[2012] 13 S.C.R. 230

A THE SECRETARY, MINISTRY OF HEALTH & FAMILY WELFARE, GOVERNMENT OF MAHARASHTRA

v.

S.C. MALTE & ORS.

(Civil Appeal Nos. 9020-9021 of 2012)

B DECEMBER 13, 2012

[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

Judiciary – Medical facilities for retired High Court C *Judges and their dependent family members – Statutory power of the State Government – Jurisdiction of the High Court to direct the State Government to frame particular rule regarding medical facilities for the retired High Court Judges – Difference of opinion – Matter referred to larger Bench –* D *High Court Judges (Salaries and Conditions of Service) Act, 1954 – s.23D – Maharashtra Retired High Court Judges (Facilities for Medical Treatment) Rules, 2006 – r.2(a) – Constitution of India, 1950 – Articles 32, 136 and 226.*

E **Some retired Judges of the Bombay High Court moved a representation to the Chief Justice of the Bombay High Court mentioning the difficulties faced by them in getting medical facilities under the Central Government Health Scheme (CGHS) and difficulties in respect of reimbursement of the expenses on medicines.** F **This letter was treated as a suo motu Writ Petition and an order was passed by the High Court directing the Government of Maharashtra to frame rules for medical treatment and reimbursement of retired Judges of the Bombay High Court.**

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Pursuant to the directions of the Court and in exercise of the powers conferred under Section 23D(2) of the High Court Judges (Salaries and Conditions of

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Service) Act, 1954, the State Government of Maharashtra drafted the Maharashtra Retired High Court Judges (Facilities for Medical Treatment) Rules, 2006, and placed the same before the High Court. The amicus curiae appearing for the suo motu writ petitioners (retired Judges), however, suggested a change in the Draft Rules of 2006 that the retired Judges be entitled to the medical facilities and reimbursement provided in the Draft Rules whenever the CGHS Scheme is not "availed of" instead of not "available". The High Court disposed of the writ petition with direction to the State Government to either notify the Draft Rules in the form suggested by the amicus curiae or amend the G.R. for medical benefits to sitting Judges and extend the same benefits also to the retired Judges in exercise of its power under sub-section (2) of Section 24 of the High Court Judges (Salaries and Conditions of Service) Act, 1954.

The Government of Maharashtra (the appellant) then filed Civil Application for review of the order, but the High Court rejected the prayer for review and directed the State Government to comply with the order of the High Court within two months. Aggrieved, the appellant filed this appeal.

Referring the matter to larger Bench, the Court

HELD:

Per Swatanter Kumar, J.

1.1. It cannot be disputed and, in fact, has been noticed in the judgment under appeal before this Court that different States have different rules to provide medical facilities to the former judges of their respective High Courts. Article 221 of the Constitution read with the provisions of the Act is indicative of the fact that the framers of the Constitution envisaged parity of such

A facilities in the States. Variation in grant of medical benefits from one High Court to another and one State to another, besides adding inequality also enhances the possibility of a service condition being applied to a former Judge of a High Court adversely. This variation in service B conditions to the disadvantage of the Judge concerned, is not permissible in law. [Para 12] [244-E-G; 245-B]

1.2. The conditions of service of judiciary, have to be reasonable and free of arbitrariness. The element of arbitrariness or mercy must be eliminated so as to give C judiciary its deserved independence and freedom to work effectively in the public interest and for attainment of the constitutional goals. Any unreasonable restriction would amount to interference with the doctrine of impartiality and fairness applicable to the judiciary in all events. [Para D 27] [253-D, F-G]

1.3. There is no reason for the State of Maharashtra to have withdrawn its consent for substitution of the words 'availed of' in place of 'available'. It had ample time E at its disposal, as various matters came up before the Court on a number of hearings, particularly prior to such substitution. It is expected of the State to act inaccordance with the accepted canons of governance and not to render the judicial proceedings ineffective and F inconclusive. [Para 28] [253-H; 254-A-B]

1.4. Lack of instructions from the Finance Department was pleaded to be the sole ground for seeking review of the judgment of the High Court. However, inter departmental dealing is a matter of internal G management of the Government. The Government is represented as a unit before the Courts. How they manage their internal affairs is for them to decide. The High Court rightly held that it was not an error apparent on the face of the record, justifying the review or H satisfying the ingredients of Order XLVII Rule 1 of the

Code of Civil Procedure, 1908. Substitution of the word 'available' by 'availed of' does not bring any prejudice in law. On the contrary, it would be in conformity with the constitutional requirements of equal treatment of all Judges. [Para 29] [255-A-C]

1.5. Availability of uniform medical facilities for the former Judges in the entire country can also be substantially justified on another ground that there exists transfer policy of High Court Judges. This policy has been in force since 1994 and, therefore, this requires that the entitlement of former Judges and their dependent family members should not vary from place to place. Uniformity would remove another apprehension in the minds of the Judges as to the Court from which they retire. Presently, there are different benefits in different States and, thus, the medical benefits at the Centre as well as between the States are comparatively and considerably different. This disparity leads to a patent discrimination which should not be permitted. It will be in the interest of all concerned, including the State Governments, that complete uniformity is maintained in relation to availability of medical facilities in terms of Section 23D of the High Court Judges (Salaries and Conditions of Service) Act, 1954 and procedure of reimbursement of medical bills of the former Judges of the High Courts. The Former Judges of the High Courts should be placed at parity with the sitting Judges of the High Courts. Thus, it will be appropriate for the competent authority to frame/amend the rules in accordance with this judgment and the constitutional mandate. [Para 30] [256-A-E]

1.6. In order to ensure the absolute independence of judiciary, in the interest of administration of justice and for the Judges to act free of any apprehensive attitude and to provide complete certainty to the service

A conditions of the former Judges of the High Courts, it is directed that Rule 2(a) of the draft rules shall remain in the form as directed by the High Court. The word 'available' shall stand substituted by the words 'availed of'. The State of Maharashtra is hereby directed to notify B these rules forthwith. Henceforth, there shall be complete uniformity in the 'grant of medical benefits' to the former Judges of various High Courts. It may not only be desirable but necessary for the Centre and the State Governments to amend and alter the existing rules. If no C rules are in force, to frame the rules on such uniform lines. In relation to the medical facilities, the former Judges of the High Courts would be placed at parity with the facilities available to the sitting Judges and their dependent family members. Providing such benefit and D bringing uniformity in the rules shall be in the interest of the State administration as well as administration of justice. All the medical bills of the former Judges of various High Courts shall be submitted to the Registrar General of the concerned High Court, who shall, subject to approval of the Chief Justice of that Court and in E accordance with the rules in force, pay such bills (upon due scrutiny) to the former Judges. The Union Government and the State Governments are directed to provide such 'head of expenditure', being part of the High Court budget of the respective High Courts for F reimbursement of medical bills of the former Judges. In other words, the payment would be directly made by the High Court to the former Judges and it, in turn, would be reimbursed by the State Government. All the former Judges of the High Courts would be entitled to receive G medical facilities from the hospitals so empanelled by the Central or the State Governments, as the case may be. Till appropriate rules are framed by the appropriate authority, these directions shall remain in force and shall be abided by the executive. [Para 32] [256-H; 257-A-H; H 258-A-C]

