

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 31 of 2021

Appellant :- Rajit Ram Yadav

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Ajay Kumar Srivastava, Ramesh Chandra Dwivedi, Samir Sharma (Senior Adv.)

Counsel for Respondent :- C.S.C., Sunil Kumar Misra

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Manoj Kumar Gupta, J.

Hon'ble Vikas Budhwar, J.

(per Manoj Kumar Gupta, J.)

1. The present reference to Larger Bench is on the following questions: -

"(a) Whether an intra court appeal under Chapter VIII Rule 5 of the High Court Rules against a judgment of single Judge in a writ proceeding under Article 226 of the Constitution of India preferred against an order passed by an authority exercising appellate or revisional power under U.P. State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 would be maintainable?

(b) Whether the Division Bench decision in the case of U.P.S.R.T.C. Thru R.M. Vs. Abhay Raj Singh and 2 others (supra) or the earlier two Division Bench decisions, namely, Jageshwar Prasad Tiwari Vs. U.P.S.R.T.C. and others (supra) and Madan Pal Singh Vs. State of U.P. and others (supra), lays down the correct law ?"

The backdrop in which the reference has been made:

2. The appellant was a Conductor in the U.P. State Road Transport Corporation (for short hereinafter referred to as "UPSRTC"). It has been constituted by a notification dated 31.5.1972 by the State

Government, issued under Section 3 of the Road Transport Corporations Act, 1950 (for short hereinafter referred to as “the Act”). The appellant was removed from service by order dated 5.10.2019, passed by Assistant Regional Manager, UPSRTC (the sixth respondent herein). The appellant being aggrieved thereby, filed a departmental appeal, but it came to be dismissed by order dated 16.3.2020, passed by Regional Manager, UPSRTC (the fifth respondent herein). The matter was taken up in revision, which too came to be dismissed by order dated 12.11.2020, passed by Chairman, UPSRTC (the fourth respondent herein). The appellant challenged all the aforesaid orders by filing Writ – A No. 254 of 2021 before this Court. It has been dismissed by a learned Single Judge by order dated 13.1.2021 on the ground of availability of alternative remedy.

3. The appellant has thereafter preferred the instant appeal challenging the judgment of the learned Single Judge.

4. When the appeal came up for consideration before a Division Bench of this Court, it was contended on behalf of the respondents that special appeal would not be maintainable in view of the exceptions contained in Chapter VIII Rule 5 of the Rules of Court. Reliance was placed on a Division Bench judgment of this Court in **UPSRTC through RM vs. Abhai Raj Singh and 2 others**¹. On the other hand, it was contended on behalf of the appellant that special appeal would be maintainable as the power has been exercised under the regulations

¹ Special Appeal (Defective) No. 862 of 2014, decided on 30.10.2014.

framed under a Central Act in respect of matters enumerated in the Union List. It would therefore not fall within the ambit of the exclusions stipulated under Chapter VIII Rule 5 of the Rules of Court. In support of the contention, reliance was placed on Division Bench judgments of this Court in **Jageshwar Prasad Tiwari vs. UPSRTC and Others**² and **Madan Pal Singh vs. State of U.P. and Others**³.

5. The Division Bench which heard the appeal noticed that the judgment in **Abhai Raj Singh and 2 others**¹ proceeded on a wrong assumption that the legislation under which the orders were passed by the officers/authority, was a State Legislation, although it is a Central Legislation, but as the said judgment was passed by Bench of co-equal strength therefore, having regard to judicial propriety, the matter was referred to the Larger Bench after formulating the aforesaid questions.

6. Before we proceed to record the rival contentions, it would be advantageous to have an overview of the existing legal provisions and the legislative history of special appeals or Letters Patent Appeals as was the nomenclature assigned to such appeals at the inception of such jurisdiction.

History of Statutory Regime of Letters Patent Appeals: -

7. On 17th March, 1866 High Court of Judicature for the North-Western Provinces was established by the Royal Charter. It conferred upon the newly formed High Court, Civil, Criminal, Testamentary and

2 2018 (4) ADJ 263 (DB)

3 Special Appeal No. 1488 of 2006, decided on 22.5.2014.

Intestate as well as Matrimonial jurisdiction. Clause 10 of the Letters Patent dated 17th March, 1866 provided for appeals to the High Court from judgement of one Judge in certain circumstances. As intra-court appeal was a creation of Letters Patent, it was christened as Letters Patent Appeal. Clause 10 reads as follows:-

"10. And We do further ordain that an appeal shall lie to the said High Court of Judicature for the North-Western Provinces from the judgement (not being a sentence or order passed or made in any criminal trial) of one judge of the said High Court or of one judge of any Division Court, pursuant to Section 13 of the said recited Act, and that an appeal shall also lie to the said High Court from the judgment (not being a sentence or order as aforesaid) of two or more Judges of the said High Court, or of such Division Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court, or of such Division Court in such case shall be to Us, Our Heirs or Successors, in Our or their Privy Council, as hereinafter provided."

8. By a supplementary Letters Patent dated 11th March, 1919, the name of the High Court was changed to – High Court of Judicature at Allahabad.

9. On 28th January, 1928, Clause 10 of the Letters Patent was amended as follows:

"10. And We do further ordain that an appeal shall lie to the said High Court of Judicature at Allahabad from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions Section 107 of the Government of India Act, or in the

exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything here- inbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall to Us, Our Heirs or Successors in Our or Privy Council, as herein provided."

10. On 26th January, 1929, Clause 10 was further amended so as to provide as follows:

"In the tenth clause of the said Letters Patent between the words 'pursuant to section 108 of the Government of India Act, made' and the words 'in the exercise of appellate jurisdiction' the words 'or or after the first day of February One thousand nine hundred and twenty-nine' shall be inserted."

11. Clause 10, after amendment, reads as follows:-

"10. And we do further ordain that an appeal shall lie to the said High Court of Judicature at Allahabad from the judgment (not being a judgment passed in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of revisional, jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of Criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made, on or after the first day of February one thousand nine hundred and twenty-nine in the

exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other Judgments of Judges of the said High Court or of such Division Court shall be to us, Our Heirs or successors or our or their Privy Council, as hereinafter provided."

12. After independence, the Chief Court of Oudh was amalgamated with the High Court of Judicature at Allahabad in pursuance of U.P. High Courts (Amalgamation) Order, 1948 vide notification published in Government of India Gazette (Extraordinary) dated 19th July, 1948 and the Letters Patent of Her Majesty dated 17th March, 1866 stood abrogated. Clause 17 of the said Order provided as follows:

"17. As from the appointed day-

(a) the Letters Patent of Her Majesty, dated the 17th March, 1866, establishing the High Court of Judicature for the North-Western Provinces and Chapter II of the Oudh Courts Act, 1925 (U. P. Act .IV of 1925), shall cease to have effect except for the purpose of construing, or giving effect to, the provisions of this Order;"

13. At the same time, the provisions of the Amalgamation Order were made subject to any provision made by the legislature or authority having power to make such provision. Clause 18 of the Amalgamation Order, which so provided, is extracted below: -

"18. Nothing in this Order shall prejudice the application to the new High Court of any relevant provisions of the Act, and this Order shall have effect subject to any provisions that may be made on or after the appointed day with respect to the new High Court by any Legislature or authority having power to make such provision."

