A J.R. RAGHUPATHY, ETC.

v.

STATE OF A.P. & ORS. ETC.

JULY 28, 1988

B [A.P. SEN AND B.C. RAY, JJ.]

Andhra Pradesh Districts (Formation) Act, 1974—Whether location of Revenue Mandal Headquarters under Sub-Section (5) of Section 3 of—Was amenable to Writ jurisdiction of High Court.

C **These appeals by Special Leave and a petition for Special leave arose out of different judgments of the High Court. The main issue involved was whether the location of Revenue Mandal Headquarters in the State of Andhra Pradesh under S. 3(5) of the Andhra Pradesh District (Formation) Act, 1974, was a purely governmental function, not amenable to the writ jurisdiction of the High Court.**

D

Writ Petitions were filed in the High Court by individuals and gram panchayats questioning the legality and propriety of the formation of certain Revenue Mandals and location of certain Mandal Headquarters notified in preliminary notification issued under sub-s. (5) of Section 3 of the Act. In some cases, the High Court declined to interfere E **with the location of Mandal Headquarters, holding that the government was the best judge of the situation, or on the ground that there was a breach of guidelines it directed the Government to reconsider the question of location of the Mandal Headquarters. In some cases, the High Court quashed the final notification for location of the Mandal Headquarters at a particular place, holding that there was a breach of** F **guidelines based on the system of marking and also on the ground that there were no reasons disclosed for deviating from the preliminary notification for location of the Mandal Headquarters at another place.**

Allowing Civil Appeal Nos. 1980, 1982, 1985 and 1987 of 1986 and all other appeals and Special Leave Petitions directed against the judg- G **ments of the High Court, whereby the High Court had interfered with the location of the Mandal Headquarters, the Court,**

HELD: It was difficult to sustain the interference by the High Court in some of cases with the location of the Mandal Headquarters and the quashing of the impugned notification on the ground that the H **Government had acted in breach of the guidelines in that one place or**

the other was more centrally located or that location at the other place would promote general public convenience or that the Headquarters should be fixed at a particular place with a view to developing the areas surrounded by it or that merely because a particular person who was an influential Member of Legislative Assembly belonging to the party in opposition had the right of representation but failed to avail of it. The location of Headquarters by the Government by the issue of the final notification under sub-s (5) of s. 3 of the Act was on a consideration by the Cabinet Sub-Committee of the proposals submitted by the Collectors concerned and the objections and suggestions received from the local authorities like Gram Panchayats and the general public, keeping in view the relevant factors. Even assuming that any breach of the guidelines for the location of the Mandal Headquarters was justiciable, the utmost that the High Court could have done was to quash the impugned notification in a particular case and direct the Government to reconsider the question. There was no warrant for the High Court to have gone further and direct the shifting of the Mandal Headquarters at a particular place. [711B-E]

The guidelines are merely in the nature of instructions issued by the State Government to the Collectors regulating the manner in which they should formulate their proposals for formation of a Revenue Mandal or for the location of its Headquarters keeping in view the broad guidelines laid down in Appendix I to the White Paper issued by the Government laying down the broad guidelines. The guidelines had no statutory force and they had also not been published in the Official Gazette. They were mere departmental instructions for the Collectors. The ultimate decision as to the formation of a Revenue Mandal or location of its Headquarters was with the Government. It was for that reason that the Government issued preliminary notification under sub-s (5) of section 3 of the Act. Deviation from the guidelines in some of the aspects was usually for reasons of administrative convenience keeping in view the purpose and object of the Act i.e. to bring the administration nearer to the people. There was nothing on record to show that the decision of the Government in any of these cases was arbitrary or capricious or was one not reached in good faith or actuated with improper considerations or influenced by extraneous considerations. In a matter like this, conferment of discretion upon the Government in the matter of formation of a Revenue Mandal or location of its Headquarters in the nature of things necessarily leaves the Government with a choice in the use of the directions conferred upon it. [713A-F]

It was difficult to sustain the judgments of the High Court in the

A **cases where it had interfered with the location of Mandal Headquarters and quashed the impugned notifications on the ground that the Government had acted in breach of the guidelines in that one place or the other was more centrally located or that location at the other place would promote general public convenience or that the Headquarters should be fixed at a particular place with a view to developing the area sur-**
B **rounded by it. The location of Headquarters by the Government by the issue of the final notification under sub-section (5) of Section 3 of the Act was on a consideration by the Cabinet Sub-Committee of the proposals submitted by the Collectors concerned and the objections and suggestions received from the local authorities like the gram panchayats and the general public. Even assuming that the Government while**
C **accepting the recommendations of the Cabinet Sub-Committee directed that the Mandal Headquarters should be at one place rather than at another place as recommended by the Collector concerned in a particular case, the High Court would not have issued a writ in the nature of mandamus to enforce the guidelines which were nothing more than administrative instructions not having any statutory force, which did**
D **not give rise to any legal right in favour of the writ petitioners. The petitions filed under Article 226 of the Constitutions before the High Court were dismissed.** [723G-H; 724A-D]

Gram Panchayat, Chinna Madur & Ors. **v.** *The Government of Andhra Pradesh,* **[1986] 1 Andhra Weekly Reporter 362;** *C.J.*
E *Fernandez* **v.** *State of Mysore & Ors.,* **[1967] 3 S.C.R. 636;** *Padfield* **v.** *Minister of Agriculture Fisheries & Food,* **LR 1968 AC 997;** *Laker Airways Ltd.* **v.** *Department of Trade,* **LR 1967 QB 643 at 705;** *Council of Civil Service Unions and Others* **v.** *Minister for the Civil Service,* **[1984] 3 All ER 935 (RL);** *Secretary of State for Education and Science* **v.** *Tameside M.B.C.,* **LR 1977 AC 1014;** *Breen* **v.** *Amalgamated*
F *Engineering Union,* **LR 1971 2 QB 175 at 190;** *R.V. Criminal Injuries Compensation Board, explain,* **[1967] 2 QB 864 and** *Ridge* **v.** *Baldwin,* **[1964] AC 40, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1979-85 of 1986 etc. etc.

G

From the Judgment and Order dated 12.2.1986/28.2.1986/49.1. 1986 and 5.2.1986 of the Andhra Pradesh High Court in W.P. Nos. 6063, 5379, 9908, 7836 and 5379 of 1985.

Seetaramaiah, A.S. Nambyar, R.N. Keshwani, T.V.S.N.
H Chari, Ms. Vrinda Grover, S. Mudigonda, C.S. Vaidanathan, S.R.

