13 and 14] [561-B, D, E]

1.3. The submission that the Central Government could issue the said direction in exercise of rule making power under section 56 of the Act is wholly misplaced. In issuing the letter dated 24.08.2000, the Central Government did not exercise its legislative power nor could it do so. The Central Government in terms of the Act apart from Section 41 did not have any power and, thus, could not have issued any direction

A in terms thereof. If section 41 of the Act or for that matter Section 56(2)(r) thereof were not applicable, the question of issuing any direction purported to be in terms of Section 21 of the General Clauses Act did not arise. [Paras 15 and 16] [561-E, F, G]

B *M.P. Gangadharan and Ors.* v. *State of Kerala and Ors.*, [2006] 6 SCC 162, distinguished.

1.4. All the authorities under the Act including the Central Government being the creature of statute were bound to act within the four corners thereof. A specific grievance was raised by the appellants C that the action on the part of the authority amounted to unfair trade practice and there was deficiency of service. The same had been negatived. The courts having appropriate jurisdiction having found neither unfair trade practice nor there being deficiency in service and in that view of the matter, the Central Government ordinarily ought not D to have interfered in the matter. Appellants took recourse to remedies on administrative side which stricto sensu were not available.

[Paras 19 and 20] [562-B, C, D]

1.5. Some officers of the respondent by themselves could not have E evolved a Scheme which was beyond the purview and scope of the Act. Respondent being a State within the meaning of Article 12 of the Constitution of India is bound to fulfill the constitutional scheme contained in Article 14 thereof. The Central Government itself directed the authority to confine the 'out of turn allotment' quota by reason of a F direction issued in June, 2000 only for widows of Government servants who dies in harness and those who were killed by terrorists. It would be preposterous to suggest that the Central Government could act beyond its professed policy decision. Thus Central Government, acted illegally and without jurisdiction in purporting to take a decision that the hard G cases may be brought within the purview of the 'Out of Turn Allotment' Quota, as therefor there was no legal sanction. Having professed to abide by the Brochure which contained the policy of reservation, the Central Government could not in absence of any statutory provision directed creation of any quota and that too after closure of the Scheme. H The Scheme after its closure could not even have been revived. Such a

purported decision being wholly without jurisdiction, is a nullity. A
[Paras 21, 22 and 23] [562-D, E, F, G; 563-A, D, E]

Ramana Dayaram Shetty **v.** *The International Airport Authority of India and Ors.,* **AIR (1979) SC 1628 and** *Harjit Singh and Anr.* **v.** *The State of Punjab and Anr.,* **(2007) 3 SCALE 553, relied on.** B

Vitarelli **v.** *Seaton,* **359 US 535 referred to.**

1.6. Guidelines per se do not partake to the character of statute. Such guidelines in absence of the statutory backdrop are advisory in nature. Guidelines being advisory in character per se do not confer any C **legal right. [Para 24] [563-E; 564-C]**

P.M. Ashwathanarayana Setty and Ors. **v.** *State of Karnataka and Ors.,* **AIR (1989) SC 100 and** *State of Himachal Pradesh and Anr.* **v.** *Kailash Chand Mahajan and Ors.,* **[1992] Supp 2 SCC 351, distinguished.** D

Narendra Kumar Maheshwari **v.** *Union of India and Ors.,* **AIR (1989) SC 2138;** *Narendra Kumar Maheshwari* **v.** *Union of India and Ors.,* **[1990] (Supp) SCC 440;** *Maharao Sahib Shir Bhim Singhji* **v.** *Union of India and Ors.,* **[1981] 1 SCC 166;** *J.R. Raghupathy and Ors.* **v.** *State of A.P. and Ors.,* **[1988] 4 SCC 464 and** *Uttam Parkash Bansal and Ors.* **v.** *L.I.C. of* E *India,* **(2002) (100) DLT 487, referred to.**

1.7. The doctrine of Legitimate Expectation would apply only when a practice is found to be prevailing. It has a positive concept. But, in a case of this nature where purported expectation is based on an illegal F **and unconstitutional order, same is wholly inapplicable, as it cannot be founded on an order which is per se illegal and without foundation.**
[Para 27] [564-G, H; 565-A]

Ram Pravesh Singh and Ors. **v.** *State of Bihar and Ors.,* **[2006] 8 SCC 381;** *J.P. Bansal* **v.** *State of Rajasthan,* **[2003] 5 SCC 134: (2003) 3** G **SCALE 154 and** *Union of India* **v.** *K.P. Joseph and Ors.,* **[1973] 1 SCC 194: AIR (1973) SC 303, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5874 of 2007. H

A From the final Judgment dated 18.08.2006 with orders dated 25.4.2006 and 20.3.2006 of the High Court of Delhi at New Delhi in Civil Writ No. 19633-35 of 2005.

