REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.864 OF 2016

LOK PRAHARI THROUGH ITS GENERAL SECRETARY ...PETITIONER

VERSUS

THE STATE OF UTTAR PRADESH & ORS. …RESPONDENTS

J U D G M E N T

RANJAN GOGOI, J.

1. This writ petition under Article 32 of the Constitution of India raises a challenge to the validity of Section 4(3) of the Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981 (hereinafter referred to as "the 1981 Act"), as amended in 2016.

2. The case has a somewhat chequered history. Suffice it will be to recapitulate that as former Chief Ministers of the State of Uttar Pradesh continued to occupy their official accommodation even after demitting office, in clear breach of Section 4 of the 1981 Act as it had then existed, a writ petition was filed before the High Court of Allahabad by the present petitioner. During the pendency of the said writ petition, a set of

Rules namely "U.P. Ex-Chief Ministers Residence Allotment Rules, 1997" (hereinafter referred to as "the 1997 Rules") were framed to provide for allotment of government accommodation to former Chief Ministers. The writ petition was accordingly amended to challenge the validity of the provisions of the 1997 Rules. However, the same was closed by the High Court on a statement made on behalf of the State of Uttar Pradesh that former Chief Ministers would be henceforth allotted only Type V bungalows and that too on payment of rent etc.

3. In the aforesaid situation, the present petitioner had filed Writ Petition (C) No.657 of 2004 (***Lok Prahari*** vs. ***State of Uttar Pradesh and others***) before this Court challenging the validity of the aforesaid 1997 Rules. By judgment and order dated 1st August 2016[1], the aforesaid writ petition was answered by this Court by striking down the 1997 Rules, *inter alia,* on the ground that the provision for accommodation for ex-Chief Ministers as made under the aforesaid 1997 Rules was in direct conflict with the provisions of Section 4 of the 1981 Act. Paragraphs 33, 37 and 38 of the said report in **Lok Prahari** (supra) would be relevant to notice:

> **"33.** We may now turn to the issue whether the impugned 1997 Rules are ultra vires Article 14 of the

[1] (2016) 8 SCC 389

Constitution of India and also repugnant to the provisions of the 1981 Act. The relevant extract of the 1997 Rules is as under:

"**4. *Allotment of residence***.—A residence on falling vacant will be allotted by the Estate Officer to such ex-Chief Minister who has given an application under these Rules. There will be no right for allotment of a house outside Lucknow under these Rules.

* * *

6. *Period for which allotment subsists*.—The allotment of residence to ex-Chief Ministers shall be effective only during their lifetime. The allotment shall be deemed to be automatically cancelled upon the death of ex-Chief Minister and family members residing therein will have to invariably hand over the possession of the residence concerned to the Estate Department within 3 months from the date of death. If the family members residing in the residence do not hand over the possession, recovery rent, damages, etc. shall be taken under the provisions of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972."

* * *

* * *

37. If we look at the position of other constitutional post holders like Governors, Chief Justices, Union Ministers, and Speaker, etc. all of these persons hold only one "official residence" during their tenure. The respondents have contended that in a federal set-up, like the Union, the State has also power to provide residential bungalow to the former Chief Minister. The above submission of the respondent State cannot be accepted for the reason that the 1981 Act does not make any such provision and the 1997 Rules, which are only in the nature of executive instructions and contrary to the provisions of the 1981 Act, cannot be acted upon.

38. Moreover, the position of the Chief Minister and the Cabinet Ministers of the State cannot stand on a separate footing after they demit their office. Moreover,

> no other dignitary, holding constitutional post is given such a facility. For the aforestated reasons, the 1997 Rules are not fair, and more so, when the subject of "salary and allowances" of the Ministers, is governed by Section 4(2)(*a*) of the 1981 Act."

4. Section 4 of the 1981 Act was amended in the year 2016. Under Section 4(3) brought in by the 2016 Amendment (U.P. Act No.22 of 2016), former Chief Ministers of the State became entitled to allotment of government accommodation for their life time. The validity of the aforesaid Section 4(3), as amended, has been questioned by the writ petitioner, a registered body, which claims to be "committed to upholding of the Constitution and enforcement of the Rule of law".