Sethia, Vimal Dave, B. Rajeshwara Rao, Jitendra Sharma, G.N. Rao, T.C. Gupta, B.P. Sarathi, A. Subba Rao and B. Kanta Rao for the appearing parties. A

The Judgment of the Court was delivered by

SEN, J. These appeals by special leave and the connected special leave petitions directed against the various judgments and orders of the Andhra Pradesh High Court involve a question of principle, and relate to location of Mandal Headquarters in the State of Andhra Pradesh under s. 3(5) of the Andhra Pradesh Districts (Formation) Act, 1974. The main issue involved is whether location of Mandal Headquarters was a purely governmental function and therefore not amenable to the writ jurisdiction of the High Court under Art. 226 of the Constitution. In the present cases we are concerned with the location of 12 Revenue Mandal Headquarters. B C

The avowed object and purpose of the Andhra Pradesh District (Formation) Act, 1974, as amended by the Andhra Pradesh District (Formation) Amendment Act, 1985 as reflected in the long title, was to bring about a change in the Revenue Administration with a view to 'bring the administration nearer to the people and to make all public services easily available to them'. The change in the Revenue Administration was so achieved by the creation of Revenue Mandals in place of taluks and firkas. The purpose of the legislation is brought out in the Statement of Objects and Reasons, a relevant portion whereof is as under: D E

> "On a careful review of the socio-economic development of the State for the last 20 years the State Government felt it necessary to take the administration nearer to the people. It was of the opinion that the only method to be adopted by the Government for a better Revenue Administration and to serve the interests of the people in a more effective and suitable manner was by formation of the Mandals in place of taluks and firkas. It was of the view that a decentralisation of administration and reduction in its levels would be conducive to a more efficient implementation of administration which brings the involvement of the people, particularly in the implementation of several welfare measures of the Government, and especially to uplift the conditions of the weaker sections of the society. It also felt that there was urgent necessity to review its F G H

activities and services and welfare programmes and that they should be extended to the interior regions and that the creation of Mandals with a population ranging from 35,000 to 55,000 based upon density of population would be an effective method for providing better facilities to the people at lesser cost and greater convenience. The avowed object was therefore to 'bring the administration nearer to the people and to make all public services easily available to them'. This was achieved by the creation of Revenue Mandals in place of taluks and firkas."

To implement the decision of the Government, on 11th January, 1984 the Governor of Andhra Pradesh accordingly promulgated Ordinance No. 22 of 1984. This Ordinance was later replaced by Ordinance No. 5 of 1985 inasmuch as the earlier Ordinance could not be reintroduced due to dissolution of the Legislative Assembly. The Ordinance was later replaced by Act No. 14 of 1985. The change in administration was brought about by amending s. 3 of the Act by introducing the word 'mandals' in place of taluks and firkas. Pursuant to their powers under sub-s. (1) of s. 3 of the Andhra Pradesh Districts (Formation) Act, as amended by Act 14 of 1985, the State Government, by notification published in the official gazette, after following the procedure laid down in sub-s.(5) thereof divided the State for the purpose of revenue administration into 23 Revenue District with such limits as specified therein. Each such district consisted of Revenue Divisions and each Revenue Division consisted of Revenue Mandals. The 23 districts now comprise of 1104 Revenue Mandals.

As many as 124 petitions under Art. 226 of the Constitution were filed in the High Court by individuals and gram panchayat questioning the legality and propriety of the formation of certain Revenue Mandals, and particularly location of Mandal Headquarters, abolition of certain Mandals or shifting of Mandal Headquarters, as notified in the preliminary notification issued under sub-s. (5) of s. 3, deletion and addition of villages to certain mandals. Some of the writ petitions were heard by one Division Bench and the others by another, both the Benches being presided over by Reghuvir, J. who has delivered all the judgments. Incidentally, there is no statutory provision relating to location of Mandal Headquarters and the matter is governed by GOMs dated 25th July, 1985 issued by the State Government laying down the broad guidelines for the formation of Mandals and also for location of Mandal Headquarters. The learned Judges upheld the validity of formation of Mandals as also the aforesaid GOMs and in some

cases they declined to interfere with the location of Mandal Headquarters holding that the Government was the best judge of the situation or on the ground that there was a breach of the guidelines, and directed the Government to reconsider the question of location of Mandal Headquarters.. However, in other cases the learned Judges have gone a step further and quashed the final notification for location of Mandal Headquarters at a particular place holding that there was a breach of the guidelines based on the system of marking and also on the ground that there were no reasons disclosed for deviating from the preliminary notification, and instead directed the Government to issue a fresh notification for location of Mandal Headquarters at another place. One of the arguments advanced before us in the cases where the High Court has declined to interfere is that both the High Court and the State Government should have applied a uniform standard in dealing with the question and generally it is said that the State Government should at any rate have adhered to the guidelines in fixing the location of Mandal Headquarters without being guided by extraneous considerations.

Myriad are the facts. It is not necessary for us to delve into the facts in any detail. It would suffice for our purposes to touch upon the facts in some of the cases to present the rather confusing picture emerging as a result of conflicting directions made by the High Court. It appears that Raghuvir, J. relied upon the underlying principle emerging from his earlier decision delivered on behalf of himself and Sriramulu, J. in the *Gram Panchayat, Chinna Madur & Ors.* v. *The Government of Andhra Pradesh,* [1986] 1 Andhra Weekly Reporter 362 which he calls as the 'Chandur principle'. In that case following the earlier decision of the High Court where a place called Chandur was not shown in the preliminary notification for formation of a taluk, but was chosen to be the place of location of the Taluk Headquarters in the final notification, it was held that in such a case publication of the final notification could not be sustained and it was for the Government to give reasons for such deviation. The decision proceeded on the principle that where guidelines are issued regulating the manner in which a discretionary power is to be exercised, the Government is equally bound by the guidelines. If the guidelines were violated, it was for the Government to offer explanation as to why the guidelines were deviated from. We are afraid, there is no such inflexible rule of universal application. The learned Judges failed to appreciate that the guidelines issued by the State Government had no statutory force and they were merely in the nature of executive instructions for the guidance of the Collectors. On the basis of such guidelines the Collectors

were asked to forward proposals for formation of Revenue Mandals and for location of Mandal Headquarters. The proposals so forwarded by the Collectors were processed in the Secretariat in the light of the suggestions and objections received in response to the preliminary notification issued under s. 3(5) of the Act and then placed before a Cabinet Sub Committee. The ultimate decision as to the place of location of Mandal Headquarters was for the Government to take. It cannot be said that in any of the cases the action of the Government for location of such Mandal Headquarters was *mala fide* or in bad faith or that it proceeded on extraneous consideration. Nor can it be said that the impugned action would result in arbitrariness or absence of fairplay or discrimination.

We must next refer to the facts in a few illustrative cases. In the *Gram Panchayat, Chinna Madur's* case, although in the preliminary notification issued under s. 3(5) of the Act for formation of Devaruppalla Mandal, Chinna Madur was proposed as the Mandal Headquarters, the Revenue authorities in the final notification declared Devaruppalla as the Mandal Headquarters. In the writ petition, the High Court produced the records and it showed that both Devaruppalla and Chinna Madur provided equal facilities as to communication, transport, veterinary hospital, bank, school etc. and secured 15 marks each. The Government preferred Devaruppalla as Chinna Madur was inaccessible in some seasons as that village was divided by two rivers from rest of the villages. Devaruppalla besides is located on Hyderabad-Suryapet Highway which was considered to be a factor in its favour. After reiterating the Chandur principle that it is for the Government to give reasons for such deviation, the learned Judges declined to interfere, observing:

> "In the instant case, the record produced shows the authorities considered the comparative merits of Devaruppalla and Chinna Madur. The Revenue authorities applied the correct indicia of accessibility in all seasons. Other facilities of the two villages were discussed at length in the record. Having regard to the overwhelming features in favour of Devaruppalla the village was declared as headquarters."