Poonam Verma Appellant-In-Person.

B Ashwani Kumar for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

C 2. Respondent is an authority created under the Delhi Development Act, 1957 (for short "the Act"). The Act was enacted to provide for the development of Delhi according to plan and for matters connected therewith or ancillary thereto.

Respondent floated a scheme known as Fifth Self Financing Housing D Registration Scheme, 1982 (for short "the Scheme"). Appellants herein pursuant to an advertisement issued in this behalf registered themselves; their registration numbers being 13463, 16602 and 13464. For the purpose of allotment of flats, lots were drawn on various occasions, viz., in June, 1987, November, 1987, March, 1989, July, 1990, January, 1991, E January, 1993. Appellants were not successful therein and, thus, were unable to get flats in locality of their choice. The Scheme was closed. However, with a view to give a chance to those who were not successful in the lots on the earlier occasions, a public notice was issued in some newspapers on 8.12.1993 for release of about 3000 flats which included F some built and ready-built ones situated in Kondli-Gharoli. Registrants under the Scheme were entitled to apply therefor. In the public notice, it was categorically stated that the registrants of the said scheme who had not applied for an allotment in that release would not be eligible to apply again for allotment. It was further stated that in the case registrants of 5th G SFS did not avail of this opportunity or if they surrendered allotment/ allocation after being successful, they shall be deemed to have opted out of the scheme and action shall be taken to refund their registration money.

3. Appellants did not respond to the said notice. Despite the same H allegedly they had been allotted Category- III flats. They were called upon

to pay the price specified therefor and to take delivery thereof. They declined to do so. They asked their names to be included in the VI and VI-A Self Financing Schemes which were issued later on. Respondent did not agree thereto.

4. A complaint was filed by the appellants before the Consumer Disputes Redressal District Forum – II on or about 16.01.1995 *inter alia* for a direction upon the respondent herein that their registration should not be cancelled and they should be considered in future draw of lots till they could be allotted flats in the locality of their choice. By a judgment and order dated 24.07.1995, the said application was allowed holding that the action of the respondent in not considering the cases of the appellants for allotment through the process of draw of lots amounted to unfair trade practice, apart from being unilateral and unjustified. Aggrieved by and dissatisfied therewith, the respondent preferred an appeal before the State Consumer Disputes Redressal Commission, New Delhi and by an order dated 30.11.1998 allowed the said appeal and set aside the order of the District Forum. Appellants herein thereafter filed a revision application before the National Consumer Disputes Redressal Commission. During pendency of the said application, they approached the Finance Member and Chairman of the respondent to place their case before the 'out of court settlement committee'. By an order dated 25.11.1999, the National Commission dismissed the revision petition filed by the appellants herein relying *inter alia* on Clause 16 of the Brochure wherein it had categorically been stated that "DDA reserves the right to withdraw the Scheme at any time". A Special Leave Petition preferred thereagainst was dismissed.

5. Although the appellants were not successful in their attempt to obtain any remedy on the judicial side, they purported to approach the Ministry of Urban Affairs in 1997. They made certain representations. Allegedly, the Joint Secretary (D&L) by reason of a letter dated 24.08.2000 addressed to the Vice-Chairman of Delhi Development Authority directed as under:

> "I am directed to refer to D.O. letter No. F.1 (Misc.) 5th SFS & onwards/2000/SFS, dated the 15th May, 2000 from Shri Arvind

A Kumar, the then Commissioner (Housing), on the subject noted above, and to state that the matter pertaining to giving one more opportunity to the left out registrants of 5th and subsequent Self Financing Schemes was discussed in the Chamber of UDM with VC, DDA some time back. After discussion, it was agreed that
B instead of a general scheme, VC, DDA would cover the pending petitioners, especially, the hard cases under the OTA quota. It was also mentioned by the VC, DDA that there are only three such cases. It is, therefore, requested that further action to allot the flats to these three petitioners may please be taken and action taken in
C the matter may be intimated to this Ministry in due course."

