

Rakesh Kumar Sharma and ors. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : May-21-2004

Reported in : 2004(3)AWC2234

Judge : Tarun Chatterjee, C.J. and ;Ashok Bhushan, J.

Acts : [Constitution of India](#) - Articles 14, 226 and 243; Uttar Pradesh Land Revenue Act, 1901 - Sections 11; Uttar Pradesh General Clauses Act, 1904 - Sections 4(42B) and 21; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 7, 8, 11 and 12

Appeal No. : C.M.W.P. No. 2443 of 2004

Appellant : Rakesh Kumar Sharma and ors.

Respondent : State of U.P. and anr.

Advocate for Def. : S.P. Gupta, Adv. and ;Sudhir Agarwal, A.A.G. S.C.

Advocate for Pet/Ap. : Ravi Kant, ;R.K. Jain, ;Pankaj Shukla, ;P.P. Srivastava, ;Nitin Sharma, ;W.H. Khan, ;S.P. Singh, ;Shashi Nandan, ;Akhilesh Kalra and ;Amit Khemka, Adv.

Disposition : Writ petition allowed

Judgement :

Tarun Chatterjee, C.J.

1. In these bunch of writ petitions, the notifications issued by the State Government on 13th January, 2004 in the exercise of power under Section 11 of the U. P. Land Revenue Act, 1901 (hereinafter referred to as 'the Act') read with Section 21 of U. P. General Clauses Act, 1904, are under challenge. By these notifications, nine districts of the State of Uttar Pradesh, namely : Hathras, Gautam Budh Nagar, Jyotiba Phule Nagar, Ambedkar Nagar, Sant Kabir Nagar, Auraiya, Chandauli, Kaushambi, Shrawasti and four Commissioner's Division, namely, Basti, Devipatan, Mirzapur, Saharanpur have been abolished. Since the language of all these notifications are practically similar, we feel it necessary to reproduce one of such notifications, which runs as under :

NOTIFICATION

'In exercise of the powers under Section 11 of the U. P. Land Revenue Act, 1901 (U. P. Act No. III of 1901) read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U. P. Act No. I of 1904) and in supersession of Government Notification No. 2869/1-5-97-322-97-Rajaswa-5, dated Lucknow September 18, 1997, issued in this behalf regarding creation of a new district by the name of Auraiya, the Governor is pleased to abolish the said district of Auraiya and to alter the limits of the existing district of Etawah by including areas of tehsils Auraiya and Bidhuna with effect from the date of publication of this notification in Gazette,

The Governor is further pleased to direct that the jurisdiction of all legal proceedings commenced or pending on the date of publication of this notification in the Gazette in any district level court of the aforesaid abolished district shall now be vested in the District Court of Etawah district.

By order

Kapil Deo

Pramukh Sachiv.'

2. We have heard Sri Ravi Kiran Jain, Sri Ravi Kant, Sri P. P. Srivastava, learned senior advocates, Sri W. H. Khan, S. P. Singh, Sri Shashi Nandan, Sri Akhilesh Kalra, Sri Amit Khemka, learned advocates for the petitioners in different writ

petitions. Sri S. P. Gupta, learned senior advocate and Sri Sudhir Agarwal, learned Additional Advocate General have been heard for State of Uttar Pradesh,

3. After hearing the learned counsel for the parties and after examining the notifications issued, which are under challenge before us, the following questions that need to be decided in these bunch of writ petitions can be formulated as follows :

(1) Whether the writ petitioners, who have filed these writ petitions challenging the notifications dated 13th January, 2004, abolishing nine districts and four divisions have any locus standi to maintain these writ petitions.

(2) Whether the 'district' contemplated under Section 11 of the Act is different from the 'district' as defined in Part IX and IX-A of the [Constitution of India](#).

(3) Whether exercise of power under Section 11 of the Act by the State Government is purely executive or administrative in nature or it is purely legislative or not.

(4) Whether it was mandatory on the part of, the State Government to comply with the principle of natural justice by affording an opportunity to the residents of the districts while taking a decision to create or abolish the districts and divisions in the exercise of its power under Section 11 of the Act.

(5) Whether consultation was necessary with the High Court before the State Government could exercise or issue the notifications under Section 11 of the Act abolishing the districts and divisions already created.

(6) Whether the notification issued by the State Government under Section 11 of the Act was a policy decision of the State and if it is accepted to be a policy decision of the State, whether there can be a judicial review of such policy decision of the State Government while exercising its power under Section 11 of the Act.

(7) (i) Whether the decision is arbitrary, discriminatory or unreasonable offending Article 14 of the [Constitution of India](#).

(ii) Whether the policy decision taken by the State in exercise of its delegated legislative power is contrary to the purpose and object of the parent Statute or any other constitutional provision.

(8) Whether the State Government while taking decision to abolish the districts, which were created similarly in the exercise of its power under Section 11 of the Act have taken into consideration the relevant factors, which were required to be taken for reaching to a decision for abolition of districts and divisions.

(9) Whether there is hostile discrimination in the decision of the State Government in the matter of issuing a notification under Section 11 of the Act since the districts, namely : Kannauj, Bagpat, Mahoba, Balrampur and Bhadohi have not been abolished.

4. Before we take up the aforesaid questions for our decision, it would be fair on our part to state the facts taken in the various writ petitions in which the notifications issued under Section 11 of the Act have been challenged.

5. As noted hereinabove, separate writ petitions have been filed challenging the notifications abolishing nine districts and four divisions. With regard to some districts, there are more than one writ petitions filed by the writ petitioners. However, the pleading are complete in Writ Petition No. 2443 of 2004, Rajesh Kumar Sharma and Ors. v. State of U.P. and Ors., which may be treated as leading petition. At this juncture, we may also keep on record that the learned Additional Advocate General appearing on behalf of the State has referred the counter-affidavit filed by the State Government in Writ Petition No. 3019 of 2004, Barkha Ram Verma v. State of U. P. and Ors., apart from the counter-affidavits filed in the leading petition and other writ petitions. However, the pleadings in all the writ petitions are almost similar except some small variation here and there. Counter-affidavits of the State Government are also on similar line in all these bunch of writ petitions. However, we may also keep on record that some additional facts have been given in Writ Petition No. 3019 of 2004, which would be referred to by us later. Therefore, for appreciating the controversies raised in these bunch of writ petitions, it would be sufficient to note the statements and averments made in Writ Petition No. 2443 of 2004.

6. Writ Petition No. 2443 of 2004, has been filed by six writ petitioners. Writ petitioner Nos. 1 and 3 are the advocates, who had represented District Bar Association, Collectorate Bar Association, Hathras, as President and Secretary. Petitioner No. 2 is the Secretary of a Registered Society, which is a Non-Governmental Organisation and claims to be working for public welfare. Petitioner No. 4 claims to be a social worker. Petitioner No. 5 claims to be Vice President of International Goodwill Society of India, a Non-Governmental Organisation engaged in social work. Petitioner No. 6 is the Ex-President of Nagar Panchayat, Sahpau, Hathras.

7. In Writ Petition No. 2443 of 2004, the case that has been made out is that the power under Section 11 of the Act is to conform to constraint of Article 14 of the Constitution. After 74th amendment of the Constitution by which Article 243Q has been inserted which lays down specification of a transitional area, smaller urban area and larger urban area, which principles are not directly applicable, but the exercise of power under Section 11 of the Act must be in accordance with the factors as required under the said Article. In abolishing the districts, the Government has acted selectively, which renders its action discriminatory, arbitrary, whimsical and irrational. Much smaller districts, namely : Bhadohi, Baghpat, Amethi, Balrampur, Chitrakoot, Mahoba and Rannauj have been spared the axe, Kannauj has been spared since Sri Akhilesh Singh Yadav represents the said constituency in Lok Sabha who is son of the Chief Minister Mulayam Singh Yadav. Baghpat is represented by the President of Lok Dal, which party is an ally of the present Government in the State. District Hathras has made rapid strides from the day of creation. The Government has acquired huge area of land, i.e., 220 acres which has already been allotted and earmarked for development to various departments. A sum of Rs. 5.0867 crores has been sanctioned by the State Government for construction of Collectorate building out of which 45% amount has been utilised. The Government has allocated Rs. 135 lacs for building of Communication Development Centre, Sasni. Infrastructure facilities are fully possessed by district Hathras. The district has generated 116.95 crores of revenue between April to December, 2003. This district is recipient of several awards initiated by State Government for outstanding performance under 20 point development programme. Subordinate courts are also functioning in which two

Fast Track Courts are under constructions at the cost of Rs. 25 lacs. A hundred bed district hospital is under construction for which the State Government has released an amount of Rs. 1 crore. The district has ten Allopathic Hospitals/Dispensaries and 19 Ayurvedic Hospitals and one Unani Hospital. It has also sprawling network of primary health centres, family, maternity and child welfare centres. Office of District Basic Education Officer has been constructed. Tahsil and Block Headquarters are close to the District Headquarters as compared to District Head Quarter, Aligarh and Mathura. The State has already disbursed compensation to the tune of more than five crores for land acquisition. The State has arrogated the power vested in the High Court by providing that the Courts of Sessions Judge and other Courts would stand transferred to district Aligarh. There is total defiance of the provisions of Sections 7, 9(6), 11, 12, 14 and 24(3) of the Code of Criminal Procedure. The State Government has not at all consulted the High Court before issuing the impugned notification. The reason given by the Government that since it is undergoing acute financial stringency, it cannot, therefore, afford to bear the expenses to provide infrastructure facilities, which is not applicable to district Hathras. However, even if assumed that aforesaid reason is at all reasonable, the Government ought to have abolished all the remaining districts. The decision of the State is outrageously arbitrary and illegal which tantamount to violation of rule of fairness and fair play as contained in Article 14 of the Constitution. The decision being manifestly detrimental to the public interest is patently arbitrary and whimsical. The decision has been taken in haste without application of mind and principles bearing thereon.

8. In other writ petitions, in which similar notifications have been challenged alleged practically similar pleadings. In this view of the matter, it is not necessary for us to note the pleadings made in other writ petitions except some additional facts pleaded in few other writ petitions. In Writ Petition No. 2553 of 2004, which has been filed by a non-governmental organisation claimed to be engaged in public welfare, it has been pleaded that formation of district Gautam Budh Nagar had miraculous impact on the development of the area covered by the said district. A large number of educational institutions set up their engineering and management colleges in NOIDA and Greater NOIDA. A large number of software companies including many multinational companies have set up their

manufacturing unit in this area after the establishment of the said district. Police lines/police headquarters have already been established in the district, district court have started full fledged functioning and a Court Complex is under construction and its land has already been acquired and earmarked, the Collectorate building is almost complete. In 1997 revenue contribution by the district Gautam Budh Nagar was approximately Rs. 620 crores while in financial year 2003-2004 (up to December, 2003) it has crossed 1,200 crores which is at least 10% of the total revenue collected in the State. Ghaziabad and Bulandshahr has population of more than 30 lacs each and administration is already overstressed as against the average population of each district of 24 lacs. In the counter-affidavit filed by the State it has been stated that in last seven years only Collectorate Office could have been constructed spending about Rs. 5 crores. Similarly in the police department, the administrative office, workshop and forensic science laboratory have been constructed. No infrastructures for other district level offices could have been made available. Writ Petition No. 2439 of 2004, has been filed by Bar Association of District Jyotiba Phule Nagar and Udyog Vyapar Mandal, Jyotiba Phule Nagar. After creation of the district 58 officials of the various department were posted in the district. 100.92 acres of land had been acquired for which compensation amounting to Rs. 2,43,51,650 has been paid. The State Government has already incurred expenditure of Rs. 5.08 crores for construction of Collectorate building which has already been completed and office of the District Magistrate was to be inaugurated on 26.1.2004. Residential buildings for the officers and other staff of the district have also been constructed after incurring an expenditure of a sum of Rs. 2.70 crores. Rs. 4 crores have already been sanctioned by the State Government for the construction of Nayay Bhawan. The revenue collection of the district upto December, 2003 was about 7,254.25 lacs. The impugned notification mentioned that pending cases shall be transferred to district Moradabad which notification is without jurisdiction inasmuch as it is only the High Court who can pass order relating to pending cases in district courts in exercise of its power under Article 235 of the Constitution. In supplementary-affidavit filed in the writ petition reference has been made to the counter-affidavit filed on behalf of the State in Writ Petition No. 25851 of 1997, which was filed challenging creation of district Jyotiba Phule Nagar. The State in the said counter-

affidavit has defended the creation of district and stated that district is functioning with full amenities. In the counter-affidavit filed in Writ Petition No. 2439 of 2004, it has been stated that an amount of Rs. 7.5 crores has been used for construction of Collectorate building and residential houses which are incomplete. It has been stated that the counter-affidavit filed in earlier case in which the creation of district was challenged, was based on the state of affairs as were existing at the time of creation of district and filing of counter-affidavit in 1997-98. In the present state of affairs it was found expedient to abolish district Jyotiba Phule Nagar. Writ Petition No. 3006 of 2004 has been filed by Dinesh Kumar Chaudhary who claims to be resident of erstwhile district Ambedkarnagar. After creation of district Ambedkar Nagar in the year 1995, Vikas Bhawan, which houses the Chief Development Officer's office, his residence, quarters for the staff of class 1, 2, 3 and 4 has been completely constructed. Collectorate building, building of district court and residence of Judicial Officers have been completed. Police Line, residence of police officers, headquarters of Zila Panchayat, existing hospitals has been upgraded. More than Rs. 100 crores have already been spent for the creation of the facilities of the district Ambedkar Nagar. In supplementary-affidavit reference of Writ Petition No. 3743 (M/B) of 1999, filed by Faizabad Bar Association challenging the creation of district Ambedkar Nagar has been mentioned. It is stated that State has filed counter-affidavit in the said writ petition justifying the creation of district. In paragraph 21 of the said counter-affidavit it was specifically pleaded by the State of U. P. that budget for new district was allocated as per Financial Rules and the same was passed by the Legislature in the form of Appropriation Bill under Article 204 of the Constitution. It was also stated in the said counter-affidavit by the State that all officers in the district Headquarters have been established and are functioning.