5. Section 4 of the 1981 Act as originally enacted and as amended in the year 2016 by 2016 Amendment is in the following terms:

Section 4 of the Act, as originally enacted	**Section 4 of the Act, as amended in the year 2016 by 2016 Amendment (U.P Act No. 22 of 2016)**
4.Residence.-(1) Each Minister shall be entitled without payment of any rent to the use throughout the term of his office and for period of fifteen days thereafter, of a residence at Lucknow which shall be furnished and maintained at	**4.** For section 4 of the principal Act, the following sections shall be substituted, namely:- 4(1) The Chief Minister and each Minister shall be entitled, without payment of any rent to the use, throughout the term of his office and for a period of

public expenses at the prescribed scale. (2) Where a Minister has not been provided with a residence in accordance with sub-Section (1), or does not avail of the benefit of the said sub section, he shall be entitled to a compensatory allowance at the rate of- (a) three hundred rupees per month in the case of Deputy Minister, and (b) five hundred rupees per month in any other case.	fifteen days thereafter, of a residence at Lucknow which shall be furnished and maintained at public expense at the prescribed scale. (2) Where the Chief Minister or a Minister has not been provided with a residence in accordance with sub-section(1) or does not avail of the benefit of the said sub-section, he shall be entitled to a compensatory allowance at the rate of – (a) ten thousand rupees per month in the case of the Chief Minister, a Minister, a Minister of State (Independent Charge) and a Minister of State; (b) eight thousand rupees per month in the case of a Deputy Minister. (3) A government residence shall be allotted to a former Chief Minister of Uttar Pradesh, at his/her request, for his/her life time, on payment of such rent as may be determined from time to time by the Estate Department of the State Government.

6. The 1981 Act was amended by the Uttar Pradesh Ministers and State Legislature, Officers and Members Amenities Laws (Amendment) Act, 1990 (U.P. Act No.5 of 1990) (hereinafter referred to as “1990 Amendment”) by insertion of

sub-section (1-A) to Section 4 which is in the following terms:

> "(1-A) Each Minister for whose use a residence at Lucknow has been provided under sub-section (1) shall immediately after the expiration of the period referred to in that sub-section, vacate such accommodation and an officer authorized by the State Government in this behalf may take possession of the accommodation and may for the purpose use such force as may be necessary in the circumstances.
> *Explanation* – For the purposes of this sub-section 'Minister' includes a person who has ceased to be a Minister", and also includes a person who was given the status of a Minister."

7. By another amendment to the 1981 Act by the Uttar Pradesh Ministers and State Legislature, Officers and Members Amenities Laws (Amendment) Act, 1997 (U.P. Act No.8 of 1997) (hereinafter referred to as "1997 Amendment") Section 4-A was inserted, which is to the following effect:

> "**4-A. Special provisions regarding certain accommodations.-** (1) On and from the commencement of the Uttar Pradesh Ministers and State Legislature Officers and Members Amenities Laws (Amendment) Act, 1997, the State Government may, with a view to ensuring timely availability of residence to a Minister under sub-section (1) of Section 4, by a notified order, specify any type-VI accommodation or an accommodation in which a Minister was in occupation at any time, under the control and Management of the Estate Department of the State Government, as Minister's residence and *an accommodation so specified shall be allotted to a Minister only and not to any other person*.

> (2) The State Government, or an officer authorized by it in this behalf may, if a person other than a Minister referred to in sub-section (1-A) of Section 4 is in occupation of an accommodation specified as Minister's residence under sub-section (1) on the basis of any allotment order or otherwise, cancel the allotment order of such person, if any, and by notice in writing require such person to vacate the said accommodation within fifteen days from the date of service upon him of such notice, and if such person fails to vacate the said accommodation within the said period, an officer authorized by the State Government in this behalf may take possession of the accommodation and *may for the purpose use such force as may be necessary in the circumstances*".

8. It will be worthwhile to note at this stage that while Section 4(1-A) of the 1981 Act has been deleted by the 2016 Amendment Section 4-A continues to remain on the statute book.

9. Section 4-A(2) of the 1981 Act, extracted above, visualize that if any person other than the Minister is in occupation of accommodation specified as Minister's residence under sub-section (1) of Section 4-A (Type VI accommodation) the allotment order of such person shall be cancelled and the occupant would be required to vacate the said accommodation within fifteen days from the date of service of notice, failing

which, the Authorized Officer would be competent in law to take possession of the accommodation, if necessary, by use of such force, as may be required.

10. Having noted the salient features of the provisions of the 1981 Act the question that arises for determination in the present proceedings may be summarized as follows:

"Whether retention of official accommodation by the functionaries mentioned in Section 4(3) of the 1981 Act after they had demitted office violate the equality clause guaranteed by Article 14 of the Constitution of India."

