

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 22 of 2020

Mohd Naved ...Petitioner

Vs.

State of Uttarakhand and others ...Respondents

And

Writ Petition (M/S) No. 731 of 2018

Mahesh Kumar and another ...Petitioners

Vs.

State of Uttarakhand and others ...Respondents

And

Writ Petition (M/S) No. 1018 of 2018

Mahesh Kumar ...Petitioner

Vs.

State of Uttarakhand and others ...Respondents

And

Writ Petition (M/S) No. 1159 of 2018

Ravipal Singh Saini ...Petitioner

Vs.

State of Uttarakhand and others ...Respondents

And

Writ Petition (M/S) No. 1277 of 2019

Yash Pal Singh ...Petitioner

Vs.

State of Uttarakhand and others ...Respondents

And

Writ Petition (M/S) No. 3876 of 2019

Baby ...Petitioner

Vs.

State of Uttarakhand and others ...Respondents

And

Writ Petition (M/S) No. 342 of 2020

Mohd. Harun

...Petitioner

Vs.

State of Uttarakhand and others

...Respondents

Mr. M.C. Pant, learned counsel for the petitioner in WPPIL No. 22 of 2020.

Mr. Parikshit Saini, learned counsel for the petitioners in WPMS No. 731 of 2018, WPMS No. 1018 of 2018, WPMS 1159 of 2018, WPMS No. 1277 of 2019, WPMS No. 3876 of 2019 and WPMS No. 342 of 2020, and for the sixth respondent in WPPIL No. 22 of 2020.

Mr. Paresh Tripathi, learned Chief Standing Counsel for the State of Uttarakhand.

Chronological list of cases referred :

1. (2018) 6 ADJ 1
2. (1976) 2 ALR 202
3. (1986) AWC 1175
4. (1986) AWC 279
5. (2018) 1 UC 185
6. AIR 1963 SC 1503
7. AIR 1965 SC 1486
8. 2019 (134) ALR 757
9. 1992 Supp (2) SCC 651
10. (2010) 11 SCC 1
11. AIR 1965 SC 1595
12. AIR 1987 SC 1629
13. 1955 (1) SCR 267
14. AIR 1963 SC 677
15. (1962) 2 SCR 339
16. (2014) 16 SCC 248
17. (1974) 4 SCC 98
18. AIR 1967 SC 295
19. (1918) 1 KBD 578
20. (1917) 1 KB 922
21. Cases III (2009) BC 360
22. (1953) 2 Q.B. 18
23. AIR 1956 SC 285
24. AIR 1969 SC 483
25. AIR 1995 SC 21
26. (1969) 2 SCC 166
27. (1990) 1 SCC 12
28. AIR 1962 SC 1044
29. (1955) 1 SCR 1071
30. AIR 1986 SC 1783
31. AIR 1951 SC 69
32. (2005) 2 SCC 591
33. (1940) F.C.R. 110
34. AIR 1955 SC 58
35. (1955) Supp. 1 SCC 596
36. AIR 1939 F.C. 1
37. (1936) AC 578
38. (2018) 4 SCC 743
39. (1961) 3 SCR 242
40. AIR 1967 SC 1801
41. (2008) 5 SCC 33

42. (2012) 4 SCC 483
43. (2010) 7 SCC 643
44. (1980) 4 SCC 697
45. (1949) 2 All ER 155
46. (2005) 12 SCC 77
47. (1994) 5 SCC 672
48. (1972) 1 SCC 209
49. AIR 1962 SC 955
50. (2004) 11 SCC 26

Judgment Reserved on :17.03.2020
Judgment Delivered on : 29.05.2020

Common Judgment

Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble R.C. Khulbe, J.

Ramesh Ranganathan, C.J.

Writ Petition (PIL) No. 22 of 2020 is filed in public interest seeking a writ of mandamus to appoint an SIT, or any other investigating agency, to inquire into the matter regarding misutilization and misappropriation of public money, and to take action against the culprits; and for a writ of mandamus or declaration directing the State authorities to take appropriate action against the private respondent, to seize his financial powers thereby preventing him from misappropriating public money, and to declare his continuance in office as illegal.

2. During the hearing of this Writ Petition on 02.03.2020, it was brought to our notice by Mr. Paresh Tripathi, learned Chief Standing Counsel for the State of Uttarakhand, that several other Writ Petitions were pending in this Court on the question whether or not the power to suspend a Village Pradhan is a quasi-judicial power, and whether such a power could be delegated by the State Government to the District Magistrate; in view of the interim orders passed in those writ petitions, the Secretary to the Government was now required to examine the cases of more than five thousand Gram Pradhans in the entire State; and all these Writ Petitions be heard early. Since the very same questions, which arise for consideration in Writ Petition (PIL) No. 22 of 2020, were also raised in the other connected Writ Petitions, we

directed that this Writ Petition be listed along with the connected Writ Petitions for early resolution of this issue.

3. Writ Petition (M/S) No. 731 of 2018 is filed by two Gram Pradhans, both of whom had earlier filed Writ Petition (M/S) No. 2318 of 2017 and Writ Petition (M/S) No. 2956 of 2017 questioning the orders placing them under suspension. Both these Writ Petitions were finally disposed of quashing the orders of suspension on the ground that, in terms of the proviso to Section 138(4) of the Act, the petitioners were not given an opportunity of being heard before placing them under suspension. It was, however, left open to the State Government to take action against the petitioners in accordance with Section 138 of the Uttarakhand Panchayati Raj Act, 2016 (for short the “Act”), and in compliance with principles of natural justice.

4. Writ Petition (M/S) No. 731 of 2018 was filed by these two Village Pradhans questioning the validity of the notification dated 09.06.2017 whereby the State Government had delegated its powers, under Section 138 of the Act, to the District Magistrates in the exercise of the powers conferred on it by Section 146 read with Section 185 of the Act. The petitioners contend that since the power, conferred under Section 138 of the Act and its provisos, is in the nature of a quasi-judicial power, the State Government is not empowered to delegate such powers to the District Magistrate.

5. During the pendency of Writ Petition (M/S) No. 731 of 2018, the first petitioner therein filed Writ Petition (M/S) No. 1018 of 2018, and the second petitioner therein filed Writ Petition (M/S) No. 1159 of 2018, questioning the show-cause notices issued to them by the District Magistrate under Section 138 of the Act. They have contended that the District Magistrate lacked jurisdiction to issue the show-cause notice. Writ Petition (M/S) No. 1277 of 2019 and Writ Petition (M/S) No. 342 of 2020 were filed by two other Village Pradhans questioning the show-cause notices issued to them by the District Magistrate, under Section 138 of the Act, on the ground that he lacked jurisdiction to

issue the said show-cause notices. The petitioner in Writ Petition (M/S) No. 1018 of 2018 has also questioned the validity of the show-cause notice, issued by the District Magistrate, on the ground that action, with respect to the irregularities in the execution of MGNREGA works, could only be taken in terms of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for short the “2005 Act”), and the Regulations made thereunder; and the petitioner could not be proceeded against under the Uttarakhand Panchayati Raj Act.

6. Writ Petition (M/S) No. 3876 of 2019 was filed by another Village Pradhan questioning the notification dated 09.06.2017, (whereby the power of the State Government was delegated to the District Magistrate), and on the ground that no show-cause notice was issued to the petitioner before placing him under suspension.