14. Article 225 of the Constitution of India provided that jurisdiction and law administered in any existing High Court shall be the same as immediately before the commencement of this Constitution subject to provisions of the Constitution and to the provisions of any law of the appropriate legislature made by virtue of powers conferred on that Legislature by the Constitution.

15. The Rules of the Court were framed by Allahabad High Court in exercise of power conferred by Article 225 of the Constitution and all other powers enabling in that behalf. Article 225 of the Constitution is extracted below for ready reference: -

"225. Jurisdiction of existing High Courts. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make Rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction."

16. In Rules of the Court framed in 1952, Chapter VIII, Rule 5 provided for intra-court appeal, labelled as 'special appeal'. Chapter VIII, Rule 5 as it originally existed in the Rules of the Court, 1952 is quoted as below: -

"5. An appeal shall lie to the Court from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the Court, and not being an order made in the exercise of revisional jurisdiction, and not being an order passed or made in the exercise of its power of Superintendence, or in the exercise of Criminal Jurisdiction of one Judge, and an appeal shall lie to the Court from a judgment of one Judge made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the Court, where the Judge who passed the judgment declares that the cases is a fit one for appeal."

17. In view of the circumstances obtaining after the establishment of the Supreme Court, a Bill was introduced, namely, the U.P. High Court (Abolition of Letters Patent Appeals) Bill, 1962, with the object of abolishing appeals against appellate jurisdiction of Single Judge.

18. U.P. Act No.14 of 1962, namely, the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 was passed by Uttar Pradesh Legislature which came into force with effect from 13th November, 1962. Section 3 of the aforesaid Act provided for abolition of special appeal from a judgment or order of one Judge of High Court, made in the exercise of appellate jurisdiction, in respect of a decree or order

made by a Court subject to the superintendence of the High Court.

Section 3 of U.P. Act No.14 of 1962 is quoted as below:--

"3. (1) No appeal, arising from a suit or proceeding instituted or commenced, whether prior or subsequent to the enforcement of this Act, shall be to the High Court from a judgment or order of one Judge of the High Court, made in the exercise of appellate jurisdiction, in respect of a decree or order made by a Court, subject to the Superintendence of the High Court, anything to the contrary contained in Clause 10 of the Letters Patent of Her Majesty, dated the 17th March, 1866, read with Clause 17 of the U.P. High Courts' (Amalgamation) Order, 1948, or in any other law, notwithstanding.

(2) Notwithstanding anything contained in sub-section (1) all appeals pending before the High Court on the date immediately preceding the date of enforcement of this Act shall continue to lie and be heard and disposed of as heretofore, as if this Act had not been brought into force."

19. In view of the provisions of U.P. Act No.14 of 1962, the Rules of the Court, 1952 were also amended vide notification dated 6th November, 1963. Chapter VIII, Rule 5 was substituted by the following Rule:---

"5. An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction) of one Judge."

20. In 1972 another Bill was introduced to further amend the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 so as to exclude Letters Patent Appeals in cases decided by Board of Revenue under various Tenancy Laws.

21. Accordingly, in terms of the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1972, Section 4 stood inserted, as follows: -

"4. (1) No appeal, arising from a suit or proceeding instituted or commenced, whether prior or subsequent to the commencement of this section, shall lie to the High Court from a judgment or order of one judge of the High Court, made in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution, in respect of a judgment, decree or order made or purported to be made by the Board of Revenue under the United Provinces Land Revenue Act, 1901, or the U.P. Tenancy Act, 1939, or the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or by the Director of Consolidation (including any other officer purporting to exercise the powers and to perform the duties of Director of Consolidation) under the U.P. Consolidation of Holdings Act, 1953, anything to the contrary contained in clause ten of the Letters Patent of Her Majesty, dated March 17, 1866, read with clauses 7 and 17 of the U.P. High Courts (Amalgamation) Order, 1948, or in any other law notwithstanding.

(2) Notwithstanding anything contained in sub-section (1), all appeals pending before the High Court on the date immediately preceding the date of commencement of this section shall be heard and disposed of as if this section had not been enacted."

22. That once again, further amendment was made in the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 inserting Section 5, with intent to narrow down the scope of Letters Patent Appeals.

Newly added Section 5 is extracted below:

"5. (1) No appeal, arising from an application or proceeding instituted or commenced, whether prior or subsequent to the commencement of this section, shall lie to the High Court from a judgment or order of one judge of the High Court, made in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution, in respect of a judgment or order made or purported to be made in the exercise or purported exercise of appellate or revisory jurisdiction by a District Judge, Additional District Judge, Civil Judge or Additional Civil Judge under any

Uttar Pradesh Act (including any Central Act as amended by an Uttar Pradesh Act) anything to the contrary contained in clause 10 of the Letters Patent of Her Majesty, dated March 17, 1866, read with clauses 7 and 17 of the U.P. High Courts (Amalgamation) Orders, 1948, or in any other law notwithstanding.

(2) Notwithstanding anything contained in sub-section (1), all appeals pending before the High Court on the date immediately preceding the date of commencement of this section shall be heard and disposed of as if this section had not been enacted."

23. Despite the aforesaid measures, the number of cases in the High Court, continued to increase and impediments in the way of speedy justice could not altogether be removed. It was, therefore, considered necessary to further amend the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 with a view to abolishing the Letters Patent Appeals against the judgment or order of a Single Judge of the High Court under Article 226 or Article 227 of the Constitution in respect of any judgment order or award of the Subordinate Courts, Tribunals or Statutory Arbitrators made in exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act relating to any of the matters enumerated in the State List or Concurrent List of the Seventh Schedule to the Constitution or in respect of any order made in exercise of the appellate or revisional jurisdiction under any such Act, by the State Government or any officer or authority. It is also being provided that the pending Letters Patent Appeal shall continue to be disposed of as before. The Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1981, was introduced accordingly. The

Statement of Objects and Reasons of the aforesaid Act were as follows:-

"Prefatory Note---Statement of Objects and Reasons.---Prior to the enactment of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962 a Letters Patent Appeal could (except in certain cases), be filed before a Division Bench of a High Court against the judgment of the Single Judge. In view of the circumstances obtaining after the establishment of the Supreme Court the said Act of 1962 was enacted under which Letters Patent Appeal against the judgment of a Single Judge of the Allahabad High Court given in exercise of his appellate jurisdiction arising out of the judgment of a Subordinate Court in civil or other proceedings was abolished.

2. Amendments were made in the aforesaid Act in 1972 and 1975 to abolish the Letters Patent Appeals against the judgments of a Single Judge of the High Court in writ petitions arising out of certain judgments of the Board of Revenue, the Director of Consolidation, the District Judge and the civil Judge.