6. The State Consumer Disputes Redressal Commission was again approached. The application of the appellants was dismissed. Another application was filed by them before the Permanent Lok Adalat for non-
D compliance of orders of Ministry of Urban Development despite availability of flats. By an order dated 6.09.2005, the Lok Adalat observed:

"On 12.4.2005, Lok Adalat had recommended that the case of the petitioner is a hard case and instead of General Scheme the case of the petitioner should be considered under the Out of Turn
E Allotment quota particularly when there are only three cases left. In this connection a letter of Minister of Urban Development & Poverty Alleviation dated 24.8.2005 refers to. This letter clearly provides that according to the Vice-Chairman, DDA there are only three such cases left and in such a situation the case of the petitioner
F should be covered under OTA Quota being a hard case. This recommendation has not been accepted by the DDA presumably for the reason that the scheme of SFS under which the petitioner had applied had become defunct. The scheme of OTA under the quota is also no longer in existence and as such the case of the
G petitioner cannot be considered under this category. The petitioner cannot be considered under this category. The petitioner cannot be allotted a flat as the flats which are lying vacant for which the petitioner has applied for the DDA has merged the flats with the Higher Income Group. In other words, the DDA in the aforesaid
H circumstances has opposed such allotment to the petitioner. There

is no meeting ground between the parties, the matter is closed as unsettled. The petitioner is at liberty to approach appropriate Forum/Court of Law for redressal of his grievances if she is so advised."

7. Thereafter, a writ petition was filed before the Delhi High Court which was marked as Civil Writ No. 19633-35 of 2005. By an order dated 20.03.2006, the said petition was dismissed. Letters Patent Appeal preferred thereagainst by the appellants being LPA No. 652-654 of 2006 has also been dismissed by reason of the impugned judgment dated 25.04.2006. A review application filed thereagainst also stand dismissed.

8. Mr. Ram Prakash, representing the appellants, in support of this appeal *inter alia* would submit:

(i) As in the Brochure, a policy of reservation was provided, the High Court committed a serious illegality in opining that no legal right accrued in their favour in terms of the said letter dated 24.08.2000.

(ii) The Central Government, having regard to Section 41 read with Section 56(2)(r) of the Act, could direct allotment of flats from 'out of turn quota' keeping in view the cases of the appellants who were three in number, as falling in the category of hard cases.

(iii) The Central Government in a situation of this nature was entitled to formulate a Scheme for the left out registrants. The authorities of the respondent having participated in the meeting with the Minister of Urban Development, pursuant whereto the said letter dated 24.08.2000 was issued, the respondent was bound to implement the same in view of the principles of Legitimate Expectation and Promissory Estoppel.

(iv) As a large number of flats had been vacant, as would appear from the statement made by the Vice-Chairman of the respondent on 8.11.2002 by reason of allotment of the flats, nobody else would be prejudiced.

A 9. Mr. Ashwani Kumar, learned counsel appearing on behalf of the respondent, on the other hand, submitted:

(i) Appellant do not have any legal right in obtaining allotment of flats.

B (ii) They having failed to deposit the amount as far back in 1994 cannot now be permitted to claim an equitable right despite their unsuccessful attempt before the Forums created under the Consumer Protection Act, 1985.

10. Indisputably, the Scheme was an independent one. It was a Self C Financing Housing Registration Scheme. Other similar schemes following the same were also wholly independent of each other. The Brochure issued for enforcing the said Scheme is a self-contained document. It provides for the mode and manner in which flats are to be allotted, the categories of the allotment of flats thereof, mode of payment as also cancellation D thereof. Indisputably, despite the fact that the appellants were not successful in obtaining the flats by reason of draw of lots and despite the fact that they did not respond to the notice issued by the respondent, those cases had not been considered in the year 1994. On what ground, we do not know, flats were allotted in their favour. They were asked to make E deposits. They did not do so. They, on the other hand, made a totally untenable claim of continuing their registration again in VI and VI-A Schemes.

11. We have noticed hereinbefore that their claim based on deficiency F of service and/ or unfair trade practice was rejected by the Higher Forum on the part of the respondent. They lost their battle upto this Court in the first round of litigation.