7. The questions which arise for consideration, in this batch of cases, are (a) whether the first proviso to Section 138(4) of the Act, whereby an opportunity of hearing is required to be given, would apply even in the case of suspension, or whether it would apply only where the services of the Village Pradhan are sought to be terminated; (b) whether the power, to place a Village Pradhan under suspension, is a quasi-judicial power; (c) if so, whether such a power, conferred on the State Government under Section 138(4) of the Act, can be delegated by them to the District Magistrate under Section 146 of the Act; and (d) whether the provisions of the Panchayati Raj Act can be applied for taking action against a Village Pradhan for alleged irregularities on his part in the execution of MGNREGA works.

8. Mr. Paresh Tripathi, learned Chief Standing Counsel for the State Government, would submit that Section 146 of the Act confers very wide powers of delegation; there is no embargo therein for delegation of quasi-judicial powers also; accepting the submission, urged on behalf of the petitioners, would require the State Government to deal with around 70452 elected members of Panchayati Raj

Institutions in the State; there are in all 7079 Gram Panchayats, 95 Kshetra Panchayats and 30 Zila Panchayats in the State of Uttarakhand; and a restricted meaning being given to Section 146 of the Act, to exclude delegation of quasi-judicial powers, would render it impossible for the Secretary to the Government to exercise the power to place elected members, of several thousands of Panchayati Raj Institutions, under suspension. Learned Chief Standing Counsel would rely on **Shamim v. State of Uttar Pradesh**^[1]; **Udai Bhan Singh v. Sub-Divisional Officer**^[2]; **Matloob Ahmad v. Sub-Divisional Officer, Najibabad, Bijnor & another**^[3]; **Deo Sharan Misra v. Commissioner, Lucknow Division, Lucknow & others**^[4]; **Smt. Shahjahan Baigam v. District Magistrate, Udham Singh Nagar & others**^[5]; and **Roop Chand v. State of Punjab & another**^[6].

9. Mr. Parikshit Saini, learned counsel appearing for the Village Pradhans, would submit that the judgments of the Allahabad High Court, in **Udai Bhan Singh**^[2] and **Matloob Ahmad**^[3], were passed in the context of Section 96A of the Uttar Pradesh Panchayati Raj Act; unlike Section 96A of the Uttar Pradesh Panchayati Raj Act, Section 146 of the Uttarakhand Panchayati Raj Act does not specifically provide for delegation of judicial powers; since the power to place an employee under suspension is an exercise of the quasi-judicial power of the State, the said power could not have been delegated to the District Magistrate by the State Government; and the order of the District Magistrate, placing the petitioners under suspension, is without jurisdiction. He would rely on the judgment of the Supreme Court in **Bombay Municipal Corporation v. Dhondu Narayan Chowdhary**^[7]; a Full bench judgment of the Allahabad High Court in **Shamim**^[1]; and a Division Bench judgment of this Court in **Nainital Bank Ltd. v. M/s Naveen Kisan Rice Mill & others**^[8].

I. IS THE POWER, CONFERRED BY SECTION 138(4) OF THE ACT, A QUASI-JUDICIAL POWER?

10. In examining the question whether the power conferred on the Government, to place a Gram Pradhan and others under suspension

pending inquiry, is a quasi-judicial or an administrative power, it is necessary to note, at the outset, the relevant provisions of the Act. Section 138(1) of the Act enables the State Government to remove a member of the Panchayats on any of the following grounds-(a) that he has acted as a member of the Gram Panchayat, Kshettra Panchayat and Zila Panchayat, or member of any committee, by voting or taking part in the discussion of any matter in which he has, directly or indirectly, a personal interest or in which he is professionally interested on behalf of a client, principal or other person; (b) that he has become physically or mentally incapacitated from performing his duties as such member, Pradhan, Up Pradhan, Pramukh, Up pramukh, Chairman, Vice-Chairman; (c) that he has been guilty, whether in his present or an earlier term of office, of misconduct in the discharge of his duty as such member, Pradhan, Up pradhan, Pramukh, Up pramukh, Chairman, Vice-chairman or has contravened any of the provisions of this Act or caused loss or damage to the fund or property of Panchayats, and if such misconduct, contravention or causing of loss or damage is rendered due to conduct of work as unauthorised by a woman representative, her husband or family members or relatives, such woman shall be ineligible as member, Pradhan Up-pradhan, Pramukh, Up-pramukh, Chairman, Vice-chairman; and, in such a case, they may be suspended upto the departmental final enquiry and their work and duties may be handed over to a committee of three elected members of the concerned Panchayat. In addition, disciplinary action may also be taken against the departmental employees/ officer, if found guilty in the enquiry. Section 138(1) confers power on the State Government to remove a Gram Pradhan and others from office, as also to place them under suspension pending departmental enquiry, if the conditions stipulated therein are attracted.

11. Section 138(2) provides that, notwithstanding anything in any other enactment, where a member, Pradhan, Up Pradhan, Pramukh, Up Pramukh, Chairman and Vice-Chairman, specified in clause (c) of sub-section (1) of Section 29, is removed from membership under this

Section he shall, with effect from the date of publication of the notification of removal under sub-section (c), cease to hold the office of member, Pradhan, Up- Pradhan, Pramukh Up- Pramukh, Chairman and Vice- chairman respectively, and a vacancy shall be deemed to have been created in that office. Section 138(3) stipulates that a person, who has been removed from membership of the Panchayat under clause (a) or clause (c) of Sub-Section (1), shall be disqualified for being chosen a member of the Panchayat, and from being elected as a member, Pradhan, Up Pradhan, Pramukh, Up Pramukh, Chairman, Vice- Chairman of a Panchayat for a period of five years from the date of his removal. Under the proviso thereto, the State Government may, at any time by order, remove the disqualification. Section 138(2) provides for the consequences and the disqualifications which the Gram Pradhan and others would face on their removal from such office.

12. Section 138(4) relates to suspension, and, under Sub-Section (a) thereof, if, after the preliminary enquiry, the Pradhan, Up pradhan, Pramukh, Up pramukh, Chairman, Vice-Chairman is found guilty, prima facie, then, till the final enquiry, the State Government may suspend him. Clause (b) stipulates that, if it is proved that the meeting of Gram Sabha/ Gram Panchayat is convened in the house of the Pradhan/ Up Pradhan then, after enquiry against the concerned person, the State Government may suspend him. Under the first proviso thereto, no order shall be passed, adversely affecting any person by the State Government/ designated authority, unless such person has been given an opportunity of making his representation. The second proviso requires a preliminary inquiry to be completed within one month, and the final inquiry to be completed within six months, positively.

13. As noted hereinabove, Section 138(4) relates to suspension, and clauses (a) and (b) thereunder stipulate when the Pradhan, and others referred to therein, can be placed under suspension. Section 138(4) requires an enquiry to be caused before placing the Gram Pradhan and others under suspension. The first proviso, which requires an

opportunity of making a representation to be given to the person adversely affected, is a proviso to Section 138(4) which relates only to suspension and not termination, and, thereunder, even before a Pradhan and others referred to in the Section are placed under suspension, such persons are required to be afforded an opportunity of making a representation.