3. Despite the aforesaid measures, the number of cases in the High Court, continued to increase and impediments in the way of speedy justice could not altogether be removed. It is, therefore, considered necessary to make a similar provision in the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 with a view to abolishing the Letters Patent Appeals against the judgment or order of a Single Judge of the High Court under Article 226 or Article 227 of the Constitution in respect of any judgment order or award of the Subordinate Courts, Tribunals or Statutory Arbitrators made in exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act relating to any of the matters enumerated in the State List or Concurrent List of the Seventh Schedule to the Constitution or in respect of any order made in exercise of the appellate or revisional jurisdiction under any such Act, by the State Government or any officer or authority. It is also being provided that the pending Letters Patent Appeal shall continue to be disposed of as before.

24. By 1981 Amendment Act, Section 5 of 1962 Act was substituted by the following provision:-

"2. Substitution of Section 5 of U.P. Act 14 of 1962.----For Section 5 of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962, the following section shall be substituted, namely:---

"5. Abolition of Letters Patent Appeals in certain other cases.---

(1) Notwithstanding anything to the contrary contained in Clause 10 of the Letters Patent of Her Majesty, dated March 17, 1866 read with Clauses 7 and 17 of the U.P. High Courts (Amalgamation) Order, 1948, or in any other law, no appeal arising from an application or proceeding, instituted or commenced whether prior or subsequent to the commencement of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1981, shall lie to the High Court from a judgment or order of one Judge of the High Court, made in the exercise of jurisdiction conferred by Articles 226 or 227 of the Constitution, in respect of any judgment, order or award---

(a) of a Tribunal, Court of Statutory Arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or
(b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act.

(2) Notwithstanding anything contained in sub-section (1), all appeal of the nature referred to in that sub-section pending before the High Court immediately before the commencement of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1981, shall be heard and disposed of as if that sub-section had not been enacted."

25. Chapter VIII, Rule 5 of the Rules of the Courts was again amended by Notification dated 27th July, 1983 to bring it in accord with Section 5 of the Amendment Act, 1981. Chapter VIII, Rule 5 now existing in the Rules of the Court is as follows:---

"5. Special Appeal.---An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of

criminal jurisdiction (or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award---(a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitutions or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

26. It transpires from the legislative history of Letters Patent Appeals that at present, the special appeal is governed by U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962, as amended from time to time, and Chapter VIII Rule 5 of the Rules of Court.

27. It is well settled that an appeal is a creature of statute and it can be circumscribed by the conditions in the Grant. A Constitution Bench of the Supreme Court in **South Asia Industries Pvt. Ltd. vs. S.B. Sarup Singh**⁴, considered the Letters Patent of the Lahore High Court and held that if the appropriate legislature has, expressly or by necessary implication, not taken away the right to appeal, the inevitable conclusion is that the appeal shall lie from the judgment of a Single Judge. In a later judgment in **Sharda Devi vs. State of Bihar**⁵, the Supreme Court has reiterated the aforesaid legal proposition in paragraph 9 of the Law Report -

“9. A Letters Patent is the charter under which the High Court is established. The power given to a High Court under the Letters Patent are akin to the constitutional powers of a High Court. Thus

4 AIR 1965 SC 1442

5 (2002) 3 SCC 705

when a Letters Patent grants to the High Court a power of appeal, against a judgment of a single Judge, the right to entertain the appeal would not get excluded unless the statutory enactment concerned excludes an appeal under the Letters Patent.”

28. A Full Bench of this Court in **Sheet Gupta vs. State of U.P. (FB)**⁶, considered the existing legal provisions, particularly Chapter VIII Rule 5 of the Rules of the Court, relating to special appeals and succinctly laid down the class of cases where special appeal would not lie. It would be advantageous to extract paragraph 15 of the Full Bench judgment -

“15. Having given our anxious consideration to the various plea raised by the learned counsel for the parties, we find that from the perusal of Chapter VIII Rule 5 of the Rules a special appeal shall lie before this Court from the judgment passed by one Judge of the Court. However, such special appeal will not lie in the following circumstances:

“1. The judgment passed by one Judge in the exercise of appellate jurisdiction, in respect of a decree or order made by a Court subject to the Superintendence of the Court;

2. the order made by one Judge in the exercise of revisional jurisdiction;

3. the order made by one Judge in the exercise of the power of Superintendence of the High Court;

4. the order made by one Judge in the exercise of criminal jurisdiction;

5. the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India in respect of any judgment, order or award by

(i) the tribunal,

(ii) Court or

(iii) statutory arbitrator

made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India;

6 AIR 2010 All 46

6. the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or 227 of the Constitution of India in respect of any judgment, order or award of

- (i) the Government or
- (ii) any officer or
- (iii) authority,

made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act, i.e. under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India.”

Analysis:-

29. One of the class of cases culled out in para-15(6) in **Sheet Gupta**⁶ where special appeal would not lie is when the jurisdiction is exercised by Single Judge under Article 226 or 227 in respect of any judgment, order or award of

- “(i) the Government or
- (ii) any officer or
- (iii) authority,

made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act, i.e. under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India.”

30. For an appeal to fall under the exclusion clause noted above, it should be (i) under any Uttar Pradesh Act or under any Central Act, (ii) with respect to any of the matter enumerated in the State List or the Concurrent List.

31. The orders impugned in the writ petition were passed by the Officers/Authority in exercise of appellate and revisional jurisdiction conferred under Uttar Pradesh Road Transport Corporation Employees

(Other than Officers) Service Regulations, 1981. The Regulations have been framed by UPSRTC in exercise of the power delegated on it by virtue of Section 45 of the Act, which undoubtedly is a Central Act.

Section 45 of the Act is extracted for convenience of reference: -

“45. Power to make regulations.—(1) A Corporation may, with the previous sanction of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the manner in which, and the purposes for which, persons may be associated with the Board under section 10;

(b) the time and place of meetings of a the Board and the procedure to be followed in regard to transaction of business at such meetings;

(c) the conditions of appointment and service and the scales of pay of officers and other employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser, or as the case may be, the Chief Accounts Officer-cum-Financial Adviser.

(d) the issue of passes to the employees of the Corporation and other persons under section 19;

(e) the grant of refund in respect of unused tickets and concessional passes under section 19.”

32. The first question which therefore arises is whether the exercise of power by the Officers/Authority under the Regulations could be said to be a power exercised under a Central Act.

