

2 SCOB [2015] HCD 84**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 3606 of 2010

With

WRIT PETITION NO.1909 of 2013
 WRIT PETITION NO.12357 of 2013
 WRIT PETITION NO.12358 of 2013
 WRIT PETITION NO. 7980 of 2013
 WRIT PETITION NO. 7982 of 2013
 WRIT PETITION NO. 9355 of 2013
 WRIT PETITION NO. 7979 of 2013
 WRIT PETITION NO. 5175 of 2013
 WRIT PETITION NO.7981 of 2013
 WRIT PETITION NO. 3184 of 2013
 WRIT PETITION NO. 7766 of 2013
 WRIT PETITION NO. 3210 of 2009
 WRIT PETITION NO. 991 of 2012
 WRIT PETITION NO. 6056 of 2014
 WRIT PETITION No. 227 of 2014
 WRIT PETITION No. 2672 of 2014
 WRIT PETITION NO. 1192 of 2014
 WRIT PETITION NO. 335 of 2014
 WRIT PETITION NO. 7768 of 2014
 WRIT PETITION NO. 1956 of 2014
 WRIT PETITION NO. 5065 of 2014

Singer Bangladesh Limited.

..... Petitioner
 (In writ petition No.3606 of 2010)

British American Tobacco Bangladesh
 Company Limited

..... Petitioner
 (In writ petition No. 1909 of 2013)

Buildtrade Engineering Limited.

..... Petitioner
 (In writ petition No. 12357 of 2013)

Buildtrade Color Coat Limited.

..... Petitioner
 (In writ petition No. 12358 of 2013)

Akij Biri Factory Limited

..... Petitioner
 (In writ petition No. 7980 of 2013)

Akij Biri Factory Limited

..... Petitioner
 (In writ petition No. 7982 of 2013)

M/S. Al Noor Paper and Board Mills.

..... Petitioner
 (In writ petition No. 9355 of 2013)

Akij Biri Factory Limited.

..... Petitioner
 (In writ petition No. 7979 of 2013)

DAF Packaging Industries Ltd.

..... Petitioner
 (In writ petition No. 5175 of 2013)

Akij Biri Factory Limited

..... Petitioner
 (In writ petition No. 7981 of 2013)

British American Tobacco Bangladesh
 Company Limited

..... Petitioner
 (In writ petition No. 3184 of 2013)

Nitol Motors Limited

..... Petitioner
 (In writ petition No. 7766 of 2013)

Unilever Bangladesh Limited.

..... Petitioner
 (In writ petition No. 3210 of 2009)

Al-Amin Metal and Re-Rolling Mills (Pvt.)
 Ltd.

..... Petitioner
 (In writ petition No. 991 of 2012)

British American Tobacco Bangladesh
 Company Limited

..... Petitioner
 (In writ petition No. 6056 of 2014)

Bank Asia Limited

..... Petitioner
 (In writ petition No. 227 of 2014)

Jayson Pharmaceuticals Limited

..... Petitioner
 (In writ petition No. 2672 of 2014)

Appollo Ispat Complex Limited (Unit-2)

..... Petitioner
 (In writ petition No. 1192 of 2014)

Akij Biri Factory Limited

..... Petitioner

(In writ petition No. 335 of 2014)
 Otobi Limited
 Petitioner
 (In writ petition No. 7768 of 2014)
 Niloy Cement Industries Limited
 Petitioner
 (In writ petition No. 1956 of 2014)
 Grameenphone Limited
 Petitioner
 (In writ petition No. 5065 of 2014)

-Versus-

National Board of Revenue and others
 Respondents

Mr. Moudud Ahmed,
 Mr. Hasan Arif, the learned Senior Advocates
 with
 Mr. Ahsanul Karim,
 Mr. Khairul Alam Chowdhury,
 Mr. Kabir Iqbal Hossain,
 Mr. Aminul Hoque,
 Mr. Tanveer Hossain Khan,