14. As it relates to suspension pending departmental enquiry, and not for removal of the Gram Pradhan and others from office, the enquiry, referred to in Section 138(4), need not be elaborate unlike a departmental enquiry held to remove the Gram Pradhan and others from office. Since the first proviso requires an opportunity of making a representation to be given to the person adversely affected, the authority, competent to place them under suspension, is required to issue a notice to them indicating that the conditions stipulated in clauses (a) and (b) of Section 138(4) are attracted, and the person concerned, to whom the notice is issued, should be asked to show cause why he should not be placed under suspension. On receipt of such a notice, it is open to the said person to submit his representation. It is only after considering such a representation, should the competent authority take a decision whether or not to place the said person under suspension. If he decides to place him under suspension, then an order of suspension should be passed and communicated to the said person.

15. On the question whether or not the power, to place the Pradhan and others under suspension, under Section 138(4) is a quasi-judicial power, it is necessary to note that, where there is a lis - an affirmation by one party and denial by another - and the dispute necessarily involves a decision on the rights and obligations of the parties to it and the authority is called upon to decide it, there is an exercise of judicial power. (**Kihoto Hollohan v. Zachillhu and others**^[9]; **Union of India v. Madras Bar Association**^[10]; **Associated Cement Companies Ltd. v. P.N. Sharma**^[11]; and **Dev Singh v. Registrar, Punjab and Haryana High Court and others**^[12]). As the power conferred on the authority under Section 138(4) and its first proviso, to place the Gram

Pradhan and others under suspension, involves an adjudication of facts, as the representation by the Gram Pradhan to the show cause notice is required to be considered and an order passed assigning reasons for not accepting his contentions in the representation, exercise of power, to place him under suspension, is quasi-judicial in character.

16. The authority, passing the order of suspension, must be held to be a quasi-judicial Tribunal, for Tribunals are adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction (**Madras Bar Association**^[10]; and **Durga Shankar Mehta v. Raghuraj Singh and others**^[13]) under certain special laws (in the present case, Section 138(4) of the Act). In order to be a Tribunal, a body or authority must, besides being under a duty to act judicially, be invested with the judicial power of the State. (**Jaswant Sugar Mills v. Laxmi Chand**^[14]; and **Madras Bar Association**^[10]). Tribunals are special alternative institutional mechanisms, usually brought into existence by or under a Statute, to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Tribunals can either be private Tribunals (Arbitral Tribunals), or Tribunals constituted under the Constitution, or Tribunals authorized by the Constitution or Statutory Tribunals which are created under a Statute. (**Madras Bar Association**^[10]).

17. In the case of Tribunals, it is the State's inherent judicial power which has been transferred and, by virtue of the said power, it is the State's inherent judicial function which they discharge. (**Madras Bar Association**^[10]; and **Durga Shankar Mehta**^[13]). Among the powers of the State includes the power to decide such controversies. This is one of the attributes of the State, and is aptly called the judicial power of the State. Broadly speaking, certain special matters go before Tribunals, and the residue goes before the ordinary Courts of Civil Judicature. (**Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala**^[15]; and **Madras Bar Association**^[10]). The power exercised by the State Government, to place a Village Pradhan and

others under suspension, is a quasi-judicial power, and the Government, while exercising such a power, acts as a Tribunal.

II. CAN THE JUDICIAL POWER CONFERRED ON THE STATE GOVERNMENT, UNDER SECTION 138 (4) OF THE ACT, BE DELEGATED BY IT TO THE DISTRICT MAGISTRATE?

18. The notification, whereby the State Government delegated its powers, under the Panchayati Raj Act to various officers, reads as under:-

**Uttarakhand Government
Panchayatiraj Section-I
No.913/XII(1)/2017-86 (20)/2017
Dehradun: 9th June, 2017**

NOTIFICATION

In exercise of power conferred under Section 146 and Section 185 of the Uttarakhand Panchayati Raj Act, 2016, His Excellency the Governor delegates powers of the State Government, given under the mentioned Sections of the Appendix-A, to the mentioned Authorities.

Appendix-A

**List of Delegated Authorities under the relevant Sections of the
Uttarakhand Panchayati Raj Act, 2016**

S.N	Sections of the Act	Delegated Authority
1	3(A)	Director, Panchayati Raj
2	19(1)	Director, Panchayati Raj
3	138	For Pradhan, Up-Pradhan and member of Gram Panchayat: “the District Magistrate”. For Pramukh, Up-Pramukh, Member Kshetra Panchayt and Member Zila Panchayat: ‘the Director, Panchayati Raj’
4	169(3)(B)(3)	Director, Panchayati Raj

**By order of the Governor
Manisha Panwar,**

Principal Secretary**(a) JUDICIAL POWER CANNOT, ORDINARILY, BE DELEGATED:**

19. On the question whether the power conferred on the Government, to place the Gram Pradhan and others under suspension, can be delegated to the District Magistrate, it is necessary, at the outset, to understand what the word “delegation” means. “Delegation” is defined in Black's Law Dictionary as “the act of entrusting another with authority by empowering another to act as an agent or representative”. In P. Ramanatha Aiyar's, The Law Lexicon, “delegation” is defined as “the act of making or commissioning a delegate”. Delegation, generally, means parting of powers by the person who grants the delegation, but it also means conferring of an authority to do things which otherwise that person would have to do himself. (**Sidhartha Sarawgi v. Board of Trustees for the Port of Kolkata and others**^[16]). Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or the delegator. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced. (**Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd v. The Asstt. Commissioner of Sales Tax and others**^[17]; and **Sidhartha Sarawgi**^[16]).

20. Delegatus Non Potest Delegare means that a delegate has no power to delegate. The said maxim indicates a rule of construction of a statute or other instrument conferring an authority. Ordinarily, a discretion conferred by a statute on any authority is intended to be exercised by that authority, and by no other. But the intention may be negated by any contrary indication in the language, scope or object of the Statute. (**The Barium Chemicals Limited and Anr. v. The Company Law Board and others**^[18]; and **Sidhartha Sarawgi**^[16]).

This maxim is sometimes invoked as if it embodied some general principle that made it legally impossible for statutory authority to be delegated. In reality there is no such principle, and the maxim plays no real part in the decision of cases, though it is sometimes used as a convenient label. Its proper home is in the law of agency, but even here there are wide exceptions. (**Administrative Law - by H.W.R. Wade & C.F. Forsyth - Seventh Edition**).

21. In **The King v. Superintendent of Chiswick Police Station, ex parte Sacksteder**^[19], the Home Secretary had made an order under the Aliens Restriction Act, 1914, and Article 12 of the Aliens Restriction (Consolidation) Order, 1916, that a certain alien, who was a French subject of military age, should be deported from the United Kingdom, and should remain out of the United Kingdom during the continuance of the war. The order was made in consequence of an arrangement between the French and British Governments by which French subjects resident in the United Kingdom, who were liable to military obligations in France, were sent to France. At the same time the Home Secretary gave directions that the order should be enforced immediately. The Home Secretary had previously given general directions that any person named in a deportation order, which was intended to be enforced immediately, should be arrested and conveyed by ship from the United Kingdom and should be detained between the time of his arrest and the sailing of the ship selected for his passage. Acting under those general directions, an assistant secretary in the Home Office caused instructions to be given to the police for the alien's arrest and conveyance to the ship selected for his deportation. The alien was accordingly arrested.