12. Having failed to establish any legal right in themselves as also purported deficiency in services on the part of the respondent before G competent legal forums, they took recourse to remedies on administrative side which stricto sensu were not available. It has not been shown as to on what premise the Central Government can interfere with the day to day affairs of the respondent. Section 41 of the Act, only envisages that the respondent would carry out such directions that may be issued by H

the Central Government from time to time for the efficient administration of the Act. The same does not take within its fold an order which can be passed by the Central Government in the matter of allotment of flats by the Authority. Section 41 speaks about policy decision. Any direction issued must have a nexus with the efficient administration of the Act. It has nothing to do with carrying out of the plans of the authority in respect of a particular scheme.

13. The Central Government does not have any quota under the Act. It did not have any quota under the Scheme. The reservations envisaged in terms of the Scheme were as under:

"a) 25% of the flats for the persons belonging to SC/ST.

b) 3% of the flats for MPs.

c) 2% of the flats for persons who have won national recognition in the field of sports, art and music.

d) 1% of the flats for physically handicapped."

14. Evidently, the Central Government had no say in the matter either on its own or under the Act. In terms of the Brochure, Section 41 of the Act does not clothe any jurisdiction upon the Central Government to issue such a direction.

15. Submission of Mr. Ram Prakash that the Central Government could issue the said direction in exercise of its rule making power under Section 56 of the Act is wholly misplaced. In issuing the said letter, the Central Government did not exercise its legislative power nor could it do so. The Central Government in terms of the Act apart from Section 41 did not have any power and, thus, could not have issue any direction in terms thereof.

16. If Section 41 of the Act or for that matter Section 56(2)(r) thereof were not applicable, the question of issuing any direction purported to be in terms of Section 21 of the General Clauses Act, as has been submitted by Mr. Ram Prakash, did not arise.

17. *M.P. Gangadharan and Ors.* v. *State of Kerala and Ors.*,

A [2006] 6 SCC 162, whereupon reliance has been placed by Mr. Ram Prakash, has no application in the instant case.

18. The Scheme in question was closed as far back as in the year 1994. The Central Government in terms of the provisions of the Act or otherwise had no jurisdiction to revive the same.

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19. All the authorities under the Act including the Central Government being the creature of statute were bound to act within the four corners thereof. A specific grievance was raised by the appellants herein that the action on the part of the authority amounted to unfair trade practice. C Deficiency of service was also pleaded. The same had been negatived. The courts having appropriate jurisdiction having found neither unfair trade practice nor there being deficiency in service and in that view of the matter, the Central Government ordinarily ought not to have interfered in the matter.

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20. The purported letter dated 24.08.2000 does not specify as to how the Central Government assumed any jurisdiction in the matter.

21. Some officers of the respondent by themselves could not have evolved a Scheme which was beyond the purview and scope of the Act. E Respondent being a State within the meaning of Article 12 of the Constitution of India is bound to fulfill the constitutional scheme contained in Article 14 thereof. It could not, going behind the professed scheme as contained in the Brochure, create a quota. Such a purported decision being wholly without jurisdiction, is a nullity. The Central Government itself F directed the authority to confine the 'out of turn allotment' quota by reason of a direction issued in June, 2000 only for widows of:

(a) Government servants who dies in harness.

(b) Those who were killed by terrorists.

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It would be preposterous to suggest that the Central Government could act beyond its professed policy decision.

22. The Central Government, thus, acted illegally and without jurisdiction in purporting to take a decision that the hard cases may be

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brought within the purview of the 'Out of Turn Allotment' Quota, as therefor there was no legal sanction. A

Justice Frankfurter in Vitarelli v. *Seaton* [359 US 535] stated:

> "An executive agency must be rigorously held to the standards by which it professes its action to be judged..... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. .....This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword." B C

[See also *Ramana Dayaram Shetty* v. *The International Airport Authority of India and Ors.*, AIR (1979) SC 1628 : [1979] 3 SCC 489, *Harjit Singh & Anr.* v. *The State of Punjab & Anr.* (2007) 3 SCALE 553]) D

23. Having professed to abide by the Brochure which contained the policy of reservation, as noticed hereinbefore, the Central Government could not in absence of any statutory provision directed creation of any quota and that too after closure of the Scheme. The Scheme after its closure could not even have been revived. E

24. Guidelines *per se* do not partake to the character of statute. Such guidelines in absence of the statutory backdrop are advisory in nature. Mr. Ram Prakash himself has relied upon a decision of this Court in *Narendra Kumar Maheshwari* v. *Union of India and Ors.*, AIR (1989) SC 2138 wherein it has been laid down: F

> "100... This is because guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to G H

A undermine a basic public purpose which the guidelines and the statute under which they are issued are intended to achieve."