We have referred to the facts of this case because it highlights the approach of the High Court and it has assumed to itself the function of the Government in weighing the comparative merits and demerits in the matter of location of the Mandal Headquarters.

The same infirmity unfortunately permeates through some of the judgments where the High Court has interfered. In some of the cases the High Court has gone further and not only quashed the impugned notification for location of the Mandal Headquarters at a particular place but also directed the shifting to another place. In Civil Appeals Nos. 1980 and 1985 of 1986, in formation of Gollamamidada Mandal, Gollamamidada was shown as the proposed Headquarters in the priliminary notification, but Pedapudi was selected to be the place of Headquarters in the final notification. Gollamamidada secured 23 marks as compared to 18 marks secured by Pedapudi. The Collector relaxed the guideline because, it was stated, 12 out of 17 Panchayat opted for Pedapudi to be the Headquarters presumably because Gollamamidada was at one end of the Mandal and out of 17 villages comprised in the Mandal, 10 villages were at a distance of 7 to 14 kilometres and there were no proper travelling facilities and therefore it was beyond the reach of the common man. Allowing the writ petition, the High Court observed: "On evaluation of the sketch, we hold that neither of the two villages is centrally located". It went on to say that "the guidelines prescribed by the Government bind the Government and cannot be relaxed and there was no reason forthcoming for supersession of the claim of the village Gollamamidada by Pedapudi." Although the Cabinet Sub Committee had directed the variation on grounds of administrative convenience and for the reason that 12 out of 17 Gram Panchayats had resolved that Pedapudi should be the Headquarters, the High Court quashed the notification saying that the resolution of the Gram Panchayat might be relevant for consideration, but in law it was not decisive of the question. It further observed that there was no explanation as to why the place of location as specified in the preliminary notification was varied and accordingly directed the shifting of Headquarters to Gollamamidada. We find it difficult to subscribe to this line of reasoning adopted by the High Court.

In Civil Appeals Nos. 1982 and 1987 of 1986, the judgment of the High Court suffers from the same infirmity. In the preliminary as well as final notification, for formation of Kalher Revenue Mandal, Kalher was declared to the Mandal Headquarters. Kalher secured 14 marks as against Sirgapur which secured 22 marks. The High Court quashed the notification for location of the Headquarters at kalher and directed the shifting of the Headquarters to Sirgapur on the basis of the Collector's note appended to the file which stated:

> "As per the guidelines, the Mandal Headquarters may have to be fixed at Sirgapur and not at Kalher. Sirgapur has

A scored 22 points whereas the score of Kalher is only 14. Sirgapur is undoubtedly the zone of influence for this Mandal. Moreover, Sirgapur is centrally located and has better road connections with the rest of the villages, besides having maximum infrastructural facilities."

B The High Court observed that no record was produced as to why the Government did not act on the note placed on the file.

It will serve no useful purpose to delineate the facts in all the cases which follow more or less on the same lines. We are of the opinion that the High Court had no jurisdiction to sit in appeal over the decision of the State Government to locate the Mandal Head-
C quarters at a particular place. The decision to locate such Headquarters at a particular village is dependent upon various factors. The High Court obviously could not evaluate for itself the comparative merits of a particular place as against the other for location of the Mandal Headquarters. In some of the cases the High Court declined to
D interfere saying that the Government was the best judge of the situation in the matter of location of Mandal Headquarters. However, in a few cases the High Court while quashing the impugned notifications for location of Mandal Headquarters issued under sub-s. (5) of s. 3 of the Act on the ground that there was a breach of the guidelines, directed the Government to reconsider the question after hearing the
E parties.

We have had the benefit of hearing learned counsel for the parties on various aspects of this branch of administrative law as to the nature and scope of the guidelines and whether their non-observance was justiciable. The learned counsel with their usual industry placed
F before us a large number of authorities touching upon the subject. On the view that we take, it is not necessary for us to refer to them all.

Shri T.V.S.N. Chari, learned counsel appearing on behalf of the State Government followed by Dr. Y.S. Chitale, Shri U.R. Lalit and Shri C.S. Vaidyanathan, learned counsel appearing for the appellants
G in cases where the High Court has interfered have, in substance, contended that suitability as to the location of Mandal Headquarters is for the Government to decide and not for the High Court. They contend that the High Court failed to view the case from a proper perspective. According to them, the guidelines are executive instructions, pure and simple, and have no statutory force. It was pointed out that there is no
H statutory provision made either in the Act or the Rules framed there-

under laying down the manner in which the location of the Headquarters of a Revenue Mandal was to be made. The Legislature has left the matter of selection of a place to be the Mandal Headquarters to the discretion of the State Government and it was purely a Governmental function based on administrative convenience. The Government accordingly issued a White Paper laying down the broad guidelines as contained in Appendix I thereto. The Collector were required to forward their proposals for formation of Revenue Mandals indicating the place where the Headquarters should be located in accordance with the principles laid down in the guidelines based on a system of marking. Although the Collectors were required to propose the location of Mandal Headquarters at a particular place on a system of marking, but that was not determinative of the question. If the marks were to be the sole criterion, then there was no question of inviting objections and suggestions. The ultimate decision therefore lay with the Government and in making the selection the Government had the duty to ensure that the place located for location of Mandal Headquarters promoted administrative convenience and further the object and purpose of the legislation in bringing about a change in the Revenue administration viz. (i) to bring the administration nearer to the people and (ii) to make all public services easily available to them, the main criterion as laid down in the guidelines being suitability and accessibility. Further, the learned counsel contended that the High Court was clearly in error in substituting its judgment for that of the State Government. Non-observance of the guidelines which were in the nature of executive instructions was not justiciable. In any event, the High Court could not have issued a direction requiring the Government to shift the Headquarters of a Revenue Mandal from a particular place to another place on its own evaluation of the comparative merits and demerits merely on the basis of marking. The learned counsel relied upon *G.J. Fernandez* v. *State of Mysore & Ors.*, [1967] 3 SCR 636 and other decisions taking the same view.

We had an equally persuasive reply to these arguments. Shri Seetaramaiah, learned counsel appearing for the respondents in cases where the High Court has interfered, advanced the main argument on the legal aspect with much learning and resource and placed all the authorities on this abstruse branch of administrative law, namely, the Courts have albeit the Governmental action which involves exercise of discretionary powers, control over the exercise of such Governmental power by implying limits of reasonableness, relevance and purpose. Judicial control over the executive, or over an administrative authority, must be maintained. Such judicial control by necessary impli-

A cation is reconciled with legislative intent, on the premise that the legislature never intended that the Government should have unfettered control over a certain area. He drew our attention to several recent English decisions which manifest a definite shift in the attitude of the Courts to increase their control over discretion. According to the learned counsel, the traditional position is that Courts will control B the existence and extent of prerogative power i.e. governmental power, but not the manner of exercise thereof. What degree or standard of control would then be exercised would depend upon the type of subject-matter in issue. He submits that there is increasing willingness of the Courts to assert their power to scrutinise the factual bases upon which discretionary powers have been exercised.