22. It is in this context that it was held that an order for deportation had been made against the alien, and it was in the form held valid by the Court of Appeal in **R. v. Secretary of State for Home Affairs, ex parte Duke of Chateau Thierry**^[20]; Parliament had allowed the Order in Council to confer upon such persons, as may be specified in the Order, powers with regard to arrest and detention; and these powers

were of a judicial character and could not be delegated by the person named in the Order.

23. An element which is essential to the lawful exercise of judicial power is that it should be exercised by the authority upon whom it is conferred, and by no one else. Normally, Courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. **(Administrative Law -by H.W.R. Wade & C.F. Forsyth - Seventh Edition)**. Bereft of the empowering statute authorizing delegation of statutory power, the repository of that statutory power should exercise that power himself. That cannot be delegated. He may, for such purpose, issue a commission, even to a subordinate in the official hierarchy, to supervise, or/and authorize further action to be taken, but this can be only under his control and orders. Delegation, in such cases, is impermissible. **(Sundaram BNP Paribas Home Finance Ltd. v. State of Kerala^[21])**. The general objections to delegation apply with special force to judicial functions, particularly if they affect personal liberty or are disciplinary. **(Administrative Law -by H.W.R. Wade & C.F. Forsyth - Seventh Edition)**.

24. Even a statutory power to delegate functions, expressed in wide general terms, will not necessarily extend to everything. In the case of important judicial and disciplinary functions the court may be disposed to construe general powers of delegation restrictively. **(Administrative Law -by H.W.R. Wade & C.F. Forsyth-Seventh Edition)**. No judicial tribunal can, ordinarily, delegate its functions unless it is enabled to do so expressly or by necessary implication. **(Barnard v. National Dock Labour Board^[22]; and Pradyat Kumar Bose v. The Chief Justice, Calcutta High Court^[23])**. Save specific conferment of power of delegation by a Statute, the quasi-judicial power conferred on the State Government under Section 138(4) and its

first proviso, to place the Gram Pradhan and others under suspension, could not have been delegated by it to another.

(b) **STATUTORY PROVISIONS WHEREBY THE POWER OF DELEGATION IS CONFERRED:**

25. It must, however, be noted that that the above referred notification dated 09.06.2017, whereby the power to place a Gram Pradhan under suspension was delegated by the Government to the District Magistrate, was issued in the exercise of the powers conferred by Sections 146 and 185 of the Act. Section 146 of the Act provides for delegation of powers by the State Government, and enables it to delegate all or any of its powers under the Act to any officer or authority subordinate to it subject to such conditions and restrictions as it may deem fit to impose. Section 185 of the Act relates to the delegation of powers by the State Government, and enables it to delegate all or any of its powers under the Act to the appointed authority subject to the Zila Panchayat or Zila Panchayats or Kshetra Panchayat or Kshetra Panchayats or Gram Panchayats. When the Government delegates its power to an officer or authority subordinate to it, it is not unreasonable to assume that it fully considers the fitness of the delegate before making the order in respect of the delegation. (Hari Chand Aggarwal v. Batala Engineering Co. Ltd.^[24]; and M/s Naveen Kisan Rice Mill and others^[8]).

(c) **JUDICIAL POWER OF A SOVEREIGN STATE IS ENTRUSTED TO COURTS AND TRIBUNALS BY THE CONSTITUTION ITSELF OR BY A LAW MADE BY THE COMPETENT LEGISLATURE :**

26. A sovereign State discharges legislative, executive and judicial functions and can legitimately claim corresponding powers which are described as legislative, executive and judicial powers. Under our Constitution, the judicial functions and powers of the State are primarily conferred on the ordinary courts which have been constituted under its relevant provisions. The Constitution recognises a hierarchy of Courts, and to their adjudication are normally entrusted all disputes between citizens and citizens, as well as between the citizens and the

State. These courts can be described as ordinary courts of civil judicature. The powers which these courts exercise are judicial powers, the functions they discharge are judicial functions and the decisions they reach and pronounce are judicial decisions. (**P.N. Sharma**^[11]; **State of Tamil Nadu v. G.N. Venkataswamy**^[25]; and **Madras Bar Assn.**^[10]).

27. The respective legislatures are competent to confer special powers on Courts, and to create special jurisdictions acting under those powers in respect to their divided fields of legislation. The legislative power to make laws, relating to administration of justice and constitution and organisation of all courts, is of the widest amplitude. The words are sufficient to confer upon the Legislature the right to regulate and provide for the whole machinery connected with the administration of justice in the State. (**G.N. Venkataswamy**^[25]). The State Legislature has the power to make laws enlarging or reducing the powers of Courts, to create new courts, reorganise the existing courts, provide jurisdiction to the said courts, and also to take away the existing jurisdiction if it so desires. (**G.N. Venkataswamy**^[25]).

28. The power to legislate is given to the appropriate legislature by Article 246 of the Constitution. The Entries in the three lists, which are legislative heads or fields of legislation, demarcate the area over which the appropriate legislature can operate. The widest amplitude should be given to the language of the Entries. (**Harakchand Ratanchand Banthia & others v. Union of India & others**^[26]; **India Cement Ltd. v. State of Tamil Nadu Etc.**^[27]; and **Calcutta Gas Co. v. The State of West Bengal**^[28]). The Lists are designed to define and delimit the respective areas of the respective competence of the Union and the States. They neither impose any implied restriction on the legislative power conferred by Article 246 of the Constitution, nor prescribe any duty to exercise that legislative power in any particular manner. (**India Cement Ltd.**^[27]; and **Duni Chand Rataria v. Bhuwalka Brothers Ltd.**^[29]).

29. Entry 11A read with Entry 46 of List III of the Seventh Schedule, and other relevant entries of this list, confer power both on Parliament and the State Legislature to create Courts and Tribunals. Entry 65 of List II, and other entries therein, confer power on the State Legislature to create Courts and Tribunals and confer power on them. (**Madras Bar Assn.**^[10]). The expressions, "administration of justice" and "constitution and organisation of courts", used in Entry 11-A of List III, are without any qualification or limitation, and are wide enough to include the power and jurisdiction of Courts, irrespective of what its subject-matter may be. (**Indu Bhusan De v. State of West Bengal**^[30]). The Legislature can bring into existence a Court with general jurisdiction to administer justice on all matters coming before it within certain territorial and pecuniary limits, subject to the condition that such general jurisdiction may be expressly or impliedly taken away by the provisions of other laws. (**State of Bombay v. Narothamdas Jethabhai**^[31]; and **Jamshed N. Guzdar v. State of Maharashtra and others**^[32]). As soon as legislative power is exercised, the causes that arise with respect to those subjects would then only be heard in the jurisdictions created by those statutes, and not in the Courts of general jurisdiction entrusted with the normal administration of justice and, in the language of Section 9 of the Code of Civil Procedure, jurisdiction of the general courts will then become barred by those statutes. (**P.N. Sharma**^[11]).