[See also *Narendra Kumar Maheshwari* v. *Union of India and Ors.*, [1990] Supp SCC 440 at 508; *Maharao Sahib Shir Bhim Singhji* v. *Union of India and Ors.*, [1981] 1 SCC 166 at 232; *J.R. Raghupathy and Ors.* v. *State of A.P. and Ors.*, [1988] 4 SCC 464 (paragraph 31) and *Uttam Parkash Bansal and Ors.* v. *L.I.C. of India,* (2002) 100 DLT 487]

Guidelines being advisory in character *per se* do not confer any legal right.

25. Reliance has also been placed upon *P.M. Ashwathanarayana Setty and Ors.* v. *State of Karnataka and Ors.*, AIR (1989) SC 100 for the proposition that the State cannot rely on an evasive reason. We fail to understand how a case relating to Court Fees and Suit Evaluation Act, would assist us in invoking the principles in regard to the discriminatory impact of the matter in a case of this nature.

26. Mr. Ram Prakash has also placed reliance upon *State of Himachal Pradesh and Anr.* v. *Kailash Chand Mahajan and Ors.*, [1992] Supp (2) SCC 351 wherein this Court was considering the statutory conditions of services framed under a regulation made in terms of Electricity (Supply) Act. In that context, this Court considered the question as to whether the term of appointment can be confined to a single person. Reliance placed on the said decision is wholly misplaced. A reasonable classification is permissible although a class legislation is not, but the same will have no application in a case where an executive order was passed wholly without jurisdiction and contrary to the constitutional scheme relating to fixation of quota for certain categories of persons.

27. An endeavour has been made to invoke the principles of Legitimate Expectation and Promissory Estoppel. The doctrine of Legitimate Expectation would apply only when a practice is found to be prevailing. It has a positive concept. But, in a case of this nature where purported expectation is based on an illegal and unconstitutional order, the same is wholly inapplicable, as the same cannot be founded on an

order which is *per se* illegal and without foundation. A

Strong reliance has also been placed on a decision of this Court in *Ram Pravesh Singh and Ors.* v. *State of Bihar and Ors.*, [2006] 8 SCC 381 wherein a Bench of this Court opined:

> "15. What is legitimate expectation? Obviously, it is not a legal right. B It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and C valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the D requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and E consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle an expectant: (a) to an opportunity to show cause before the F expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, G change in policy, conduct of the expectant or any other valid or *bona fide* reason given by the decision-maker, may be sufficient to negative the "legitimate expectation". The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only H

A by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognised legal relationship with the authority..."

B The said decision, thus, instead of assisting the appellants runs counter to their contention.

28. Mr. Ram Prakash has also placed strong reliance on *J.P. Bansal* v. *State of Rajasthan,* [2003] 5 SCC 134 : 2003 (3) SCALE 154. Therein itself, it is laid down:

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"...The Constitution requires that action must be taken by the authority concerned in the name of the Governor. It is not till this formality is observed that the action can be regarded as that of the State. Constitutionally speaking, the Council of Ministers are advisers and as the Head of the State, the Governor is to act with the aid or advice of the Council of Ministers. Therefore, till the advice is accepted by the Governor, views of the Council of Ministers do not get crystallised into action of the State..."

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29. This decision is, therefore, an authority for the proposition that E the government order, so as to confer a legal right, must conform to the provisions contained in Article 166 of the Constitution of India.

30. Questioning the correctness of the observation of the Division bench that the communication contained in the letter dated 24.08.2000 F did not confer any legal right, Mr. Ram Prakash, would submit that an administrative order may also confer a legal right. No doubt, it was so stated in *Union of India* v. *K.P. Joseph and Ors.,* [1973] 1 SCC 194: AIR 1973 SC 303 but then it was a case where an executive order was passed which was within the jurisdiction of the State in terms of the proviso G appended to Article 309 of the Constitution of India. The Bench, it is interesting to note, hastened to add:

"11. We should not be understood as laying down any general proposition on this question. But we think that the Order in question conferred upon the first respondent the right to have his pay fixed

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in the manner specified in the Order and that was part of the conditions of his service. We see no reason why the Court should not enforce that right." A

31. We, therefore, find no merit in this appeal which is dismissed accordingly. In the facts and circumstances of this case, however, there shall be no order as to costs. B

N.J. Appeal dismissed.