Mr. M. A. Qayyum Khan,
 Mr. Abu Taleb,
 Mr. Md. Ramzan Ali Sikder,
 Mr. Abdullah M. Hasan,
 Mr. Khan Mohammad Shameem Aziz,
 Mr. A.M. Amin Uddin,
 Mr. Munshi Moniruzzaman,
 Mr. Md. Sadullah,
 Mr. Raziuddin Ahmed,
 Mr. Mubina Asaf,
 Mrs. Shathika Hossain,
 Mr. Akhtar Farhad Zaman,
 Mr. A. K. A. Mamun,
 Mr. M Ataul Gani ,
 Mr. Sakib Rezwan Kabir and
 Mr. Meah Mohammed Kausar Alam,
 Advocates For the petitioners

Mr. S.M. Moniruzzaman, D.A.G with
 Mosammat Kairun Nessa,
 Mr. S.M. Quamrul Hasain and
 Mr. Shams-ud-Doha Talukder, A.A.Gs.
For the Respondents.

Heard on 04.12.2014, 08.12.2014, 10.12.2014
 and
 Judgment on 15.12. 2014.

Present:

Mr. Justice Md. Ashfaquul Islam
And

Mr. Justice Md. Nazrul Islam Talukder

VAT Act, 1991

No provision of the said Act of 1991 empowers the VAT authority to direct the petitioner as a VAT registered person to deliver any documents or records directly to any third party authority, i.e. Local and Revenue Audit Directorate. Neither a notice can be issued either directing and deposit of revenue or under section 55(1) of VAT Act on that Count. ...(Para 45)

Thus 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. The 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 authorized to do.

...(Para 46)

JUDGMENT

Md. Ashfaquul Islam, J:

1. All these Writ petitions are heard together and disposed of by a single judgment as there involved common question of fact and law.

2. In writ petition No.3606 of 2010 on an application under Article 102 of the Constitution filed by the petitioner Singer Bangladesh Limited, the Rule was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the proceeding vide Order under Nothi No. 4/Gj WBD(ggyK)/273/wm/2vi/vbxq I ivR ^ AwWU/mvKj-3/10/332 dated 18.04.2010 (Annexure- D) by the respondent No.3 rejecting the prayer of the petitioner and making demand under Section 55(1) of the Value Added Tax Act, 1991 should not be declared to have been passed without any lawful authority and is of no legal effect.”

3. If we sum up the terms of all the Rules we find that the respondents of all the petitions have been asked to show cause as to why the different Memos in the petitions issued by the respondents, the VAT Authority, directing the petitioner company to pay the amount as revenue, calculated on the basis and at the behest of audit report submitted by Local Audit team and audit directorate not shall be declared unlawful being violative of mandate of the Constitution.

4. Be it mentioned that for the sake of proper disposal of all the writ petitions three categories of the same have been made. In the first one the notices in which the direct demand of revenue from the petitioners by the VAT authority issued at the instance of the Local Revenue Audit Directorate, are challenged. All the Rules were made absolute by declaring the notices of such direct demand to be illegal.

5. In the second category, the notices in which the demand of documents and papers from the petitioners by the VAT Authority as directed by the Local and Revenue Audit Directorate were impugned. All the Rules have been made absolute by declaring the demand illegal.

6. And the third category deals with the present writ petitions which calls in question the sustainability of the notices issued by the respondents VAT Authority under section 55(1) of the VAT Act, 1991 but that even under the direction of the Local and Revenue Audit Directorate.

7. Since we have already decided the first and second category, we think it would be easier to appreciate the issue involved in third category of writ petitions. For the proper analysis let us first reproduce the impugned order from one of the petitions. In writ petition No.3606 of 2010 Annexure- ‘D’ is the impugned order issued under the signature of the respondent No.3, Deputy Commissioner, Large Tax Payer Unit (LTU), Customs, Excise and VAT, Office, Dhaka upon the petitioner which has been quoted below:-