33. In **Sheet Gupta**⁶, the Full Bench considered a similar question in reference to the power exercised by the Officers/Authority under the Uttar Pradesh Scheduled Commodities Distribution Order, 2004 framed under Section 3 read with Section 5 of the Essential Commodities Act, 1955. The contention that the appellate power in the said case, exercised by the Divisional Commissioner, was under the Distribution Order framed by the State Government in exercise of its delegated power under Section 5 of the Essential Commodities Act, 1955 and not under the Act itself and therefore, would not fall within the clutches of the exclusion clause was repelled holding that an order framed under the delegated provision of the Act is “definitely a power exercised under the Act” and it is not necessary that the power should be “given by the Act” itself. In reaching to the aforesaid conclusion, the Full Bench relied on the judgment of the Supreme Court in **Dr. Indramani Pyarelal Gupta and others vs. W.R. Natu and others**⁷. Further, in the said case, the Essential Commodities Act, 1955 was found to have been enacted under Article 246(2) in respect of matters enumerated in the Concurrent List, and therefore the special appeal was held to be not maintainable. The relevant discussion in this regard as contained in para-17 of the Law Report is extracted below:-

“The exercise of original jurisdiction by any tribunal, Court or statutory arbitrator or exercise of appellate or revisional jurisdiction by the Government or any officer or authority is to be under any U.P. Act or any Central Act with respect to the matters enumerated in the State List or the Concurrent List in the Seventh

⁷ AIR 1963 SC 274

Schedule to the Constitution of India. The powers have to be exercised under the Act and not given by the Act. As held by the Apex Court in the case of Dr. Indramani Pyarlal Gupta (supra) the words 'powers exercised under the Act' would comprehensively embrace in its power conferred by any bye laws or delegated legislation. If the appellate or revisional powers has been conferred by the Government through an order issued under the delegated provisions of the Act then it is definitely a power exercised under the Act and in that event no special appeal under Chapter VIII Rule 5 of the Rules would lie against the judgment and order passed by the learned single Judge. In the present case, we find that the Commissioner had exercised powers conferred under Clause 28 of the Distribution Order, 2004, which order has been passed under the provisions of the Act, therefore, the appellate power has been exercised under the Act and, thus, no special appeal would lie.”

(emphasis supplied)

34. The enunciation of law by Apex Court on the aforesaid issue in **Dr. Intramani Pyarelal Gupta**⁷ is extracted to make the legal position more explicit :-

"15. A more serious argument was advanced by learned Counsel based upon the submission that a power conferred by a bye-law framed under S.11 or 12 was not one that was 'conferred "by or under the Act or as may be prescribed". Learned Counsel is undoubtedly right in his submission that a power conferred by a law is not one conferred "by the Act", for in the context the expression "conferred by the Act" would mean "conferred expressly or necessary implication by the Act itself." It is also common ground that a bye law framed under Sections 11 or 12 could not fall within the phraseology "as may be prescribed", for the expression "prescribed" has been defined to mean "by rules under the Act", i.e, those framed under S.28 and a bye law is certainly not within that description. The question therefore is whether a power "conferred by a bye-law could be held to be a power conferred under the Act". The meaning of the words "under the Act" is well known. "By an Act would mean by a provision directly enacted in the statute in question and which is gatherable from its express languages or by necessary implication therefrom. The words "under the Act" would in that context signify what is not directly to be found in the statute itself but is conferred

or imposed by virtue of powers enabling this to be done; in other words, bye-laws made by subordinate law-making authority which is empowered to do so by the parent Act.
(emphasis supplied)

35. The impugned orders have been made by the Officers/Authority exercising appellate and revisional powers conferred upon them by the Regulations. The Regulations have been framed 'under the Act.' It is a piece of delegated legislation. It owes its existence to Section 45 of the Act. The phrase 'under the Act' is wide enough to include the powers conferred by a delegated legislation framed under the Act, as held by Supreme Court in **Dr. Indramani Pyarelal Gupta**⁷ and Full Bench in **Sheet Gupta**⁶. Thus, it cannot be doubted that while passing the impugned orders, the officers/authority had acted under a Central Legislation.

36. The core issue however is whether the Act, albeit a Central Legislation, has been enacted in exercise of the legislative power conferred on the Parliament in the Union List or the Concurrent List. In case the power has been exercised in respect of any of the matters enumerated in the Union List, it would not be covered by the exception carved out under Chapter VIII Rule 5 of the Rules of the Court and the appeal would be maintainable. However, in case the Central Legislation is referable to any entry in the Concurrent List, it would fall within the clutches of the exclusion clause of Rule 5 Chapter VIII and special appeal would not be maintainable.

37. Learned counsel for the respondents contended that the Regulations framed by the Corporation under Section 45 of the Act under which the appellate and revisional powers have been exercised relates to conditions of service of the employees of the Corporation and is referable to Entries 22 and 24 of the Concurrent List. Therefore, appeal would not be maintainable. He placed reliance on the judgment of this Court in **UPSRTC through R.M. vs. Abhay Raj Singh and 2 others⁸**, **A.P. Jeet Singh (Constable) vs. State of U.P. & others⁹**, and **M/s Vajara Yojna Seed Farm, Kalyanpur and Others vs. Presiding Officer, Lower Court & Another¹⁰** and judgment of the Supreme Court in **State of U.P. & Others vs. Madhav Prasad Sharma¹¹**.

38. Per contra, learned counsel for the appellant submitted that the Act relates to incorporation and regulation of Road Transport Corporation and is referable to Entries 43 & 44 of List-1 of the Seventh Schedule to the Constitution. Therefore, the instant appeal would not fall under the exclusion clauses of Chapter-VIII Rule 5 of the Rules of the Court. He further submitted that the laying down of service conditions of the employees is incidental to the main object of the Act viz. incorporation and regulation of Road Transport Corporations. It is urged that while determining the field of legislation the Court has to examine the enactment as a whole in context of its main object. The

8 Special Appeal Defective No. 862 of 2014 decided on 30.10.2014

9 2013 (8) ADJ 715 (DB)

10 2003 ALL.L.J 883

11 2011 (2) SCC 212

true subject matter of legislation is to be ascertained to find out the field of legislation i.e. what constitutes the pith and substance of an enactment. Merely because the legislation incidentally encroaches on matter assigned to another list would not be determinative of the Entry under which a particular enactment has been framed. If so examined, the Act and the Regulations framed thereunder, though incidentally touches upon certain subjects in the Concurrent List would still be referable to the legislative power of the Parliament under the Union List. In support of his contention, he placed reliance on the decisions of this Court in **Madan Pal Singh vs. State of U.P. and others**¹² and **Jageshwar Prasad Tiwari vs. UPSRTC & others**¹³.

39. Entries 43 & 44 of List-1 are as follows :-

“43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies.

44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.”

40. Entries 22 & 24 of List-III are as follows:

“22. Trade unions; industrial and labour disputes.

24. Welfare of labour including conditions of work, provident funds, employers’ liability, workmen’s compensation, invalidity and old age pensions and maternity benefits.”