C It is said that the Court is not powerless to intervene where the decision of the Government is reached by taking into account factors that were legally irrelevant or by using its power in a way calculated to frustrate the policy of the Act. It follows that the nature and object of the status had to be considered to determine the area of power posses- D sed. It is urged that the remedy of a writ of mandamus is available if a decision is reached by the Government on the basis of irrelevant considerations or improper purposes or for other misuse of power. Upon that premise, he does not accept that the High Court had no jurisdiction to interfere with the orders passed by the State Government for the location of the Headquarters of a Revenue Mandal under Art. 226 E of the Constitution. Substantially, the argument is that the guidelines framed by the State Government have a statutory force inasmuch as the power to issue such administrative directions or instructions to the Collectors is conferred by the provisions of the Act itself. Alternatively, he says that even though a non-statutory rule, bye-law or instruction may be changed by the authority who made it without any F formality and it cannot ordinarily be enforced through a Court of law, the party aggrieved by its non-enforcement may nevertheless get relief under Art. 226 of the Constitution where the non-observance of the non-statutory rule or practice would result in arbitrariness or absence of fairplay or discrimination, particularly where the authority making such non-statutory rule—or the like—comes within the definition of G 'State' under Art. 12. In substance, the contention is that the principle laid down in the classical decision of the House of Lords in *Padfield* v. *Minister of Agriculture, Fisheries & Food,* LR 1968 AC 997 that the Courts will control the exercise of statutory powers by the Minister, still prevails over exercise of discretionary powers by the Government. The general approach now is for the Courts to require that the Govern- H ment must produce reasonable grounds for its action, even where the

jurisdictional fact is subjectively framed. He drew our attention to the observations of Lord Denning M.R. in *Laker Airways Ltd.* v. *Department of Trade,* LR 1977 QB 643 at p. 705 to the effect: A

> "The prerogative is a discretionary power exercisable by the executive government for the public good, in certain spheres of governmental activity for which the law has B made no provision, such as the war prerogative (of requisitioning property for the defence of the realm), or the treaty prerogative (of making treaties with foreign powers). The law does not interfere with the proper exercise of the discretion by the executive in those situations: but it can set limits by defining the bounds of the activity: and it can C intervene if the discretion is exercised improperly or mistakenly. That is a fundamental principle of our constitution."
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> "Seeing that the prerogative is a discretionary power to be D exercised for the public good, it follows that its exercise can be examined by the courts just as any other discretionary power which is vested in the executive. At several times in our history, the executive have claimed that a discretion given by the prerogative is unfettered: just as they have claimed that a discretion given by statute or by regulation is E unfettered ..... The two outstanding cases are *Padfield* v. *Minister of Agriculture, Fisheries and Food,* [1968] AC 997 and *Secertary of State for Education and Science* v. *Tameside Metropolitan Borough Council,* [1976] 3 WLR 641, where the House of Lords have shown that when discretionary powers are entrusted to the executive by statute, F the courts can examine the exercise of those powers to see that they are used properly, and not impropertly or mistakely."

In order to appreciate the contentions advanced, it is necessary to refer to the relevant statutory provisions bearing on the questions G involved. Sub-s. (1) of s. 3, as amended, is in these terms:

> "3(1) The Government may, by notification, from time to time, for the purposes of revenue administration, divide the State into such disticts with such limits as may be specified therein; and each district shall consist of such H

A revenue divisions and each revenue division shall consist of such mandals and each mandal shall consist of such villages as the Government may, by notification from time to time, specify in this behalf."

Sub-s. (2) thereof provides that the Government may, in the interests B of better administration and development of the areas, by notification from time to time on and with effect on and from such date as may be specified therein, form a new district, revenue division or mandal or increase or diminish or alter their name. Sub-s. (4) empowers the Board of Revenue in the interests of better administration and development of the areas and subject to such rules as may be prescribed, by notification, group or amalgamate, any two or more revenue villages C or portions thereof so as to form a single new revenue village or divide any revenue village into two or more revenue villages, or increase or diminish the area of any revenue village, or alter the boundaries or name of any revenue village. Sub-s. (5) provides that before issuing any notification under the section, the Government or the Board of D Revenue, as the case may be, shall publish in such manner as may be prescribed, the proposals inviting objections or suggestions thereon from the person residing within the district, revenue division, taluk. firka or village who are likely to be affected thereby within such period as may be specified therein, and shall take into consideration the objections or suggestions, if any, received. Sub-s. (1) of s. 4 enacts that E the Government may, by notification, make rules for carrying out all or any of the purposes of this Act. The rules so framed shall be laid before each House of the State Legislature, etc.

In exercise of the powers conferred by sub-s. (1) of s. 4 of the Act, the State Government framed the Andhra Pradesh District F (Formation) Rules, 1984. The term 'Mandal' as defined in r. 2(iv) means a part of the district within a revenue division under the charge of a Tahsildar or Deputy Tahsildar. The expression 'revenue division' is defined in r. 2(v) to mean a part of the district comprising of one or more mandals under the charge of a Revenue Divisional Officer/Sub Collector/Assistant Collector or any other officer placed in charge of a G division. The word 'village' in r. 2(vi) means a settlement or locality or area consisting of cluster of habitations and the land belonging to their proprietory inhabitants and includes, a town or city and a hamlet (Mazra). Rule 3 lays down the matters for consideration in formation of districts, etc. Rules 4 and 5 provide for the publication of the preliminary and final notifications in the official gazette. Rule 3 insofar as H material reads:

"3(1) Where any action is proposed to be taken by the Government under sub-s. (1) or sub-s. (2) of s. 3 of the Act ..... the Government ..... shall take into consideration *as far as may be* the following matters and the views of the Collectors of the districts and of such other authorities as the Government may consider necessary:—

(i) Area, population, demand under the land revenue and other revenues in respect of areas affected by the proposals;

(ii) Historical association, Geographical contiguity, Physical features common interests and problems, Cultural and Educational requirements, Infrastructural facilities and economic progress of the areas;

(iii) Development of the area or areas concerned, having regard to the various developments and welfare schemes undertaken or contemplated by the Government in relation to those areas;

(iv) Administrative convenience and better administration; and

(v) Interests of economy."

"3(3). In matters concerning sub-s. (1) or sub-s. (2) of s. 3 of the Act the Collector concerned shall forward to the Government his report with his views together with the record of enquiry if any for the consideration of the Government. If after such consideration the Government so decides, a preliminary notification under sub-s. (5) of s. 3 of the Act inviting objections or suggestions to the proposals from the persons residing in the area/areas which are likely to be affected thereby, shall be issued."