30. Part IX, which relates to the Panchayats, was inserted in the Constitution by the Constitution 73rd Amendment Act, 1992. Article 243-C (1), in Part-IX, enables the State Legislature, by law, to make provisions with respect to the composition of Panchayats. Article 243-C(3)(a) enables the State Legislature, by law, to provide for the representation of the Chairpersons of the Panchayats at the village level. Article 243-F relates to disqualifications for membership and, under clause (1) thereof, a person shall be disqualified for being chosen as, and for being, a member of a Panchayat if he is so disqualified by or under any law made by the Legislature of the State. Article 243-G

enables the State Legislature, by law, to endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government.

31. Entry 5 of List II of the Seventh Schedule to the Constitution relates to local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration. In view of Entry-5 in List II, the State Legislature has the power to constitute Tribunals with respect to Panchayat Raj Institutions, and to confer jurisdiction and powers on such Tribunals with respect to these subjects, including the judicial power of the State. Entry 5 of List II of the Seventh Schedule to the Constitution is a head of legislative power. None of the Entries in the Lists are to be read in a narrow or restricted sense, and each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. In construing an entry in a List conferring legislative powers the widest possible construction according to their ordinary meaning must be put upon the words used therein. (**The United Provinces v. Mst. Atiq Begum and others**^[33]; **Navinchandra Mafatlal v. The Commissioner of Income-Tax**^[34]; and **Madras Bar Assn.**^[10]).

32. It is a fundamental principle of the construction of a Constitution that everything necessary for the exercise of powers is included in the grant of power. Everything necessary, for the effective execution of the power of legislation, must be taken to be conferred by the Constitution with that power. (**G.N. Venkataswamy**^[25]). A construction, which is beneficial to the amplitude of legislative powers, should be adopted. (**Jilubhai Nanbhai Khachar & others v. State of Gujarat and Ors.**^[35]; **India Cement Ltd.**^[27]; **In Re : C.P. & Berar Sales of Motor Spirit & Lubricants Taxation Act**^[36]; **Frederick Alexander James v. Commonwealth of Australia**^[37]; and **Jayant Verma and Ors. v. Union of India and Ors.**^[38]).

33. It is a cardinal rule that words, conferring the right of legislation, should be interpreted literally and the powers conferred should be given the widest scope. (**Diamond Sugar Mills Ltd. v. State of Uttar Pradesh**^[39]; and **New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Ors. v. Municipal Corporation of the City of Ahmedabad and Ors.**^[40]). On a conjoint reading of Articles 246 with Entry 5 of List II, it is evident that very wide powers have been given to the State Legislature to make laws for Panchayat Raj Institutions, and it is in exercise of such powers that the Uttarakhand State Legislature made the Act, including Sections 138, 146 and 185 thereof.

(d) **PRESUMPTION REGARDING CONSTITUTIONALITY OF STATUS :**

34. In this context it is necessary to note that the constitutional validity of the aforesaid provisions of the Act have not been subjected to challenge in any of the writ petitions listed before us. We are required, therefore, only to interpret the aforesaid provisions, for there is a presumption in favour of the constitutionality of a statute. (**Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat**^[41]; **K.B. Nagur v. Union of India**^[42]; and **Nagaland Senior Govt. Employees Welfare Association v. State of Nagaland and others**^[43]). Even if the language is rather not clear and precise as it ought to be, the attempt of the Court is to ascertain the intention of the legislature and put that construction which would lean in favour of the constitutionality unless such construction is wholly untenable. (**State of Karnataka and others v. Hansa Corpn.**^[44]; and **Seaford Court Estates Ltd. v. Asher**^[45]).

35. The rule of presumption in favour of constitutionality, as a principle of construction, is that if two meanings are possible then the courts will reject the one which renders it unconstitutional and accept the other upholding the validity of the impugned legislation. (**State of Rajasthan and others v. Basant Nahata**^[46]; **Kerala State Housing Board v. Ramapriya Hotels (P) Ltd.**^[47]; **The State of M.P. and others v. Chhotabhai Jethabhai Patel & Co. and others**^[48]; and

Kedar Nath Singh v. State of Bihar^[49]). The approach must be to uphold the validity of the impugned legislation/delegated legislation by a process of fair and broad reading of the statutory mandate. (**State of Punjab v. Devans Modern Breweries Ltd.**^[50]).

36. Let us now examine whether, on a fair and broad reading of the statutory mandate in Sections 146 and 185 of the Act, the State Government could have issued the notification dated 09.06.2017 delegating its power, to place a Gram Pradhan under suspension, to the District Magistrate? In the case of statutory provisions conferring the power of delegation, the important question is whether, on its true construction, it is intended that a power conferred upon A may be exercised on A's authority by B. The maxim, *Delegatus Non Prodest Delegare*", merely indicates that this is not normally allowable. (**Administrative Law -by H.W.R. Wade & C.F. Forsyth - Seventh Edition**).

37. In practice government demands a great deal of delegation. This has to be authorized by statute, either expressly or impliedly. Statutory delegation of powers must be construed in the same way as other powers, and will not therefore extend to sub-delegation in the absence of some express or implied provision to that effect. The delegate must also keep within the bounds of the power actually delegated, which may be narrower than that possessed by the delegating authority. (**Administrative Law -by H.W.R. Wade & C.F. Forsyth-Seventh Edition**). As noted hereinabove, Section 146 enables the State Government to delegate, "**all or any of its powers under the Act**", to any officer or authority subordinate to it subject to such conditions and restrictions as it deems fit to impose. The words "**all or any of its powers under the Act**", used in Section 146 of the Act, confer power on the State Government to delegate its powers under Section 138 also, to any officer subordinate to it, which would include the District Magistrate. Section 146 enables the State Government to delegate its powers conditionally or unconditionally. By the impugned notification

dated 09.06.2017 the State Government has unconditionally delegated its powers, under Section 138 of the Act, to the District Magistrate.

38. This issue can be examined from another angle also. As the power conferred on the State Legislature, under Article 246 read with Entry 5 of List II, is extremely wide, it could have, when it made the Act, conferred power on the District Magistrate instead of on the State Government, or on both, to place a Gram Pradhan under suspension. In such an event this complaint of quasi-judicial power being incapable of delegation would not have been made. Instead of conferment of the power of suspension on another, the Legislature has conferred the power of suspension on the Government, and has conferred on it very wide powers of delegation. In the absence of conferment of any statutory power of delegation, the State Government, on whom the Legislature had conferred the power to place a Gram Pradhan under suspension, could not have delegated it to any other, including to the District Magistrate. The fact, however, remains that the Uttarakhand State Legislature, while conferring on the State Government the power to place a Gram Pradhan under suspension, has also conferred on it the power to delegate such a power to any other officer or authority subordinate to it (which would include the District Magistrate). The impugned notification dated 09.06.2017 whereby the State Government, in the exercise of its powers under Sections 146 and 185 of the Act, delegated its powers under Section 138 of the Act, to the District Magistrate, does not suffer from any legal infirmity, and is valid.

(e) **JUDGMENTS RELIEF UPON :**

39. Let us now take note of the law declared in the judgments cited by learned counsel on either side, and examine whether a different view has been taken therein.