11. The petitioner - body which is a registered society under the Societies Registration Act, 1860 is represented in these proceedings by its Secretary Shri S.N. Shukla, who is a retired I.A.S. Officer. Though Shri Shukla had advanced his arguments and contentions with great clarity, yet, having regard to the importance of the question raised we had thought it proper to take the assistance of Shri Gopal Subramanium, learned Senior Counsel of this Court and to assist him we had thought it proper to request Shri Gopal Sankaranarayanan, learned counsel, a member of the Supreme Court Bar Association. Both Shri Gopal Subramanium, learned Senior

Counsel and Shri Gopal Sankaranarayanan, learned counsel have rendered their valuable assistance to this Court which assistance is being acknowledged by the Court at the very outset of the present order.

12. Though the issue in the present proceeding is strictly confined to the provisions of the 1981 Act, having regard to the fact that there may be similar/*pari materia* provisions in force in different States/Union Territories and also in the Union we had thought it proper to inform, through the learned Amicus Curiae, the law officers of the Union and all the States/Union Territories of the pendency of the present writ petition and the issues arising therein. Pursuant thereto, the responses of the Union and the States of Assam, Bihar, Tamil Nadu and Odisha have been received. Shri Aman Lekhi, learned ASG has submitted that the Government Accommodation is provided to former Presidents, Vice-Presidents, Prime Ministers of the country. The issue had come up for consideration in this Court in **Shiv Sagar Tiwari** vs. **Union of India and others**[2] wherein this Court has approved the action taken in the matter of provision of official accommodation to the aforesaid dignitaries under the extant Rules in the following manner:

[2] (1997) 1 SCC 444

> "**72.** Keeping in view the very high constitutional position occupied by the President, Vice-President and Prime Minister, we feel no difficulty in stating that they should be accommodated in government premises after demitting of office by them, so that problem of suitable residence does not trouble them in the evening of life. What should be the terms of the same is a matter to be decided by the Government."

13. Insofar as the States of Tamil Nadu and Odisha are concerned, it is clear from the communications received from the Advocate Generals of the said States by the office of the learned Amicus Curiae Shri Gopal Subramanium that no provision for official accommodation to former Chief Ministers has been made by the said two states whereas in the case of States of Bihar and Assam such provision has been made by executive instructions issued by the State under Article **162** of the Constitution of India.

14. We had thought it proper to request the learned Amicus Curiae to sound the Advocate Generals of the States on the pendency of this writ petition to enable the States to render assistance to the Court in the matter of adjudication of

the validity of Section 4(3) of the 1981 Act in view of the fact that some of the States may have *pari materia* provisions in force. No such contest by the States with regard to the validity of the Section 4(3) of the 1981 Act had been forthcoming except to the extent mentioned hereinabove on behalf of the Union of India. We, therefore, proceed to undertake the present exercise which, we make it clear, is confined to the issue of validity of Section 4(3) of the 1981 Act.

15. It would be appropriate to initiate the discourse by remembering the preamble to the Constitution of India which is in the following terms.

> **WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:**
>
> JUSTICE**, social, economic and political;**
>
> LIBERTY**, of thought, expression, belief, faith and worship;**
>
> EQUALITY **of status and of opportunity;**
>
> **and to promote among them all**
>
> FRATERNITY **assuring the dignity of the individual and the unity and integrity of the Nation;**
>
> **IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS**

CONSTITUTION.

16. The preamble to the Constitution of India embodies, *inter alia*, the principles of equality and fraternity and it is on the basis of these principles of equality and fraternity that the Constitution recognizes only one single class of citizens with one singular voice (vote) in the democratic process subject to provisions made for backward classes, women, children, SC/ST, minorities, etc. A special class of citizens, subject to the exception noted above, is abhorrent to the constitutional ethos.

17. The resolve of 'the People of India' to have a republican form of Government is a manifestation of the constitutional philosophy that does not recognize any arbitrary sovereign power and domination of citizens by the State. The republican liberty and the doctrine of equality is the central feature of the Indian democracy.

18. It is, therefore, axiomatic that in a democratic republican government public servants entrusted with duties of public nature must act in a manner that reflects that ultimate authority is vested in the citizens and it is to the citizens that holders of all public offices are eventually accountable. Such a situation would only be possible within a framework of equality

and when all privileges, rights and benefits conferred on holders of public office are reasonable, rational and proportionate.