Sub-r. (1) of r. 4 provides for the manner of publication of the preliminary notification referred to in sub-rr. (3) and (4) of r. 3 inviting objections or suggestions. The notification has to be in Form I appended to the Rules. R. 4(2) provides that any person affected by the proposal may within thirty days from the date of publication of the notification referred to in sub-r. (1), communicate his objections or suggestions thereto to the Secretary to the Government in the

A Revenue Department through the Collector of the district concerned, who shall forward the same with his remarks to the Government, etc. R. 5 provides that the Government shall having regard to the suggestions or objections referred to in r. 4 either confirm the preliminary notification or issue it with such modification/modifications as may be necessary and publish it in Form II of the Gazette. A preliminary B notification under sub-s. (5) of s. 3 of the Act which has to be in Form I has to notify to all concerned that the Government in the interests of better administration and development of the area concerned, proposed to form a new district/revenue division/mandal as set out in the schedule appended thereto. All objections and suggestions have to be addressed to the Collector within whose jurisdiction the area or areas fall. Likewise, Form II prescribes the form of the final notification to C the effect that the State Government having taken into consideration the objections and suggestions received thereon, is pleased to notify that with effect from (date) the State shall consist of the District/ Revenue Division/Mandal specified in Schedule I appended thereto. There are no statutory provisions formulating the governing principles D for formation of Revenue Mandals or for location of Mandal Headquarters.

On 25th July, 1985 the State Government published a White Paper on formation of Mandals. It was stated *inter alia* that the Revenue Mandals would be formed covering urban as well as rural E areas unlike Panchayat Mandals which would cover only rural areas. A Revenue Mandal would be demarcated for a population ranging from 35,000 to 55,000 in the case of rural mandals and was expected to cover one-third to one-fourth the size of the existing taluks in areas and in population. When a Municipality came within the area of a Revenue Mandal, the urban population would be in addition. The ushering in of F rural mandals would result in introductions of a four-tier system by replacement of the then existing five-tier system. Such reduction in the levels of tiers of administration the Government felt would be more conducive to proper implementation of the policies and programmes of the Government. Greater decentralisation was expected to lead to more intensive involvement of the people, particularly in the G implementation of programmes of economic development. According to the scheme contemplated, each Revenue Mandal would be headed by a Revenue Officer of the rank of a Tahsildar or a Deputy Tahsildar and it was stated that the intention of the Government was to vest in such Revenue Officers, all the powers that were till then exercised by the Tahsildars and Taluk Magistrate. Appendix I to the White Paper H formulated the principles for formation of Revenue Mandals and also

laid down the broad guidelines for location of Mandal Headquarters. The Collectors were accordingly asked to forward their proposals for creation of Revenue Mandals and also for location of Mandal Headquarters in conformity with the guidelines. The proposals were to be duly notified by publication of a preliminary notification under sub-s. (5) of s. 3 of the Act inviting objections and suggestions and the Government after consideration of the objections and suggestions so received would publish the final notification. The broad guidelines for location of Mandal Headquarters are set out below:

> (3) As a general principle, the present Taluk Headquarters, Samithi Headquarters, Municipalities and Corporations will be retained as Headquarters of Revenue Mandals; if any exception is called for on grounds of compelling reasons detailed reasons will have to be given.
>
> (4) Revenue Mandals whose headquarters will be the present Taluk Headquarters/Samithi Headquarters/Municipalities/Corporations, will generally have a number of much needed infrastructural facilities already existing. A number of people from the neighbouring villages will therefore be visiting these headquarters for both Governmental/non-Governmental business. In the case of Revenue Mandals to be located exclusively within municipal corporation areas, their requirements will be formulated according to their needs.
>
> In cases of Mandal Headquarters located in urban centres which are not municipalities but with a population of 15,000 or above the total population of the Mandal would be 55,000 irrespective of population density.
>
> (6) In choosing the Headquarters of the Revenue Mandals in the rural areas, weightage may be given to the availability of the following facilities and the future growth of the place.
>
> (i) Banking facility;
>
> (ii) Communication facility—either Railway Station or Bus Stand;
>
> (iii) PHC or Sub-Centre or any Dispensary/Indian Medicine;

(iv) Veterinary Dispensary;

(v) Police Station;

(vi) Post Office/Telephone Exchange;

(vii) High School.

(viii) Market Yard/Agricultural Godown;

(ix) Already a Firka Headquarters;

(x) Any other special qualification like availability of office accommodation, residential quarters for the staff etc.

A centre having one or more of the above characteristics and more accessible to most of the villages proposed for the Mandal in comparison to any other centre should be generally selected as Headquarters. If in any mandal there is more than one centre having equal accessibility/facilities then the centre which comes forward to donate land for office buildings and to provide temporary office accommodation may be given preference.

(8) In the selection of villages for inclusion in the Mandal, the principal criterion shall be that the Mandal Headquarters is most accessiable to all the villages."

It is quite obvious from the guidelines that the location of the Headquarters of a Revenue Mandal is based on a system of marking, the principal criterion being 'accessibility' i.e. the place located must be accessible to all the villages in the Revenue Mandal. In choosing the Headquarters of the Revenue Mandals in the rural areas, weightage had to be given to the availability of certain facilities and the future growth of the place as specified in items (i) to (x) of paragraph 6 of the guidelines. A centre or a place having one or more of the characteristics so set out and more accessible to most of the villages proposed for the Mandal in comparison to any other place had to be generally selected as Mandal Headquarters. If in any Mandal there was more than one place having equal accessibility/facilities then the place which came forward to donate land for office buildings and to provide temporary office accommodation had to be given preference. Location

of Mandal Headquarters was therefore based on a system of marking. Learned counsel for the parties have with infinite care taken us minutely to the facts of each case in an endeavour to support their respective contentions, viz., as to whether location of the Mandal Headquarters by the Government at a particular place was in breach of the guidelines or not.

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B

We find it rather difficult to sustain the interference by the High Court in some of the cases with location of Mandal Headquarters and quashing of the impugned notification on the ground that the Government acted in breach of the guidelines in that one place or the other was more centrally located or that location at the other place would promote general public convenience or that the Headquarters should be fixed at a particular place with a view to develop the areas surrounded by it or that merely because a particular person who was an influential Member of Legislative Assembly belonging to the party in opposition had the right of representation but failed to avail of it. The location of Headquarters by the Government by the issue of the final notification under sub-s. (5) of s. 3 of the Act was on a consideration by the Cabinet Sub Committee of the proposals submitted by the Collectors concerned and the objections and suggestions received from the local authorities like Gram Panchayat and the general public, keeping in view the relevant factors. Even assuming that any breach of the guidelines was justiciable, the utmost that the High Court could have done was to quash the impugned notification in a particular case and direct the Government to reconsider the question. There was no warrant for the High Court to have gone further and directed the shifting of the Mandal Headquarters at a particular place.