9. Writ Petition No. 3179 of 2004, has been filed by practising advocates of the Court at Sant Kabir Nagar. Reference to Writ Petition No. 39756 of 1998, Ram Milan Shukla and Ors. v. State of U. P. and Ors., has been made which was allowed by this Court on 15.1.1999. Reference of Contempt Petition No. 1449 of 1999 filed by Ram Milan Shukla and others alleging non-compliance of the judgment dated 15.1.1999 had been made by which contempt petition was dismissed by this Court on 15.2.2002. Special leave petition filed by Ram Milan

Shukla and others was also dismissed by Apex Court on 1st August, 2003. It is stated that large number of offices are functioning in the district. The State has allotted fund of Rs. 1688.3480 lacs for the district. On 18.12.2003 notification has been issued by the State Government in consultation with the High Court establishing Sessions Court and other Courts in the district. An impleadment application has also been filed by three advocates practising at Basti who were also heard in the writ petition, without being formally impleaded. Writ Petition No. 2050 of 2004 has been filed by District Bar Association Auraiya. After creation of district Auraiya Courts were created by notification dated 17.12.1999. Several Courts were created by the State Government by issuing notification in the year 1999. It is not permissible for the State Government to refer to the provisions of the Act, 1901 to throttle the constitutional provision contained in Part IX and Part IX-A of the Constitution. Before issuing notification dated 13th January, 2004, no opportunity whatsoever was given to the residents of the area. Vested right accrued to the residents of that area to assert their right to development which is a fundamental right under Article 21 of the Constitution. The change of a boundary of a district whether by way of creation or abolition or alteration entails civil consequences making applicable the principles of natural justice. The creation of district was upheld by the Division Bench of this Court in Writ Petition No. 44906 of 1999, Brijendra Kumar Gupta and Ors. v. State of U. P. and Ors. Other writ petitions contain pleading on similar line which need no repetition. The writ petitions challenging the abolition of the Commissioner's division also challenge the notification on similar line.

10. The counter-affidavits filed by the State Government were in the same line, i.e., to say, the State Government in their counter-affidavits have practically taken the same plea in all the counter-affidavits to these bunch of writ petitions. In the counter-affidavit filed by the State, a preliminary objection has been taken regarding locus of the petitioners to maintain the writ petitions. It is stated that petitioners have not disclosed as to what rights of the petitioners or other persons to whom the petitioners purports to represent have been violated by issuance of notification dated 13th January, 2004. Creation, alteration and abolition of a division or district do not affect any kind of right of any person, individual or body of individual or public at large. Creation and abolition of district or division is nothing

but a kind of re-organisation of territorial administration and/or management of the area of the State for performance of its functions and duties. The counter-affidavit has traced out the history of district before British India. It is stated that guidelines laid down by the Government by Government order dated 29.10.1992, for creation of district were not adhered to while creating new districts. In the year 1997, twelve new districts were created. The power of the State Government to create, alter or abolish district or division are both statutory and administrative power but it is legislative in nature, it does not affect the individual in any manner. Article 14 of the [Constitution of India](#) is totally inapplicable. Article 243Q of the Constitution has nothing to do with the creation and abolition of the district as the purpose of the aforesaid constitutional amendment is totally different. In abolishing nine districts and, four divisions and leaving four districts and one commissioner, care was taken for law and order problems, administrative difficulties and other factors, e.g., wherever to new districts are adjacent, in such cases, one district has been taken to avoid the gravity of backlash due to vicinity. In last eight years not a single official or residential building could have been constructed due to non-availability of funds. Against 50 offices, in the last almost 8 years, a total sum of about Rs. 7.5 crores only could have been sanctioned for construction of Collectorate office, residential pool housing unit out of which only 5.5 crores could be actually made available and 1.7 crores could have been spent. All the district level offices either working in the office meant for subordinate staffs or in the rental building. Hathras itself was a highly developed commercial Tahsil of district Aligarh since a very long time being a very big mandi of cereals and utensils. After creation of district Hathras, the District Judgeship was also established but the district level Courts' building is not available and the district court is functioning from the earlier building of subordinate Courts. Notification dated 13th January, 2004, has been issued only under the provisions of the Act, 1901 and the Courts mentioned therein are only Revenue Courts. This has also been clarified vide subsequent corrigendum notification dated 28.1.2004. Additional facts mentioned in the counter-affidavit filed by the State in Writ Petition No. 3019 of 2004 also need to be noted. Reference to earlier writ petitions being Writ Petition No. 17736 of 1997 and Writ Petition No. 39756 of 1998, filed challenging the creation of districts has been made in the counter-affidavit. It has been stated that even before delivery of the

order in Ram Milan Shukla's case on 15.11.1999, the State Government on its own constituted a Cabinet Sub-Committee to consider the viability, effectiveness, financial burden and public convenience in respect to the newly created districts and divisions. The Cabinet Sub-Committee considered the matter, which records various facts in its minutes. The Cabinet in its meeting dated 7th December, 2001, decided to maintain status quo for examination of the entire matter by the house. In process of preparation of the Ordinance/Bill, the matter was again examined at various levels from time to time and noticing extreme difficulties on administrative and financial side, the Board of Revenue as well as the Finance Department submitted their recommendations that newly created districts and divisions are neither desirable nor viable and thus should be abolished. A detailed note was prepared by the Special Secretary (Revenue) recommending abolition of nine districts and four commissioneries. The Cabinet took decision on 13th January, 2004 to abolish nine districts and four divisions in which care was taken for law and order problems, the administrative difficulties and many other factors. Having regard to the non-availability of funds for the newly created districts and divisions in the past, as well as the administrative problems due to the non-availability of infrastructure, it was found extremely urgent and in the public interest to save the State from whopping extravagance to the tune of about 5,000 crores, required by the aforesaid districts and divisions, to abolish new districts and four divisions. In nine districts which have been abolished in past seven years, a total amount which had/have been sanctioned by the Government in various annual budgets was only to the tune of Rs. 117 crores out of which only Rs. 75 crores have been spent and about Rs. 42 crores are still to be spent. Considering the present requirement in each district total required amount is taken to be on an average as 200 crores, a sum of more than 1,700 crores is still required for purposes of completion of district level infrastructure. However, it may be kept on record that the learned standing counsel has produced two original files of the State Government. The title of the first file is 'Manniya Mantri Parishad kee cabinet Upsamiti/Zila/Mandal/Tehsil kay srajan kay sambandh main', which contains pages 1 to 197 and noting from 30.12.1998 to 1.3.2004. The second original file also produced by the learned standing counsel contains Cabinet notes from 21st February, 1999, upto issuance of notification dated 13th January, 2004, including the Cabinet decision dated 7th

January, 2004 and 13th January, 2004.

11. We have carefully examined both the original files and perused the pleadings of both the parties in these writ petitions as well as in the counter-affidavits and the rejoinder-affidavits filed by the parties.

12. Before we take up the questions raised in these bunch of writ petitions, for the purpose of deciding these bunch of writ petitions and for appreciating the submissions of the learned counsel for the parties in the matter of challenge of the impugned notifications, we feel it necessary to note some of the relevant facts starting from creation of above districts and divisions and culminating into issuance of the impugned notifications dated 13th January, 2004.

13. In the exercise of power under Section 11 of the Act in the year 1994, district Kushinagar (13.5.1994) and district Bhadohi (Sant Ravi Das Nagar) (30.9.1994) were created by the State of Uttar Pradesh. However, in the year 1995, district Mahoba (9.5.1995) and district Ambedkar Nagar (29.9.1995) were also created by the State of Uttar Pradesh. 12 districts were also created in the year 1997 by the State of U. P., namely : Kaushambi (4.4.1997), Jyotiba Phule Nagar (15.4.1997), Chitrakoot (6.5.1997), Maha Maya Nagar (Hathras) (6.5.1997), Gautam Budh Nagar (11.5.1997), Chandauli (25.5.1997), Balrampur (25.5.1997), Shravasti (25.5.1997), Sant Kabir Nagar (5.9.1997), Baghpat (15.9.1997), Auraiya (18.9.1997) and Kannauj (18.9.1997).

14. Various writ petitions were filed in this Court challenging the creation of the districts. Writ Petition No. 17736 of 1997, Samvidhan Bahali Andolan and Anr. v. Union of India and Ors., was filed for a declaration that Section 11 of the Act as void and ultra vires and also for quashing the notification creating six new districts. The said writ petition challenging the creation of six new districts was dismissed by this Court by its judgment dated 22nd May, 1997. Another writ petition was filed being Writ Petition No. 39756 of 1998, Ram Milan Shukla and Ors. v. State of U. P. and Ors., praying for quashing the notification dated 5th September, 1997, by which district Sant Kabir Nagar was created and also challenging the order of the State Government dated 9th November, 1998. The said writ petition was allowed by a Division Bench of this Court by its judgment dated 15th January, 1999. This

Court directed the State Government to reconsider and decide whether there was any good administrative and financial reason and/or ground to issue such notification dated 5th September, 1997, for creation of district Sant Kabir Nagar and if the State Government again decided to continue district Sant Kabir Nagar and other districts created then it must introduce a Bill in the State Legislature for this purposes. It was further held that unless and until such a Bill is introduced and passed, the notification dated 5.9.1997 shall remain in abeyance.

15. Two other writ petitions being Writ Petition No. 44906 of 1999 and Writ Petition No. 48513 of 1999 were filed challenging the notification dated 18th September, 1997, creating district Auraiya and also the letter dated 22nd July, 1999 of Registrar, High Court of Judicature at Allahabad. After creation of the district, the Registrar issued a draft notification for creation of five Courts. The writ petition was dismissed by a Division Bench of this Court by its judgment dated 3rd February, 2000.

16. Even before issuance of the direction of this Court on 15.1.1999 to reconsider the matter, the State Cabinet in its meeting dated 23rd December, 1998, constituted a Cabinet Sub-Committee of five Hon'ble Ministers of the State Government for considering the viability of districts newly created in the year 1997. The Subcommittee constituted for this purpose, held various meetings, called representative of the public, District Magistrates and Commissioners, but it could not arrive at any consensus decision. The Sub-Committee, however, took a decision that the entire matter be placed before the Cabinet to take a decision. A Cabinet note dated 21st December, 1999, was prepared and the matter was placed before the State Cabinet for consideration as to whether the newly created districts/divisions in the year 1997 be allowed to, continue or not. It may be placed on record that the Cabinet Sub-Committee had also taken notice of the directions issued by this Court on 15.1.1999, as noted herein earlier, and also a judgment of the Apex Court by which the special leave petition of the State was dismissed against the judgment date 15.1.1999. The Cabinet after considering the factors noted above, took a decision in its meeting dated 7.1.2000 to continue the newly created districts and divisions as it was and necessary steps regarding bringing of Ordinance/Bill as required was also taken. Steps were taken by the State

Government for communication and implementation of the decision of the Cabinet dated 7th January, 2000. A contempt application was filed in this Court being Contempt Application No. 1449 of 1999 against the Chief Secretary of the State of U. P. alleging that direction of the Division Bench dated 15th January, 1999, was not complied with. In the contempt application, an affidavit was filed by the Joint Secretary (Revenue) stating that the direction dated 15th January, 1999, was complied with and in compliance with the said direction, the Cabinet had already taken a decision on 7th January, 2000, to continue all the newly created districts of the year 1997, It was also stated that in view of the decision of the Cabinet, regular annual financial statement (budget) appropriation bills were passed. This Court by its order dated 15th March, 2002, discharged the contempt notices and rejected the contempt application. Against the said order of this Court dated 15th March, 2002, a special leave petition was filed before the Apex Court of our country, which was also dismissed by the Apex Court on 1st August, 2003.

17. After examining the entire files as produced by the learned standing counsel, we find that on 4th of November, 2003, the Special Secretary (Revenue), however, submitted a note that earlier Cabinet decision required reconsideration. Note further stated that the direction issued by the Division Bench in its order dated 15th January, 1999, was not complied with in its true spirit. With regard to district Sant Kabir Nagar, filing of the writ petition challenging the land acquisition was also taken note of. A further detailed note dated 8th of January, 2004, was submitted by the Special Secretary stating that new districts were created without taking into consideration the guidelines fixed in the year 1992. It was also stated that the earlier Cabinet decision dated 7th January, 2000 required reconsideration. For the first time against the names of nine districts and four divisions proposed to be abolished were also mentioned. After the note dated 8th of January, 2004, the approvals of Law Department and Finance Department were obtained and before the State Cabinet, the note was submitted on 12th of January, 2004, in which a decision was taken by the State Cabinet on 13th January, 2004, for abolishing nine districts and four divisions. The State Cabinet while approving the proposal for abolishing nine districts and four divisions had also taken a decision to grant a sum of Rs. 10 crores for each abolished district and division for special development and Rs. 1 crore for big qasbas in the aforesaid area for the

development. Pursuant to the Cabinet decision dated 13th January, 2004, the impugned notifications abolishing the nine districts and four divisions were issued on 13th January, 2004.

18. Let us now deal with the questions raised by the learned counsel appearing on behalf of the parties in the matter of challenge of the notifications issued under Section 11 of the Act. Before we go into the merits of those submissions, we feel it necessary to take up the first issue concerning the locus standi of the writ petitioners to move and file the writ petitions by way of public interest litigation in which the aforesaid notifications issued under Section 11 of the Act have been challenged.

19. Mr. S. P. Gupta, learned senior advocate appearing on behalf of the State-respondents raised this objection as a preliminary objection as to maintainability and/or entertainability of the writ petitions by way of public interest litigation at the instance of the writ petitioners. According to Mr. Gupta, the writ petitioners cannot be said to have any locus standi to maintain the writ petitions, as the question of creation, alteration and abolition of a district or a division does not affect any kind of right of any person individual or body of individual or public at large. It was further contended by Mr. Gupta, learned senior counsel appearing for the State that in order to prove locus of the writ petitioners to maintain the writ petitions, it was necessary for them to plead and prove the public injury in the matter of challenge of the impugned notifications. Mr. Gupta also submitted that the writ petitioners ought to have sufficient interest in the challenge of the aforesaid notifications.

20. To elaborate the aforesaid preliminary objection, Mr. Gupta further submitted that the writ petitioners had not disclosed as to what rights of the writ petitioners or other persons to whom the writ petitioners purport to represent have been violated by issuance of the notifications dated 13th January, 2004. As noted herein, according to Mr. Gupta, Section 11 of the Act deals with creation, alteration and abolition of the districts or divisions, which does not affect any kind of right of any of the persons, individual or body of individual or public at large inasmuch as neither any person has any kind of right to have a particular district or division with

a fixed or specified area in the Constitution or in any other statute, nor any kind of legal recognisable or enforceable right is conferred on account of uses, practice, prescription or easement. In support of this contention Mr. Gupta, learned senior advocate, appearing on behalf of the respondents placed strong reliance on the judgments of the Apex Court in *S.P. Gupta and Ors. v. President of India and Ors.*, AIR 1982 SC 149 ; *Guruvayoor Devaswom Managing Committee and Anr. v. C.K. Rajan and Ors.*, 2003 (7) SCC 546 ; *Janta Dal v. H.S. Chowdhary*, (1992) 2 SCC 305 and *Federation of Bar Association v. Union of India*, 2000 (6) SCC 715. It may also be kept on record that a recent judgment of the Apex Court passed in Writ Petition (Civil) No. 122 of 2004, delivered on 11.3.2004. *Dr. B. Singh v. Union of India and Ors.*, was also relied on by Mr. S. P. Gupta, learned senior advocate appearing on behalf of the State-respondents.