40. In **Roop Chand**^[6], Section 21(4) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short the “1948 Act”) provided for an appeal to the State Government, but

the petitioner's appeal was heard by the Assistant Director, Consolidation of Holdings to whom the Government's powers and functions, concerning the appeal, had been delegated under Section 41(1) of the 1948 Act which enabled the State Government, for the administration of the Act, to appoint such persons as it thinks fit, and, by notification, to delegate any of its powers or functions under the Act to any of its officers either by name or designation. Section 42 of the 1948 Act, as was amended by Act 27 of 1960 with retrospective effect, enabled the State Government, at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed by any officer under the Act, to call for and examine the records of any case pending before or disposed of by such officer, and to pass such order in reference thereto as it thought fit.

41. It was contended that an order, which could be interfered with under Section 42, was an order passed under the Act by any officer in his own right and not an order made by the Government itself or by an officer exercising powers of the Government upon delegation under Section 41(1). The question which arose for consideration was the meaning of the words "any order passed by any officer under this Act" in Section 42, and whether these words included an order passed by an officer in the exercise of the powers delegated to him by the Government under Section 41(1)?

42. It is in this context that the Supreme Court held that Section 42 did not authorise the Government to interfere with an order made by itself; the Government could have itself heard an appeal preferred under Section 21(4) instead of getting it heard by an officer to whom it delegated its power and, if it did so, then it could not, under Section 42, interfere with the order which it, itself, had passed in the appeal; when the Government delegates its power to entertain and decide an appeal under Section 21(4) to an officer, and the officer pursuant to such delegation hears the appeal and makes an order, it must be held to be the order of the Government as the order is made under a statutory power; it is the statute which creates that power; the power can,

therefore, be exercise only in terms of the statute and not otherwise; an order made in exercise of the power under Section 21(4) will be the order of the Government, for no one else has the right under the statute to exercise the power; though the Act enables the Government to delegate its power, such a power, when delegated, remained the power of the Government, for the Government can only delegate the power given to it by the Statute, and cannot create an independent power in the officer; when the delegate exercised the power, he did so for the Government; an order passed by an officer, on delegation to him under Section 41(1) of the power of the Government under Section 21(4), is, for the purposes of the Act, an order of the Government; and there can be no order except as authorised by the Act.

43. Applying the law declared by the Supreme Court, in **Roop Chand**^[6], to the facts of the present case would require that the power exercised by the District Magistrate, in terms of the notification dated 09.06.2017 to place a Gram Pradhan under suspension, to be held to be the power exercised by the State Government itself, and not an order passed by the District Magistrate independently. In view of the notification dated 09.06.2017, both the State Government (delegator) and the District Magistrate (delegate) can exercise power to place a Gram Pradhan under suspension. However, once such a power is exercised, the other cannot exercise such a power thereafter. It is also open to the State Government, if it so chooses, to cancel the delegation, the consequence of which would be that the District Magistrate would, thereafter, cease to exercise jurisdiction to place a Gram Pradhan under suspension.

44. In **Dhondu Narayan Chowdhary**^[7] Section 68(1) of the Bombay Municipal Corporation Act, 1888 (for short the “1888 Act”) stipulated that any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner, by any of the Sections mentioned in Sub-Section (2), may be exercised, under the Commissioner's control and subject to his revision and to such conditions and limitations, if any, as he shall think fit to prescribe, by

any municipal officer whom the Commissioner generally or specially empowered in writing in this behalf; and in each of the said Sections, Sub-Sections and clauses, the word "Commissioner" shall, to the extent to which any municipal officer is so empowered, be deemed to include such officer. Section 68(2) provided that the Sections, referred to in Sub-Section (1), included Section 105B and, under Sub-Section (1), the Commissioner could, notwithstanding anything contained in any law for the time being in force, by notice, order that that person in occupation of the whole or any part of the premises shall vacate them within one month of the date of the service of the notice.

45. Proceedings for ejection were initiated, under Chapter VI-A of the Municipal Corporation Act, by one of the officers to whom the Commissioner had delegated his powers under Section 68 of the 1888 Act. After the officer passed an order of eviction, an appeal was filed, under Section 105F of the 1888 Act, before the Bombay City Civil Court which held that the delegation was not proper as the judicial functions of the Commissioner, under Sections 105B to 105E of the 1888 Act, had been delegated to be exercised under the Commissioner's control and subject to his revision; judicial or quasi-judicial power could not, ordinarily, be delegated; and, in any event, it could not be delegated so that the control over the decision was kept by the Commissioner.

46. The question which fell for consideration was whether the delegation by the Commissioner, of his functions under Sections 105B to certain officers, was valid and proper. It is in this context that the Supreme Court held that when Chapter VI A was added, and a reference to Sections 105B was included in Section 68, the wording of that Section became applicable to the powers exercisable under Section 105B, even though that wording, taken literally, was somewhat inapt to cover delegation of judicial power; no question had been raised that any of the amendments were ultra vires, so the words of Section 68 must be reasonably construed; judicial power cannot, ordinarily, be delegated unless the law expressly or by clear implication permitted it;

in the present case the amendment of Section 68, by inclusion of delegation of the functions of the Commissioner under Sections 105B, did indicate the intention that the judicial or quasi-judicial powers, contained in Chapter VIA, were expressly intended to be delegated; and to the delegation as such there could be no objection.

47. As held by the Supreme Court, in **Dhondu Narayan Chowdhary**^[7], judicial power cannot, ordinarily, be delegated unless the Statute either expressly or by necessary implication permitted it; and, in the absence of any challenge to the vires of the provision, it should be reasonably construed. The words, “**any of the powers, duties and functions**”, used in Section 68(1) of the 1888 Act, were construed as indicating the intention that the judicial or quasi-judicial powers, contained in Chapter VI-A, were expressly intended to be delegated. The words “**all or any of its powers**”, used in Section 146 of the Act, also show that the power of suspension, under Section 138 of the Act, is expressly indicated to be delegated.

48. In **Udai Bhan Singh**^[2], the Sub-Divisional Officer had passed an order under Section 95(1)(gg) of the U.P. Panchayat Raj Act placing the Appellant-Gram Pradhan under suspension pending further proceedings under Clause (g) of Section 95(1). It was contended on behalf of the appellant that the power of suspension, under sub-section (gg), was a quasi-judicial power and, unless there was a specific provision in the Act itself permitting delegation of the specific quasi-judicial power, there could be no delegation of such a power. A Division Bench of the Allahabad High Court held that the decision of the Supreme Court, in **Dhondu Narayan Chowdhary**^[7], merely held that judicial power cannot be delegated unless the law expressly or by clear implication permits it; even if the power to suspend, under sub-section (gg), is held to be a quasi-judicial power, the decision of the Supreme Court did not help the appellant; Section 96-A of the Act expressly empowered the State Government to delegate all or any of the powers conferred by the Act upon it; the power to suspend, under sub-section (gg), was one of the powers under the Act, and it was

clearly covered by the provisions of Section 96-A; the decision of the Supreme Court did not support the contention that there must be a specific provision in the Act permitting delegation of quasi-judicial power; the provisions of Section 96-A empowered the Government to delegate all or any of the powers, including the powers under subsection (gg) of the Act; the State Government had, by notification dated 4-8-1974, delegated the power exercisable by it under subsection (gg) to the Sub-Divisional Officers; and the Sub-Divisional Officer was, therefore, empowered to pass the order of suspension.