12 Special Appeal No. 1488 of 2006 decided on 22.05.2014

13 2018 (4) ADJ 263 (DB)

41. Undoubtedly, the Regulations whereunder the orders impugned before the Writ-Court were passed relates to the conditions of service of employees of the Corporation in respect of which power has been conferred on the Corporation to frame Regulations by virtue of Section 45(2)(c). The core issue is whether the said fact is sufficient to bring the legislation under which the Regulations have been framed within the four corners of Entries 22 & 24 of the Concurrent List as is contended by learned counsel for the respondents. In order to determine the question whether the Legislature has kept itself within bounds of its jurisdiction or has encroached upon a forbidden field, the Courts have consistently applied the doctrine of ‘pith and substance’. The main object and the true scope and effect of legislation is determined in its entirety and even if some topic incidentally encroaches on matter assigned to another Legislature, it does not detract from the true nature of legislation or the field under which it has been enacted. In **K.K. Baskaran v. State**¹⁴, the Supreme Court explained the principles governing the applicability of the doctrine of pith and substance as follows:

“21. The doctrine of pith and substance means that an enactment which substantially falls within the powers expressly conferred by the Constitution upon a legislature which enacted it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature. The Court must consider what constitutes in pith and substance the true subject-matter of the legislation. If on such examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid even

14 (2011) 3 SCC 793

though it incidentally trenches on matters beyond its legislative competence, vide *Union of India v. Shah Goverdhan L. Kabra Teachers' College*, (2002) 8 SCC 228 (SCC para 7).

22. For applying the doctrine of pith and substance regard is to be had to the enactment as a whole, its main objects and the scope and effect of its provisions vide Special Reference No. 1 of 2001, *In re*, (2004) 4 SCC 489 (SCC para 15). For this purpose the language of the entries in the Seventh Schedule should be given the widest scope of which the meaning is fairly capable, vide *State of W.B. v. Kesoram Industries Ltd.*, (2004) 10 SCC 201, [SCC para 31(4)], *Union of India v. Shah Goverdhan L. Kabra Teachers' College*, (2002) 8 SCC 228 (SCC para 6) and *ITC Ltd. v. State of Karnataka*, 1985 Supp SCC 476 (SCC para 17).”

Applying the doctrine of pith and substance in considering overlapping of fields in Central and State List, it has been held as follows:

“18. It often happens that a legislation overlaps both List I as well as List II of the Seventh Schedule. In such circumstances, the doctrine of pith and substance is applied. We are of the opinion that in pith and substance the impugned State Act is referable to Entries 1, 30 and 31 of List II of the Seventh Schedule and not Entries 43, 44 and 45 of List I of the Seventh Schedule.

19. It is well settled that incidental trenching in exercise of ancillary powers into a forbidden legislative territory is permissible vide the Constitution Bench decision of this Court in *State of W.B. v. Kesoram Industries Ltd.*, (2004) 10 SCC 201 [vide SCC paras 31(4), (5) & (6) and 129(5)]. Sharp and distinct lines of demarcation are not always possible and it is often impossible to prevent a certain amount of overlapping vide *ITC Ltd. v. State of Karnataka*, 1985 Supp SCC 476 (SCC para 17). We have to look at the legislation as a whole and there is a presumption that the legislature does not exceed its constitutional limits.”

42. In ***State Bank of India v. Santosh Gupta***¹⁵, the question arose concerning the right of banks to enforce security interests outside the courts' process by acting under Section 13 of the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security*

¹⁵ (2017) 2 SCC 538

Interest Act, 2002 (for short ‘SARFAESI Act’) vis-a-vis the provision of the Transfer of Property Act of Jammu & Kashmir, 1920 (for short ‘the JK Act’). The applicability of the SARFAESI Act in respect of State of Jammu & Kashmir was being objected to on the ground that the provisions thereof come in conflict with Section 140 of the JK Act. The contention was repelled by examining the object of the Central Legislation i.e. the SARFAESI Act. In doing so, the doctrine of pith and substance was applied. It was held that the legislation would fall under List-1 Entry-45 which relates to ‘banking’. Although, the transfer of property by way of sale or assignment is stipulated as one of the several ways for recovery of debts under the SARFAESI Act, but when the said Act is considered in the light of the objects with which it has been enacted, it cannot be said to be relatable to the subject of ‘transfer of property’, covered under List-III Entry 6. The relevant observations are as follows:

“37. Applying the doctrine of pith and substance to SARFAESI, it is clear that in pith and substance the entire Act is referable to Entry 45 List I read with Entry 95 List I in that it deals with recovery of debts due to banks and financial institutions, inter alia through facilitating securitisation and reconstruction of financial assets of banks and financial institutions, and sets up a machinery in order to enforce the provisions of the Act. In pith and substance, SARFAESI does not deal with “transfer of property”. In fact, insofar as banks and financial institutions are concerned, it deals with recovery of debts owing to such banks and financial institutions and certain measures which can be taken outside of the court process to enforce such recovery. Under Section 13(4) of the SARFAESI, apart from recourse to taking possession of secured assets of the borrower and assigning or selling them in order to realise

their debts, the banks can also take over the management of the business of the borrower, and/or appoint any person as manager to manage secured assets, the possession of which has been taken over by the secured creditor. Banks as secured creditors may also require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom money is due or payable to the borrower, to pay the secured creditor so much of the money as is sufficient to pay the secured debt. It is thus clear that the transfer of property, by way of sale or assignment, is only one of several measures of recovery of a secured debt owing to a bank and this being the case, it is clear that SARFAESI, as a whole, cannot possibly be said to be in pith and substance, an Act relating to the subject-matter “transfer of property”.”

43. A Constitution Bench of Supreme Court in **Pandurang Ganpati Chaugule v Vishwasrao Patil Murgud Sahakari Bank Limited**¹⁶ considered the issue as to whether Cooperative Banks which are Cooperative Societies also are governed by List-1 Entry-45 or List-II Entry 32 of the Seventh Schedule to the Constitution and whether Central Government has the power to provide for different mode of recovery in respect of Cooperative Banks under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, though Cooperative Banks are registered and regulated by the State Legislation viz. the Maharashtra Cooperative Societies Act, 1960. The Constitution Bench after examining in great detail the main object of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act held that it was within the competence of the Parliament to include Cooperative Societies carrying on banking activities, registered under the

¹⁶ (2020) 9 SCC 215

Maharashtra Cooperative Societies Act, 2002 under the definition of 'banking company' under the Banking Regulation Act, 1949. The Parliament is held to have legislative competence under List-I Entry 45 to provide for additional procedures for recovery under Section 13 of the SARFAESI Act with respect to Cooperative Banks and it does not in any manner impinge upon the field occupied by List-II Entry-32 under which the State Act has been enacted.