A *S.P. Gupta v. Union of India* **(1981) Supp. SCC 87;** *Union of India v. R. Gandhi, President Madras Bar Association* **(2010) 11 SCC 12010 (6) SCR 857;** *Brij Mohan Lal v. Union of India* **(2012) 6 SCC 502;** *Supreme Court Advocates-on-Record Association v, Union of India* **(1993) 4 SCC 441: 1993 (2) Suppl. SCR 659 and** *State of Bihar v.* B *Bal Mukund Sah* **(2000) 4 SCC 640: 2000 (2) SCR 299 – referred to.**

Case Law Reference:

C

(1981) Supp. SCC 87	**referred to**	**Para 18**
2010 (6) SCR 857	**referred to**	**Para 23**
(2012) 6 SCC 502	**referred to**	**Para 24**
1993 (2) Suppl. SCR 659	**referred to**	**Para 25**
2000 (2) SCR 299	**referred to**	**Para 26**

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Per A.K. Patnaik, J. (dissenting)

1. Section 23D of the High Court Judges (Salaries E **and Conditions of Service) Act, 1954 is titled "Medical facilities for retired Judges". It is clear from language of sub-section (1) of Section 23D of the Act that every retired Judge is entitled for himself and his family, to the same facilities as respects medical treatment and on the same conditions as a retired officer of the Central Civil Services,** F **Class-I and his family, are entitled under any rules and orders of the Central Government for the time being in force. However, under sub-section (2) of Section 23D of the Act, power is vested in the Government of the State to extend facilities for medical treatment to a retired** G **Judge of the High Court for that State and his family different from the facilities provided to a retired officer of the Central Civil Services, Class-I and his family. This statutory power is that of the State Government and cannot be exercised by the High Court under Article 226** H

A of the Constitution. The appellant, therefore, was right in urging a ground in these appeals that the High Court had no jurisdiction to direct the State Government to frame any particular rule regarding medical facilities of the retired Judges of the Bombay High Court. [Paras 4, 5]
B [260-A-E-F-H; 261-A-B]

2. Neither the High Court in exercise of its power under Article 226 of the Constitution nor this Court under Article 32 or Article 136 of the Constitution can direct the State Government to grant particular medical facilities to
C a retired High Court Judge when sub-section (2) of Section 23D of the Act vests such power on the State Government to grant medical facilities other than those mentioned in sub-section (1) of Section 23D of the Act. [Para 6] [261-F-H]
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3. It was brought to the notice of this Court that some of the State Governments in exercise of their powers under sub-section (2) of Section 23D of the Act are providing the same medical facilities and medical
E reimbursement to retired Judges and their families as are being provided to sitting Judges of the High Court and their families. In the light of the provisions regarding medical facilities in other States, the Government of Maharashtra must consider extending better medical
F facilities to the retired Judges of the Bombay High Court, but what exactly should be the provisions for medical facilities can only be decided by the State Government in exercise of its powers under sub-section (2) of Section 23D of the Act. [Para 8] [263-C-D; 264-A-B]

G *Supreme Court Employees Welfare Association v. Union of India* AIR 1990 SC 334: 1989 (3) SCR 488 and *Kuldip Singh v. Union of India* JT 2002 (2) SC 506 – referred to.

Case Law Reference:

H 1989 (3) SCR 488 referred to Para 6

JT 2002 (2) SC 506 referred to Para 7 A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9020-9021 of 2012.

From the Judgment & Order dated 15.01.2007 of the High Court of Judicature of Bombay in Suo Moto Writ Petition No. 6285 of 2005 and dated 22.04.2008 in Civil Application No. 73 of 2008 in Suo Moto Writ Petition No. 6285 of 2005. B

Sanjay V. Kharde, Asha Gopalan Nair for the Appellant.

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Gaurab Banerji, ASG, R.K. Rathore, Ashok K. Srivastava, Sadhana Sandhu, Arjun Krishan, Sushma Suri, D.S. Mahra, Shridhar Y. Chitale, Saurabh Kapoor, Abhijat P. Medh for the Respondents.

The Judgments & Order of the Court was delivered by D

SWATANTER KUMAR J. 1. Leave granted.

2. Some of the former Judges of the Bombay High Court, particularly those who are settled at Aurangabad, moved a representation to the Chief Justice of that High Court explaining the difficulties faced by them in getting medical facilities and difficulties in respect of reimbursement of the expenses on medicines. These former Judges also included Judges who were appointed to the Bombay High Court but were subsequently transferred under the transfer policy to other High Courts. After their tenure, their efforts to resolve these issues obviously did not result in bringing about any fruitful result. In this representation, they also referred to various judgments under which the full reimbursement was provided under different rules as well as disparities that were prevalent in this respect, in different States of the country. This representation came to be treated as a suo motu Writ Petition on the appellate side of the Bombay High Court. In this writ petition, on 13th October, 2005, after hearing the counsel appearing for the parties, the Court noticed that some hospitals had been empanelled by the

A Government as approved hospitals under its Scheme. It was noticed in the same order that the provisions under the Central Government Health Scheme ('CGHS', for short) are inadequate and under the scheme only a few hospitals in selected cities are recognized for reimbursement of medical treatment. It was B also mentioned in the letter sent to the Chief Justice of the Bombay High Court that government hospitals in Aurangabad did not have the facilities of proper diagnosis and treatment for certain serious ailments and CGHS had not been extended to Aurangabad where all the said former Judges had settled after C their retirement.

3. The contention of the learned counsel appearing for the Union of India is that where CGHS has not been extended, there the former Judges can take the treatment from the government hospitals and if any treatment is not available in D the government hospitals, then they would be at liberty to go to any hospital to which they are referred to by the doctors of the government hospitals. Having noticed these difficulties and the practical problems which had really become a matter of great concern for the High Courts and the former Judges of the High E Courts, the Court passed the following interim order:

> "Meanwhile, the Hon'ble Retired Judges would be permitted to get medical treatment from any of the hospital mentioned in paragraph 4 on being referred by a Doctor F of Government Hospital and obviously their bills shall be reimbursed expeditiously."