21. We are extremely happy to note that Mr. S. P. Gupta, a respected senior lawyer of this Court was one of the person instrumental to file a public interest litigation, which was taken up for consideration by the Supreme Court in the year 1982 in the form of *S.P. Gupta and Ors. v. President of India and Ors.*, AIR 1982 SC 149.

22. Referring to Writ Petition No. 2551 of 2004, *L.N. Sharma and Ors. v. State of Uttar Pradesh and Ors.*, it was contended that the Writ Petitioner Nos. 3 to 5 are the Bar Association, Non-Government Organisation and Social Workers. In Writ Petition Nos. 2439 of 2004, 2441 of 2004, 2443 of 2004, 4348 of 2004 and 2442 of 2004 some of the writ petitioners are Bar Association and Advocates. In Writ Petition No. 2553 of 2004, the writ petitioner is a Non-Government Organisation. In Writ Petition No. 3019 of 2004, the writ petitioner is a member of the political party and some writ petitioners claimed to be public-spirited persons. According to Mr. Gupta, none of the writ petitioners have suffered any injury nor any injury is suffered by any person of the public.

23. The submission on the question of maintainability of the writ petitions as advanced by Mr. Gupta was refuted by the learned counsel appearing on behalf of the writ petitioners. According to the learned counsel for the writ petitioners, the writ petitioners have sufficient locus to maintain the writ petitions. It has been

contended by the learned counsel for the writ petitioners that the notification dated 13th January, 2004, certainly affects the public in general at large as well as the learned advocates practising in different district courts functioning in the aforesaid nine districts. It was also submitted by the writ petitioners that after creation of the districts large scale development and activities had taken place in newly created districts including construction of public buildings, hospitals, schools in the interest of public in general and by abolition of the districts development activities have now come to an end. It was further contended that new districts were created with the sole object of bringing the governance near to the public, which will again go far away causing public inconvenience and adverse effect on the administration and law and order situation. It was further contended that substantially the writ petitioners are the members of the District Bar Association whose districts have been abolished and, therefore, they had sufficient interest in the matter of challenge of the notifications.

24. Learned counsel appearing on behalf of the writ petitioners also contended that the impugned notifications have serious adverse effect on the functioning of the district courts in the newly created districts. It was contended that the District Courts, which started functioning in each newly created districts after consultation with the High Court will be adversely affected by the abolition of the districts and the Court of the District Judge and other Courts which are functioning in the newly created districts, may come to an end causing immense inconvenience and practical difficulties to the public in general, litigants and advocates practising in the district courts, which have been abolished by the impugned notifications. Further submission of the learned counsel for the writ petitioners was that any arbitrary decision of the State Government whether administrative or taken as a policy decision could be questioned by any person having sufficient interest. Therefore, the learned counsel for the writ petitioners submitted that since the writ petitioners having sufficient interest in the running of the district courts and divisions, which may be said to constitute public injury, the locus standi of the writ petitioners to challenge the impugned notifications by way of public interest litigation cannot be ruled out.

25. The law on the question of locus in a public interest litigation has been liberalised to permit even those aggrieved persons who have not suffered any personal injury to approach the High Court or the Supreme Court for redressal of their grievances of any group of people determined or undetermined complaining violation of any fundamental right or any public injury.

26. The issue of locus standi has been elaborately dealt with by the Constitution Bench of the Apex Court, while considering locus of advocates practising in the High Court in challenging the circular issued by the Law Ministry regarding transfer of Judges of the High Court in the case of S.P. Gupta and Ors. v. President of India and Ors. (supra). The Supreme Court in the said judgment has observed that a vast revolution had taken place in the judicial process ; the law is fast changing and the problems of the poor are coming to the forefront, the Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people. In that decision, the Apex Court further dealt with those cases where the State or public authority acted in violation of constitutional or statutory obligation resulting an injury to public interest and had given answer in following words :

But there may be cases where the State or a public authority may act in violation of a constitutional or statutory obligation or fail to carry out such obligation, resulting in injury to public interest or what may conveniently be termed as public injury as distinguished from private injury. Who would have standing to complain against such act or omission of the State or public authority? Can any member of the public sue for judicial redress? Or is the standing limited only to a certain class of persons? Or there is no one who can complain and the public injury must go unredressed. To answer these questions it is first of all necessary to understand what is the true purpose of the judicial function. This is what Prof. Theio states in his book on 'Locus standi and Judicial Review'.

Is the judicial function primarily aimed at preserving legal order by confining the legislative and executive organs of Government within their powers in the interest of the public (Jurisdiction de droit object if) or is it mainly directed towards the protection of private individuals by preventing illegal encroachments on their

individual rights (jurisdiction de droit subject if)? The first contention rests on the theory that Courts are the final arbiters of what is legal and illegal requirements of locus standi are therefore, unnecessary in this case since they merely impede the purpose of the function as conceived here. On the other hand, where the prime aim of the judicial process is to protect individual rights, its concern with the regularity of law and administration is limited to the extent that individual rights are infringed.'

We would regard the first proposition as correctly setting out the nature and purpose of the judicial function, as it is essential to the maintenance of the rule of law that every organ of the State must act within the limits of its power and carry out the duty imposed upon it by the Constitution or the law. If the State or any public authority acts beyond the scope of its power and thereby causes a specific legal injury to a person or to a determinate class or group of persons, it would be a case of private injury actionable in the manner discussed in the preceding paragraphs. So also if the duty is owed by the State or any public authority to a person or to a determinate class or group of persons, it would give rise to a corresponding right in such person or determinate class or group of persons and they would be entitled to maintain an action for judicial redress. But if no specific legal injury is caused to a person or to a determinate class or group of persons by an act or omission of the State or any public authority and the injury is caused only to public interest, the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of the public duty. If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law, for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. The Courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore, been taken by the Courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which

insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a member busy-body or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or a public authority by any citizen will induce the State or such public authority to act with greater responsibility and care thereby improving the administration of justice.'

27. In paragraph 19 of the Judgment, the Apex Court gave further reason why the rule of locus standi needed to be liberalised. The Apex Court has noted that the law is being increasingly used as a device of organised social action for the purpose of bringing about socio-economic change. The task of national reconstruction has brought about enormous increase in developmental activities and law is being utilised for the purpose of development, social and economic. The Apex Court further observed that individual rights and duties are giving place to meta-individual, collective, social rights and duties of classes or groups of persons. The Apex Court noted that there may be actions which may affect the entire public in such case it would not be possible to show that any specific legal injury is caused to an individual or to determine class or group of individuals. Following was observed in paragraph 19 :

'What results in such cases is public injury and it is one of the characteristics of public injury that the act or acts complained of cannot necessarily be shown to affect the rights of determinate or identifiable class or group of persons : public injury is an injury to an indeterminate class of persons. In these cases the duty which is breached giving rise to the injury is owned by the State or a public authority not to any specific or determinate class or group of persons, but to the general public. In other words, the duty is one, which is not correlative to any individual rights. Now if breach of such public duty were allowed to go unredressed because there is no one who has received a specific legal injury or who was entitled to participate in the proceedings pertaining to the decision relating to such public duty the failure to perform such public duty would go unchecked and it would promote disrespect for the rule of law. It would also open the door for corruption and inefficiency because there would be no check on exercise of public

power except what may be provided by the political machinery, which at best would be able to exercise only a limited control and at worst, might become a participant in misuse or abuse of power. It would also make the new social collective rights and interests created for the benefit of the deprived sections of the community meaningless and ineffectual.'

28. From a plain reading of the aforesaid observations of the Supreme Court as noted hereinabove in the said decision, it is, therefore, pellucid that the writ petitioners who are advocates practising in various district courts had sufficient interest and locus to file the writ petitions. In paragraph 22 of the said decision, the Supreme Court also laid down the following principles :

'We would, therefore, hold that any member of the public having sufficient interest can maintain an action for Judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and order seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective.'

29. Following the principles laid down in the aforesaid Supreme Court decision, namely ; S. P. Gupta's case, a Full Bench of this Court in Public Service Tribunal Bar Association v. State of U. P. and Ors., 2000 (4) ESC 2311, while dealing with the question regarding maintainability of a writ petition filed by the Public Service Tribunal Bar Association challenging the U. P. Public Services Tribunal (Amendment) Act, 2000, observed in paragraph 66, which is extracted below :

'66. As far as the preliminary objection with regard to maintainability of the writ petitions is concerned it is an old tradition of the bar to agitate the grievances of the public at large including litigants and also guiding the society in every walk of life. The society looks upon the members of bar for guidance right from the time of struggle for independence of the country. Therefore, it is not a new thing that bar or members of the bar have agitated the interest of public for the first time. The case of Sanjai Kumar Srivastava v. State of Uttar Pradesh and Ors., (supra) is one of the glaring examples. So is the case of S.P. Gupta v. Union of India, 1981 SCC

(Supp) 87. Further we find that directly no personal interest of the Bar Association is involved in this petition and the Bar Association can espouse the cause of the society at large. Further who else can appreciate the difficulty of the litigant public than the bar association. Therefore, we are of the considered opinion that the Bar will always feel the pinch if any wrong is done to the litigant public. In the circumstances we find that these writ petitions are maintainable. Accordingly, the objection with regard to maintainability of the writ petition is rejected.'

30. However, Mr. S. P. Gupta, learned senior counsel appearing for the respondents had strongly relied on a decision of the Supreme Court in *Guruvayoor Devaswom Managing Committee and Anr. v. C.K. Rajan* (supra). In our view, the said decision cannot be of any help to the respondents. In the aforesaid decision of the Supreme Court, a writ petition was entertained by the High Court in public interest on a letter by one Sri C. K. Rajan bringing to the notice of the Court serious irregularity, mala fide practice, mal-administration and mis-management prevailing in a Sri Krishan Temple which is governed by an Act namely, Guruvayoor Devaswom Act, 1978. The principle evolved by the Apex Court was summarised in paragraph 50 of the same. While summarising the principle, the Apex Court itself in paragraph 50 (ii) held that issue of public importance, enforcement of fundamental rights of a large number of public vis-a-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. In paragraph 55 the Apex Court held as under :

'55. We do not intend to lay down any strict rule as to the scope and extent of a public interest litigation, as each case has to be judged on its own merits. Furthermore, different problems may have to be dealt with differently.'

31. Again in paragraph 62, the Supreme Court laid down the following principles :

'62. Existence of certain grey areas may not be ruled out but such a case was required to be made out before the High Court which has not been done in the instant case. For any court of law including this Court, it is difficult to draw a strict line of demarcation as to which matters and to what extent a public interest litigation should be entertained but, as noticed herein before, the decisions of this

Court render broad guidelines. This Court and the High Court should, unless there exist strong reasons to deviate or depart therefrom, not undertake an unnecessary journey through the public interest litigation path.'

32. From the aforesaid observations of the Supreme Court made in its decision as indicated above, it is more clear to us that to entertain a public interest litigation, it cannot be said that all cases relating to public interest litigation can be placed in a straitjacket formula, but they must be judged individually on their merits. Therefore, it cannot be disputed that such public interest litigations cannot be thrown out as there was no strict rule as to the scope and extent of the public interest litigation.

33. However, the recent judgment relied on by the learned counsel for the writ petitioners of the Apex Court is the decision in the case of Dr. B. Singh (supra). In our view, the said judgment is not applicable in the present case as we find that in that decision, the writ petition was filed by the writ petitioner in the Apex Court questioning the propriety of an individual being considered for appointment as a High Court Judge. The Apex Court in that context has held that the petitioner appears to be busy person seeking publicity and had no genuine concern with the institution.

34. In the instant case, as already observed, it was neither pleaded nor proved that the instant writ petitions were filed to foster any personal disputes or vendetta. Therefore, we are unable to rely on the decision of the Supreme Court in the case of Dr. B. Singh (supra).

35. In the counter-affidavit filed by the respondent, it is evident that in all the writ petitions it was neither pleaded nor proved that the petitioners are wayfarers, interlopers, officious intervener or busy bodies without any interest or concern of their own in the subject matter. The decision of the State Government abolishing the districts is being challenged as arbitrary and any person having sufficient interest can maintain a writ petition challenging an arbitrary decision taken by the Government, which affects large number of public. It was pleaded in the writ petitions that various developmental activities had taken place in the districts, which were abolished by the impugned notifications including the construction of buildings, establishment of district hospitals, construction of various schools

buildings of public utility and convenience. For example in a District Hospital certain minimum facilities including posting of specialised Doctors is provided for in accordance with the present administrative set up of the Government. Going into the grievance of the various advocates and lawyers associations raised in the writ petitions that abolition of districts will affect the functioning of the district courts, it cannot be said that there is no sufficient locus to them to raise the grievance. Admittedly, the districts were created long back, i.e., more than six years back (eight years for Ambedkar Nagar) and after creation various courts including Court of District and Sessions Judge, were created by the notifications issued by the State Government and they were functioning. The grievance of the lawyers association and advocates that consequent to the abolition of the districts, the district courts may also be abolished from that area cannot be said to be without any substance. Therefore, we are unable to accept the contention of Mr. Gupta learned senior counsel for the State-respondents that the writ petitioners cannot have any locus standi to maintain the public interest litigation in which notifications under Section 11 of the Act abolishing nine districts and four divisions were challenged. 36. However, before we part with this question, it would be our duty to refer two decisions cited by Mr. Gupta, learned senior counsel appearing for the State. So far as *Janta Dal v. H.S. Chowdhary's* case (supra) is concerned, we find that this was a case, which had arisen from a writ petition filed by one Sri H. S. Chowdhary in Delhi High Court arising out of a first information report under various sections of Indian Penal Code and Prevention of Corruption Act against fourteen accused. Sri H. S. Chowdhary filed the writ petition claiming to be public interest litigation and making prayers, which were to protect the accused from various investigations and other process in the criminal case. In the aforesaid context, the Apex Court had taken a view that the petition filed by H. S. Chowdhary could not come within the true meaning and scope of public interest litigation. The Apex Court in the said Judgment, however, on the other hand, has itself laid down that concept of public interest litigation is still a developing concept in which no rigid litmus test rule can be laid down. The Apex Court in that decision also clearly laid down the principle that only a person acting bona fide and having sufficient interest in the proceeding has the locus standi to file and maintain the public interest litigation. In the said judgment, the Supreme Court in paragraph 109

observed as follows :

'It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold.'