44. In **Delhi Cloth & General Mills Co. Ltd.**¹⁷ upon which reliance was placed by the Constitution Bench, it was held that in pith and substance, if a legislation falls within one or the other Entry of a particular List but some portion of the subject matter of the legislation incidentally trenches upon or enters a field under another List, then it must be held to be valid in its entirety. The relevant portion is as follows:

“33. Mr O.P. Malhotra raised a contention as to the legislative competence of Parliament to enact Section 58-A and the Deposits Rules enacted in exercise of the power conferred by Section 58-A read with Section 642 of the Companies Act, 1956. This is only to be mentioned to be rejected. Mr Malhotra urged that when a company invites and accepts deposits, there comes into existence a lender-borrower relationship between the depositor and the company, and therefore the legislation dealing with the subject squarely falls under Entry 30 of the State List, 'money lending and moneylenders'. If this submission were to carry conviction, every depositor in the bank would be a moneylender and the transaction would be one of money lending. Is the banking industry to be covered under Entry 30? On the other hand, Entry 45 in Union List is a specific Entry 'Banking' and therefore any legislation relating to banking would be referable to Entry 45 in the Union List. Entry 43 in the Union List is: 'Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial

17 (1983) 4 SCC 166

corporations but not including cooperative societies'. Entry 44 refers to 'incorporation, regulation, and winding up of corporation whether trading or not when business is not confined to one State but not including universities'. Obviously the power to legislate about the companies is referable to Entry 44 when the objects of the company are not confined to one State and irrespective of the fact whether it is trading or not. When a law is impugned on the ground that it is ultra vires the powers of the legislature which enacted it, what has to be ascertained is the true character of the legislation. To do that one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions (see A.S. Krishna v. State of Madras, SCR p. 410). To resolve the controversy if it becomes necessary to ascertain to which entry in the three Lists, the legislation is referable, the court has evolved the doctrine of pith and substance. If in pith and substance, the legislation falls within one entry or the other but some portion of the subject-matter of the legislation incidentally trenches upon and might enter a field under another List, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence (see Ishwari Khaetan Sugar Mills (P) Ltd. v. State of U.P., (1980) 3 SCR 331, 343, Union of India v. H.S. Dhillon, (1972) 2 SCR 33, Kerala State Electricity Board v. Indian Aluminium Company Ltd., (1976) 1 SCR 552 and State of Karnataka v. Ranganatha Reddy (1978) 1 SCR 641"

(emphasis supplied)

45. In **State of Madhya Pradesh v. M.V. Narasimhan**¹⁸, the Supreme Court repelled the contention that doctrine of pith and substance is applicable only where the legislative competence is in issue. It has been held that the said doctrine can conveniently be applied to cases involving statutory interpretation founded on source of legislation as in the instant case. The relevant observations are as follows:

“173. The doctrine of pith and substance can be applied to examine the validity or otherwise of a legislation for want of legislative competence as well as where two legislations are embodied together for achieving the purpose of the principal Act. Keeping in view that we are construing a federal Constitution, distribution of legislative powers between the

18 (1975) 2 SCC 377

Centre and the State is of great significance. Serious attempt was made to convince the Court that the doctrine of pith and substance has a very restricted application and it applies only to the cases where the court is called upon to examine the enactment to be ultra vires on account of legislative incompetence.

174. We are unable to persuade ourselves to accept this proposition. The doctrine of pith and substance finds its origin from the principle that it is necessary to examine the true nature and character of the legislation to know whether it falls in a forbidden sphere. This doctrine was first applied in India in *Prafulla Kumar Mukherjee v. Bank of Commerce Ltd.*, (1946-47) 74 IA 23 : AIR 1947 PC 60. The principle has been applied to the cases of alleged repugnancy and we see no reason why its application cannot be extended even to the cases of present kind which ultimately relates to statutory interpretation founded on source of legislation.”

(emphasis supplied)

46. In another Constitution Bench in **H.C. Narayanappa and others v. State of Mysore and others**¹⁹ the Supreme Court held that while interpreting Entries in a List in context of legislative competence, widest possible amplitude should be given and not a narrow or restricted meaning:-

“The expression used in a constitutional enactment conferring legislative powers must be construed not in any narrow or restricted sense but in a sense beneficial to the widest possible amplitude of its powers: *Navinchandra Mafatlal v. Commissioner of Income-tax, Bombay City*, 1955-1 SCR 829 at p. 836 : (S) AIR 1955 SC 58 at p. 61); *United Provinces v. Atiqua Begum*, 1940 FCR 110 : (AIR 1941 FC 16).”

47. The Road Transport Corporations Act, 1950 provides for the incorporation and regulation of Road Transport Corporations. It extends to whole of India. It envisages establishment of Road Transport

19 AIR 1960 SC 1073

Corporations in the States. Section 3 of the Act is extracted for ready reference :-

“3. Establishment of Road Transport Corporations in the States.—The State Government having regard to—
(a) the advantages offered to the public, trade and industry by the development of road transport;
(b) the desirability of co-ordinating any form of road transport with any other form of transport;
(c) the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein;
may, by notification in the Official Gazette, establish a Road Transport Corporation for the whole or any part of the State under such name as may be specified in the notification.”

48. By virtue of Section 4 of the Act, every Corporation is a body corporate by the name notified under Section 3 having perpetual succession and a common seal. The general superintendence, direction and management of the affairs and business of a Corporation vests in a Board of Directors. The Board comprises of a Chairman and such other Directors, as the State Government may think fit to appoint. The Board has been given power under Section 12 to appoint committees and delegate its functions. By virtue of Sections 14 and 19, the Corporation has power to provide for the conditions of service and other matters relating to the employees of the Corporation.

49. Under Section 17-A of the Road Transport Corporations Act, 1950, the Corporation is conferred with power to establish one or more subsidiary corporations for the more efficient discharge of its functions.

50. Section 18 of the Act lays down the general duty of Corporation which is to provide or secure or promote the provision of an efficient, adequate, economical and properly coordinate system of road transport services in the State or part of the State for which it is established and in any extended area.

51. The powers of the Corporation are stipulated under Section 19, which are as follows:

“(a) to operate road transport services in the State and in any extended area;

(b) to provide for any ancillary service;

(c) to provide for its employees suitable conditions of service including fair wages, establishment of provident fund, living accommodation, places for rest and recreation and other amenities;

(d) to authorise the issue of passes to its employees and other persons either free of cost or at concessional rates and on such conditions as it may deem fit to impose;

(e) to authorise the grant of refund in respect of unused tickets and concessional passes.”

52. Sub-Section (2) of Section 19 of the Act provides for additional powers which are as follows:

“(a) to manufacture, purchase, maintain and repair rolling stock, vehicles, appliances, plant, equipment or any other thing required for the purpose of any of the activities of the Corporation referred to in sub-section (1);

Explanation.—In this clause, the expression “manufacture” does not include the construction of the complete unit of a motor vehicle except for purposes of experiment or research;

(b) to acquire and hold such property, both movable and immovable, as the Corporation may deem necessary for the purpose of any of the said activities, and to lease, sell or otherwise transfer any property held by it;

(c) to prepare schemes for the acquisition of, and to acquire, either by agreement or compulsorily in accordance with the law of acquisition for the time being in force in the State concerned and with such procedure as may be prescribed, whether absolutely or for any period, the whole or any part of any undertaking of any other person to the extent to which the activities thereof consist of the operation of road transport services in that State or in any extended area;

(d) to purchase by agreement or to take on lease or under any form of tenancy any land and to erect thereon such buildings as may be necessary for the purpose of carrying on its undertaking;

(e) to authorise the disposal of scrap vehicles, old tyres, used oils, any other stores of scrap value, or such other stores as may be declared to be obsolete in the prescribed manner;

(f) to enter into and perform all such contracts as may be necessary for the performance of its duties and the exercise of its powers under the Act;

(g) to purchase vehicles of such type as may be suitable for use in the road transport services operated by the Corporation;

(h) to purchase or otherwise secure by agreement vehicles, garages, sheds, office buildings, depots, land, workshops, equipment, tools, accessories to and spare parts for vehicles, or any other article owned or possessed by the owner of any other undertaking for use thereof by the Corporation for the purposes of its undertaking;

(i) to do anything for the purpose of advancing the skill of persons employed by the Corporation or the efficiency of the equipment of the Corporation or of the manner in which that equipment is operated, including the provision by the Corporation, and the assistance by the Corporation to others for the provision of facilities or training, education and research;

(j) to enter into and carry out agreements with any person carrying on business as a carrier of passengers or goods providing for the carriage of passengers or goods on behalf of the Corporation by that other person at a thorough fare or freight;

(k) to provide facilities for the consignment, storage and delivery of goods;

(l) to enter into contracts for exhibition of posters and advertising boards on and in the vehicles and premises of the Corporation and also for advertisement on tickets and other forms issued by the Corporation to the public;

(m) with the prior approval of the State Government to do all other things to facilitate the proper carrying on of the business of the Corporation.”