19. It may be necessary herein to recapitulate the Seven Principles of Public Life Report by Lord Nolan which find mention in the judgment of this Court in ***Vineet Narain and others*** vs. ***Union of India and another***[3] (paragraph 54). This Court in paragraph 55 of the report in ***Vineet Narain*** (supra) had observed:

> "These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinizing the conduct of every holder of a public office."

The seven principles of public life stated in the Report by Lord Nolan are as follows:

> **"THE SEVEN PRINCIPLES OF PUBLIC LIFE**
>
> ***Selflessness***
>
> Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
>
> ***Integrity***
>
> Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
>
> ***Objectivity***

[3] (1998) 1 SCC 226

> In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
>
> ***Accountability***
>
> Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
>
> ***Openness***
>
> Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
>
> ***Honesty***
>
> Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
>
> ***Leadership***
>
> Holders of public office should promote and support these principles by leadership and example."

20. It would be significant to note that the legislative anxiety to bring in a classless society, a constitutional vision, *inter alia*, found manifestation in the Twenty-sixth (26th) Amendment to the Constitution of India by which Articles 291 and 362 were repealed and a new Article 366A was incorporated, resulting in depriving the Rulers of Princely States the recognition accorded to them and

declaring the abolition of the privy purse. In the resultant challenge by a co-Ruler of an erstwhile sovereign Indian State of Kurundwad Jr. this Court in ***Shri Raghunathrao Ganpatrao*** **vs.** ***Union of India***[4] while dealing with the challenge, inter alia, spoke as follows:

> **"96.** Permanent retention of the privy purse and the privileges of rights would be incompatible with the sovereign and republican form of Government. Such a retention will also be incompatible with the egalitarian form of our Constitution. That is the opinion of the Parliament which acted to repeal the aforesaid provisions in exercise of its constituent power. The repudiation of the right to privy purse privileges, dignities etc. by the deletion of Articles 291 and 362, insertion of Article 363-A and amendment of clause (22) of Article 366 by which the recognition of the Rulers and payment of privy purse are withdrawn cannot be said to have offended Article 14 or 19(*g*) [*sic* 19(1)(*f*)] and we do not find any logic in such a submission. No principle of justice, either economic, political or social is violated by the Twenty-sixth Amendment. Political justice relates to the principle of rights of the people, i.e. right to universal suffrage, right to democratic form of Government and right to participation in political affairs. Economic justice is enshrined in Article 39 of the Constitution. Social justice is enshrined in Article 38. Both are in the directive principles of the Constitution. None of these rights are abridged or modified by this Amendment. We feel that this contention need not detain us any more and, therefore, we shall pass on to the next point in debate."

[4] AIR 1993 SC 1267

21. An instance of State action inconsistent with the constitutional goal to secure socio-economic justice was dealt with by this Court in ***Victorian Granites (P) Ltd.*** Vs. ***P. Rama Rao and others***[5]. In the said case, the state action approving the assignment of a lease granted to an individual on expiry thereof in favour of a private Company, at the request of the outgoing lessee, without any publicity and without inviting objections from others was explicitly disapproved by this Court by holding that such a transfer was opposed to the common good and the constitutional objective of securing socio-economic justice which was described as the arch of the Constitution. Material resources of the community must be distributed to sub-serve the common good, this Court had opined.

22. Similarly, in **Akhil Bhartiya Upbhokta Congress** *vs.* **State of Madhya Pradesh and others**[6] this Court held that:

> **"48.** Part IV contains "directive principles of State policy" which are fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws. Article 39 specifies certain principles of policy which are required to be followed by the State. Clause (*b*) thereof provides that the

[5] (1996) 10 SCC 665
[6] (2011) 5 SCC 29

> State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Parliament and legislatures of the States have enacted several laws and the Governments have, from time to time, framed policies so that the national wealth and natural resources are equitably distributed among all sections of people so that have-nots of the society can aspire to compete with haves."