37. If we draw inspiration from the aforesaid principles laid down in the aforesaid decisions of the Supreme Court, we can safely conclude that the present writ petitions are not the writ petitions, which can be said to be not filed in a bona fide manner or filed for any individual profit or for any oblique consideration or for vindicating any personal grievance.

38. Let us now consider the other decision cited by Mr. Gupta on behalf of the respondents. In our view, the decision cited namely, Federation of Bar Associations v. Union of India (supra) cannot be said to have any manner of application to the present writ petitions. In the said decision, it appears that a writ petition was filed in the Supreme Court praying for direction for issuance of a writ of mandamus to the Union of India for establishing a permanent Bench of the High Court at any place in Northern Karnataka. The Supreme Court while holding that the writ petitioners had no locus, had taken into consideration that no litigant can claim a fundamental right to have the High Court located within proximal distance of his residence. We are unable to find any similarity in the facts involved in the present bunch of writ petitions. If a district is declared to be sessions by notification issued by the State Government under the Criminal Procedure Code, the Courts as it required under the Criminal Procedure Code have to be established in the district. A litigant will have sufficient interest to challenge the decision of abolition of district, which will have effect on the functioning of already established Court in a district. Therefore, in our view, the aforesaid judgment of the Supreme Court, namely. Federation of Bar Association v. Union of India (supra) is squarely distinguishable on the facts of the present case.

39. In view of our discussions made hereinabove and taking into consideration the entire facts of the case and relying on the decisions referred to hereinabove and considering the fact that the writ petitioners particularly the members of the different Bar Associations have sufficient interest in the matter of challenge of the Impugned notifications, we are unable to appreciate the submission that the writ petitioners cannot have any locus standi to maintain the writ petitions challenging the notifications dated 13th January, 2004, abolishing nine districts and four divisions of the State of Uttar Pradesh. Therefore, the preliminary objection raised by Mr. Gupta, must be said to have no merit.

40. Let us now deal with the question No. 2. The question is whether the 'district' contemplated under Section 11 of the Act is different from the 'district' as defined in Part IX and IX-A of the [Constitution of India](#). In order to answer this question, the concept of 'district' must be looked into, in detail.

41. District is a geographical area carved out as an administrative unit for performance of Governmental duties and functions Black's Law Dictionary Sixth Edition defines the 'district' in following words 'one of the territorial areas into which an entire State or Country, County, Municipality or other political sub-division is divided for judicial, political, electoral or administrative purposes'.

42. Concept of 'district' was very much in existence prior to enactment of the Act, 1901. The preamble of the Act clearly provides that this Act has been enacted to consolidate and amend the law relating to 'land revenue' and 'jurisdiction of revenue of officers' in State of Uttar Pradesh. Section 4 of the Act is a definition clause in which definitions of 'revenue court' 'revenue officers' 'revenue free' and all other definitions have been indicated in Section 4 and its sub-sections. Section 4 (7) defines 'revenue' which means 'land revenue'. Section 4 (8) defines 'revenue court'. Section 4 (9) defines 'revenue officer'. Section 4 (10) defines 'revenue free'. There are other definitions incorporated in Section 4 of the Act. We have also perused the entire provisions of the Act including the definition clause, but we are unable to find any indication in the Act to define 'district' excepting that Section 11 of the Act is conferred with the power to create, alter or abolish the divisions, districts, tehsils and sub-divisions. Since we are concerned in this case with

Section 11 of the Act, by which the notifications were, however, issued for abolishing nine districts and four divisions, we like to refer Section 11 of the Act, which is quoted below :

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

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

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

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

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

45. From the averments made in the counter-affidavit filed by the State, we find that it has been stated by the State-respondent that the State Government under the Bengal Districts Act, 1836, could have created new Zilas (districts) in any part of West Bengal by issuing a notification in the official Gazette. The Bengal Districts Act, 1836, was made applicable to the State of Uttar Pradesh till it was repealed by U. P. Act No. 1 of 1903. The power to create 'district' is vested with the State Government. The purpose and object is obvious, i.e., for carrying out administration in a territory. By passage of time, there was tremendous increase in the Governmental functions and duties, which were entrusted to it by various Statutes enacted by State Legislature as well as by Parliament. At this stage, it would be relevant to note that power to create and abolish district in so far as State of Uttar Pradesh is concerned, is only contained in the Act and nowhere. Learned counsel for the parties also could not bring to our notice any Statute

containing any provision for creation, alteration or abolition of 'district' excepting the Act, 1901.

46. Sri Ravi Kiran Jain, senior advocate, appearing for petitioners in two writ petitions emphatically contended that concept of 'district' as contained in Act, 1901 has become redundant after 73rd and 74th amendment of the Constitution by which Part IX and Part IX-A have been inserted. Mr. Jain has drawn our attention to Article 243(a) of the Constitution, which defines 'district' and Article 243(c) of the Constitution, which contains a concept of district level and indicates that a specific district is contemplated under Part IX of the Constitution. Similarly referring to provisions of Article 243P(c), it was contended by Mr. Jain that concept of 'district' is very much there. It was contended by Mr. Jain that 'district' as indicated in Part IX and Part IX-A of the Constitution cannot be altered or touched by any notification issued under Section 11 of the Act and this can only be altered by bringing legislation by State Legislature. Sri Akhilesh Kalra appearing for the writ petitioners in another writ petition had gone a step more by submitting that 'district' as contemplated in Part IX and Part IX-A of the Constitution could not be abolished and, in fact, power to abolish a 'district' was frozen by Part IX and Part IX-A of the Constitution and therefore. Section 11 of the Act by which nine districts and four divisions were abolished cannot be brought into action in view of Part IX and Part IX-A of the Constitution.

47. Learned counsel for the writ petitioners have further contended that there can be various types of districts, e.g., municipal district, police district, judicial district and the district as contemplated in the [Constitution of India](#) and these districts are different from revenue district as created under Section 11 of the Act. Therefore, the question that needs to be decided is whether [Constitution of India](#) contemplates creation of a district for the purposes of Part IX and Part IX-A and as to whether other statutes, e.g., U. P. Municipalities Act, U. P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961, Police Act and (the) Bengal, Agra, Assam Civil Courts Act, 1887 and Code of Criminal Procedure contemplate different kind of 'district' from one created under Section 11 of the Act.

48. Mr. Jain referred to provisions of Articles 243C, 243E and 243-I of the Constitution. It is relevant to note the relevant constitutional provisions contained in Part IX and Part IX-A of the Constitution, Article 243 is a definition clause, which runs as follows :

'243. Definitions.-- In this part, unless the context otherwise requires :

(a) 'district' means a district in a State ;

(b) 'gram sabha' means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level ;

(c) 'intermediate level' means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this part :

(d) 'panchayat' means an institution (by whatever name called) of Self-Government constituted under Article 243B, for the rural areas ; (e) 'panchayat area' means the territorial area of a panchayat;

(f) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published ;

(g) 'village' means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of village so specified.'

49. Article 243(a), therefore, clearly defines 'district', which means a 'district' in a State. Article 243(c) defines 'intermediate level'. It means a level between the village and district levels specified by the Governor of the State by public notification to be the intermediate level for the purposes of this part. Article 243(d) defines 'panchayat'. It means an institution of Self-Government constituted under Article 243B, for the rural areas. Sub-clause (g) of Article 243 defines 'village' which means as specified by the Governor by public notification to be a village for the purposes of this part and includes a group of village so specified. Article 243B runs as follows :

'243B. Constitution of panchayats.--(1) There shall be constituted in every State, panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.'

50. From the aforesaid provisions of the Constitution, it is, therefore, pellucid that public notification by the Governor should be issued specifying a village as well as the intermediate level. Panchayat is to be constituted in every State at the village, intermediate and district level. Although Article 243 contemplates specification of village by public notification by the Governor, but no such notification is contemplated for district level. District has also been defined in Article 243(a) as noted hereinabove. Part IX does not contemplate creation of district or district level by any notification or any action of the Governor or any other authority. The constitutional scheme shows that district as existing in a State has been adopted for purposes of Part IX of the Constitution and no concept of creation of a district is contained in Part IX or Part IX-A of the Constitution. The district level as contemplated in Article 243(c) and 243(b) is nothing, but district as existing in a State. The submission of the learned counsel for the writ petitioners that Constitution contemplates a district for the purposes of Part IX and Part IX-A separately independent from revenue district is not acceptable. Article 243-I contemplates constitution of financial commission to review financial position with regard to panchayats of all level. Similarly, Articles 243P, 243Q and 243Y of the Constitution contain the same scheme. These Articles, in our view, do not contemplate creation or constitution of a district for purposes of Part IX-A and the definition of district is the same, i.e., district means a district in a State.

51. We are in full agreement with the submission of Mr. S. P. Gupta, learned senior advocate when he replied to the submission of Sri Jain by saying that no new scheme for creation of district is contained in Part IX and Part IX-A of the Constitution since Constitution framers and Parliament and Legislature by 73rd amendment knew the concept of district as existing.

52. In the case of *State of Madras v. Cannon Dunkerley and Co., (Madras) Ltd.*, AIR 1958 SC 560, the Apex Court of our country while considering the meaning of 'sale of goods' in Entry No. 48 in the Government of India Act held that the true

legislative intent was that the expression 'sale of goods' in Entry No. 48 should bear the precise and definite meaning it has in law, and that meaning should not be left to fluctuate with the definition of 'sale' in laws relating to sale of goods which might be in force for the time being. 53. In *Thampanoor Ravi v. Charupara Ravi and Ors.*, 1999 (8) SCC 74, the Supreme Court in paragraph 22 observed as follows :

'22. In ascertaining the meaning of an expression used in a statute, certain norms are adopted. If the Legislature has used an expression which has acquired a technical meaning and such expression is used ordinarily in the context of a particular branch of law, it must be assumed that because of its constant use the Legislature must be deemed to have used such expression in a particular sense as is understood when used in a similar context. If an expression has acquired a special connotation in law, dictionary or general meaning ceases to be helpful in interpreting such a word. Such an expression must be given its legal sense and no other. In this context, we may refer to the weighty observation in the decision of this Court in *State of Madras v. Cannon Dunkerly and Co. (Madras) Ltd.*, AIR 1958 SC 560, that a term of well-recognised import in the general law should be accepted as confining the meaning in interpreting the Constitution.'

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

more, comprised in one or more districts and consisting of two or more Municipalities or panchayats or other contiguous areas, specified by the Governor by public notification.

55. At this juncture, on this question, the submission as advanced by Mr. Akhilesh Kalra, learned counsel for the writ petitioners in one of the writ petitions, may also be dealt with. According to Mr. Kalra the 'district' as existing at the time of 73rd amendment to the Constitution is frozen. As observed above, the constitutional provisions contained in Part IX and Part IX-A do not contemplate creation of any district for the purposes of Part IX and Part IX-A. The intention as noted above, shows that public notification by the Governor is contemplated for specifying a village of the intermediate level but no such notification is contemplated specifying a 'district'. When the Constitutional provisions do not contemplate creation of a district, there is no question of reading any Constitutional intendment in the provision to freeze the 'district' as existing at the time of Constitutional amendment. It cannot be said that the Constitutional provisions do not disclose any intention that the 'district' as existing in a State are not alterable or can neither be abolished nor altered after, the 73rd and 74th amendment in the Constitution. Therefore, this submission of the learned counsel for the writ petitioners, in our view, has no merit and, therefore, not acceptable.

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

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

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

following observations in paragraph 11, which is as under :

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

58. At this juncture, we may recall that the submission of Mr. Jain on the question of vires of Section 2 (26) of the U. P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961, may not be dealt with, in detail, as the said submission was made only for the purposes of making other submissions as noted hereinabove. In any view of the matter, we do not find that the definition of Section 2 (26) of the U. P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961, can in any way be said to be ultra vires. Therefore, we are unable to accept the contention of the learned counsel for the writ petitioners that the notifications issued under Section 11 of the Act were redundant and not relevant for Part IX and Part IX-A of the Constitution.

59. Let us now consider the question No. 3, which is more serious in nature, as raised by the learned counsel for the parties. The question is whether exercise of power under Section 11 of the Act by the State Government is purely executive or administrative in nature or it is purely legislative, in character. To answer this question, we require serious consideration of the submissions of the learned counsel for the parties as well as the materials available on record.

60. For this purpose, we have carefully examined the preamble and objects and reasons of the Act as well as the provisions of the Act including Section 11 of the Act.

61. From a plain reading of the provisions under Section 11 of the Act, it cannot be disputed, as noted hereinafter that the power under Section 11 of the Act is to be exercised only by the State Government. In our constitutional scheme, there is no absolute separation of power. Apart from the various governmental functions, the executive is also entrusted with several functions, which are legislative in nature. The distinction between administrative and legislative function is thin and overlapping. In De Smith's 'Judicial Review of Administrative Action' (Fifth Edition) with regard to difference between legislative and administrative acts following observations has been made :

'A distinction often made between legislative and administrative act is that between the general and the particular. A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases and administrative act cannot be exactly defined, but it includes the adoption of a policy, the making and issue of a specific direction, and the application of a general rule to a particular case in accordance with the requirements of policy of expediency or administrative practice. Legal consequences flow from this distinction.'

62. In *Jayati Lal Amrit Lal Sodhan v. F.M. Rana*, AIR 1964 SC 648, the Supreme Court also laid down that executive apart from purely administrative function is also entrusted under various Statutes functions which are legislative and judicial in character. The Apex Court in paragraph 11 made following observations ;

'It cannot however be assumed that the legislative functions are exclusively performed by the legislative executive functions by the executive and judicial functions by the judiciary alone. The Constitution has not made an absolute or rigid division of functions between the three agencies of the State. To the executive, exercise of functions legislative and Judicial are often entrusted. For instance power to frame rules, regulations and notifications which are essentially legislative in character is frequently entrusted to the executive. Similarly judicial authority is also entrusted by legislation to the executive authority : *Harinagar Sugar Mills Ltd. v. Shyamsundar*, (1962) 2 SCR 339 : AIR 1961 SC 1669. In the performance of the executive functions, public authorities issue orders which are not far removed from legislation and make decisions affecting the persona] and

proprietary rights of individuals which are quasi-Judicial in character. In addition to these quasi-judicial, and quasi-legislative functions, the executive has also been empowered by statute to exercise functions which are legislative and judicial in character, and in certain instances, powers are exercised which appear to partake at the same moment of legislative, executive and judicial characteristics. In the complexity of problems which are modern Government have to face and the plethora of Parliamentary business to which it inevitably leads, it becomes necessary that the executive should often exercise powers of subordinate legislation ; Halsbury's Laws of England Vol. 7, Article 409. It is indeed possible to characterise with precision that an agency of the State is executive, legislative or judicial, but it cannot be predicated that a particular function exercised by any individual agency is necessarily of the character which the agency bears.'