49. Section 96-A of the Uttar Pradesh Panchayat Raj Act, 1947 (for short the “1947 Act”), the scope of which fell for consideration in **Udai Bhan Singh**^[2], enabled the State Government to delegate all or any of its powers under the Act to any officer or authority subordinate to it subject to such conditions and restrictions as it may be deem fit to impose. Section 146 of the Act is in *pari-materia* with Section 96-A of the 1947 Act. As the Allahabad High Court has, in **Udai Bhan Singh**^[2], held that Section 96-A empowered the State Government to delegate its power of suspension to the sub-divisional officer, exercise of power by the State Government, under Section 146 of the Act, to issue the notification dated 09.06.2017 must also be held to be a valid delegation of quasi-judicial power.

50. To a similar effect is the judgment, in **Deo Sharan Misra**^[4], wherein it was contended that the notification, empowering the Sub-Divisional Officer and revision thereof by the Commissioner, amounted to excessive delegation. The State Government was vested with the power of delegation under Section 96A of the U.P. Panchayat Raj Act 1947 (hereinafter referred to as the “1947 Act”). It is in this context that the Allahabad High Court held that the Pradhan is an elected Officer and, therefore, abundant caution had been taken by the State Government while delegating its power to the Sub-Divisional Officer; it is in order to check the reasonableness of the order, that it was provided that the order of suspension passed by the Sub-Divisional Officer shall be revisable by the Commissioner of the Division; this

was covered within the phraseology ' subject to such conditions'; the Legislature, in its wisdom, had provided for delegation of powers by the State Government and, therefore, the State Government could, by notification, delegate its powers within the ambit of the exercise of powers for the purpose of passing the order for breach of any of the conditions provided in Section 95 of the Act; and the notification did not suffer from the vice of excessive delegation.

51. In **Matloob Ahmad**^[3], the State Government, by its notification, delegated its powers under Section 95(1)(g) of the Act to the Sub-Divisional Officer subject to an order for removal passed by him being appealable to the District Magistrate; the State Government issued another notification modifying the earlier notification, and imposed further conditions on the exercise of the power of removal by the Sub-Divisional Officer; the State Government, by notification and in exercise of its powers under Section 96A of the Act, delegated its powers under Clause (g) of Sub-section (1) of Section 95 of the Act to the Sub-Divisional Officer having jurisdiction, subject to the condition that any order passed by the Sub-Divisional Officer in the exercise of the said power, either before or after the date of the notification, shall be revisable by the Commissioner of the Division, and also by the State Government. The Allahabad High Court held that, in view of the notification issued by the State Government in the exercise of its powers under Section 96A of the Act, it was clear that the State Government had delegated its powers under Section 95(1)(g) and 95(1)(gg) of the Act to the Sub-Divisional Officer having jurisdiction; and the exercise of those powers by the Sub-Divisional Officer was subject to the condition that, in case of suspension, they were revisable by the Commissioner of the Division, and also by the State Government.

52. In **Smt. Shahjahan Baigam**^[5], it was submitted on behalf of the State Government that the power of the Government, under Section 138(1)(c), had been exercised by the District Magistrate within the terms of a notification issued under Section 146 and Section 185 of the

Act which provided for delegation of powers. It was contended, on behalf of the appellant, that the power must be treated as having been delegated only within the meaning of Section 138(4) which related to suspension. A Division Bench of this Court held that the notification did not limit the power of the District Magistrate to exercise power under Section 138(4); having regard to the scope of the notification under Section 185, by which the power under Section 138 had been delegated to the prescribed authority, which in the case of a local Panchayat was with the District Magistrate, the power should not be abridged or in any way truncated; there was no merit in the submission that the portion of Section 138(1)(c), which talks about depriving the Pradhan of his financial powers, is an independent power and, therefore, the delegated powers, which the District Magistrate enjoys under the notification issued under Section 185 read with Section 146, cannot be extended to it; the power, in respect of a Pradhan, is unambiguously delegated by the State Government to the District Magistrate; and the delegation of the power was not called in question in the writ petition.

53. In **Shamim**^[1], a Full Bench of the Allahabad High Court was called upon to examine the scope of Section 95(1)(g) of the U.P. Panchayat Raj Act, 1947 which dealt with the removal of the Pradhan of a Gram Panchayat, and enabled the State Government to remove a Pradhan in the circumstances specified therein. Under the second proviso no action could be taken under Clause (g) except after giving to the person concerned a reasonable opportunity of showing cause against the action proposed. Section 95(3) provided that no order, made by the State Government, under Section 95, shall be called in question in any Court.

54. It is in this context that the Full Bench of the Allahabad High Court held that Section 95 conferred power upon the State Government to remove the Pradhan; however, Section 96A of the Panchayat Raj Act empowered the State Government to delegate all or any of its powers under the Panchayat Raj Act to any authority subordinate to it;

the power under Section 95(1) (g) had been delegated by the State Government to the "District Magistrate" vide notification dated 20.04.1997; the words "the State Government is of the opinion" indicated that the opinion must be formed by the State Government, and it is implicit that the opinion must be an honest opinion based on the preliminary enquiry report; the consequence of the order passed, in exercise of the power under Section 95(1)(g), is serious as it divests the elected representative from exercising power until exonerated in final enquiry; the decision taken by the State Government is in the exercise of the statutory power conferred upon it, and is in the nature of a judicial power; the test is whether the adjudicating power, which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function; and applying this test there can be no doubt that the power which the State Government/District Magistrate exercises under the proviso to Section 95(1)(g) is a quasi-judicial power exercised by a quasi-judicial authority. The Full Bench answered the reference holding that the District Magistrate, exercising delegated authority of the State Government, is a Tribunal exercising quasi-judicial power by a quasi-judicial authority under the proviso to Section 95(1)(g) of the Panchayat Raj Act while proceeding to cease the administrative and financial authority of the Pradhan pending final enquiry.

55. In **M/s Naveen Kisan Rice Mill**^[8], a Division Bench of this Court held that the power conferred on the District Magistrate or the Chief Metropolitan Magistrate, under the second proviso, to pass suitable orders on the application made by the secured creditor in terms of the first proviso, had not, unlike sub-section (1-A) of Section 14 of the SARFAESI Act, been permitted by Parliament to be delegated to any other officer; if Parliament intended to confer the power to pass an order also on an officer, subordinate to the District Magistrate or the Chief Metropolitan Magistrate, it would have so specified in sub-section (1A) of Section 14 and would not have confined the power, to

authorize a subordinate officer, only to the taking possession of the assets and documents, and forwarding such assets and documents to the secured creditor; and in the absence of Parliament conferring authority on the District Magistrate or the Chief Metropolitan Magistrate to delegate its powers, the doctrine of delegatus non potest delegare would apply, and any such delegation would then contravene the provisions of Section 14 of the SARFAESI Act, and would be illegal.

56. Unlike in **M/s Naveen Kisan Rice Mill^[8]**, Section 146 of the Act is widely couched, and confers power on the State Government to delegate all or any of its powers under the Act to any officer subordinate to it. The District Magistrate is an officer subordinate, and delegation of the power of suspension to him, by notification dated 09.06.2017, is legal and valid. In none of the aforesaid judgments has a different view been taken. Viewed from any angle, we are satisfied that the challenge to the validity of the notification dated 09.06.2017 must fail.