53. Section 45 of the Act as noted in the foregoing paragraphs empowers the Corporation to frame regulations with the previous sanction of the State Government and by notification in the Official Gazette. It, inter alia, includes the power to lay down conditions of appointment and service of its officers and employees.

54. It is evident from the scheme of the Act that the main object of the legislation is to provide for the incorporation and regulation of Road Transport Corporations in order to establish an adequate, economical and properly coordinated system of road transport services in the State or part of the State for which it is established having regard to the advantages offered to the public, trade and industry by the development of road transport.

55. In **Sita Ram Sharma and others vs. State of Rajasthan and others**²⁰

the Supreme Court has observed that the Road Transport Corporations Act, 1950 has been made by the Parliament under Item 43 of List-I.

The relevant observation made in this regard in para 11 of the Law Report is reproduced below:

“11. The Road Transport Corporation Act, 1950 is made by Parliament under Item 43 of List I. Section 19(2)(c) enables the Road Transport Corporation :

. . . to prepare schemes for acquisition of, and to acquire, either by agreement or compulsorily in accordance with the law of acquisition for the time being in force in the State concerned and with such procedure as may be prescribed, whether absolutely or for any period, the whole or any part of any undertaking of any other person to the extent to which the activities thereof consist of the operation of road transport services in that State or in any extended area.”

56. A Full Bench of Madhya Pradesh High Court in **M.P.S.R.T.C. Bairagarh, Bhopal vs. Ram Chandra & Others**²¹ considered the issue as

to whether Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 of the State Legislature would prevail over the Regulations framed by the Madhya Pradesh State Road Transport Corporation in exercise of its powers under Section 45 of the Road Transport Corporations Act, 1950 in respect of age of retirement of the employees. In that context, it was examined as to whether the Regulations would fall within the purview of Entries 43 and 44 of the Union List or Entry 24 of the Concurrent List of the Seventh Schedule to the Constitution.

20 (1974) 2 SCC 301

21 1977 SCC Online MP 25

57. The Full Bench applied the test of 'pith and substance' in determining the legislative field under which the Act has been enacted. It has been held that the source of power of the Legislation are Entries 43 & 44 of the Union List. The contention that the Regulation being under Section 45(2)(c) of the Act which relates to conditions of service of employees, is referable to Entry 22 of the Concurrent List has been repelled holding that the Act, when examined as a whole, is referable to the exclusive powers reserved with the Parliament under the Union List (Entries 43 and 44) and even if it incidentally entrenches upon some subject in the Concurrent List, it is of no consequence. The relevant observations in this behalf are as follows:

“8. The Madhya Pradesh State Road Transport Corporation was established under Section 3 of the Act. In exercise of its powers under S. 45, it has made regulations which, inter alia, provide for conditions of appointment and service within the meaning of Cl. (c) of sub-section (2) of S. 45, Regulation 59 reads thus:—

“59. Employees of State Transport are liable to compulsory, retirement on the date of their completion of fifty eight years of age unless specifically permitted by the Corporation to continue in service for a specified period thereafter, but he must not be retained after the age of 60 years without the sanction of State Government.”

9. Now, the last mentioned subject comes within the purview of Entry 24 in the concurrent list of the Seventh Schedule to the Constitution : “Welfare of labour, including conditions of work, provident funds, employer's liability, workmen's compensation invalidity and old-age pensions and maternity benefits”. It must however, be said that the true subject-matter of the Corporation Act, in pith and substance, falls within the legislative field of Parliament, by which it has been enacted. Even if S. 45(2)(c) incidentally trenches upon the subject-matter in the concurrent list, the validity of the Act is not affected, firstly because of the pith and substance doctrine,

and secondly, because the subject-matter in the concurrent list is also within the legislative field of Parliament.”

58. Applying the above propositions to the present case, we have reached the following results:

“(1) (a) The essential subject-matter of the Road Transport Corporations Act, 1950, falls within the purview of Entries 43 and 44 of the Union List. It is valid, being within the Parliament's Legislative competence.”

59. The aforesaid Full Bench judgment was considered by a Larger Bench of five Judges in **MPSRTC vs. Heeralal Ochhelal and others**. The Five Judges Full Bench did not approve the view of Full Bench in **Ramchandra's** case to the effect that Standing Order-11 relating to termination would also take within its ambit retirement of an employee. However, the judgment in **Ramchandra's** case in so far as it held that the Act was referable to power of the Parliament under Entries 43 & 44 of the Union List, was approved with the clarification that Article 254 would not apply as the standing orders were framed by the State Legislature under Entry 24 of the Concurrent List. Article 254 would apply only if there are two competing legislations, one made by the Parliament and another by the State Legislature pertaining to a subject in the Concurrent List, which was not the case under consideration.

60. The theory of pith and substance is now firmly grounded and is being applied without exception in interpreting legislative competence qua the Entries in various Lists under the Seventh Schedule to the Constitution.

61. Applying the doctrine of pith and substance, we are of the considered opinion that the Act is referable to List 1 Entry 43 and 44. The power to legislate in relation to ‘regulation of the corporations’ under the aforesaid Entries, includes within its umbrella the regulation of its workforce. The same is essential part of incorporation and making functional any corporation and in ensuring its proper functioning. Merely because Section 45(2)(c) invests the Corporation with power to make Regulations, inter alia, concerning the conditions of appointment and service of its employees, would not bring the legislation within the ambit of List-III Item No. 22 or 24, as is sought to be contended by counsel for the respondents. The enactment is with the avowed object of incorporation and regulation of Road Transport Corporations in different States in the country and the fountainhead of the Legislation are Entries Nos. 43 and 44 of List 1 and even if it incidently entrenches upon certain Entries in List-III, it would still be referable to the power of the Parliament under List-I.