63. The Supreme Court in *Tulsipur Sugar Company Limited v. Notified Area Committee, Tulsipur*, AIR 1980 SC 882, while dealing with Section 3 of U. P. Town Area Act, 1914, held after considering the nature and the power exercised by the State Government under Section 3 that the said power to be legislative in character. In paragraph 8 of the said judgment, the Supreme Court observed as follows :

'8. We are concerned in the present case with the power of the State Government to make a declaration constituting a geographical area into a town area under Section 3 of the Act which does not require the State Government to make such declaration after giving notice of its intention so to do to the members of the public and inviting their representations regarding such action. The power of the State Government to make a declaration under Section 3 of the Act is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation.'

64. The Supreme Court had again occasion to consider the nature of power exercised by State Government under Drugs (Prices Control) Order, 1979 in *Union of India and Ors. v. Cynamide India Limited*, AIR 1987 SC 1802, in which the tests for identifying whether a power is legislative or administrative was also considered.

The Supreme Court in paragraph 7 of the said decision laid down the following principles :

'7. The third observation we wish to make is, price fixation is more in the nature of a legislative activity than any other. It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it has been said, is 'difficult in theory and impossible in practice'. Though difficult, it is necessary that the line must sometimes be drawn as different legal rights and consequences may ensue. The distinction between the two has usually been expressed as 'one between the general and the particular'. 'A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases ; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy. 'Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future ; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases'. It has also been said 'Rule making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class' while, 'an adjudication, on the other hand, applies to specific individuals or situations'. But, this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts. A price fixation measure does not

concern itself with the interests of an individual manufacturer or producer. It is generally in relation to a particular commodity or class of commodities or transactions. It is a direction of a general character, not directed against a particular situation. It is intended to operate in the future. It is conceived in the interests of the general consumer public. The rights of the citizen to obtain essential articles at fair prices and the duty of the State to so provide them are transformed into the power of the State to fix prices and the obligation of the producer to charge no more than the price fixed. Viewed from whatever angle, the angle of a general application. The prospectivity of its effect, the public interest served, and the rights and obligations flowing therefrom, there can be no question that price fixation is ordinarily a legislative activity. Price-fixation may occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Such situations may arise when the owner of property or goods is compelled to sell his property or goods to the Government or its nominee and the price to be paid is directed by the Legislature to be determined according to the statutory guidelines laid down by it. In such situations the determination of price may acquire a quasi-judicial character. Otherwise, price fixation is generally a legislative activity. We also wish to clear a misapprehension which appears to prevail in certain circles that price-fixation affects the manufacturer or producer primarily and therefore, fairness requires that he be given an opportunity and that fair opportunity to the manufacturer or producer must be read into the procedure for price-fixation. We do not agree with the basic premise that price fixation primarily affects manufacturers and producers. Those who are most vitally affected are the consumer public. It is for their protection that price-fixation is resorted to and any increase in price affects them as seriously as any decrease does a manufacturer, if not more.'

65. Again in the case of *Sundarjan v. Collector, Thane*, 1989 (3) SCC 396, the Apex Court while dealing with the provisions of Section 3 (3) of Bombay Provincial Municipal Corporation Act, 1949, considered as to whether the power exercised is administrative or legislative in nature and the Apex Court held that the power to be legislative in nature which excluded the rules of natural justice. In the said judgment, the Apex Court observed that rules of natural Justice are not applicable

to the legislative action plenary or subordinate.

66. Lastly, in the case of *State of Punjab v. Tehal Singh and Ors.*, 2002 (2) SCC 7, the Supreme Court while considering the nature of power of the State Government while issuing a notification under Section 3 of Punjab Panchayati Raj Act, 1994, for constituting a Gram Sabha laid down the following principles for classifying the functions in paragraph 7, which is extracted below :

'7. The principles of law that emerge from the aforesaid decisions are : (1) where provisions of a statute provide for the legislative activity, i.e., making of a legislative instrument or promulgation of general rule of conduct or a declaration by a notification by the Government that certain place or area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into on action forthwith which provide for certain consequences ; (2) where the power to be exercised by the Government under provisions of a statute does not concern with the interest of an individual and it relates to public in general or concerns with a general direction of a general character and not directed against an individual or to a particular situation ; and (3) lay down future course of actions, the same is generally held to be legislative in character.'

67. Reliance was placed by the learned counsel for the writ petitioners on *Baldev Singh v. State of Himachal Pradesh*, AIR 1987 SC 1239. It is true that in the said case, the Supreme Court after considering the scheme of Himachal Pradesh Municipal Act, 1968, held that the power is administrative power of the State, which requires giving of an opportunity to the affected aggrieved party. Strong reliance has also been placed by the learned counsel for the writ petitioners upon *B.N. Shankarappa v. Utharur Srinivas and Ors.*, 1992 (2) SCC 61. In that decision, the Supreme Court was considering the power of the Deputy Commissioner under Section 4 of Karnataka Zila Parishad, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983. In the statutory provisions itself, the power to modify the order was given to the Deputy Commissioner. The previous publication of proposal by notification was also given under the statutory scheme itself. Therefore, this decision of the Supreme Court cannot be said to have laid down any proposition regarding classification of

administrative or legislative function. Therefore, we are not in a position to hold that the exercise of power under Section 11 of the Act, 1901, is administrative in nature.

68. As noted hereinafter and applying the test as laid down by the Apex Court in State of Punjab's case (supra), it is clear that the notification issued by the State Government under Section 11 of the Act is a legislative instrument of general rule of conduct and the power exercised does not concern with the interest of an individual and it relates to public in general. In this connection, Section 4 (42B) of the U. P. General Clauses Act, 1904, which defines statutory instrument must be looked into. Section 4 (42B) of the U. P. General Clauses Act, 1904, runs as under :

'4 (42B) 'statutory instrument' shall mean any notification, order, scheme, rule, or bye-law issued under any enactment and having the force of law ;'

69. It cannot be disputed that the power exercised by the State Government is admittedly the power exercised under the Act, 1901 and the order passed under Section 11 of the Act has the force of law. It can also not be disputed that the notification issued by the State Government under Section 11 of the Act falls within the definition of statutory instrument as defined in Section 4 (42B) of U. P. General Clauses Act, 1904. The learned Additional Advocate General submitted that the State Government while creating, altering or abolishing districts had issued notifications, which were published in the official Gazette.

70. It may be stated in this connection that the learned counsel for the writ petitioners had placed reliance upon State of U. P. and Ors. v. Pradhan Sangh Kshetra Samiti and Ors., 1995 (2) AWC 1316 (SC) : 1995 Suppl (2) SCC 305, in which it was held that the power of the Governor to issue a notification specifying the village is an executive power which is to be exercised by the Governor.

71. In the aforesaid decision, the Apex Court was considering the submission raised in the writ petitions that since under Article 243(g) the power is given to the Governor to specify a village by notification, the power of the State Government under the U. P. Panchayat Raj Act, 1947, to specify a village was ultra vires. In

that decision, the Supreme Court held that the Governor exercises the power under the Constitution and the Governor cannot act without aid and advice of the Council of the Ministers. In that decision, the Apex Court also observed that 'Hence, whether it is a notification issued by the Government or a general or special order issued by the State Government constitutionally both are the acts of the Governor'. In the said case no such ratio is deducible as contended by the learned counsel for the petitioners that act of abolition of district is not a legislative act but an administrative act. Therefore, this decision, which was strongly relied on by the learned counsel for the writ petitioners is of no help to them.

72. At the same time, the submission of Mr. Ravi Kant, learned senior advocate appearing for one of the writ petitioners to the effect that Section 11 of the Act is a conditional legislation cannot be accepted since Section 11 of the Act does not fulfil the tests for identifying it as conditional legislation.

73. It is well-settled that conditional legislation is a legislation which is complete in itself but its operation is made to depend on fulfilment of certain conditions and what is delegated to an outside authority is the power to determine according to its own judgment whether or not those conditions are fulfilled. In case of delegated legislation, some portion of the legislative power of the Legislature is delegated to the outside authority. The distinction between conditional legislation and delegation of legislative power are quite distinct, conditional legislation which contains no element of delegation of legislative power whereas delegated legislation does confer some legislative power of outside authority. In support of this conclusion, we may refer to and rely on a Supreme Court Judgment in the case of *State of T. N. v. K. Sabanayagam and Anr.*, 1998 (1) SCC 318.

74. Learned counsel for the writ petitioners, however, as noted hereinearlier, relied upon a Division Bench decision of this Court in *Brijendra Kumar Gupta's case* (supra), in which the Division Bench of this Court observed that the power of the State Government under Section 11 of the Act is an administrative power. It is true that the Division Bench of this Court in *Brijendra Kumar Gupta's case*, proceeded on the basis that the power Under Section 11 of the Act is an administrative power, but in the said case neither the issue that the power is not administrative

but legislative in nature was either decided or raised. Therefore, no ratio can be drawn from the aforesaid judgment of the Division Bench that the power is not legislative but administrative. It is the ratio of the case which is binding and not the conclusions as laid down by the Apex Court in a Constitution Bench judgment in *B. Shama Rao v. Union of India*, AIR 1965 SC 1480, in which the Supreme Court held that :

'.....It is trite to say that a decision is binding not because of its conclusion but in regard to its ratio and principles laid down therein.....'

75. For the reasons aforesaid, we are of the firm opinion that the power of the State Government in issuing the notifications under Section 11 of the Act is legislative, in character, must be accepted. Therefore, we hold that the State Government while issuing a notification under Section 11 of the Act exercises power which is legislative in nature and it is not purely an executive or administrative power of the State Government-76. Let us now deal with question No. 4, as noted hereinearlier. The question is whether it was mandatory on the part of the State Government to comply with the principle of natural justice by affording opportunity to the residents of the districts while taking a decision to create or abolish the districts and divisions in the exercise of its power under Section 11 of the Act or not. The answer is very simple.

77. However, in order to complete our conclusion on this aspect of the matter, it would be in our interest that paragraph 5 of the Apex Court decision in the case of *Union of India and Anr. v. Cynamide India Ltd. and Anr.*, 1987 (2) SCC 720, must be reiterated, which runs as under :

'The second observation we wish to make is, legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of Parliament legislation, the proposition is self-evident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for hearing there are several instances of the Legislature requiring the subordinate legislating authority to give public notice and a public hearing before say, for example, levying a municipal rate-in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating

the subordinate legislation. The right here given to rate payers or others is in the nature of a concession which is not to detract from the character of the activity as legislative and not quasi-judicial. But, where the Legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural Justice into such legislative activity.'

78. From a plain reading of this paragraph rendered in the aforesaid decision of the Supreme Court, namely, *Union of India v. Cynamide India Ltd.* (supra), it appears that the Supreme Court in that decision has clearly laid down the principles that the legislative action plenary or subordinate is not subject to rules of natural justice. It was further laid down by the Supreme Court that in the case of subordinate legislation. It may happen that the Parliament may itself provide for a notice and for hearing, which right is in the nature of a concession, which is not to be detracted from the character of the activity as legislative. From the aforesaid observations of the Supreme Court, it can further be deduced that the Supreme Court has laid down the principle to the extent that where the Legislature had not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity.

79. Before we part with this question, we must appreciate the arguments of Mr. S. P. Gupta, learned senior counsel appearing on behalf of the State-respondents that no civil consequences had taken place by abolition of districts by issuing the Impugned notifications under Section 11 of the Act. In *Rameshchandra Kachardas Porwal and Ors. v. State of Maharashtra and Ors.*, (1981) 2 SCC 722, in paragraph 17, the Supreme Court observed as follows :

'The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice. In *Bates v. Lord Hailsham*, Megarry, J., pointed out that the rules of natural justice do not run in the sphere of legislation, primary or delegated, and in *Tulsipur Sugar Co. v. Notified Area Committee*, our brothers Desai and Venkataramiah, JJ., approved what was said by Megarry, J., and applied it to the field of conditional legislation too. In Paul Jackson's *Natural Justice*, (2nd Edition), it has been pointed out (at p. 169) :

There is no doubt that a minister, or any other body, in making legislation, for example, by statutory instrument or by law, is not subject to the rules of natural justice-Bates v. Lord Hailsham of St. Marylebone-any more than is Parliament itself ; Edinburgh and Dalkeith Ry. v. Wauchope per Lord Brougham ; British Railways Board v. Pickin.

Prof. H. W. R. Wades has similarly pointed out in his Administrative Law (4th Edition) : 'There is no right to be heard before the making of legislation, whether primary or delegated, unless it is provided by statutes'. There is, therefore, no substance in the invocation of the rules of natural justice.'

80. In view of our discussions made hereinabove, we are, therefore, of the firm opinion that exercise of power under Section 11 of the Act by the State Government was legislative, in nature and, therefore, in view of the aforesaid discussions and applying the principles laid down by the Supreme Court in its aforesaid decisions, as noted hereinearlier, we are of the view that the State Government was not duty bound to follow the principle of natural justice by giving opportunity to the residents of the respective districts and the members of the Bar Associations and others before issuing the impugned notifications. Accordingly, the submission raised on behalf of the writ petitioners on this question is not acceptable and, therefore, rejected. We may also keep on record that some of the learned counsel appearing for the writ petitioners before us also accepted that the exercise of power under Section 11 of the Act by the State Government was legislative, in nature and it was not executive, in character.

81. Let us now deal with question No. 5, which is, whether consultation was necessary with the High Court before the State Government could exercise or issue the impugned notifications under Section 11 of the Act abolishing the districts and divisions already created.

82. In our view, before issuance of the notifications by the State Government under Section 11 of the Act, consultation with the High Court was not, at all, necessary either for creation of districts and divisions or for abolition of districts and divisions.

83. The learned counsel appearing for the writ petitioners refer to Sections 7, 8, 11 and 12 of the Code of Criminal Procedure for the purpose of satisfying us that consultation was mandatory on the part of the State Government before issuing a notification under Section 11 of the Act. It is true that before creation of the newly created districts consultation was made by the State Government with the High Court. Therefore, according to the writ petitioners before abolition of such districts under Section 11 of the Act, it was incumbent and/or mandatory for the State Government to consult the High Court. Learned counsel for the writ petitioners have submitted that although Section 11 of the Act has not clearly provided that consultation was required before issuing a notification under Section 11 of the Act, but such consultation with the High Court was still required by necessary implications.