23. In ***Akhil Bhartiya*** **(supra)**, this Court examined the legality of the action of the Madhya Pradesh Government to allot twenty acres of land to an Institution on the basis of application made by the Trust. This Court held that the distribution of State largesse allocation of land, grant of permit, licence etc. should always be in a fair and equitable manner. It was held that the elements of favouritism or nepotism shall not influence the exercise of discretion by the decision maker. Observing that every action of the public authority should be guided by public interest, free from arbitrariness, in para (65), it was held as under:-

> **"65.** What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound,

> transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.
>
> **(Underlining is ours)**

24. In ***Sachidanand Pandey and another*** *vs.* ***State of West Bengal and others***[7]**,** this Court after referring to some of the available precedents, laid the following principles:-

> **"40.** On a consideration of the relevant cases cited at the Bar the following propositions may be taken as well established: State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is

[7] (1987) 2 SCC 295

> as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."
>
> **(Underlining is ours)**

25. After ***Akhil Bhartiya*** (supra) and ***Sachidanand Pandey*** (supra), in ***Centre for Public Interest Litigation and others*** *v.* ***Union of India and others***[8]**,** it was held as under:-

> **"89.** In conclusion, we hold that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good."

26. In ***Natural Resources Allocation, in Re, Special Reference No. 1 of 2012***[9], while considering the allocation of 2G Spectrum, this Court observed that as natural resources are public goods, the '*Doctrine of Equality*' which emerges from the concepts of justice and fairness must guide the State in determining the actual mechanism for distribution of natural resources. Any further detailed reference to the opinion rendered is being avoided as the principles evolved are in furtherance of what has been had been laid down earlier, as noticed above.

---

[8] (2012) 3 SCC 1
[9] (2012) 10 SCC 1

27. Coming back to the issue in hand a brief look at the contentions advanced may be appropriate at this stage. The State of Uttar Pradesh has sought to defeat the writ petition by contending that the same being under Article 32 of the Constitution of India a direct infringement of the fundamental rights of the petitioner must be established which is nowhere apparent even on a close scrutiny. The writ petition, therefore, is not maintainable. Alternatively, it has been argued that infringement of the equality clause under Article 14 of the Constitution of India is a far cry as there is an intelligible differentia to justify a separate and exclusive treatment to former Chief Ministers who form a class of their own.

28. While it is true that Article 32 of the Constitution is to be invoked for enforcement of the fundamental rights of a citizen or a non citizen, as may be, and there must be a violation or infringement thereof we have moved away from the theory of infringement of the fundamental rights of an individual citizen or non citizen to one of infringement of rights of a class. In fact, the above transformation is the foundation of what had developed as an independent and innovative stream of jurisprudence called “Public Interest Litigation” or class action.

Though evolved much earlier, a Solemn affirmation of the aforesaid principle is to be found in paragraph 48 of the report in ***Vineet Narain*** (supra) which would be eminently worthy of recapitulation and, therefore, is extracted below:

> **"48.** In view of the common perception shared by everyone including the Government of India and the Independent Review Committee (IRC) of the need for insulation of the CBI from extraneous influence of any kind, it is imperative that some action is urgently taken to prevent the continuance of this situation with a view to ensure proper implementation of the rule of law. This is the need of equality guaranteed in the Constitution. The right to equality in a situation like this is that of the Indian polity and not merely of a few individuals. The powers conferred on this Court by the Constitution are ample to remedy this defect and to ensure enforcement of the concept of equality."
>
> **(Underlining is ours)**

29. Along with the aforesaid shift in the judicial thinking there has been an equally important shift from the classical test (classification test) for the purpose of enquiry with regard to infringement of the equality clause under Article 14 of the Constitution of India to, what may be termed, a more dynamic test of arbitrariness. The shift which depicts two different dimensions of a challenge on the anvil of Article 14 is best demonstrated by a comparative reading of the judgments of this Court in the case of ***Budhan Choudhry and others*** *vs.* ***State***

of Bihar[10]**, and *E.P. Royappa* *vs.* State of Tamil Nadu and another.**[11]

30. In ***Budhan Choudhry*** (supra), the classical test based on a reasonable classification to give legitimacy to an act of differential treatment was expounded in the following terms:

> "……It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (*i*) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (*ii*) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

31. The more dynamic version came two decades later in the case of ***E.P. Royappa*** (supra) wherein Bhagwati, J. expanded the scope of Article 14 of the Constitution of India in

[10] AIR 1955 SC 191
[11] (1974) 4 SCC 3

the following terms:

> **"85…….**From a positivistic point of view, equality is antithetic to arbitrariness. In fact 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. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."