C

D

E

Broadly speeking, the contention on behalf of the State Government is that relief under Art. 226 of the Constitution is not available to enforce administrative rules, regulations or instructions which have no statutory force, in the absence of exceptional circumstances. It is well-settled that mandamus does not lie to enforce departmental manuals or instructions not having any statutory force, which do not give rise to any legal right in favour of the petitioner. The law on the subject is succinctly stated in Durga Das Basu's Administrative Law, 2nd edn. at p. 144:

F

G

> "Administrative instructions, rules or manuals, which have no statutory force, are not enforceable in a court of law. Though for breach of such instructions, the public servant may be held liable by the State and disciplinary action may

H

A be taken against him, a member of the public who is aggrieved by the breach of such instructions cannot seek any remedy in the courts. The reason is, that not having the force of law, they cannot confer any *legal* right upon anybody, and cannot, therefore, be enforced even by writs under Art. 226."

B

The learned author however rightly points out at p. 145:

"Even though a non-statutory rule, bye-law or instruction may be changed by the authority who made it, without any formality and it cannot ordinarily be enforced through a Court of law, the party aggrieved by its non-enforcement C may, nevertheless, get relief under Art. 226 of the Constitution where the non-observance of the non-statutory rule or practice would result in arbitrariness or absence of fairplay or discrimination,—particularly where the authority making such non-statutory rule or the like comes D within the definition of 'State' under Art. 12."

In *G.J. Fernandez's* case, the petitioner submitting the lowest tender assailed the action of the Chief Engineer in addressing a communication to all the tenderers stating that even the lowest tender was unduly high and enquired whether they were prepared to reduce their tenders. E One of them having reduced the amount of his tender lower than the lowest, the Chief Engineer made a report to the Technical Sub-Committee which made its recommendations to the Major Irrigation Projects Control Board, the final authority, which accepted the tender so offered. The High Court dismissed the writ petition holding that there was no breach of the conditions of tender contained in the Public F Works Department Code and further that there was no discrimination which attracted the application of Art. 14. The question that fell for consideration before this Court was whether the Code consisted of statutory rules or not. The so-called Rules contained in the Code were not framed under any statutory enactment or the Constitution. Wanchoo, CJ speaking for the Court held that under Art. 162 the G executive power of the State enables the Government to issue administrative instructions to its servants how to act in certain circumstances, but that would not make such instructions statutory rules the breach of which is justiciable. It was further held that non-observance of such administrative instructions did not give any right to a person like the appellant to come to Court for any relief on the alleged breach H of the instructions. That precisely is the position here. The guidelines

are merely in the nature of instructions issued by the State Government to the Collectors regulating the manner in which they should formulate their proposals for formation of a Revenue Mandal or for location of its Headquarters keeping in view the broad guidelines laid down in Appendix I to the White Paper. It must be stated that the guidelines had no statutory force and they had also not been published in the Official Gazette. The guidelines were mere departmental instructions meant for the Collectors. The ultimate decision as to formation of a Revenue Mandal or location of its Headquarters was with the Government. It was for that reason that the Government issued the preliminary notification under sub-s. (5) of s. 3 of the Act inviting objections and suggestions. The objections and suggestions were duly processed in the Secretariat and submitted to the Cabinet Sub-Committee along with its comments. The note of the Collector appended to the proposal gave reasons for deviating from the guidelines in some of the aspects. Such deviation was usually for reasons of administrative convenience keeping in view the purpose and object of the Act i.e. to bring the administration nearer to the people. The Cabinet Sub-Committee after consideration of the objections and suggestions received from the Gram Panchayat and members of the public and other organisations as well as the comments of the Secretariat and the note of the Collector came to a decision applying the standards of reasonableness, relevance and purpose while keeping in view the object and purpose of the legislation, published a final notification under sub-s. (5) of s. 3 of the Act. There is nothing on record to show that the decision of the State Government in any of these cases was arbitrary or capricious or was one not reached in good faith or actuated with improper considerations or influenced by extraneous considerations. In a matter like this, conferment of discretion upon the Government in the matter of formation of a Revenue Mandal or location of its Headquarters in the nature of things necessarily leaves the Government with a choice in the use of the discretion conferred upon it.

A B C D E F

It would be convenient at this stage to deal with the arguments of Shri Seetaramaiah that the action of the Government in the matter of location of Mandal Headquarters amounted to misuse of power for political ends and therefore amenable to the writ jurisdiction of the High Court under Art. 226 of the Constitution. The learned counsel mainly relied upon certain English decisions starting from *Padfield* v. *Minister of Agricultural, Fisheries & Food,* LR 1968 AC 997 down to *Council of Civil Service Unions and Others* v. *Minister for the Civil Service,* [1984] 3 ALL. ER 935 (HL). What we call 'purely governmen-

G H

tal function', it is said, is nothing but exercise of 'discretion derived from the royal prerogative'. The learned counsel contends that ever since the judgment of Lord Denning in *Laker Airways Ltd.* v. *Department of Trade,* LR 1977 QB 643, the myth of executive discretion in relation to prerogative power no longer exists. The learned counsel equated prerogative and statutory powers for this purpose, saying that in both cases alike the Courts will not review the proper exercise of discretion but will intervene to correct excess or abuse. According to him, the prerogative powers of the Crown in England are akin to the executive functions of the Union and the States under Art. 73 and 162 of the Constitution, on which refrain from expressing any final opinion. *Prima facie,* it seems to us that the executive powers of the Union and the States under Arts. 73 and 162 are much wider than the prerogative powers in England. We would refer to a couple of English decisions from amongst those to which we were referred to during the arguments.

At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work 'Judicial Review of Administrative Action' 4th Edn., at pp. 285-287 states the law in his own terse language. The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account; and where an authority hands over its discretion to

another body it acts *ultra vires*. The learned author then deals with the question whether the principles outlined above are applicable to the alleged abuse of wide discretionary powers vested in executive bodies and further states: A

> "We have already noted that the courts sometimes call a discretionary power executive or administrative when they are unwilling to review the mode of its exercise by reference to "judicial" standards. Does this mean that such discretionary powers are legally absolute, totally immune from judicial review? To this question there is no short answer. B
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> (1) Parliament (or, to put the matter more realistically, the Government) may purport to exclude judicial review by means of special statutory formulae which, if construed literally, would deprive the courts of jurisdiction. C
>
> (2) No discretionary power is reviewable unless somebody has *locus standi* in impugn the validity of its exercise. D
>
> (3) If it is claimed that the authority for the exercise of discretion derives from the royal prerogative, the courts have traditionally limited reveiw to questions of *vires* in the narrowest sense of the term. They can determine whether the prerogative power exists, what is its extent, whether it has been exercised in the appropriate form and how far it has been superseded by statute; they have not normally been prepared to examine the appropriateness or adequacy of the grounds for exercising the power, or the fairness of the procedure followed before the power is exercised, and they will not allow bad faith to be attributed to the Crown." E F

Although the weight of authority in England favours only narrow grounds for judicial review of the exercise of prerogative powers, there is not a total absence of support for the view that in some circumstances at least the Court may apply somewhat broader standards of review. See: De Smith's Judicial Review of Administrative Action, 4th edn., pp. 285-287; H.W.R. Wade's Administrative Law, 5th edn. pp. 350 *et. seq.*; Foulkes' Administrative Law, 6th edn., pp. 213-215, 219-225; Applications for Judicial Review, Law and Practice by Grahame Aldous and John Alder, p. 105; and D.C.M. Yardley's G H

A Principles of Administrative Law, 2nd edn. pp. 65–67.