“ tçK: weFvMq KgRZP
çK: e’ve rcbv çvi Pj K
tgmwmm/2vi evsj vt`k wj :
Svgy, ivRdZewMqv, mvFvi, XvKv|

welq : vbxq I ivR ^AwWU Aw`Bi KZR 2007-2008 A_@Qti AwWU wicvU^AvciE DlvicZ Ur: 52,01,768.17 (evqvbaej q] GK nvrvi mvZ kZ AvUl wE UvKv mZi cqm) UvKv tURvixRgv/Pj wZ wmwte mg`q Ki vYi Rb` `vexbvqv m`hj Z KviY `k`bv tbnUK Rvix KiY çh`z|

mF: 1|
02| vbxq I ivR ^AwWU Aw`Bi, XvKv KZR 2007-2008 A_@Qti Avcbv`i çZôvbi wmw vbxqv Kti Avcbvi çZôvbi KZR DçKivbi gj` evi` cvlqv mFEl çyivq gj` tNvlbv bv w`tq AwZwiE MpxZ tiqvZ eve` 29,33,330.99 UvKv Abtgvw Z gj` i tPtq weRvcb e`q tekv t`wL`q AwZwiE MpxZ tiqvZ eve` 15,48,804.18 UvKv Ges Drtm KZBKZ. F`vUv tURvix Rgv Pj wZ wmwte Rgv t`wL`q 7,19,633.00 UvKv Mhb Kivq meFvU 52,01,768.17 UvKv ggyK çvKi AvciE Dlvcb Kiv n`qtQ |

03| BZvçte`mFvK 4 bs, 6 bs I 7 bs çT`i gva`tg Dch` welq `wv wj K çvbm Avcbv`i gZvqZ Pvlqv n`tqvQj | tçZ Reve mF`vRbK bv nlqv Ges GtZ gj` mstqvRb Ki AvBb, 1991 Gi aviv 5(2) I 9(1) (QO) j`wNZ nlqvq D` AvciEKZ.UvKv Av`vtqi Rb` gj` msthvRb Ki, 1991 Gi aviv 55(1) tgvZvteK `vexbvqv Rvix Kiv n`jv |

14. First of all let us see what are the provisions under which the Constitution framed the function and establishment of the office of Constitutional body, the Comptroller and Auditor General. Chapter 8 of the Constitution in particular deals with this part. Article 128 of the Constitution postulates functions of Auditor General as under:-

“ 128 (1) The public accounts of the Republic and of all courts of law and all authorities and offices of the Government shall be audited and reported on by the Auditor-General and for that purpose he or any person authorized by him in that behalf shall have access to all records, books, vouchers, documents, cash, stamps, securities, stores or other government property in the possession of any person in the service of the Republic.

(2) Without prejudice to the provisions of clause (1), if it is prescribed by law in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be so prescribed.

(3) Parliament may by law require the Auditor-General to exercise such functions, in addition to those specified in clause (1) as such law may, prescribe and until provision is made by law under this clause the President may, by order, make such provision.

(4) The Auditor-General, in the exercise of his functions under clause (1) shall not be subject to the direction or control of any other person or authority. ”

15. Article 131 is also relevant in this regard which runs thus:

“The public accounts of the Republic shall be kept in such form and in such manner as the Auditor-General may, with the approval of the President, prescribe.”

16. Further Article 132 says:

“The reports of the Auditor-General relating to the public accounts of the Republic shall be submitted to the President, who shall cause them to be laid before President.”

17. On a combined reading of all these Articles of the Constitution we get a notion that the pivotal role of the Comptroller and Auditor General relates to audit of the public accounts of the Republic and of all courts of law and authorities and offices of the Government.

18. Under Article 128(3) of the Constitution parliament can make laws enabling the Comptroller General Audit Directorate to perform additional functions. Be it mentioned that pursuant to Article 128(3) of the Constitution the Comptroller and Auditor General Additional Function Act, 1974 came into being. This Act categorized the additional functions to be performed by the office of the Auditor General. In section 5 of the Act it has been stated that:

“(1) Notwithstanding anything contained in any other law for the time being in force [or in any memorandum or articles of association or in any deed], the Auditor General may audit the accounts of any statutory public authority [public enterprise] or local authority and shall submit his report on such audit to the President for laying before Parliament.