32. The evolution of the dynamic facet of Article 14 of the Constitution of India was carried forward in numerous pronouncements of this Court of which reference must be made, illustratively, to ***Ramana Dayaram Shetty*** vs. ***International Airport Authority of India and others***[12]**;**

[12] (1979) 3 SCC 489

Sharma Transport vs. ***Govt. of A.P. and others***[13]**;** ***Kumari Shrilekha Vidyarthi and others*** vs. ***State of U.P. and others***[14]**;** ***State of Punjab and another*** vs. ***Brijeshwar Singh Chahal and another***[15]**.**

33**.** Paragraph 23 and 35 of ***Kumari Shrilekha*** (supra) may be extracted with profit only to notice the absolute clarity in carrying forward the principle laid down by Hon. Bhagwati J., in ***Royappa*** (supra).

> **"23.** Thus, in a case like the present, if it is shown that the impugned State action is arbitrary and, therefore, violative of Article 14 of the Constitution, there can be no impediment in striking down the impugned act irrespective of the question whether an additional right, contractual or statutory, if any, is also available to the aggrieved persons.
>
> …….
>
> **35.** It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the

[13] (2002) 2 SCC 188
[14] (1991) 1 SCC 212
[15] (2016) 6 SCC 1

mind."

34. The "final" culmination is in ***Shayara Bano*** vs. ***Union of India and others***[16] where two members of the Bench (Hon'ble R.F. Nariman and Uday Umesh Lalit, JJ.) wrote as follows:

> **"101.** It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India* stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

35. The above view received support of a third member of the Constitution Bench (Hon'ble Kurian Joseph, J.)

---

[16] (2017) 9 SCC 1

36. In the light of the above views the allocation of government bungalows to constitutional functionaries enumerated in Section 4(3) of the 1981 Act after such functionaries demit public office(s) would be clearly subject to judicial review on the touchstone of Article 14 of the Constitution of India. This is particularly so as such bungalows constitute public property which by itself is scarce and meant for use of current holders of public offices. The above is manifested by the institution of Section 4-A in the 1981 Act by the Amendment Act of 1997 (Act 8 of 1997). The questions relating to allocation of such property, therefore, undoubtedly, are questions of public character and, therefore, the same would be amenable for being adjudicated on the touchstone of reasonable classification as well as arbitrariness.

37. The present petitioner, as already noticed in the opening paragraphs of this judgment, had earlier approached this Court under Article 32 of the Constitution challenging the validity of the 1997 Rules. Not only the said writ petition was entertained but the 1997 Rules were, in fact, struck down. In doing so, this Court had, inter alia, considered the validity of the 1997 Rules in the light of Article 14 of the Constitution of India.

The insertion of Section 4(3) by the 2016 Amendment as a substantive provision of the statute when the 1997 Rules to the same effect were declared invalid by the Court would require the curing of the invalidity found by this Court in the matter of allotment of government accommodation to former Chief Ministers. The defect found earlier persists. The impugned legislation, therefore, can very well be construed to be an attempt to overreach the judgment of this Court in **Lok Prahari (supra)**.

38. Natural resources, public lands and the public goods like government bungalows/official residence are public property that belongs to the people of the country. The '*Doctrine of Equality*' which emerges from the concepts of justice, fairness must guide the State in the distribution/allocation of the same. The Chief Minister, once he/she demits the office, is at par with the common citizen, though by virtue of the office held, he/she may be entitled to security and other protocols. But allotment of government bungalow, to be occupied during his/her lifetime, would not be guided by the constitutional principle of equality.

39. Undoubtedly, Section 4(3) of the 1981 Act would have the effect of creating a separate class of citizens for conferment

of benefits by way of distribution of public property on the basis of the previous public office held by them. Once such persons demit the public office earlier held by them there is nothing to distinguish them from the common man. The public office held by them becomes a matter of history and, therefore, cannot form the basis of a reasonable classification to categorize previous holders of public office as a special category of persons entitled to the benefit of special privileges. The test of reasonable classification, therefore, has to fail. Not only that the legislation i.e. Section 4(3) of the 1981 Act recognizing former holders of public office as a special class of citizens, viewed in the aforesaid context, would appear to be arbitrary and discriminatory thereby violating the equality clause. It is a legislative exercise based on irrelevant and legally unacceptable considerations, unsupported by any constitutional sanctity.

40. Consequently, we hold that Section 4(3) of the 1981 Act cannot pass the test of Article 14 of the Constitution of India and is, therefore, liable to be struck down. We, therefore, hold that the aforesaid Section 4(3) of the Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981 is ultra vires the Constitution of India as it transgresses the

equality clause under Article 14. The writ petition in question, therefore, is allowed.

…….....J.
(RANJAN GOGOI)

…….....J.
(R. BANUMATHI)

NEW DELHI
MAY 07, 2018.