In recent years, the concept of the rule of law in England has been undergoing a radical change. The present trend of judicial opinion is to restrict the doctrine of immunity of prerogative powers from judicial review where purely governmental functions are directly
B attributable to the royal prerogative, such as whether a treaty should be concluded or the armed forces deployed in a particular manner or Parliament dissolved on one day rather another, etc. The shift in approach to judicial interpretation that has taken place during the last few years is attributable in large part to the efforts of Lord Denning in *Laker Airways'* case. The attempt was to project the principles laid
C down in *Padfield's* case into the exercise of discretionary powers by the executive derived from the prerogative, and to equate prerogative and statutory powers for purposes of judicial review, subject to just exceptions. Thus, the present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those class of cases which relate to deployment of troops, entering into international treaties,
D etc. The distinctive features of some of these recent cases signify the willingness of the Courts to assert their power to scrutinise the factual bases upon which discretionary powers have been exercised.

The decision of the House of Lords in *Padfield's* case is an important landmark in the current era of judicial activism in this area
E of administrative law. The Minister had refused to appoint a committee, as he was statutorily empowered to do when he thought fit, to investigate complaints made by members of the Milk Marketing Board that the majority of the Board had fixed milk prices in a way that was unduly unfavourable to the complainants. The Minister's reason for refusing to accede to the complainants' request *inter alia* was that 'it
F would be politically embarrassing for him if he decided not to implement the committee's recommendations'. The House of Lords held that the Minister's discretion was not unfettered and that the reasons that he had given for his refusal showed that he had acted *ultra vires* by taking into account factors that were legally irrelevant and by using his power in a way calculated to frustrate the policy of the Act. The view
G was also expressed by four of the Law Lords that even if the Minister had given no reasons for his decision, it would have been open to the Court to infer that the Minister had acted unlawfully if he had declined to supply any justification at all for his decision: De Smith's Administrative Law, 4th edn., p. 294. More recently, in *Laker Airways* case and in *Secretary of State for Education and Science* v.
H *Tameside M.B.C.*, LR 1977 AC 1014 both the Court of Appeal and the

House of Lords have set aside as *ultra vires* the exercise of discretion that included a substantial subjective element. A

In *Padfield's* case the scarcely veiled allusion to fear of parliamentary trouble was, in particular, a political reason which was quite extraneous and inadmissible. Lord Reid during the course of his judgment emphatically and unequivocally rejected the contention that the discretion of the Minister was absolute, in these words: B

> "Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the Court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the Court." C D

Lord Upjohn said that the Minister's stated reasons showed a complete misapprehension of his duties, and were all bad in law. Lord Denning in another case observed that the decision in *Padfield* marked the evolution of judicial opinion that the Court could intervene if the Minister 'plainly misdirects himself in fact or in law'. The importance of the decision of the House of Lords in *Padfield's* case was underlined by Lord Denning in *Breen* v. *Amalgamated Engineering Union,* LR 1971 2 QB 175 at p. 190, in these words: E

> "The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by *Padfield* v. *Minister of Agriculture, Fisheries and Food,* which is a landmark in modern administrative law." F G

In *Laker Airways'* case, the Court of Appeal was concerned with the power of Minister to give directions to the Civil Aviation H

A authorities overriding specific provisions in the statute in time of war, in the interests of national security or international relations or protection of the environment. In his judgment, Lord Denning M.R. held that the review of the prerogative is assimilated to that of statutory power, so that its exercise may be impugned for 'misdirection in fact or in law'. Lord Denning M.R. discussed the nature of the prerogative
B and said;

> "Seeing that the prerogative is a discretionary power to be exercised for the public good, it follows that its exercise can be examined by the courts just as any other discretionary power which is vested in the executive."

C He then went on to say that the prerogative powers were as much capable of abuse as any other power and therefore subject to judicial review and observed:

> "Likewise it seems to me that when discretionary powers
D are entrusted to the executive by the prerogative—in pursuance of the treaty-making power—the courts can examine the exercise of them so as to see that they are not used improperly or mistakenly."

This observation has given rise to considerable debate.

E

The majority, however, proceeded on a narrower basis concluding that the Civil Aviation Act, 1971 had impliedly superseded the Crown's prerogative in foreign affairs, and that the holder of a licence under the statute could not be deprived of its commercial value by a decision on the part of the Secretary to State or revoke the licensee's
F status as a designated carrier under the Bermuda Agreement. In other respects, the majority accepted the orthodox position on the unreviewability of the exercise of the prerogative, per Roskill and Lawton, L. JJ. Lord Denning however went further and held that the Court could intervene if a Minister 'plainly misdirects himself in fact or in law'.

G Another important case in this context is *R.V. Criminal Injuries Compensation Board, ex p. Lain,* [1967] 2 QB 864. The question in this case was whether payments made by the Board to victims of crime were subject to judicial review. The difficulty was that Lord Reid's phrase 'power to make decisions affecting rights' in *Ridge* v. *Baldwin,* [1964] AC 40 was taken to refer to *legal* rights, whereas the Criminal
H Injuries Compensation Scheme was not said to be by legislation but

just as an administrative expedience by means of internal departmental circulars. So payments made under the Scheme were not, strictly, a matter of legal right but were *ex gratia*. On the other hand, the criterion on which payments were made were laid down in some detail and were very much like any law rules for assessment of damages in tort. So the Board, like the Courts, was meant to be focussing on the individuals before it, in deciding whether to make an award and how much to award. It was strenuously argued that the Board was not subject to the jurisdiction of the Courts since it did not have what was described as legal authority in the sense of statutory authority. This argument was emphatically and unanimously rejected. In his judgment Lord Parker, CJ. said:

> "I can see no reason either in principle or in authority why a board, set up as this board were set up, should not be a body of persons amenable to the jurisdiction of this Court. True the board are not set up by statute but the fact that they are set up by executive government, i.e., under the prerogative, does not render their acts any the less lawful. Indeed, the writ of certiorari has been issued not only to courts set up by statute but to courts whose authority was derived, *inter alia*, from the prerogative. Once the jurisdiction is extended, as it clearly has been, to tribunals as opposed to courts, there is no reason why the remedy by way of certiorari cannot be invoked to a body of persons set up under the prerogative.
>
> "Moreover the board, though set up under the prerogative and not by statute, had in fact the recognition of Parliament in debate and Parliament provided the money to satisfy the board's awards."

See also the judgment of Lord Diplock, LJ.

The ratio derived from *Ex parte Lain's* decision can best be stated in these words:

> "Powers derived from the royal prerogative are public law powers."

It therefore follows that a non-statutory inferior authority like the Board albeit constituted under the prerogative powers, is just as well amenable to the jurisdiction of the Court as a statutory body. It is clear

A that certiorari will lie where a decision has *de facto* effect upon the individual and it is not necessary to show that the 'right' in question is legally enforceable.