(2) For the purpose of any audit under sub-section (1) the Auditor-General or any person authorized by him in that behalf shall have access to all records, books voucher, documents, cash, stamps, securities, stores or other property of the statutory public authority [public enterprise] or local authority concerned.”

19. Hence the Constitutional body of the Comptroller and Auditor General can certainly audit as it's additional function the departments mentioned in the above section. Statutory public authority is one of those departments under which the National Board of Revenue (NBR) functions. The Local Audit directorate can authoritatively look into the papers and documents of the NBR and do the needful to ascertain whether the thinks are in the right direction or not. Deviation of any kind if could be ascertained by the audit department in the process, the statutory public body (like NBR) would certainly account for that.

20. But what then is the jurisdiction of the audit department as a whole (?) Their jurisdiction has been clearly spelt out in Article 128 and 132 of the Constitution. They will just submit their annual report to the President prepared in terms of Article 128 of the Constitution and the President in his

turn would place the same before the Parliament. That is the fine line and periphery where the Office of the Comptroller and Auditor General shall tread in.

21. It would be worthwhile to quote here an extract focused on the issue by the Senior Advocate Mr. Mahmudul Islam in his book "Constitutional Law of Bangladesh", 3rd Edition. In paragraphs 6.12. and 6.13 the of the book author succinctly narrated:-

"The office of Comptroller and Auditor-General is a constitutional office of considerable importance. On him is cast the duty of maintaining, compiling and checking the accounts of the Republic and also of such public statutory bodies as may be prescribed by an Act of Parliament. With the approval of the President he has to prescribe the form and the manner in which the public accounts shall be kept."

22. The author pin pointed:-

"Every year Parliament appropriates specific sums for specific works and services. It is the duty of the Comptroller and Auditor-General to examine and ensure that the administration does not exceed the approved sum and has spent the money for the works and services for which it was approved by Parliament. He is responsible for having all the receipts and expenditures audited and he is to examine whether the money spent were legally available for and applicable to the works and services for which it has been spent. He has to see that the expenditures have been made by the authorities competent under the law to make it and that all the legal rules and formalities governing such expenditures have been complied with. In the absence of all these checks parliamentary authorization will lose its meaning and it will be impossible for Parliament to have effective control over the finance. The Comptroller and Auditor-General has to satisfy himself on behalf of Parliament as to the wisdom faithfulness and economy of the expenditures. He thus performs the useful job of preventing waste of public fund. He can disallow any expenditure which is in violation of the Constitution and the laws and thereby he upholds the Constitution and the laws in the financial sector of the administration."

23. The identical Article like that of Article 128 of ours is Article 149 of the Indian Constitution Article 149 of Indian Constitution enumerates the duties and powers of the Comptroller and Auditor-General. It says:-

"The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively"

24. In India Comptroller and Auditor General's duties powers and condition of service Act, came into force in 1971. Section 10 of the Act, maintained :-

"Comptroller and Auditor-General to compile accounts of Union and States-

(1) Comptroller and Auditor General shall be responsible -

(a) for compiling the accounts of the Union and of each State from the initial and subsidiary accounts rendered to the audit and accounts offices under his control by treasuries, offices or departments responsible for the keeping of such accounts, and

(b) for keeping such accounts in relation to any of the matters specified in clause (a) as may be necessary."

25. The existing order as stated above provide(s) that the Comptroller and Auditor General in India shall be responsible for keeping the accounts of the Union and of each State.

26. The position in this regards as it could be found in the Constitution of ours resembles almost in its entirety to that of India. In both the Constitutions the functions and periphery of the said Constitutional body have been crystallized without any ambiguity.