4. The Court passed another order dated 23rd June, 2006 laying down the procedure that should be adopted for dealing with the medical bills of the former Judges and directed as G under:

> "Neither the State Government nor the Central Government have challenged that order so far. This being the position, now the modalities of actual working will have to be set H down. In view of this State of affairs, we propose to pass

an order whereby as in the case of the retired Supreme Court Judges as permitted by the Central Government by its office Memorandum dated 06.02.2002, medical bills of the retired High Court judges at Aurangabad will be signed by the Registrar (Administration) and countersigned by the medical officer and then passed by Registrar General. The Officers shall certify the bills whether for indoor treatment or for the purchase of medicines. The bills will be cleared by the State Government to begin with and thereafter the Central Government will reimburse the amount paid by the State Government. We would like the Central Government Counsel and the State Government Counsel to react on this, if at all there are any difficulties in the working of this procedure."

5. The case remained pending before the Court and during the hearing of the petition on 7th July, 2006, it was stated on behalf of the State Government that the Government was in the process of framing Rules in compliance with the directions contained in the orders of the Court dated 13th October, 2005 and 23rd June, 2006.

6. Vide its order dated 17th July, 2006, the High Court directed the State Government to frame Rules within three months and continued the operation of the interim order dated 13th October, 2005. Pursuant to the directions of the Court and in exercise of the powers conferred under Section 23D(2) of The High Court Judges (Salaries and Conditions of Service) Act, 1954 (for short, the 'Act'), the State of Maharashtra framed the Rules titled the Maharashtra Retired High Court Judges (Facilities for Medical Treatment) Rules, 2006 (for short, the 'draft Rules'). These draft Rules were submitted before the High Court. Thereafter, when the writ petition was taken up for hearing, the Amicus Curiae for the petitioners (retired Judges) suggested a change to be made in Rule 2(a) of the draft Rules. Rule 2(a) reads as under :

"2. Medical facilities for retired High Court Judges

A **and family members dependent on them—**

(a) Any person who was appointed and served as a High Court Judge for High Court of Judicature at Bombay and settled in the State of Maharashtra and his family members dependent upon him shall be entitled whenever the Central Government Health Scheme (CGHS) is not available, to receive the reimbursement of medical expenses incurred in any hospital recognized by the State Government to render whole time medical services as such person shall be entitled."

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7. Amendment suggested to the above Rule was that the words 'shall be entitled whenever the Central Government Health Scheme (CGHS) is not available' be substituted by the words 'shall be entitled whenever the Central Government Health Scheme (CGHS) is not availed of'. Initially the suggestion was opposed on behalf of the State. The Principal Secretary and RLA, Law and Judicial Department was present in Court, however, the Secretary, Finance Department was not. The matter was then deliberated before the Court. Thereafter, the suggestion made was acceded to and it was said that they would take concurrence of the Finance Department on the suggested change. The Court, thus, directed the change in the draft Rules, as suggested. The High Court vide its judgment dated 15th January, 2007 recorded that the CGHS was available only in three cities of the State of Maharashtra, i.e., Bombay, Nagpur and Pune. The Court, while noticing the agreed amendment to Rule 2(a), recorded its conclusion and relief as under :

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"The learned Amicus Curiae has gone through the Rules. It is submitted that these Rules will substantially cover the grievances as raised by the petitioners. Since the power conferred on the State Government is pursuant to Section 23D(2) it will be open to the State Government to either notify the said Rules in the forum which they have now been

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presented or it is open to the State Government to amend the G.R. which provides for medical benefits to sitting judges and extend the same benefit also to the retired judge, who are covered by the draft rules as submitted and which is substantially the same. It is made clear that these Rules will apply to the Judges who were appointed as Judges of this Hon'ble Court and have since retired and are settled in the State of Maharashtra and Goa."

8. While making the Rule absolute, the High Court directed the State to notify the Rules or to amend the Government resolution in light thereof. After the pronouncement of the above judgment and lapse of a considerable period of time, on 8th October, 2007 the State Government filed an application stating that the counsel and the officer giving consent for change, by substitution of the words 'availed of' in place of 'available', did not realise the repercussions of the amendment and had not obtained the concurrence of the Finance Department. Therefore, it was contended that the application should be allowed, the change directed by the Court in the draft Rules be deleted and the Rules in the original form be permitted to be notified. This application was dismissed by a detailed order of the High Court dated 22nd July, 2008. The High Court repeatedly noticed that the CGHS was not available and keeping in view the facts and circumstances of the case, recorded that there was no occasion for exercising the review jurisdiction, as the order did not suffer from any apparent error. The matter was adjourned on different dates for the State Government to give response to the contentions raised by the Amicus Curiae. It was also noticed in this order that some State Governments, including those of U.P. and Andhra Pradesh, had extended the facilities of medical treatment to the retired Judges of their respective High Courts. The review application was thus dismissed as being without any merit. Thereupon, the State was directed to comply with the orders of the High Court within two months.

A 9. Aggrieved from the orders dated 15th January, 2007 and 22nd April, 2008, the State of Maharashtra has preferred the present appeal by way of special leave before this Court. The matter was finally heard at the 'After Notice' stage.

B 10. Before I delve into the issues arising in the present appeal, it will be appropriate for the court to examine what kind of a right 'medical facilities to the judges and/or the former Judges of the High Court' is. The Judges of the High Courts of the respective States are appointed under Article 217 of the Constitution of India (for short "the Constitution"). Such Judges C are appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India and the Governor of the State and they hold office till the age of 62 years subject to the provisions contained in Article 217 of the Constitution. In terms of Article 221 of the Constitution, the D Judges of each High Court shall be paid such salaries as may be determined by the Parliament by law and every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as the case may be and as determined from time to time under the law by the Parliament. E Proviso to Article 221 of the Constitution categorically states that neither the allowances of a Judge nor his rights in respect of leave of absence shallbe varied to his disadvantage after his appointment.