III. MGNREGA :

57. Mr. Parikshit Saini, learned counsel appearing for the Village Pradhans, would submit that, in terms of the instructions issued under the 2005 Act, complaints, regarding misappropriation of MGNREGA funds, can only be made to the Ombudsman; the said instructions do not confer any right on the District Magistrate to take action, that too under a State enactment; and action sought to be taken by the District Magistrate, against the petitioner for alleged misappropriation of MGNREGA funds, is without jurisdiction.

58. On the other hand Mr. Paresh Tripathi, learned Chief Standing Counsel appearing on behalf of the State Government, would place reliance on the Government of India's circular dated 24.05.2013 whereby the Central Government had directed that action for violation of the MGNREGA scheme, including recovery, termination and

holding the Gram Pradhan ineligible to continue in office, can be taken under the State Panchayati Raj Act.

59. The 2005 Act is an Act to provide for the enhancement of livelihood, and security of households, in the rural areas of the country, by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work, and for matters connected therewith or incidental thereto. Chapter II of the 2005 Act relates to guarantee of employment in rural areas and under Section 3(1), save as otherwise provided, the State Government shall, in such rural area in the State as may be notified by the Central Government, provide to every household, whose adult members volunteer to do unskilled manual work, not less than one hundred days of such work in a financial year in accordance with the Scheme made under the Act. Section 3(4) stipulates that the Central Government or the State Government may, within the limits of its economic capacity and development, make provision for securing work to every adult member of a household under a Scheme for any period, beyond the period guaranteed under Sub-Section (1), as may be expedient. Chapter III relates to employment guarantee schemes and unemployment allowance and under Section 4(1), for the purposes of giving effect to the provisions of Section 3, every State Government shall, within one year from the date of commencement of the 2005 Act, by notification, make a Scheme for providing not less than one hundred days of guaranteed employment in a financial year to every household in the rural areas covered under the Scheme and whose adult members, by application, volunteer to do unskilled manual work subject to the conditions laid down by or under the 2005 Act and in the Scheme.

60. Section 27 of the 2005 Act confers on the Central Government the power to give directions and, under Sub-Section (1), the Central Government may give such directions, as it may consider necessary, to the State Government for the effective implementation of the provisions of the 2005 Act. It is in the exercise of the powers,

conferred by Section 27 of the 2005 Act, that the Central Government had, by its proceedings dated 24.05.2013, issued revised instructions to the State Government. Clause 10 of the said instructions prescribes the procedure for filing complaints and, under Clause 10.1, any person, who has a grievance against the MGNREGA Authority or beneficiary, may, himself or through his authorized representative, make a complaint against a MGNREGA Authority or beneficiary in writing to the Ombudsman or to any MGNREGA authority superior to the authority complained against. Complaints addressed to the Ombudsman, but received by the MGNREGA authority, are required to be forwarded to the Ombudsman. Clause 11 stipulates that the proceedings before the Ombudsman shall be summary in nature. Clause 12 relates to disposal of complaints, and Clause 13 relates to findings by the Ombudsman. Clause 13.6 stipulates that, in any proceeding before the Ombudsman, if the facts reveal a case of illegal gratification, bribery or misappropriation, and the Ombudsman is satisfied that the case is fit for further investigation by an appropriate court of law, the same shall be referred by the Ombudsman to the authority competent to sanction criminal prosecution of the persons involved in the case who shall take action in accordance with the prescribed procedure.

61. The submission of Sri Parikshit Saini, learned counsel for the petitioner, is that, in terms of the aforesaid instructions, complaints must be made only to the Ombudsman who, after an inquiry, can only direct the competent authority to sanction criminal prosecution, and thereafter criminal proceedings may be initiated for illegal gratification, bribery or misappropriation. This remedy, prescribed in the Instructions dated 24.05.2013, no doubt, enables the jurisdiction of the Ombudsman to be invoked. Along with the counter-affidavit is enclosed a copy of the instructions received from the Central Government. Clause 16.3.1 thereof stipulates that, as regards elected post-holders, (a) proceedings should be initiated under the State Panchayati Raj Act or any other appropriate State Act, and (b) if

recovery is due, after a due process and by issuing a formal recovery certificate or a written order, recovery should be done.

62. It is evident, therefore, that the instructions issued by the Central Government provide for two distinct and separate courses of action : (a) to invoke the jurisdiction of the Ombudsman, who can, after an inquiry, direct initiation of criminal proceedings; and (b) initiation of action against the Gram Pradhans under the provisions of the State Panchayati Raj Act. Since action can also be taken under the Uttarakhand Panchayati Raj Act, for allegations of corruption or misappropriation of funds by Gram Pradhans, we see no reason to disable the concerned authority from proceeding further, and taking action against the petitioners, under the Uttarakhand Panchayati Raj Act.

IV. WRIT PETITION (PIL) No. 22 OF 2020 :

63. Mr. M.C. Pant, learned counsel for the petitioner, would submit that, though the Inquiry Committee constituted by the District Magistrate, had found the Gram Pradhan to have committed several irregularities, and though a show-cause notice was issued to him by the District Magistrate on 01.12.2019, no action has been taken thereafter on the premise that the District Magistrate lacks jurisdiction to take action, against the Village Pradhan, under Section 138 of the Act; the State Government cannot plead helplessness, and await a ruling on whether or not it can delegate its powers, to take action under Section 138 of the Act, to the District Magistrate; such a power is, in any event, available to be exercised by the State Government itself; and failure on the part of the State Government, to take prompt action, would amount to abdication of its responsibilities and necessitate this Court's intervention.

64. While the submission of Sri M.C. Pant, learned counsel for the petitioner, that, despite issuance of the notification dated 09.06.2017, the State Government would continue to have power, under Section 138(4) of the Act, to place a Gram Pradhan under suspension, has

considerable force, it is unnecessary for us to dwell on this aspect any further, as we have, by this order, upheld the validity of the notification dated 09.06.2017 whereby the powers, conferred on the State Government under Section 138, have been delegated to the District Magistrate. Consequently the validity of the action of the District Magistrate, in issuing the show cause notice dated 01.12.2019, is upheld. Since the first proviso to Section 138(4) requires the concerned Village Pradhan to be given an opportunity to make a representation, respondent no. 6 in WPPIL No. 22 of 2020 shall, in case she has not already submitted a representation, do so within two weeks from today. The District Magistrate shall, on receipt of the sixth respondent's representation, pass orders, on whether or not action should be taken against the Village Pradhan pursuant to the show cause notice issued earlier, within two weeks thereafter.

V. CONCLUSION:

65. The validity of the notification dated 09.06.2017, delegating powers under Section 138 of the Act to the District Magistrate, is upheld. Since the requirement of the first proviso to Section 138(4) would apply in the case of suspension also, the Village Pradhans, whom the District Magistrates seek to place under suspension, must be given a show cause notice furnishing details as to why such action is proposed to be taken. The Village Pradhan should also be given a reasonable opportunity of submitting a representation thereto, a reasoned order should be passed by the District Magistrate thereafter, and only then may action, if need be, be taken by the District Magistrate to place the concerned Gram Pradhan under suspension.

66. All the Writ Petitions are, accordingly, disposed of. No costs.

(R.C. Khulbe, J.)
29.05.2020

(Ramesh Ranganathan, C.J.)
29.05.2020