62. The judgment of this Court in **Jageshwar Prasad Tiwari** (supra) and **Madan Pal Singh** (supra) takes the same view and which in our opinion is in accord with the interpretation made by us. The judgment of this court in **Abhai Raj Singh** (supra) although rightly holds that the expression “such Act” in Rule 5 of Chapter VIII of the Allahabad High Court Rules, would include a statutory regulation, but it proceeds on a

wrong assumption that the Regulations were framed in pursuance of a State Legislation. Therefore, in our considered opinion, the ultimate conclusion arrived at in **Abhai Raj Singh** (supra) to the effect that special appeal would not be maintainable, does not lay down the correct law. The exclusion clause would not be applicable as the orders of officers/authority had been passed under a Central Legislation in respect of matters enumerated in the Union List and not the State List or the Concurrent List in the Seventh Schedule to the Constitution of India.

63. In line with the aforesaid legal position, a Division Bench of this Court in **The District Judge, Rampur vs. Vinod Kumar Verma**²², held the special appeal to be maintainable as it arose out of an order passed by learned Single Judge against order of officers/authority under the Service Rules framed under Article 309 of the Constitution of India and not under any Central or State Act. The relevant part is extracted below: -

“13. The submission of the first respondent is that since the order of the Administrative Judge was passed in the exercise of appellate jurisdiction and the order of the learned single Judge has been passed in a writ petition under Article 226 of the Constitution challenging such order, a Special Appeal will not be maintainable. Reference has also been made to a decision of the Full Bench of this Court in *Sheet Gupta v. State of U.P.*, 2010 (1) ADJ 1: (AIR 2010 All 46) (FB).

14. There is no merit in the submission. Under Rule 5 of Chapter VIII, a Special Appeal will not be maintainable against an order passed in the exercise of the jurisdiction conferred by Article 226 or 227 of the Constitution in respect of any judgment, order or

22 2014 SCC Online All 15261

award (i) of a Tribunal, Court or Statutory Arbitrator made or purported to be made in the exercise of jurisdiction under any Uttar Pradesh Act or Central Act with respect to any of the matter enumerated in the State List or the Concurrent List of the Seventh Schedule of the Constitution or (ii) of the Government officer or authority, made or purported to be made in the exercise of appellate or revisional jurisdiction under any such Act. In the present case, the order of the Administrative Judge was made under the provisions of Rule 7(2)(b) of the U.P. Subordinate Courts Staff (Punishment & Appeal) Rules, 1976. These Rules have been framed under Article 309 of the Constitution and not "under any Act". The expression "under any such Act" means under any Uttar Pradesh Act or under any Central Act with respect to a matter enumerated in the State List or the Concurrent List of the Seventh Schedule of the Constitution. Since the exercise of powers by the Administrative Judge was not under any such Act as specified but under the Rules which have been framed under Article 309 of the Constitution, the bar to the maintenance of the Special Appeal would not be applicable."

(emphasis supplied)

64. Another Division Bench of this Court in **Sharp Industries vs. Bank of Maharashtra**²³, has held a special appeal arising out of an order of learned Single Judge in a writ petition filed against order of the Tribunal under Section 17 of the SARFAESI Act, 2002 (a Central Legislation), referable to the power under List 1 of the Seventh Schedule to the Constitution of India, to be maintainable. The relevant observations are as follows: -

13. From the authoritative pronouncement of law by the Supreme Court in the matter in issue it is no longer in doubt that the constitution of Debt Recovery Tribunal is in exercise of powers by the Parliament under entry 45 of list I i.e. 'Banking'. Similar view has been taken by this Court in Special Appeal No. 552 of 2013 (Ballia-Etawah Gramin Bank v. Dr. Ramji Properties & Hotels P. Ltd.), Special Appeal No. 814 of 2009 (U.P.S.I.D.C. v. Debts Recovery Appellate Tribunal, Allahabad), Special Appeal Defective No. 136 of 2019 (Pradeep Tekriwal v. Debt Recovery

23 2024 SCC Online All 1255

Appellate Tribunal) and Special Appeal Defective No. 735 of 2014 (Oriental Bank of Commerce v. Debts Recovery Appellate Tribunal).

14. Once the tribunal has been constituted in exercise of powers under the Union list, the exclusion clause curtailing entertainment of appeal arising out of orders passed by tribunals constituted under List II or List III would not apply. So far as the contrary opinion of the Division Bench in Special Appeal Defective No. 356 of 2022 (Tarun Kumar v. Indian Bank) is concerned, we find that the attention of the Court was not invited to the fact that Debts Recovery Appellate Tribunal has been constituted by the Parliament under the union list nor the Supreme Court judgment in the case of Delhi High Court Bar Association (supra) was placed before the Court and, therefore, it cannot be treated as a binding precedent. We, therefore, hold that the present special appeal is maintainable and the objection of the respondents is turned down.”

(emphasis supplied)

65. The Division Bench of this Court in **M/s Vajara Yojna Seed Farm**¹⁰ holds the special appeal against order of learned Single Judge passed in exercise of jurisdiction conferred under Article 226 and 227 of the Constitution of India against (I) orders of Labour Court passed under any Uttar Pradesh Act, (ii) orders of Joint Director of Education under Statutory Regulations framed under U.P. Intermediate Act, 1921 and (iii) against orders of Election Tribunals under the U.P. Panchayat Raj Act, all State Legislations, to be not maintainable. Similarly, in **A.P. Jeet Singh (Constable)**⁹, once again the orders impugned in the writ petition was held to have been passed under U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 and therefore not maintainable. Same was the position before the Supreme Court in

Madhav Prasad Sharma¹¹. These cases are therefore of no help to the respondents.

66. Learned counsel for the respondent also tried to contend that while construing whether the exercise of power of appellate or revisional jurisdiction is with respect to any matter enumerated in the State List or the Concurrent List, it is the subject matter of the dispute in hand which has to be examined and not the legislation itself. However, we are unable to accept the contention. It is amply clear that the expression “with respect to” refers to source of State or Central Legislation and not the subject matter of dispute involved in a particular case. Such an interpretation not only goes against the express language of the provision itself, but also against the well established principle that while interpreting the source of power of the legislature, any incidental entrenchment on the power reserved for the other legislature, is of no consequence.

Conclusion: -

67. We, accordingly, answer the questions referred to us as follows: -

(a) Intra-court appeal under Chapter VIII Rule 5 of the High Court Rules against a judgment of Single Judge in a writ proceeding under Article 226 of the Constitution of India, preferred against an order passed by an officer or authority exercising appellate or revisional power under U.P. State Road

Transport Corporation Employees (Other than Officers) Service Regulations, 1981, is maintainable.

(b) The Division Bench decisions in **Jageshwar Prasad Tiwari vs. UPSRTC and Others** and **Madan Pal Singh vs. State of U.P. and Others** lay down the correct law while the judgment of this court in **UPSRTC through RM vs. Abhai Raj Singh and 2 others** does not and is overruled to the extent it holds the special appeal to be not maintainable.

68. Let the papers of the instant appeal, be placed before appropriate Bench, along with our opinion, for disposal.

Dated:- 8/7/2024
Ankit/Jaideep/Mukesh

(Vikas Budhwar, J.) (Manoj Kumar Gupta, J.) (Arun Bhansali, C.J.)