F 11. Article 229(3) concerns itself with administrative expenses, including salaries, allowances and pensions payable to or in respect of the officers and servants of the court, which shall be charged upon the Consolidated Fund of the State and any fees or other monies taken by the court shall form part of G that fund. These are some constitutional provisions which indicate the constitutional protections in the Page 23 form of legal rights that are available to the judges of the High Court. The Indian Parliament enacted The High Court Judges (Salaries and Conditions of Service) Act, 1954. This Act provided the H conditions of service of sitting judges and even that of acting

judges who had been appointed in terms of clause (2) of Article 224 of the Constitution. It dealt with the leave and/or allied subjects thereto such as salaries, pension, family pension, provident fund and other miscellaneous items. The miscellaneous items included travelling allowance, rent free house and medical facilities. It made a specific provision with regard to medical facilities available to the former judges of the High Court. Section 23D dealt with this aspect, while Section 23A dealt with the facilities for medical treatment of the sitting judges. These provisions read as under:-

> "23A. (1). Every Judge and the members of his family shall be entitled to such facilities for medical treatment and for accommodation in hospitals as may from time to time, be prescribed.
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> (2) The conditions of service of a Judge for which no express provision has been made in this Act shall be such as may be determined by rules made under this Act.
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> (3) This section shall be deemed to have come into force on the 26th January, 1950, and any rule made under this section may be made so as to be retrospective to any date not earlier than the commencement of this section.
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> xxxxx xxxx xxxxx
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> 23D(1)Every retired Judge shall, with effect from the date on which the High Court Judges (Conditions of Service) Amendment Act, 1976, receives the assent of the President be entitled for himself and his family, to the same facilities as respects medical treatment and on the same conditions as a retired officer of the Central Civil Services, Class-I and his family, are entitled under any rules and orders of the Central Government for the time being in force.
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> (2) Notwithstanding anything in subsection (1) but subject

A to such conditions and restrictions as the Central Government may impose a retired Judge of the High Court for a State may avail, for himself and his family, any facilities for medical treatment which the Government of that State may extend to him."

B 12. Section 23D of the Act deals with the medical benefits to which the former Judges of the High Court and their family members would be entitled to. This provision states that they would be entitled to similar medical benefits as may be prescribed through appropriate rules by the State and to the C retired Class I Civil Services officers. Sub-section (2) of Section 23D, in fact, is an exception to Section 23D(1) of the Act. The non-obstante clause of sub-section (2) makes it clear that the legislature intended to provide the medical benefits to the former Judges in terms of the law framed by the State but with D restrictions as may be imposed by the Central Government. It provides that notwithstanding anything contained in sub-Section (1), but subject to conditions and restrictions as the Central Government may impose, a retired judge of the High Court for the State may avail for himself and his family, any facility for E medical treatment which the Government of that State may extend to him. It cannot be disputed and, in fact, has been noticed in the judgment under appeal before this Court that different States have different rules to provide medical facilities to the former judges of their respective High Courts. Article 221 F of the Constitution read with the provisions of the Act is indicative of the fact that the framers of the Constitution envisaged parity of such facilities in the States. Variation in grant of medical benefits from one High Court to another and one State to another, besides adding inequality also enhances G the possibility of a service condition being applied to a former Judge of a High Court adversely. For instance, a Judge of Court 'A', upon his retirement, would be entitled to the medical benefits provided by the State to the former Judges of High Court 'A'. But, if such a Judge is transferred to High Court 'B', he would H be entitled to the medical benefits as allowed by the State to

the former Judges of High Court 'B'. There may be disparity between the medical benefits of High Court 'A' and 'B', like the High Court 'A' may be extending the same benefits as that of a sitting Judge while the High Court 'B' may be giving the said benefit to a limited extent of the CGHS or any other scheme formulated by the concerned State. This would result in variation in service conditions to the disadvantage of the Judge concerned, which is not permissible in law.

13. This variation is to the extent that some States/Courts provide for complete reimbursement while others do not. In some States there are rules permitting partial reimbursement, while in some others even the rules have not been framed to provide for adequate medical facilities. The non-availability of CGHS is another major concern and wherever the CGHS is available, availability of its benefits and impediments in its smooth application are obvious from the very ineffective implementation of the Scheme. The CGHS, firstly, is not even available in all the major cities, much less in and around the rural areas and secondly, the procedure specified under the scheme is quite complex and impracticable. The Scheme contemplates prior permission for referral hospitals. In normal course of sickness, it requires the Head of the concerned specialty in the hospital to grant such permission, subject to furnishing of the requisite documents, which itself may frustrate the purpose of reference to an outside hospital. In emergencies, one has to comply with the entire procedure of ex-post facto approval, which appears to be in order.

14. The eligibility criteria and the method in which the CGHS can be availed of on paper appear to be sound, but when it comes to practice, things are quite unsatisfactory. Receiving a medicine, availability of drugs, the rush in the hospitals, payment of bills under the CGHS are some of the practical problems that are faced by everyone, of which the Court can even take a judicial notice. Attempts under the Scheme have been made by introducing different aspects like

A medical audit of hospital bills, holding of claim adalats, establishment of local advisory committees, decentralization and delegation of powers etc., but they ultimately do not serve the purpose of effective and readily available medical facilities to the concerned persons.

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15. The Court cannot ignore the harsh reality that the rates stipulated under the CGHS and its approved hospitals are much lower than the prevalent rates for providing such treatments in other hospitals. Thus, the State employees and even the former Judges of the Courts have to provide for the C difference in rates from their own pockets, if they take treatment from other private hospitals. Of course, an attempt has been made by the Central Government while introducing a specific clause, being clause 15 in the conditions of tender, relating to validity of CGHS rates which requires that for the stipulated D period, the empanelled institutions shall not charge more than CGHS rates. But the stated difficulty will still prevail where CGHS is not in force and/or there are no empanelled hospitals. In such a situation, the basic right sought to be protected under the rules would stand violated.

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16. The Court is certainly not oblivious to the problems faced by the Central Government in this behalf, but that by itself cannot be reason enough to overlook the practical problems faced by the people and particularly, the former Judges of the F High Courts. One aspect that deserves attention is that in the year 1994, the policy in relation to transfer of Judges at the High Court level was introduced and has been, thereafter, applied quite frequently. A Judge may be appointed to one Court, transferred to another and still another, from where he retires. G It results in dual problems to the former Judge; firstly, in relation to availability of medical facilities and secondly, with regard to reimbursement of the medical bills. The nature of the right to medical facility is 'statutory'. It, being a condition of service, cannot be altered or changed to the disadvantage of the former Judges. Such is the requirement of law.

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17. In normal discharge of his duties, a Judge has to decide a case in favour and against the Government as well. While performing his duties in accordance with law, the courts do pass some orders of severe or serious consequences, against the State Government or an officer in its hierarchy. The Courts also deal with penal proceedings under the Contempt of Courts Act at the level of the higher judiciary. In this process, the courts are likely to pass orders which may not be to the liking of the executive hierarchy of the State. In such circumstances, the possibility of bias against the Judges in the minds of the Executive cannot be entirely ruled out. This may have the impact of, if nothing else, lowering the degree of impartiality and independence of judiciary.