84. Before we proceed to examine this question, it may be kept on record that in the counter-affidavit filed in these bunch of writ petitions, statements have been made on behalf of the State Government that in the notification dated 13th January, 2004, it has been shown that the 'Court' mentioned as revenue court and corrigendum notification to this effect has already been published on 28th January, 2004. Thus, the State Government itself has taken a stand that the notification dated 13th January, 2004, was not with regard to district courts (civil and criminal) and was confined only to the revenue courts. In view of this stand being taken by the State Government in its counter-affidavit that the notification dated 13th January, 2004, only relates to revenue courts, it is not necessary to decide the above question for decision of these bunch of writ petitions.

85. Let us now take up the question No. 6 for our consideration, which is, whether the notification issued by the State Government under Section 11 of the Act was a policy decision of the State Government and if it is accepted to be a policy decision of the State Government, whether there can be a judicial review of such policy decision of the State Government while exercising its power under Section 11 of the Act.

86. In our view, this is one of the most important issues raised before us for our decision in these bunch of writ petitions. The question as noted hereinabove is

whether there is any scope of judicial review of the stand taken by the State Government under Section 11 of the Act or not. From the notifications, as noted herein earlier, it appears that such notifications were issued by the State Government in exercise of its power under Section 11 of the Act read with Section 21 of the U. P. General Clauses Act, 1904. From the records, as produced before us by the learned standing counsel, it appears that the said notifications were issued on the basis of a Cabinet decision of the State taken on 13th January, 2004.

87. It was contended by Mr. S. P. Gupta, learned senior counsel appearing on behalf, of the State-respondents that the decision of the Cabinet being a policy decision to abolish already created Districts and Divisions, such a decision was beyond the judicial review of this Court. Mr. Gupta further contended that the decision of the State Government being a policy decision which is in the executive domain of the State Government and this Court in exercise of its writ jurisdiction under Article 226 of the [Constitution of India](#) would not be permitted to scrutinise the said decision or could substitute its opinion to that of the State Government.

88. As noted hereinafter, the writ petitioners have challenged the impugned notifications on the ground that the policy decision of the State Government was arbitrary, unreasonable, irrational and discriminatory. According to the learned counsel for the writ petitioners even if the policy decision of the State Government to be considered to be a legislative in nature, the same can be struck down if the policy decision was arbitrary, unreasonable, irrational and discriminatory. According to the learned counsel for the writ petitioners every policy decision of the State Government must apply the mandate of Article 14 of the [Constitution of India](#). Therefore, the question centered around is as to what can be the ground of judicial review of the impugned action in these bunch of writ petitions and if such Judicial review is possible then whether there exists sufficient ground to assail the Impugned policy decision in these bunch of writ petitions. It cannot be denied that the judicial review is a basic feature of the Constitution.

89. The rule of law recognises power of the judicial review of legislative and administrative actions. The power of judicial review is integral part of our

Constitutional provisions. It is for the judiciary to uphold the constitutional values and to enforce the constitutional limitation, that is the essence of the rule of the law. De Smith : In 'Judicial Review of Administrative. Action' (5th Edition) spelt the grounds of judicial review in paragraph 1.025 which is being extracted below :

'1.025. In our view, the standards applied by the courts in Judicial review must ultimately be justified by constitutional principles, which govern the proper exercise of public power in any democracy. This is so irrespective of whether the principles are set out in a formal, written document. The sovereignty or supremacy of Parliament is one such principle, which accords primacy to laws enacted by the elected Legislature. The rule of law is another such principle of the greatest importance. It acts as a constraint upon the exercise of all power. The scope of the rule of law is broad. It has managed to justify albeit not always explicitly..... a great deal of the specific content of judicial review, such as the requirements that laws as enacted by Parliament be faithfully executed by officials ; that orders of Courts should be obeyed; that individuals wishing to enforce the law should have reasonable access to the Courts ; that no persons should be condemned unheard, and that power should not be arbitrarily exercised. In addition, the rule of law embraces some internal qualities of all public law ; that it should be certain, that is, ascertainable in advance so as to be predictable and not retrospective in its operation ; and that it be applied equally, without unjustifiable differentiation.'

90. Keeping our findings, as made hereinafter, in mind to the extent that exercise of power under Section 11 of the Act by the State Government was legislative in character, the scope of judicial review is to be considered qua the legislative power delegated to Government.

91. The Supreme Court in *Indian Express Newspapers (Bombay) Private Ltd. and Ors., etc. etc. v. Union of India and Ors.*, AIR 1986 SC 515, had considered the grounds of challenge of a delegated legislation before the Courts. The writ petition was filed before the Supreme Court challenging the notification issued under Section 22 of the Customs Act, 1962. The notification issued by the Government was held to be issued in exercise of delegated legislative power of the

Government. In paragraph 73 of the said decision, following principle was laid down by the Supreme Court :

'73. A piece of subordinate legislation does not carry the same degree of Immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary.'

92. In *Union of India and Anr. v. Cynamide India Limited and Anr.*, AIR 1987 SC 1802, the Supreme Court considered the grounds for challenge of a subordinate legislation. The notification issued by the Central Government fixing the minimum price under the Drugs (Control) Order, 1977, was challenged in the High Court. The High Court had allowed the writ petition against which the Union of India filed an appeal. In paragraph 4 of the said decision the Supreme Court observed as follows :

'4. We start with the observation, 'Price fixation is neither the function nor the forte of the Court'. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price. For example, if the Legislature has decreed the pricing policy and prescribed the factors, which should guide the determination of the price, we will, if necessary, enquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of price fixation are the concern of the executive and we leave it to them. And, we will not reevaluate the considerations even if the prices are demonstrably injurious to some manufacturers or producers.

The Court will, of course, examine if there is any hostile discrimination. That is a different 'cup of tea' altogether.'

93. In *Sri Sitaram Sugar Company Limited and Anr. v. Union of India and Ors.*, 1990 (3) SCC 223, a Constitution Bench of the Supreme Court also considered the scope of judicial review of the delegated legislative power, in that decision, the Supreme Court clearly laid down that any arbitrary action whether legislative, administrative or quasi-judicial is liable to attract prohibition of Article 14 of the [Constitution of India](#). The Supreme Court further held that the power delegated by the statute is limited by its term and subordinate to its object. Following principles were laid down by the Supreme Court in the said decision in paragraphs 46 and 47, which are as under :

'46. Any arbitrary action, whether in the nature of a legislative or administrative or quasi-judicial exercise of power, is liable to attract the prohibition of Article 14 of the Constitution. As stated in *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3, 'equality and arbitrariness are sworn enemies ; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch.' Unguided and unrestricted power is affected by the vice of discrimination : *Maneka Gandhi v. Union of India*. (1978) 1 SCC 248. The principle of equality enshrined in Article 14 must guide every State action, whether it be legislative, executive, or quasi-judicial ; *Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489 ; *Ajai Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 and *D.S. Nakara v. Union of India*, (1983) 1 SCC 305.

47. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires and power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be 'reasonably related to the purposes of the enabling legislation'. See *Leila Mourning v. Family Publications*, 411 US 356. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation. Court might well say, 'Parliament

never intended to give authority to make such rules : they are unreasonable and ultra vires' : per Lord Russel of Killowen, C.J. in *Kruse v. Johnson*, 1998 (2) QB 91, 99.'

94. Again in a recent judgment of the Supreme Court in *Dai-Ichi Karlkaria Ltd. v. Union of India and Ors.*, (2000) 4 SCC 57, the Supreme Court considered the scope of interference in a notification issued under Section 25 of the Customs Act, which was held to be a legislative power. The tests for questioning a subordinate legislation were again reiterated by the Supreme Court in paragraph 8 which is reproduced below :

'8. In *Indian Express Newspapers (Bombay) (P.) Ltd. v. Union of India*, AIR 1986 SC 515, the scope of interference in the notification issued under Section 25 of the Customs Act, 1962, is considered. This Court held that power to grant exemption under Section 25 of the Customs Act is a legislative power and a notification issued by the Government thereunder amounts to a piece of subordinate legislation, even then the notification is liable to be questioned on the ground that it is an unreasonable one inasmuch as a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation can be challenged : (i) that it does not conform to the statute under which it is made ; (ii) that it is contrary to some other statute inasmuch as subordinate legislation must yield to plenary legislation ; (iii) that it is unreasonable in the sense that it is manifestly arbitrary. The embargo of arbitrariness is embodied in Article 14 of the Constitution. An enquiry into the vires of delegated legislation must be confined to the ground on which the plenary legislation may be questioned, except that subordinate legislation cannot be questioned on the ground of violation of the principle of natural justice on which administrative action may be questioned. In cases where power vested in the Government is a power which has got to be exercised in public interest, as is the case in the present case, the Court may require the Government to exercise that power in a reasonable way in accordance with the spirit of the Constitution.'

95. From the discussions made hereinabove and applying the principle laid down by the Supreme Court as referred to above, we are, therefore, of the view that even in a case of legislative action, judicial review was possible only in cases where the prohibition of Article 14 of the [Constitution of India](#) was attracted.

96. Accordingly, we are of the opinion that even in a case of legislative action taken by the State Government, it would be open to challenge such action by judicial review under Article 226 of the [Constitution of India](#) when such action attracted the prohibition of Article 14 of the [Constitution of India](#).

97. At the risk of repetition, it may be recalled that Mr. S. P. Gupta, learned senior advocate, appearing for the State submitted that the said decision of the State being a policy decision, was beyond the scrutiny of this Court. According to him, the State Government is always authorised or free to lay down its policy from time to time and change the same as and when it pleases and the policy decision being in the exclusive domain of the State Government cannot be challenged in this Court under Article 226 of the [Constitution of India](#). Therefore, it was not open for this Court to entertain or interfere with the notifications issued under Section 11 of the Act, as it was simplicitor a policy decision of the State Government.

98. Let us now consider this submission of Mr. S. P. Gupta treating the decision of the State Cabinet taken on 13th January, 2004 to be a policy decision for exercising its power under Section 11 of the Act.

99. Before proceeding to consider the aforesaid submission, it is necessary to note that in taking such decision for exercising the power, which is legislative in nature and a power which is executive in nature, there remains once difference. The State Government as a delegatee of the legislative power has to exercise power in accordance with the purpose and object of the statute under which the power has been delegated. The delegatee cannot go beyond the purpose and object of the Act. The U. P. Land Revenue Act, 1901, is a preconstitutional legislation, which was enacted to consolidate and amend the law relating to the land revenue and the jurisdiction of the revenue officers in Uttar Pradesh.

100. On a plain reading of the various provisions and the preamble and the object and reasons of the Act, it appears to us that the purpose and object is collection of revenue, maintenance of records of title of various tenure holders in the State. The purpose of law was assessment, collection of revenue payable to the Crown. The State was empowered to carry settlement operation in any district or local area from time to time, distribution of revenue amongst proprietors, determination of rent. The Collector of the district was given various powers under the Act for carrying out the revenue administration. The functions and duties of the State have tremendously increased after enactment of the [Constitution of India](#). The State is to perform various constitutional obligations while discharging its functions and duties with regard to citizen of the country. The directive principles of the State policy has to play a fundamental role in the governance of the country and the State is duty bound to apply directive principles of the State policy in making the law. Thus, the legislative power of the State Government under Section 11 of the Act has to be in consonance with the various constitutional provisions.

101. In this connection, we may add that the provision of the Act was keenly examined by us. We have also examined the objects for enacting the Act and, therefore, the power under Section 11 of the Act is to be exercised in furtherance of the objects of the Act and in spirit of the [Constitution of India](#). The policy decision has thus to be considered in the above background.

102. With these in mind, we now proceed to consider the submission of Mr. S. P. Gupta, learned senior advocate appearing for the State. As noted hereinafter, Mr. Gupta contended that the impugned notification issued under Section 11 of the Act being a policy decision, it cannot come within the scrutiny of this Court under Article 226 of the Constitution.

103. The Supreme Court in Col. A.L. Sangwan v. Union of India and Ors., AIR 1981 SC 1545, has held that it is within the reasonable discretion of the Government to change its policy. The Court observed :

'.....But one imperative of the Constitution implicit under Article 14 is that if it does change its policy, it must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrary.....'

104. In *Union of India and Ors. v. Dinesh Engineering Corporation and Anr.*, (2001) 8 SCC 491, the Supreme Court considered the scope of judicial review of a policy decision. The Apex Court held that the Court has right to scrutinise whether the policy, in question, is formulated keeping in mind all the relevant factors and the policy has to be beyond the pale of discrimination or unreasonableness. The Supreme Court observed as follows :

'.....Any decision, be it a simple administrative decision or a policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision. If it is so, then be it a policy decision or otherwise, it will be violative of the mandate of Article 14 of the Constitution.'

105. Again in *Union of India and Anr. v. International Trading Consolidation Officer and Anr.*, (2003) 5 SCC 437, the Supreme Court had occasion to consider the scope of judicial review of a Governmental policy and in that decision the Supreme Court held that Article 14 pervades in all Governmental actions including the decision to change policy. In paragraph 15 of the said decision, the Supreme Court observed as follows :

'15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Action are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualised than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so,

does it really satisfy the test of reasonableness.'

106. As noted herein earlier, in order to satisfy us on the question whether the judicial review is permissible against a policy decision taken by the State Government, Mr. S. P. Gupta, learned senior counsel appearing for the State-respondents placed strong reliance on the Judgments of the Apex Court in *Balco Employees Union Regd. v. Union of India*, 2002 (2) SCC 333 ; *Narmada Bachao Andolan v. Union of India*, 1999 (4) AWC 2.151 (SC) (NOC) : 2000 (10) SCC 664 ; *J.R. Raghupati v. State of A.P.*, AIR 1988 SC 1681 and *Federation of Railway Officers Association v. Union of India*, 2003 (4) AWC 2738 (SC) ; 2003 (4) SCC 289.

107. Coming to the judgment of the Apex Court in *Balco Employees Union's* case (supra), the policy decision taken by the State held to be an economic decision and it was held that the Court cannot examine relative merit of different economic policies and cannot strike down a policy merely on ground that another policy would have been fairer and better. The decision was taken by the Government for disinvestments of the *Bharat Aluminium Company Limited*. Reliance was placed on paragraph 46 of the said judgment which is quoted below :

'46. It is evident from the above that it is neither within the domain of the Courts nor the scope, of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely, because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.'