27. Let us now digress on the mode of collecting revenue by VAT Authority, Under the Act. The VAT Act 1991 is a self-contained Act making provisions for collecting VAT together with the provisions of assessment and others. Section 26(k) 35, 36 of the said Act have direct bearing on the issue. Drawing our attention to the said aspect Mr. Ahsanul Karim the learned Advocate submits that Under section 26Ka of the said Act of 1991, a VAT officer having the status of Joint Commissioner or Joint Director can make an audit and enquiry of activities of a VAT registered person as per order and direction made by the National Board of Revenue, Section 26Ka of the said Act of 1991 reads as follows:

“ 26Lz LI c;ajl LI pwnb LjkH?j tel fr j Hhw Aepã;ez- (1) kNA
Lçj nejl hj kNAfcl QimL fcj klldar নিম্নে নহেন এমন কোন মূল্য কর্মকর্তা, এই আইনের অধীন প্রদেয় করে যথার্থতা নিরপনের উদ্দেশ্যে সংশ্লিষ্ট কার্যক্রম নিরীক্ষা বা অনুসন্ধানের জন্য যে কোন নিবন্ধিত বা নিবন্ধনযোগ্য ব্যক্তিকে নির্বাচন করিতে পারিবেন।

(2)

(৩) এই ধারার অধীন নিরীক্ষা বা অনুসন্ধান কার্যক্রম পরিচালনার উদ্দেশ্যে বোর্ড এই আইন এবং বিধির বিধানাবলীর সহিত সামঞ্জস্যপূর্ণ রীতি ও পদ্ধতি নির্ধারণকল্পে প্রয়োজনীয় হইলে উহা মূল্য সংযোজন কর কর্মকর্তা কর্তৃক অনুসৃত হইবে।”

28. Section -35 says:-

“ c;Mmfæ @fnLIZ- প্রত্যেক করযোগ্য পণ্য প্রস্তুতকারক বা উৎপাদক বা ব্যবসায়ী বা করযোগ্য সেবা প্রদানকারী বিধি দ্বারা নির্ধারিত ফরম ও পদ্ধতিতে সংশ্লিষ্ট কর্মকর্তার নিকট নির্ধারিত তারিখের মধ্যে প্রতিটি করমেয়াদের জন্য এই আইনের অধীনে তাহার সকল করদায়িতার বিবরণ সম্বলিত দাখিলপত্র পেশ করিবেন।

29. Further Section – 36 says:-

“দাখিলপত্রের পরীক্ষা- (১) সংশ্লিষ্ট কর্মকর্তা কোন ব্যক্তি কর্তৃক ধারা ৩৫ এর অধীনে পেশকৃত দাখিলপত্র বিধি দ্বারা নির্ধারিত পদ্ধতিতে যথাশীঘ্র সম্ভব পরীক্ষা করিবেন এবং পরীক্ষান্তে যদি প্রমাণিত হয় যে, উক্ত ব্যক্তি কর্তৃক পরিশোধিত মূল্য সংযোজন কর বা, ক্ষেত্রমত, মূল্য সংযোজন কর ও সম্পূরক শুল্ক তৎকর্তৃক এই আইনের অধীন প্রদেয় মূল্য সংযোজন কর বা, ক্ষেত্রমত, মূল্য সংযোজন করা ও সম্পূরক শুল্ক অপেক্ষা কম, তাহা হইলে সংশ্লিষ্ট কর্মকর্তা উক্ত ব্যক্তিকে আদেশ দ্বারা, আদেশ প্রাপ্তির সাত দিনের মধ্যে-

(ক) পণ্য সরবরাহের ক্ষেত্রে, চলতি হিসাবে সমন্বয়ের মাধ্যমে, এবং

(খ) সেবা প্রদানের ক্ষেত্রে, তৎকর্তৃক এতদুদ্দেশ্যে নির্ধারিত পহণয়, অপরিশোধিত পরিমাণ মূল্য সংযোজন কর বা, ক্ষেত্রমত, মূল্য সংযোজন কর ও সম্পূরক শুল্ক পরিশোধ করার নির্দেশ দান করিবেন।”

30. Here for better understanding it would be profitable to quote from the the case of Sekandar Spinning Mills Ltd. Vs. Commissioner, Customs Excise and VAT and others reported in 63 DLR 272. While declaring the under mentioned impugned order illegal this Division held:-