Relevance of Independence of Judiciary

18. Another important facet of this statutory right is relatable to the independence of judiciary. I may refer to some judgments of this Court, which have dealt with the independence of judiciary with reference to the Constitution of India. Referring to the functions of the judiciary, this Court in the case of *S.P. Gupta v. Union of India* [(1981) Supp. SCC 87], held:

> "...what the true function of the judiciary should be in a country like India which is marching along the road to social justice with the banner of democracy and the rule of law, for the principle of independence of the judiciary is not an abstract conception but it is a living faith which must derive its inspiration from the constitutional charter and its nourishment and sustenance from the constitutional values. It is necessary for every Judge to remember constantly and continually that our Constitution is not a non-aligned national charter."

The Court further held:

> "the principle of independence of judiciary is the basic

A feature of the Constitution. It cannot remain content to act merely as an umpire but it must be functionally involved in the goal of socioeconomic justice. In this judgment, the court also referred to the observations recorded by Justice V. Krishna Iyer in the case of *Union of India v.* B *Sankalchand Himatlal Sheth* (1977) 4 SCC 193: "Independence of the Judiciary is not genuflexion; nor is it opposition to ever proposition of Government. It is neither Judiciary made to Opposition measure nor Government's pleasure."

C 19. Besides referring to these remarks, the court with great emphasis noticed the views expressed by Dr. Rajendra Prasad that the Constitution undoubtedly made clear provisions for an independent judiciary and observed:

D "We have provided in the Constitution for a judiciary which will be independent. It is difficult to suggest anything more to make the Supreme Court and the High Courts independent of the influence of the executive. There is an attempt made in the Constitution to make even the lower E judiciary independent of any outside or extraneous influence. One of our articles makes it easy for the State Governments to introduce separation of executive from judicial functions and placing the magistracy which deals with criminal cases on similar footing as civil courts. I can F only express the hope that this long overdue reform will soon be introduced in the States."

20. In *Sankalchand Himatlal Sheth* (supra), the Court also referred to the view of Pt. Jawahar Lal Nehru who said that it was important that the High Court Judges should not only be G first- rate but should be of the highest integrity, people, who can stand up against the executive Government and whoever come in their way. According to Dr. Ambedkar, independence of judiciary was of the greatest importance and that there could be no difference of opinion that the judiciary had to be H independent of the executive.

21. In this very judgment, the Court, while referring to the form of oath prescribed in clause VIII, Third Schedule of the Constitution, for a Judge or a Chief Justice of the High Court also noticed that it requires him to affirm that he will perform the duties of his office "without fear or favour, affection or ill will". The words "without fear or favour" have some significance. Relevancy of such expressions is traceable to various constitutional provisions. In terms of Article 202(3)(d), the expenditure in respect of the salaries and allowances of High Court Judges is charged on the Consolidated Fund of each State and Article 112(3)(d)(iii) enunciates that pensions payable to the High Court Judges are charged on the Consolidated Fund of India. By virtue of Article 113(1) the pensions are not subject to the vote of the Parliament. The court also noticed: "Now the independence of the judiciary is a fighting faith of our Constitution. Fearless justice is a cardinal creed of our founding document. It is indeed a part of our ancient tradition which has produced great Judges in the past. In England too, from where we have inherited our present system of administration of justice in its broad and essential features, judicial independence is prized as a basic value and so natural and inevitable it has come to be regarded and so ingrained it has become in the life and thought of the people that it is now almost taken for grantedand it would be regarded an act of insanity for anyone to think otherwise."

22. Besides this, the court also noticed that the framers of the Constitution were aware of this constitutional development in England and were conscious of our great tradition of judicial independence and impartiality and they realized that the need for securing the independence of judiciary was even greater under our Constitution than it was in England.

23. At this stage, reference to the judgment of this court in the case of *Union of India v. R. Gandhi, President Madras Bar Association* [(2010) 11 SCC 1], with reference to independence of judiciary would be proper and, in fact,

A inevitable. A five-Judge Bench of this Court not only observed but formatively stated:

> "...impartiality, independence, fairness and reasonableness in decision making are the hallmarks of judiciary. If "Impartiality" is the soul of the judiciary, "Independence" is the lifeblood of the judiciary. Without independence, impartiality cannot thrive. Independence is not the freedom for Judges to do what they like. It is the independence of judicial thought. It is the freedom from interference and pressures which provides the judicial atmosphere where he can work with absolute commitment to the cause of justice and constitutional values."

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(emphasis supplied)

D 24. In a recent judgment of this Court in the case of *Brij Mohan Lal v. Union of India* [(2012) 6 SCC 502], the Court held as under:

> "The independence of the Indian judiciary is one of the most significant features of the Constitution. Any policy or decision of the Government which would undermine or destroy the independence of the judiciary would not only be opposed to public policy but would also impinge upon the basic structure of the Constitution. It has to be clearly understood that the State policies should neither defeat nor cause impediment in discharge of judicial functions. To preserve the doctrine of separation of powers, it is necessary that the provisions falling in the domain of judicial field are discharged by the judiciary and that too, effectively."

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25. Thus, various Benches of different strength (Seven Judge Bench, Five Judge Bench and Two Judge Bench) of this Court have consistently held that independence of judiciary is a part of the basic structure of the Constitution and cannot be

H permitted to be adversely impacted by policy-making or even

by legislative power. The constitutional ethos of independent judiciary cannot be permitted to be diluted by acts of implied intervention or undue interference by the executive in the impartial administration of justice, directly or indirectly. This Court in the case of *Supreme Court Advocates-on-Record Association v. Union of India* [(1993) 4SCC 441], in unambiguous terms stated: "Independence of judiciary has always been recognised as a part of the basic structure of the Constitution." It is a known fact that a large part of the litigation in courts is generated from people being aggrieved against the governance, action and inaction of the Government including the executive and/or its instrumentalities. Thus, the courts must be kept free from any influence that the executive may be able to exercise by its actions, purely executive or even by its power of subordinate legislation. Where this court refers to independence, fairness and reasonableness in decisionmaking as the hallmarks of judiciary, there it also states impartiality as one of its essentials. <u>Though, what is most important is the independence of judiciary, its freedom from interference and pressure from other organs of the State. The Courts and Judges, thus, must be provided complete freedom to act, not to do what they like but to do what they are expected to do, legally and constitutionally and what the public at large expects of administration of justice.</u> If the State is able to exercise pressure on the Judges of the High Court by providing arbitrary or unreasonable conditions of service or altering them in an arbitrary manner, it would certainly be an act of impinging upon the independence of judiciary. Of course, what is put forward as part of the basic structure must be justified by reference to the provisions of the Constitution. When one looks into the scheme of our Constitution and the doctrine of separation of powers, there are many Articles, some of which I have already referred to, which clearly show that independence of the judiciary was of utmost concern with the framers of the Constitution. Such intent of the framers is not only ingrained into the ethos of our Constitution but is also explicitly provided for, even in the Directive Principles of the Constitution. Reference

A in this regard can usefully be made to Article 50 of the Constitution, which requires the State to separate the judiciary from the executive in public services of the State. This Article, with the passage of time, has turned into a constitutional mandate rather than a mere constitutional directive.