108. In our view, the decision of the Supreme Court in the case of *Balco Employees Union* (supra) cannot have any application to the present case. In that decision, the Supreme Court was of the view that judicial review was not possible to embark upon an enquiry as to whether a particular public policy or better public policy can be evolved. In the said decision, the Supreme Court further observed that our courts are not inclined to strike down a policy at the behest of the writ petitioners only because a different policy would have been fairer or wiser or more scientific or more logical. Therefore, for the purpose of deciding these bunch of

writ petitions, we are of the view that the decision in the case of Balco Employees Union (supra), would not come in the aid of the writ petitioners.

109. In *Narmada Bachao Andolan v. Union of India*. 1999 (4) AWC 2.151 (SC) (NOC) : 2000 (10) SCC 664, the Supreme Court has put a caution in the exercise of their jurisdiction not to transgress into the field of policy decision. The Supreme Court observed that whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are in fact part of policy making process and the Courts are ill-equipped to adjudicate on a policy decision so undertaken. At the same time, the Supreme Court also observed in the aforesaid decision that the Court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and the fundamental rights of the people are not transgressed upon except to the extent permissible under the Constitution. It is also observed in the aforesaid decision that the essence of judicial review is a constitutional fundamental and the role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of the Indians. It was further observed that the Courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest.

110. It would, therefore, be evident from the aforesaid decision of the Supreme Court that when the policy decision is not in conformity with law or Article 14 of the [Constitution of India](#) has come into play in a particular case, in that case, the Courts would be free to interfere with such a policy decision.

111. Strong reliance was placed by Mr. S. P. Gupta, learned senior advocate, appearing for the respondents on the judgment of the Apex Court in *J. R. Raghupathy's case* (supra). In our view, this decision does not stand in the way of the writ petitioners in challenging the impugned notification issued under Section 11 of the Act. In the aforesaid decision, the Supreme Court held that administrative instructions issued by the Government were not statutory in nature and breach of the said administrative instructions cannot be enforced by invoking the extraordinary power under Article 226 of the Constitution. The Supreme Court further held that the guidelines framed were in the nature of instructions issued by

the State Government to the Collector regulating the manner in which they should formulate their proposal for formation of a revenue Mandal or for location of its headquarters. The High Court had set aside the decision on the ground that guidelines as framed by the State Government were not followed. The aforesaid case, in our view, was not a case in which any arbitrariness was pleaded or proved with regard to decision of the State Government in location of Mandals. In paragraph 30 of the said decision, the Supreme Court held as under :

'30. We find it rather difficult to sustain the judgment of the High Court in some of the cases where it has interfered with the location of Mandal Headquarters and quashed the impugned notifications on the ground that the Government acted in breach of the guidelines in that one place with a view to develop the area surrounded by it. The location of headquarters by the Government by the issue of the final notification under Sub-section (5) of Section 3 of the Act was on a consideration by the cabinet sub-Committee of the proposals submitted by the Collectors concerned and the objections and suggestions received from the local authorities like the gram 'panchayats and the general public. Even assuming that the Government while accepting the recommendations of the Cabinet Sub-Committee directed that the Mandal Headquarters should be at place 'X' rather than place 'Y' as recommended by the Collector concerned in a particular case, the High Court would not have issued a writ in the nature of mandamus to enforce the guidelines which were nothing more than administrative instructions not having any statutory force, which did not give rise to any legal right in favour of the writ petitions.'

112. In view of our discussions made hereinabove, we are, therefore, of the view that this judgment does not help the writ petitioners in the present case since the case of the writ petitioners is not founded on breach of any administrative instruction issued by the State Government nor arbitrariness was pleaded or proved with regard to the decision of the State Government in the matter of location of Mandals.

113. The learned Additional Advocate General Sri Sudhir Agrawal, however, placed strong reliance on the Judgment of the Supreme Court in State of Punjab

and Ors. v. Ram Lubhaya Bagga and Ors., AIR 1998 SC 1703, in that decision, change of policy by the State of Punjab regarding medical reimbursement was under consideration. The old policy of 1991 was modified by new policy-dated 13.2.1995. The policy decision, which was not as beneficial as earlier to the employees, was challenged. The Supreme Court held that the policy is normally within the domain of the State Government and the Court cannot test the utility/beneficial effect of the policy or appreciate, apprise the policy on facts set out in the affidavit. The Supreme Court, however, in the same judgment mentioned the exception to the above, i.e., the policy can be scrutinised if it is arbitrary and violative of any provision of Constitution, statutory or any provision of law. In the said judgment grounds for scrutinising the challenge of a policy decision were noticed.

114. In Kailash Chand Sharma v. State of Rajasthan and Ors., 2002 (6) SCC 562, the Supreme Court again reiterated the permissible grounds for challenging the policy decision of the State. In the said decision, before the Supreme Court, the policy decision of the State of Rajasthan for giving bonus mark for domicile in selection of post of Primary Schools Teachers of Zila Parishad was under challenge. Paragraph 11 of the said decision may be quoted for our purpose, which is as follows :

'11. There can be little doubt that the impugned circular is the product of the policy decision taken by the State Government. Even then, as rightly pointed out by the High Court, such decision has to pass the test of Articles 14 and 16 of the Constitution. If the policy decision, which in the present case, has the undoubted effect of deviating from the normal and statutory rule of selection based on merit is subversive of the doctrine of equality, it cannot sustain. It should be free from vice or arbitrariness and conform to the well-settled norms, both positive and negative, underlying Articles 14 and 16, which together with Article 15 form part of the Constitutional Code of equality.'

115. In view of the background of the aforesaid principles laid down by the various decisions of the Supreme Court, as noted hereinabove, let us now deal with question No. 7, which is, whether :

(1) The decision is arbitrary, discriminatory or unreasonable offending Article 14 of the [Constitution of India](#).

(2) The policy decision taken by the State in exercise of its delegated legislative power is contrary to the purpose and object of the parent Statute or any other constitutional provision.

116. From the discussions made hereinabove, it is now pellucid that the grounds for challenging a legislative action of the Government or a policy decision taken by it are well-settled.

117. Keeping these two grounds in our mind, let us now consider whether any of above grounds exists in the present case for assailing the impugned policy decision. It cannot be disputed that the impugned policy decision was primarily challenged by the writ petitioners as arbitrary and discriminatory or unreasonable. In order to deal with this question, it is relevant to note the sequence of the events, which led to issuance of impugned notification under Section 11 of the Act.

118. As noted above 12 districts were newly created in the year 1997 by the then Government exercising powers under Section 11 of the Act, 1901 read with Section 21 of the General Clauses Act. In the year 1995 district Mahoba (9.2.1995) and district Ambedkar Nagar (29.9.1995) were already created. In the year 1994 Kushinagar (13.5.1994) and Bhadohi (Sant Ravidas Nagar) (30.9.1994) were created. The Writ Petition No. 39756 of 1998, Ram Milan Shukla and Ors. v. State of Uttar Pradesh and Ors., was filed challenging the notification dated 5.9.1997 by which new district Sant Kabir Nagar was created. The above writ petition was allowed by this Court vide its judgment dated 15.1.1999, the operative portion of which is extracted below :

'On the facts and circumstances of the case, we allow this petition, quash the order dated 9.11.1998 and direct the State Government to reconsider the matter and decide whether there was any good administrative and financial ground to issue the notification dated 5.9.1997 for creation of Sant Kabir Nagar district. If the State Government again decides to continue Sant Kabir Nagar and other districts created by the previous Government then it must introduce a bill in the State

Legislature for this purpose. Until and unless such a bill is introduced and passed the notification dated 5.9.1997, shall remain in abeyance.'

119. Before the above judgment the Cabinet vide its decision dated 23.12.1998 has already constituted a Cabinet Sub-Committee of five Hon'ble Ministers to consider the viability of the newly created districts in the year 1997. The judgment of this Court dated 15.1.1999 was also brought into the notice of the Cabinet Sub-Committee. The special leave petition against the judgment of this Court dated 15.1.1999 was also dismissed on 26.3.1999. The Cabinet Sub-Committee invited Members of Parliament and Members of Legislative Assembly belonging to the newly created districts to give their opinion, respective District Magistrates and Commissioners were also called. The Cabinet Sub-Committee held various meetings but could not reach to any unanimous decision as to whether the newly created districts should be allowed to continue or abolished, Cabinet Sub-Committee decided that in view of it having not reached to unanimity the matter be placed before the Cabinet. The matter was placed before the Cabinet and the Cabinet took a decision on 7.1.2000 that new Districts and Divisions created in the year 1997 be allowed to continue as it is and further steps be taken for issue of Ordinance/Bill as required. The said Cabinet decision is contained in the original file produced by the learned standing counsel for perusal of the Court. At this juncture, it is relevant to note that although in paragraph 42 of the counter-affidavit filed by the State in the Writ Petition No. 3019 of 2004, it has been stated that the Cabinet in its meeting dated 7.12.2001 decided to maintain status quo and for examination of the entire matter by the House, it directed for preparation of an Ordinance/Bill in accordance with the Rules, the said averments of the counter-affidavit is not correct and does not correctly give the decision of the Cabinet. The Cabinet decision dated 7.1.2000 as contained in the original letter dated 10th January, 2000 of the Joint Secretary (Confidential) issued on behalf of the Chief Secretary and Cabinet Secretary states that :

'Cabinet in its meeting dated 10.1.2000 after discussion decided that new Districts and Divisions created in the year 1997 shall be continued as it is and with regard to them further steps as necessary regarding placing of Ordinance/Bill be taken.

120. After the aforesaid decision, the matter proceeded with the various departments for compliance of the Cabinet decision regarding posting of Officers and other matters. It is also relevant to note that alleging non-compliance of the judgment dated 15.1.1999, passed in the Writ Petition No. 39756 of 1998, *Ram Milan Shukla and Ors. v. State of Uttar Pradesh and Ors.*, Contempt Petition No. 1449 of 1999 was filed. In the said contempt petition, a counter-affidavit was filed on behalf of the Secretary (Revenue) Government of Uttar Pradesh dated 13.3.2002 in which it was stated that the order of the Court has been complied with and a decision has been taken to retain the newly created Districts and Divisions and by passing regular financial statement/budget and preparation of Bill. This Court vide its order dated 15.3.2002 dismissed the contempt petition making following observations :

'In supplementary counter-affidavit filed by Ajit Kumar Sahu, Joint Secretary, Revenue Government of Uttar Pradesh, Lucknow, dated 13.3.2002, it has been stated that pursuant to the Judgment of this Court, the Cabinet had constituted a Sub-Committee under the Chairmanship of Revenue Minister regarding the consideration of utility, viability and expenditure along with facilities of public in general, which submitted a report and it was decided that the new Districts and Commissionery constituted and established in the year 1997 shall be retained and continued as it is. The decision of the Cabinet dated 7.1.2000 as circulated, is also filed as Annexure S.C.A-II to the supplementary counter-affidavit. It is also stated that in view of the decision of the Cabinet based on the report of the Sub-Committee, and passing of the regular annual financial statements (budget) appropriation Bill, the order dated 15.1.1999, is complied with.

Thus, in view of the averment made in the supplementary counter-affidavit, the Court is not inclined to precede any further in the contempt proceedings. The notice earlier issued is discharged and the contempt petition is dismissed.'

121. The original records of the State produced by the learned standing counsel reveals that after the Cabinet decision dated 7.1.2000 steps were being taken informing the concerned departments about the decision of the Cabinet dated 7.1.2000 and for implementing the said decision. A note was submitted on

4.11.2003 by the Special Secretary (Revenue) referring to one Writ Petition No. 39756 of 1998 (which stood decided on 15.1.1999). The notice suggested that the matter be reviewed and opinion of the Law Department be also taken. After the said notice dated 4.11.2003 a detailed note dated 8.1.2004 was submitted by the Special Secretary (Revenue) in which for the first time name of nine Districts which have been abolished and four Divisions were mentioned. After the note dated 8.1.2004 the report of the Secretary (Finance) was given on 12.1.2004, the report of the Principal Secretary (Revenue) on 12.1.2004 and the report of the Principal Secretary (Law) on 12.1.2004 and on 12.1.2004 the Principal Secretary put up a note and Cabinet decision was taken on 13th January, 2004. The Cabinet decision dated 13th January, 2004, has been placed before us in the original records produced by the learned standing counsel which states that :

'Cabinet in its meeting dated 13th January, 2004, approved the proposal as contained in paragraphs 12 and 13 of the note (i.e., nine districts and four divisions be abolished and after abolition of the districts and divisions and the Administration units included in the Districts shall be such as was prior to their creation meaning thereby area which were included in old district and division prior to creation will be included therein). It was also decided that in each district and division in question rupees ten crores for special development scheme in which road construction, electrification, irrigation, health and education be given preference, be immediately sanctioned and amount be made available. It is also decided that in area in question for big qasbas special development scheme of Rs. one crore be prepared and implemented.'

122. The sequence of events culminating into the decision of the Cabinet for issuance of a notification under Section 11 of the Act on 13th January, 2004, has been described in the manner indicated above. Pursuant to the judgment of this Court dated 15.1.1999 in Writ Petition No. 39756 of 1998, Ram Milan Shukla and Ors. v. State of Uttar Pradesh and Ors., the Cabinet had already taken a decision on 7.1.2000 for retaining all the newly created districts and divisions. From the note of the Cabinet dated 12.1.2004, which is also a part of the original record, it clearly indicates that the said note was put up for reconsideration. The note of the Principal Secretary (Revenue) prepared for the Cabinet in paragraphs 2 and 3

clearly said that pursuant to the directions of this Court in Writ Petition No. 39756 of 1998, it became necessary to reconsider the newly created district and divisions.

123. The policy decision was attacked by the learned counsel for the writ petitioners on the ground of arbitrariness and violation of Article 14 of the Constitution. They contended that such policy decision to abolish nine districts and four divisions was selective and discriminatory. It was pleaded that the District Kannauj, District Bagpat and District Mahoba were spared from the abolition due to arbitrary reasons. It was contended that the district Kannauj has been left out only because of the reasons that the son of the present Chief Minister, Sri Mulayam Singh Yadav represents Kannauj constituency. For the district Bagpat, it is stated that since it was represented by the President of Rastriya Lok Dal, who is a coalition partner of the present State Government, so it has spared the axe.

124. Article 14 of the Constitution prohibits discrimination, but permits a valid classification. It was contended by the learned counsel for the writ petitioners that there was no rational object sought to be achieved by leaving out several newly created districts nor there was any intelligible differentia with those districts which have been abolished. The principal reason given for abolition of the newly created districts in the counter-affidavit is financial constraint and the fact that the newly created districts did not fulfil the norms laid down by the State Government dated 28.12.1992. The only justification given in the counter-affidavit filed in the Writ Petition No. 3019 of 2004 with regard to leaving out the aforesaid districts is given in paragraph 47, which is to the following effect :

'47. That for example, whenever two new Districts are adjacent, in such cases, one district has been taken, to avoid the gravity of backlash due to vicinity. A bare perusal of the map of Uttar Pradesh would show that the District Chitrakoot is adjacent to Kaushambi, District Balrampur is adjacent to Shravasti and

District Auraiya adjacent to Kannauj. Comparing the size of the adjoining districts, Auraiya, Shravasti and Kaushambi are smaller than the District Kannauj, Balrampur and Chitrakoot. Thus, the Districts Kaushambi, Shravasti and Auraiya have been abolished.'