“-ibxq I ivR^nmve mbixqjv Awa`Bi XvKv r: bs enmbx/wm 2003-04/4 A_@ce#j -7/5665 (Bs ZwiL 116-05-05 Bs I mvKj# Gi cI bll bs 3q (12)8/ ev: wn:nb:/2004-5/ivú05/1103 ZwiL 19-06.05 Bs tgvZiteK cKZ Drcv`b A#c#jv Kg Drcv`b cð k# Kivq 10.90,595/- (`k j # beYB nvrvi cıP kZ cPıbeYB) UvKv mgšq miab Kiv njj v|

31. There after issued the impugned letter dated 25.4.2006 being Nothi No. 4rth /A(12)57/Rangu/Sekandar Spinning/Ab/98/830 dated 25.4.2006 restraining the petitioner from release of the manufactured foods and directing the petitioner to make the closing balance as credit balance and then to take release of the goods.

32. We have heard the learned Advocates, perused the writ petition, the impugned order and the annexures thereof. In the instant writ petition the respondent No. 3 issued the demand notice without initiating the proceeding under section 55 of the VAT Act, but only on the basis of the report and request of the Local Audit Agency. The law provides that the VAT authority ought to have issued notice under section 55(1) of the VAT Act on account of any discrepancy for paying VAT by any company or person who is registered under VAT authority. The VAT authority without complying with the procedure as laid down under section 55 of the VAT Act issued the demand notice is not sustainable in law. The respondent VAT Authority issued several notices upon the petitioner directing to deposit the demanded money which was revealed by the Local Audit Agency during their audit. The law does not provide that the respondent VAT authority can issue any demand notice on the request of the audit team but it is their absolute power in case of any discrepancy found, it may initiate proceeding under section 55 of the VAT Act. But in the instant case the VAT authority did not follow the said procedure.”

33. Further in the unreported decision of Bombay Sweets and Company Ltd. as referred to above it has been observed:

“The authority without considering the said reply and without hearing the petitioner illegally directed the petitioner to deposit the said demanded amount whereas no notice under section 55 of the VAT Act had ever been served upon the petitioner.”

“It also appears to us that the authority subsequently issued the demand notice only to carry out the direction of the “যদিও আইন অনুযায়ী” who is not the proper VAT authority as per VAT law. Thus it is clear that respondent No.5 did not issue demand notice independently but upon the direction of others which was illegal and malafide action of the Vat authority and as such the same should be declared to have been issued without lawful authority and is of no legal effect. Thus we find merit in the Rule.”

34. Mr. Ahsanul Karim on the point cited some authorities. In the case of vice chairman Export Promotion Bureau Government of Bangladesh –vs- Acqua Foods Limited and others 50 DLR (AD) 113 while upholding the decision of the High Court Division which declared the impugned notification unlawful as the same being passed merely under the direction of the Government, our Appellate Division maintained:

“From the admitted facts of the case it is seen that there had been violation of natural justice in not giving a hearing to the writ petitioners and that the Controller of Imports and Exports had acted at the behest of the Government without himself taking the necessary steps under articles 6, 8 and 9 of the Importers, Exporters and Indentors (Registration) Order, 1981. In these circumstances the impugned Public Notification (Annexure-A to the writ petition) cannot stand, even without a challenge of the Governments action.”

35. In the celebrated case of Authorised Officer D.I.T. Dacca – vs- Mr. A.W.Mallik and others 20 DLR (SC) 229 the Supreme Court held the sanction to the erection of the Cinema, under section 75(2) of the Town Improvement Act, obtained by the respondent and the High Court’s order directing the Authorised Officer to apply his mind afresh to the plan submitted by the respondent to be justified. The refusal to sanction the plan was not, therefore, a legal exercise of direction and unlawful as the same being done at the behest of the provincial Government.