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26. For the judiciary to be impartial and independent and to serve the constitutional goals, the Judges must act fairly, reasonably, free of fear and favour. The term 'fear' as explained in various dictionaries, means 'an unpleasant emotion caused by threat of danger, pain or harm; a feeling of anxiety regarding C the likelihood of something unwelcome happening'. (Concise Oxford English Dictionary, Eleventh Edition Revised) On the other hand, 'favour' means 'approval or liking; unfair preferential treatment, inclination, prejudice, predilection (Concise Oxford English Dictionary, Eleventh Edition Revised and Black's Law D Dictionary, Eighth Edition). The necessity of acting free of fear or favour is to maintain impartiality and independence of the judicial decision-making process. A five-Judge Bench of this court, very affirmatively and to put the matters beyond ambiguity, in the case of *State of Bihar v. Bal Mukund Sah* [(2000) 4 SCC E 640], held as under:

> "...We may also usefully refer to the latest decision of the Constitution Bench of this Court in Registrar (Admn.), High Court of Orissa v. Sisir Kanta Satapathy wherein K. F Venkataswami, J., speaking for the Constitution Bench, made the following pertinent observations in the very first two paras regarding Articles 233 to 235 of the Constitution of India:
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> > "An independent Judiciary is one of the basic G features of the Constitution of the Republic. Indian Constitution has zealously guarded independence of Judiciary. Independence of Judiciary is doubtless a basic structure of the Constitution but the said concept of independence has to be confined within

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the four corners of the Constitution and cannot go beyond the Constitution."

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[T]he mere fact that Article 309 gives power to the Executive and the Legislature to prescribe the service conditions of the Judiciary, does not mean that the Judiciary should have no say in the matter. It would be against the spirit of the Constitution to deny any role to the Judiciary in that behalf, for theoretically it would not be impossible for the Executive or the Legislature to turn and twist the tail of the Judiciary by using the said power. Such a consequence would be against one of the seminal mandates of the Constitution, namely, to maintain the independence of the Judiciary."

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27. When I discuss the conditions of service of judiciary, they have to be reasonable and free of arbitrariness. Arbitrariness in the power of the State to make unfair conditions of service for the sitting or the former Judges of the High Court would tantamount to putting a kind of pressure on the judiciary, requiring them to run to the Government for every small sickness or for reimbursement of expenditure incurred on some major ailment. The powers vested in the State, as aforenoticed, are not to cause fear or favour or any pressure in the mind of the judiciary, lest the sitting Judges, after retirement, be dependant upon the kindness of the executive. This element of arbitrariness or mercy must be eliminated so as to give judiciary its deserved independence and freedom to work effectively in the public interest and for attainment of the constitutional goals. Any unreasonable restriction would amount to interference with the doctrine of impartiality and fairness applicable to the judiciary in all events.

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28. Having discussed, in some elaboration, the constitutional colour of this statutory right, I must refer to the facts of the present case. I do not see any reason for the State of

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Maharashtra to have withdrawn its consent for substitution of the words 'availed of' in place of 'available'. It had ample time at its disposal, as various matters came up before the Court on a number of hearings, particularly prior to such substitution. It is expected of the State to act in accordance with the accepted canons of governance and not to render the judicial proceedings ineffective and inconclusive. The stand of the Government ought to have been in favour of a condition which would bring judicial independence, impartiality and fearlessness to the fore rather than its restriction, which apparently was of unreasonable nature. Is it the fault of the citizens or that of the Government servants that the CGHS Scheme is not available in a large number of cities in India and wherever it is available, it is proving ineffective, as people fail to receive their reimbursement claims for months together, despite instructions issued by the concerned Ministry? It will be unfortunate if a sitting Judge has to be continuously under the fear as to what his medical facilities will be after retirement. His service conditions should be definite and favourable to building the public confidence in the administration of justice rather than bringing unreasonableness and arbitrariness in the State action. The Ministry of Health and Family Welfare has issued a circular dated 14th November, 2011 attempting to streamline various aspects of implementation of the CGHS Scheme which itself shows that the scheme suffers from various infirmities and shortcomings and is not proving to be effective. The impact of the circular would have to be seen over a period, to realize its benefits, if any. Even in the circular issued by the same Ministry dated 27th April, 2011, which opens with the words "keeping in view the difficulties being faced by the pensioner CGHS beneficiaries residing in non-CGHS covered areas" certain clarifications were issued. The basic problem that arises is with regard to the emergency cases, specialized treatments and most concernedly the reimbursement of the bills and the process of verification of such matters. The procedure is so complex and results in such inordinate delays that it becomes

difficult for the beneficiaries to continue their treatment faithfully and as advised.

29. Lack of instructions from the Finance Department was pleaded to be the sole ground for seeking review of the judgment of the High Court. Inter departmental dealing is a matter of internal management of the Government. The Government is represented as a unit before the Courts. How they manage their internal affairs is for them to decide. The High Court rightly held that it was not an error apparent on the face of the record, justifying the review or satisfying the ingredients of Order XLVII Rule 1 of the Code of Civil Procedure, 1908. Substitution of the word 'available' by 'availed of' does not bring any prejudice in law. On the contrary, it would be in conformity with the constitutional requirements of equal treatment of all Judges. It is ultimately a matter relating to medical treatment, which nobody claims out of choice but it always emerges from necessity. Would it not be fair and reasonable on behalf of the State to take a stand which is in consonance with judicial independence and impartiality rather than subjecting a Judge to the pressure of worrying about the availability of medical facilities during the retirement era? It will be in line with the constitutional mandate of separation of powers and independence of judiciary that the medical facilities are permitted to be availed by the Judges/former Judges on the concept of 'availed of' instead of where there are 'available' with reference to the CGHS. Furthermore, the bills of the Judges should be submitted with the Registrar General of the concerned High Court and should be dealt with and paid in accordance with the rules of the High Court. The State Governments should provide a due head of expenditure for this purpose in the budget of their respective High Courts This will help in expeditious payments and also ensure that the Judges would not have to run after the members of the executive for clearance of their dues and the availability of medical facilities for them and their dependent family members would not depend upon the whims of the concerned authority.