125. In *Secretary, Ministry of Chemicals and Fertilizers, Government of India v. Cipla Ltd. and Ors.*, 2003 (7) SCC 1, the Supreme Court considered the similar challenge against the action, of the Government exercising delegated legislative power. The decision of the Government professed to be in accordance with the policy decision of the Central Government. The Supreme Court held that when the selection or classification of certain drugs is involved for the purpose of price control, such selection or classification should be on a rational basis and cannot be strikingly arbitrary. Paragraph 4.3 of the said decision for our purpose would be important and, therefore, we feel that the said paragraph may be reproduced below :

'4.3. True, the breach of policy decision by itself is not a ground to invalidate delegated legislation. But, in a case like this, the inevitable fallout of the breach of policy decision which the Government itself treated as a charter for the resultant legislation is to leave an imprint of arbitrariness on the legislation. When the selection or classification of certain drugs is involved for the purpose of price control, such selection or classification should be on a rational basis and cannot be strikingly arbitrary. No doubt, in such matters, wide latitude is conceded to the Legislature or its delegate. Broadly, the subordinate law making authority is guided by the policy and objectives of the primary legislation disclosed by the preamble and other provisions. The delegated legislation need not be modelled on a set pattern or prefixed guidelines. However, where the delegate goes step further, draws up and announces a rational policy in keeping with the purposes of the enabling legislation and even lays down specific criteria to promote the policy, the criteria so evolved become the guide posts for its legislative action. In that sense, its freedom of classification will be regulated by the self-evolved criteria and there should be demonstrable justification for deviating therefrom. Though exactitude and meticulous conformance is not what is required, it is not open to the Government to go haywire and flout or debilitate the set norms either by giving distorted meaning to them or by disregarding the very facts and factors which it professed to take into account in the interest of transparency and objectivity. Otherwise, the legislative act of the delegate in choosing some drugs for price control while leaving others will attract the wrath of Article 14.'

126. In the case of Kailash Chandra Sharma (supra), the Supreme Court held the policy decision of awarding bonus marks for domicile arbitrary, amounting to discrimination. It held that the reasons put forward are either nonexistent or irrelevant and they have no nexus with the object sought to be achieved. Paragraph 33 of the said decision for our purpose be reproduced below :

'33. The above discussion leads us to the conclusion that the award of bonus marks to the residents of the district and the residents of the rural areas of the district amounts to impermissible discrimination. There is no rational basis for such preferential treatment on the material available before us. The ostensible reasons put forward to distinguish the citizens residing in the State are either non-existent, or irrelevant and they have no nexus with the object sought to be achieved, namely, spread of education at primary level. The offending part of the circular has the effect of diluting merit, without in any way promoting the objective. The impugned circular dated 10.6.1998 insofar as the award of bonus marks is concerned, has been rightly declared to be illegal and unconstitutional by the High Court.'

127. From the pronouncement of the Supreme Court, it would be clear to us that ostensible reasons put forward to support the action if it had no nexus with the object sought to be achieved, such action will become arbitrary. In the present case, only justification sought to be given for sparing out several newly created districts is to avoid the gravity of backlash due to vicinity. The above reason, in our view, has no nexus with the object sought to be achieved. The object as pleaded by the State-respondents is to save the State from whopping extravagance to the tune of about Rs. 5,000 crores. There is also, in our view, no intelligible differentia between the districts abolished and the districts spared from abolition. By issuing the impugned notification, the State had taken action in abolishing few districts and sparing few districts without any valid classification. No criteria, which can be said to have some rational basis has been adopted in directing abolition. It is no doubt true that the State could have taken a decision to abolish the districts on the basis of date of creation or on the basis of revenue collection or population or any reasonable basis. In this case, while issuing notification under Section 11 of the Act, in our view, the act of the State in abolishing nine districts and leaving out

other several newly created districts was clearly arbitrary and discriminatory. It may be noted in this connection that in Secretary Ministry of Chemicals and Fertilizers, Government of India (supra), the action of the State, which was challenged on the ground of arbitrariness, was based on a policy decision of the Government.

128. In this view of the matter, we are in full agreement with the learned counsel for the writ petitioners that the impugned policy decision of the Cabinet dated 13th January, 2004, was discriminatory and violative of Article 14 of the Constitution.

129. In our view, it was apparent from the facts of the present bunch of writ petitions that after creation of 12 districts in the year 1997 Cabinet vide its decision dated 3.12.1998 constituted a five members Cabinet Sub-Committee to submit report regarding viability of districts and divisions created in the year 1997. From the records, it appears that the Cabinet Sub-Committee as constituted proceeded to examine the viability of 12 newly created districts and five divisions. The report of the Cabinet Sub-Committee is also part of original records produced by learned standing counsel before us. The names of 12 districts find place in the Cabinet Sub-Committee report, which were under consideration. These 12 districts were the districts created in the year 1997. After the Cabinet Sub-Committee report, the matter was put up for decision before the Cabinet on 7.1.2000 on which the Cabinet decided to continue the districts created in the year 1997, as it is. Before the Cabinet, which took a decision on 7.1.2000, there was no consideration of any districts created prior to 1997. From the original records produced before us, it is also apparent that after 7.1.2000 the proceedings were going on for implementation of the order and for the first time a note was put up by Special Secretary (Revenue) on 4.11.2003, stating that earlier Cabinet decision required reconsideration. Earlier Cabinet decision was a decision of the Cabinet dated 7.1.2000, which was with regard to viability of the districts created in the year 1997. After the note dated 4.11.2003, the next note on the original record is the note dated 8.1.2004 of the Special Secretary (Revenue), in which the name of district Ambedkar Nagar also figures. However, before the Cabinet, there was no consideration of district Ambedkar Nagar and the note put up on 4.11.2003, which initiated the proceeding culminating into decision dated 13th January, 2004, also

prayed for reconsideration of the Cabinet decision. Thus, on 8.1.2003, when next note was submitted, neither there was any reason for inclusion of the name of district Ambedkar Nagar nor there was any material regarding district Ambedkar Nagar to arrive at a decision regarding abolition. The Cabinet note dated 12.1.2004 put up by Principal Secretary (Revenue) on the basis of which the Cabinet decision dated 13th January, 2004, was taken had also been referred to review of decision which clearly meant review of the decision of earlier Cabinet dated 7.1.2000. As already noted, consideration of district Ambedkar Nagar was not before the earlier Cabinet, which took a decision on 7.1.2000. Therefore, it could not have been included in the note dated 8.1.2004 without there being any consideration of any facts and details pertaining to district Ambedkar Nagar.

130. From the discussions made hereinabove, it is, therefore, clear that inclusion of the name of district Ambedkar Nagar for abolition in Cabinet decision dated 13th January, 2004, was arbitrary, unreasonable and irrational.

131. Let us now consider the question No. 8, which is, whether the State Government while taking the decision to abolish the districts, which were created similarly in the exercise of its power under Section 11 of the Act, have taken into consideration the relevant factors, which were required to be taken for reaching to a decision for abolition of districts and divisions.

132. Another ground has been taken by the writ petitioners to challenge the impugned notifications as arbitrary. According to the writ petitioners, before taking the policy decision, the relevant factors, which were required to be taken into consideration, were in fact not taken into consideration, which also makes the decision arbitrary. All the newly created districts were created more than six years ago and during these six years almost all infrastructures for running the districts were complete. In various writ petitions, several details of the developmental work undertaken in the districts for completion of infrastructures have been duly mentioned, which has been noted in the earlier part of this judgment. In paragraph 55 of the counter-affidavit filed in the Writ Petition No. 3019 of 2004, it has been stated that the total amount sanctioned by the Government in the various annual budgets was to the tune of Rs. 117 crores. Out of which only Rs. 75 crores have

been spent and about Rs. 42 crores are still to be spent. In paragraph 56 of the aforesaid counter-affidavit, it is further stated that a sum of Rs. 1,700 crores is still required for the aforesaid nine districts only for the purposes of completion of district level infrastructures. The learned counsel for the writ petitioners, on the other hand, pleaded that the infrastructures available in the abolished district is much more as completed to other newly created districts. It has also pleaded that in several districts even the district courts' buildings have been completed apart from Collectorate buildings and building for other offices. In the Cabinet note dated 12.1.2004 placed before Cabinet, it has not been adverted as to in which district what infrastructures facilities are available. During more than six years several development activities had taken place involving huge finance of State exchequer. Other development activities in newly created districts had also taken place, details of which have already been given above e.g., in district Gautam Budh Nagar there is all round development of the district and all facilities for the people of the district for common necessity are fully complete. The State, which has itself, allocated Budget for various districts in every year and has carried out construction work and other activities had to take into consideration the entire facts in their right perspective. The original record reveals that upto date facts pertaining to the development of each newly created district were neither called for nor contained in any of the notes prepared for the decision. The vague statement that the facilities are not complete in any of the districts, therefore, cannot be accepted. Districts were created by the State with the object of bringing the governance at the doorstep of the people. In the counter-affidavit filed by the State in the Writ Petition No. 3742 of 1999 Faizabad Bar Association v. State of Uttar Pradesh and Ors., challenging the creation of district Ambedkar Nagar, it is mentioned that the State was fully justified in creating the district and the districts have been created in public interest to provide more and more facilities to them. It is also relevant to note that Article 38 Sub-clause (2) of the Constitution enjoins the State to minimise the inequalities in facilities not only amongst individuals but also amongst groups of people residing in different areas.

133. On consideration of the above facts, also there makes the decision of the State arbitrary. The conclusion that we have arrived at, as stated hereinabove, has been on the basis of the principles laid down by the Supreme Court in Union of

India and Ors. v. Dinesh Engineering Corporation and Anr. (supra), in which paragraph 12 of the said decision made our decision easier. Paragraph 12 of the said decision is quoted below :

'12. There is no doubt that this Court has held in more than one case that where the decision of the authority is in regard to a policy matter, this Court will not ordinarily interfere since these policy matters are taken based on expert knowledge of the persons concerned and Courts are normally not equipped to question the correctness of a policy decision. But then this does not mean that the Courts have to abdicate their right to scrutinise whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind the material on record.'

134. There is yet another relevant factor, which in our view, has escaped consideration of the State. It is whether abolition of districts in the facts of the present case will be in furtherance of object of Act. As observed above, the object of Act was for collection of revenue and revenue administration of the district. The petitioners have categorically pleaded in the writ petitions that by creation of the districts, the administration of newly created districts had been streamlined and was more serving the purpose of the people. It has further been pleaded by giving figures also that the revenue collection of newly created districts has substantially increased. The relevant consideration for the State was whether by abolition of the districts revenue collection and administration of the district shall improve or not. There is neither any pleading nor any case in the counter-affidavit that by abolition of the newly created districts, the revenue collection will increase or revenue administration will be more streamlined. Therefore, the above factors, in our view, are the relevant factors in accordance with the purpose and object of the Act, as already observed. The relevant factors, which are explicitly or impliedly to be considered according to statutory scheme was also not taken into consideration which makes the decision arbitrary. Therefore, in our view, the impugned policy decision of the State Government taken under Section 11 of the Act was arbitrary also on this ground.

135. Before we part with this judgment, one more fact needs to be noted with regard to Cabinet decision dated 13th January, 2004. From a plain reading of the averments made in the counter-affidavit of the State-respondents, we are of the view that the stand of the State respondents has been throughout that the decision to abolish the district was taken due to financial constraint and due to inability of the State to provide finance for development of these districts. The Cabinet while taking the decision on 13th January, 2004, abolishing nine districts and four divisions has also sanctioned Rs. 10 crores each to nine districts and four divisions for special development, similarly Rs. 1 crore has been sanctioned for each big qasbas in the aforesaid districts. On one hand by same decision the State abolished the districts on the ground that it has no finance for the development of the districts and in the same decision it sanctioned Rs. 10 crores to each district and division abolished.

136. In view of our discussions made herein earlier, in which we have already held that the decision of the State Government to issue notifications abolishing nine districts and four divisions was arbitrary and discriminatory it is not necessary to deal with question No. 9 in these bunch of writ petitions separately.

137. It may be placed on record that from the various counter-affidavits filed by the State-respondents to defend its decision to abolish nine districts and four divisions of the State was so taken due to financial constraints and due to inability of the State to provide finance for the development of these districts. In our view, in order to come to this conclusion the financial constraints could not be applied by the State Government to provide finance for the development of these districts. For example, the case of district Gautam Budh Nagar, which was created in the year 1997. From the statements made in the writ application, which were not specifically denied by the State-respondents in their counter-affidavit to the extent that all development works in this district have been completed and no further development would be required for which the finance would be necessary by the State Government. In any view of the matter, from the statements made in the writ petitions and the counter-affidavits filed in respect of district Gautam Budh Nagar, it appears that the revenue contribution by district Gautam Budh Nagar was approximately Rs. 620 crores, while in the financial year 2003-2004 between April

to December itself it has already crossed 1,200 crores. It is said that it was not denied by the State-respondents that revenue collection of district Gautam Budh Nagar would have been at least 10% of the total revenue collected in the State and this figure was also exclusive of Central Excise, Income tax or any other central tax, which is also indirectly shared by the State Government. We may remind ourselves that the district Gautam Budh Nagar has now become 'commercial capital' of the State of Uttar Pradesh and is the showcase of the State for attracting investments.

138. Therefore, we are of the view that only due to financial constraints and due to inability of the State to provide finance for development of these districts could not be taken to be a ground for abolishing the districts and divisions.

139. For the reasons aforesaid, we are of the view that the impugned policy decision dated 13th January, 2004, taken by the State Government under Section 11 of the Act was arbitrary and violative of Article 14 of the [Constitution of India](#).

140. That being the position, the notifications dated 13th January, 2004, impugned in these bunch of writ petitions issued under Section 11 of the Act are hereby quashed.

141. All the writ petitions, therefore, are allowed to the extent indicated above. There will be no order as to costs.

142. After delivery of the judgment, an oral prayer has been made by the learned counsel for the State-respondents to stay the operation of this judgment for a period of one month from this date.

143. Considering the facts and circumstances of the case, we are not inclined to grant the same.

144. Accordingly, the prayer for stay is refused.