In *Council of Civil Service Unions & Ors.* v. *Minister for the Civil Service,* [1984] 3 All E.R. 935 the House of Lords reiterated broader B standards of review of the exercise of prerogative powers. The principles deducible are clearly brought out in the headnote extracted below:

> "(1) Powers exercised directly under the prerogative are not by virtue of their prerogative source automatically immune from judicial review. If the subject matter of a C prerogative power is justiciable then the exercise of the power is open to judicial review in the same way as a statutory power. However (per Lord Roskill), prerogative powers such as those relating to the making of treaties, the defence of the realm, the prerogative of mercy, the grant of D honours, the dissolution of Parliament and the appointment of ministers are not justiciable or reviewable. (2) Administrative action is subject to control by judicial review under three heads: (i) illegality, where the decision-making authority has been guilty of an error of law, e.g. by purporting to exercise a power it does not E possess; (ii) irrationality, where the decision-making authority has acted so unreasonably that no reasonable authority would have made the decision; (iii) procedural impropriety, where the decision-making authority has failed in its duty to act fairly."

F Lord Diplock in his speech found no reason why simply because the decision-making power is derived from a common law and not a statutory source, it should *for that reason* be immune judicial review, and observed:

> "Judicial review has I think developed to a stage today G when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'."

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We should also refer to the illuminating judgment of Lord Roskill who found no logical reason to see why the fact that the source of the power is the prerogative and not statute, should today deprive the citizen of that right of challenge to the manner of its exercise which he would possess were the source of the power statutory. In either case, the act in question is the act of the executive. The learned Judge agreed with the conclusions reached by Lord Scarman and Lord Diplock and observed: "To talk of that act as the act of the sovereign savours of the archaism of past centuries." We may with advantage quote the following passage from his judgment;

> "Dicey's classic statement in Law of the Constitution (10th edn., 1959) p. 424 that the prerogative is 'the residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the Crown, has the weight behind it not only of the author's own authority but also of the majority of this House in *Burmah Oil Co. (Burma Trading) Ltd.* v. *Lord Advocate,* [1964] 2 All ER 348 at 353, per Lord Reid. But as Lord Reid himself pointed out, this definition 'does not take us very far'. On the other hand the attempt by Lord Denning, MR in *Laker Airways Ltd.* v. *Dept. of Trade,* [1977] 2 All ER 182 at 192, (*obiter*) since the other members of the Court of Appeal did not take so broad a view) to asert that the prerogative 'if ..... exercised improperly or mistakenly' was reviewable is, with great respect, far too wide. Lord Denning MR sought to support his view by a quotation from Blackstone's Commentaries (1 B1 Com (15th edn) 252). But unfortunately and no doubt inadvertently he omitted the opening words of the paragraph:
>
> > "In the exercise therefore of those prerogatives, which the law has given him, the King is irresistible and absolute, according to the forms of the constitution. And yet, if the consequence of that exertion be manifestly to the grievance or dishonour of the kingdom, the parliament will call his advisers to a just and severe account."
>
> In short the orthodox view was at that time that the remedy for abuse of the prerogative lay in the political and not in the judicial field.

A But, fascinating as it is to explore this mainstream of our legal history, to do so in connection with the present appeal has an air of reality. To speak today of the acts of the sovereign as 'irresistible and absolute' when modern constitutional convention requires that all such acts are done by the sovereign on the advice of and will be carried B out by the sovereign's ministers currently in power is surely to hamper the continual development of our administrative law by harking back to what Lord Atkin once called, albeit in a different context, the clanking of medieval chains of the ghosts of the past."

C The effect of all these decisions is admirably summed up by Grahame Aldous and John Alder in their Applications for Judicial Review, Law and Practice thus:

"There is a general presumption against ousting the jurisdiction of the courts, so that statutory provisions which D purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is *bona fide*. In this kind of non-justiciable area judi- E cial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in *Council of Civil Service Union* v. *Minister for the Civil Service,* this is doubtful. Lords Diplock, Scarman and Roskill appeared to agree that there F is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example foreign affairs, but some are G reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest."

H Much of the above discussion is of little or academic interest as

the jurisdiction of the High Court to grant an appropriate writ, direction or order under Art. 226 of the Constitution is not subject to the archaic constraints on which prerogative writs were issued in England. Most of the cases in which the English courts had earlier enunciated their limited power to pass on the legality of the exercise of the prerogative were decided at a time when the Courts took a generally rather circumscribed view of their ability to review Ministerial statutory discretion. The decision of the House of Lords in *Padfield's* case marks the emergence of the interventionist judicial attitude that has characterized many recent judgments. In view of the recent decision of the House of Lords in *Council of Civil Service Unions,* it would be premature to conclude that in no circumstances would the Court be prepared to apply to the exercise by the Crown of some non-statutory powers the same criterion for review as would be applicable were the discretion conferred by statute. In the ultimate analysis, the present trend of judicial opinion in England on the question as to whether a 'prerogative' power is reviewable or not depends on whether its subject-matter is suitable for judicial control. All that we need is to end this part of the judgment by extracting the cautionary note administered by H.W.R. Wade in his Administrative Law, 5th edn. at p. 352 in these words:

> "On the one hand, where Parliament confers power upon some minister or other authority to be used in discretion, it is obvious that the discretion ought to be that of the designated authority and not that of the court. Whether the discretion is exercised prudently or imprudently, the authority's word is to be law and the remedy is to be political only. On the other hand, Parliament cannot be supposed to have intended that the power should be open to serious abuse. It must have assumed that the designated authority would act properly and responsibly, with a view to doing what was best in the public interest and most consistent with the policy of the statute. It is from this presumption that the courts take their warrant to impose legal bounds on even the most extensive discretion."

We find it rather difficult to sustain the judgment of the High Court in some of the cases where it has interfered with the location of Mandal Headquarters and quashed the impugned notifications on the ground that the Government acted in breach of the guidelines in that one place or the other was more centrally located or that location at the other place would promote general public convenience, or that the

A headquarters should be fixed at a particular place with a view to develop the area surrounded by it. The location of headquarters by the Government by the issue of the final notification under sub-s. (5) of s. 3 of the Act was on a consideration by the Cabinet Sub-Committee of the proposals submitted by the Collectors concerned and the objections and suggestions received from the local authorities like the gram panchayats and the general public. Even assuming that the Government while accepting the recommendations of the Cabinet Sub Committee directed that the Mandal Headquarters should be at place 'X' rather than place 'Y' as recommended by the Collector concerned in a particular case, the High Court would not have issued a writ in the nature of mandamus to enforce the guidelines which were nothing more than administrative instructions not having any statutory force, which did not give rise to any legal right in favour of the writ petitioners.

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The result therefore is that Civil Appeals Nos. 1980, 1982, 1985 and 1987 of 1986 and all other appeals and special leave petitions directed against the judgment of the High Court where it has interfered with the location of the Mandal Headquarters, must succeed and are allowed. The petition filed by the appellants under Art. 226 of the Constitution before the High Court are accordingly dismissed. There shall be no order as to costs.

D

S.L.