36. The Indian Supreme Court came down heavily in the well-known decision of Purtabpur Company Ltd. –vs- Cane Commissioner, Bihar AIR 1970 SC 1896 where it was raised that though the orders purported to have been made by the Cane Commissioner, were in fact not so; the Cane Commissioner merely acted as the mouth-piece of the Chief Minister; in truth he had abdicated his statutory functions and therefore the orders are bad. The Indian Supreme Court held us under:

“We have earlier seen that the Cane Commissioner was definitely of the view that the reservation made in favour of the appellant should not be disturbed but the Chief Minister did not agree with that view. It is clear from the documents before us that the Chief Minister directed the Cane Commissioner to divide the reserved area into two portions and allot one portion to the 5th respondent. In pursuance of that direction, the Cane Commissioner prepared

two lists 'Ka' and 'Kha'. Under the orders of the Chief Minister, the villages contained in list 'Ka' were allotted to the appellant and in list 'Kha' to the 5th respondent. The Cane commissioner merely carried out the orders of the Chief Minister.....

.....
 The power exercisable by the Cane Commissioner under cl 6(1) IS A STATUTORY POWER. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone - not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner. In this case what has happened is that the power of the Cane commissioner has been exercised by the Chief Minister, an authority not recognized by cl. (6) read with cl. (II) but the responsibility for making those orders was asked to be taken by the Cane Commissioner."

37. A similar question arose again in *chandrika -v- State of Bihar AIR 1984 SC 322*. The relevant statute empowered the Registrar, Cooperative Societies to extend the term of the Board of Directors. An order extending the term was passed by the Registrar as directed by the Chief Minister.

38. Though the attention of the Supreme Court was not invited to *purtabpur Co. Ltd Case*, as referred to above the Court independently held the section illegal and said – "The action of the Chief Minister meant the very negation of the beneficial measures contemplated by the Act."

39. Again in *Anirudhsinhji Jadija -v- State of Guzrat AIR 1995 SC 2390*, an offence was committed under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA). The District Superintendent of Police did not give approval on his own but requested the Additional Chief Secretary to accord permission to proceed under the Act, which was granted.

40. Setting aside the order the Supreme Court of India said: "The present was thus a clear case of exercise of power on the basis of external dictation. The dictation that came on the prayer of the DSP will not make any difference to the principle. The DSP did not exercise the Jurisdiction vested in him by the Statute and did not grant approval to the recording of information under TADA in exercise of his discretion."

41. In *Commissioner of Police, Bombay -v- Gordhandas Bhanji AIR 1952 SC 16* the order purported to have been passed by the Commissioner of Police in the exercise of his power under Bombay Police Act, 1902 and the rules made thereunder by a granting a license for the construction of a cinema theatre. But later on cancelled it at the direction of the State Government. The Supreme Court of India set aside the said order as the commissioner acted illegally in doing so on the dictate of the Government.

42. Further the Supreme Court of India reiterated the said proposition in *State of Punjab -v- Hari Kishan Sharna, AIR 1966 SC 1081*. Therein Supreme Court of India held that the State Government was not justified in assuming jurisdiction which had been conferred on the licensing authority by Section 5(1) and (2) of the Punjab Cinemas (Regulation) Act. For the reasons mentioned above it was held that the impugned orders are liable to be struck down as they were not made by the prescribed authority.

43. In *U.P. -V- Maharaja Dharmendra AIR 1989 SC 997* when an authority, at the dictation of the government, issued revocation of a building plan earlier approved, the India Supreme Court quashed the notice.

44. In *Manseeklal Vithalas Chaohan -v- State of Gujrat AIR 1997 SC 3400*, the Government did not grant sanction to prosecute the appellant (public servant) under the Prevention of Corruption Act. The complainant filed a petition in the High Court and the High Court 'directed' the authorities to

50. In the result, all the Rules are made absolute without any order as to cost. The notices impugned against are declared to have been made without lawful authority having no legal effect and hereby set aside.

51. However, the VAT authority can indelicately issue notices or take steps in accordance with the law governing the field.

52. Let a copy of this judgment be sent to the office of the comptroller and Auditor General for future reference and guidance.