A 30. Availability of uniform medical facilities for the former Judges in the entire country can also be substantially justified on another ground that there exists transfer policy of High Court Judges. This policy has been in force since 1994 and, therefore, this requires that the entitlement of former Judges and their B dependent family members should not vary from place to place. Uniformity would remove another apprehension in the minds of the Judges as to the Court from which they retire. Presently, it is clear even from the various documents submitted and placed on record by the learned Additional Solicitor General that there C are different benefits in different States and, thus, the medical benefits at the Centre as well as between the States are comparatively and considerably different. This disparity leads to a patent discrimination which should not be permitted. It will be in the interest of all concerned, including the State D Governments, that complete uniformity is maintained in relation to availability of medical facilities in terms of Section 23D of the Act and procedure of reimbursement of medical bills of the former Judges of the High Courts. The Former Judges of the High Courts should be placed at parity with the sitting Judges of the High Courts. Thus, it will be appropriate for the competent E authority to frame/amend the rules in accordance with this judgment and the constitutional mandate.

31. Keeping in view the doctrine of separation of powers and independence of judiciary, which are the structural ethos F of our Constitution, it is expected that the legislative power and more particularly, the subordinate legislative power, ought not to be exercised so as to obtrude these basic fundamental principles. The exercise of subordinate legislative power, which by necessary implication, entrenches upon the independence G of judiciary, would have to be decided on the touchstone of it being violative or otherwise, of the basic structure of the Constitution.

32. In order to ensure the absolute independence of H judiciary, in the interest of administration of justice and for the

Judges to act free of any apprehensive attitude and to provide complete certainty to the service conditions of the former Judges of the High Courts, I dispose of the above appeals and pass the following order-cum-directions:

a) I do not find any merit in the present appeals.

b) Rule 2(a) of the draft rules shall remain in the form as directed by the High Court. The word 'available' shall stand substituted by the words 'availed of'. The State of Maharashtra is hereby directed to notify these rules forthwith.

c) Henceforth, there shall be complete uniformity in the 'grant of medical benefits' to the former Judges of various High Courts.

d) It may not only be desirable but necessary for the Centre and the State Governments to amend and alter the existing rules. If no rules are in force, to frame the rules on such uniform lines.

e) In relation to the medical facilities, the former Judges of the High Courts would be placed at parity with the facilities available to the sitting Judges and their dependent family members. Providing such benefit and bringing uniformity in the rules shall be in the interest of the State administration as well as administration of justice.

f) All the medical bills of the former Judges of various High Courts shall be submitted to the Registrar General of the concerned High Court, who shall, subject to approval of the Chief Justice of that Court and in accordance with the rules in force, pay such bills (upon due scrutiny) to the former Judges.

g) The Union Government and the State Governments are directed to provide such 'head of expenditure',

A being part of the High Court budget of the respective High Courts for reimbursement of medical bills of the former Judges. In other words, the payment would be directly made by the High Court to the former Judges and it, in turn, would be B reimbursed by the State Government.

h) All the former Judges of the High Courts would be entitled to receive medical facilities from the hospitals so empanelled by the Central or the State Governments, as the case may be.

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i) Till appropriate rules are framed by the appropriate authority, these directions shall remain in force and shall be abided by the executive

D 33. The appeals are disposed of in the above terms. However, there shall be no orders as to costs.

A.K. PATNAIK, J. 1. Leave granted.

2. I have read the judgment of my learned brother Justice E Swatanter Kumar but with due respect to his learning I am unable to persuade myself to agree with his conclusion that the appeals have no merit and with the directions in his judgment. In my view, the appeals should be allowed and the impugned orders of the High Court should be set aside for reasons which F I shall indicate after setting out the facts.

3. The facts very briefly are that Section 23D of the High Court Judges (Salaries and Conditions of Service) Act, 1954 (for short "the Act") provides for medical facilities for retired Judges. Sub-section (1) of Section 23D provides that every G retired Judge shall be entitled for himself and his family to the same facilities as respects medical treatment and on the same conditions as a retired officer of the Central Civil Services, Class-I and his family, are entitled under any rules and orders of the Central Government for the time being in force. A retired

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officer of the Central Civil Services, Class-I and his family are entitled to medical facilities under the Central Government Health Scheme (for short "the CHGS Scheme"). Justice S.C. Malte and four other retired Judges who after retirement were residing in Aurangabad, Maharashtra, addressed a letter to the Chief Justice of the Bombay High Court mentioning therein the difficulties of the retired Judges in getting the medical facilities under the CGHS Scheme including the fact that the facilities thereunder were provided at only three cities in Maharashtra, namely, Mumbai, Nagpur and Pune. This letter was treated as suo motu Writ Petition No.6285 of 2005 and an order was passed by the High Court on 17.07.2006 directing the Government of Maharashtra to frame rules for medical treatment and reimbursement of retired Judges of the Bombay High Court. The Government of Maharashtra drafted the Maharashtra Retired High Court Judges (Facilities for Medical Treatment) Rules, 2006, pursuant to the order dated 17.07.2006 of the Bombay High Court and placed the Draft Rules of 2006 before the High Court. The amicus curiae appearing for the suo motu writ petitioners, however, suggested a change in the Draft Rules of 2006 and the change was that the retired Judges shall be entitled to the medical facilities and reimbursement provided in the Draft Rules whenever the CGHS Scheme is not availed of and the High Court disposed of the writ petition by order dated 15.01.2007 with the direction to the State Government to either notify the Draft Rules in the form suggested by the amicus curiae or amend the G.R. for medical benefits to sitting Judges and extend the same benefits also to the retired Judges in exercise of its power under sub-section (2) of Section 24 of the Act. The Government of Maharashtra (the appellant herein) then filed Civil Application No. 73 of 2008 for review of the order dated 15.01.2007, but by order dated 22.04.2008 the High Court rejected the prayer for review and directed the State Government to comply with the order dated 15.01.2007 of the High Court within two months. Aggrieved, the appellant filed this appeal against the order dated 15.01.2007 passed in suo motu

A writ petition No.6285 of 2005 and the order dated 22.04.2008 rejecting Civil Application No.73 of 2008.

4. Section 23D of the Act which is titled "Medical facilities for retired Judges" is extracted hereinbelow:

B "23D(1) Every retired Judge, shall, with effect from the date on which the High Court Judges (Conditions of Service) Amendment Act, 1976, receives the assent of the President be entitled for himself and his family, to the same facilities as respects medical treatment and on the C same conditions as a retired officer of the Central Civil Services, Class-I and his family, are entitled under any rules and orders of the Central Government for the time being in force.

D (2) Notwithstanding anything in sub-section (1) but subject to such conditions and restrictions as the Central Government may impose a retired Judge of the High Court for a State may avail, for himself and his family, any facilities for medical treatment which the Government of that State may extend to him."

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5. It will be clear from language of sub-section (1) of Section 23D of the Act quoted above that every retired Judge is entitled for himself and his family, to the same facilities as respects medical treatment and on the same conditions as a F retired officer of the Central Civil Services, Class-I and his family, are entitled under any rules and orders of the Central Government for the time being in force. Sub-section (2) of Section 23D of the Act, however, provides that notwithstanding anything in sub-section (1) but subject to such conditions and G restrictions as the Central Government may impose a retired Judge of the High Court for a State may avail, for himself and his family, any facilities for medical treatment which the Government of that State may extend to him. Thus, under sub-section (2) of Section 23D of the Act, the power is vested in H the Government of the State to extend facilities for medical

treatment to a retired Judge of the High Court for that State and his family different from the facilities provided to a retired officer of the Central Civil Services, Class-I and his family. This statutory power is that of the State Government and cannot be exercised by the High Court under Article 226 of the Constitution. The appellant, therefore, was right in urging a ground in these appeals that the High Court had no jurisdiction to direct the State Government to frame any particular rule regarding medical facilities of the retired Judges of the Bombay High Court.

6. Though, there are several decisions of this Court on the point that the legislative power or the rule making power cannot be exercised by the Court either under Article 226 or under Article 32 of the Constitution, I may only cite the decision of this Court in Supreme Court *Employees Welfare Association v. Union of India* (AIR 1990 SC 334). In this case, writ petitions were filed by the Supreme Court Employees Welfare Association and others seeking higher pay scales and the Attorney General for India appearing for the Union of India contended inter alia that this Court cannot issue a mandate to the President of India to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave and pensions of the officers and servants of the Supreme Court and this Court held that there can be no doubt that an authority exercising legislative function cannot be directed to do a particular act and the President of India cannot therefore be directed by the Court to grant approval to the proposals made by the Registrar General of the Supreme Court, presumably on the direction of the Chief Justice of India. Hence, neither the High Court in exercise of its power under Article 226 of the Constitution nor this Court under Article 32 or Article 136 of the Constitution can direct the State Government to grant particular medical facilities to a retired High Court Judge when sub-section (2) of Section 23D of the Act vests such power on the State Government to grant medical facilities other than those mentioned in sub-section (1) of Section 23D of the Act.

A 7. In *Kuldip Singh v. Union of India* [JT 2002 (2) SC 506], the medical facilities for retired Judges of the Supreme Court were in issue. Section 23C of the Supreme Court Judges (Salaries and Conditions of Services) Act, 1958, provides for medical facilities for retired Judges. This Section 23C provides B that every retired Judge shall be entitled, for himself and his family, to the same Central Civil Services Class-I and his family, are entitled under any rules and orders of the Central Government for the time being in force. The Central Government had made the Supreme Court Judges Rules, 1959 for sitting C Judges of the Supreme Court and Rule 5 of these Rules provides for facilities for medical treatment and accommodation in hospitals and the proviso to Rule 5 stated that the medical expenses shall be reimbursed on prescription of government doctors/hospitals or (registered medical) practitioners/private hospitals by the Registry of the Supreme Court of India. This D Rule 5, however, did not apply to retired Judges. Justice Kuldip Singh, a retired Judge of the Supreme Court, filed a writ petition praying for a declaration to the effect that the proviso to Rule 5 of the Supreme Court Judges Rules, 1959, should be made applicable to the retired Judges of this Court and that E the provisions of Section 23C of the Supreme Court Judges (Salaries and Conditions of Services) Act, 1958, should be struck down. While the writ petition was pending before this Court, the Central Government issued a memorandum dated 06.02.2002 which stated that it had been decided in F consultation with the Ministry of Law, Justice and Company Affairs, Department of Justice, to delegate powers of relaxation of rules for sanctioning medical reimbursement claims, in respect of retired Chief Justices of India and Judges of the Supreme Court holding CGHS pensioner's card to the Registrar G General of the Supreme Court who will exercise this power with the prior approval of the Chief Justice of India or his nominee and the reimbursement of medical expenses to the retired Chief Justices of India and Judges of the Supreme Court holding CGHS pensioner's card would also be made by the Supreme H Court Registry. In view of the aforesaid memorandum dated

06.02.2002 issued by the Central Government, Justice Kuldip Singh did not press the prayer in the writ petition and the writ petition was disposed of in terms of the said office memorandum. This was thus a case where the Central Government was of the opinion that the same facilities should be made available to the retired Judges of the Supreme Court and their families and had accordingly issued an office memorandum to that effect and this was not a case where this Court in exercise of judicial powers under Article 32 of the Constitution directed the Central Government to grant particular medical facilities to the retired Supreme Court Judges.

8. It has been brought to our notice by the learned Additional Solicitor General Mr. Garuab Banerji that in fact some of the State Governments in exercise of their powers under sub-section (2) of Section 23D of the Act are providing the same medical facilities and medical reimbursement to retired Judges and their families as are being provided to sitting Judges of the High Court and their families. In Jammu & Kashmir, by virtue of the State Government order dated 19.02.2006, retired Judges are entitled to the same benefits as are available to the sitting Judges of Jammu & Kashmir High Court. In Gujarat, the Gujarat Minister's (Medical Attendance and Treatment) Rules 1964 have been extended to retired Judges of the High Court and the powers of the State Government under these Rules with respect to reimbursement have been delegated to the Chief Justice of the Gujarat High Court for sanctioning and reimbursing the expenditure for both sitting and retired Judges and their family members. In Andhra Pradesh, the Government of Andhra Pradesh has extended the medical benefits to the retired Judges of the High Court at par with sitting Judges of the High Court of Andhra Pradesh. In Madhya Pradesh, the Chief Justice of the High Court sanctions the reimbursement of the medical bills of the retired Judges of the High Court pursuant to the orders passed by the State Government. In Uttar Pradesh, the medical facilities to the retired Judges of the Allahabad High Court are the same as

A those available to the sitting Judges of the High Court. In the light of these provisions regarding medical facilities in other States, the Government of Maharashtra must consider extending better medical facilities to the retired Judges of the Bombay High Court, but what exactly should be the provisions B for medical facilities can only be decided by the State Government in exercise of its powers under sub-section (2) of Section 23D of the Act.

9. In my view, therefore, the impugned orders of the High Court should be set aside and the appeal should be disposed C of with the recommendations in this judgment.

ORDER

Since there has been a difference of opinion between us D in these Civil Appeals, the Registry will place these Civil Appeals before My Lord the Chief Justice of India to constitute a larger Bench to hear and decide these Civil Appeals.

B.B.B. Matter referred to Larger Bench.