

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 CIVIL APPELLATE SIDE JURISDICTION
 PUBLIC INTEREST LITIGATION NO.156 OF 2011
 ALONG WITH
 CIVIL APPLICATION NO.155 OF 2015
 AND
 CIVIL APPLICATION NO.157 OF 2015

Mumbai Grahak Panchayat and Another. .. Petitioners
 Vs
 State of Maharashtra and Others. .. Respondents

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 Shri Uday P. Warunjikar for the Petitioners.
 Shri Rahul Rai i/b Ms. U.M. Jhaveri for the Applicant in CA No.155 of 2015.
 Shri A.B.Vagyani, Government Pleader along with Shri Manish Pabale, AGP for the Respondent State.
 Shri S.R. Rajguru along with Ms.J.N. Pandhi for the Respondent No.5.
 Shri Uday B. Wavikar along with Shri Swapnil Kamble for the Respondent No.6.

ALONG WITH
 CONTEMPT PETITION ST. NO.21807 OF 2016
 IN
 PUBLIC INTEREST LITIGATION NO.156 OF 2011

Maharashtra State District Consumer
 Forum Members Association. .. Petitioner
 Vs
 The State of Maharashtra and Others. .. Respondents

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 Shri P.R. Patil, the Petitioner in person.
 Shri A.B.Vagyani, Government Pleader along with Shri Manish Pabale, AGP for the Respondent State.

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WRIT PETITION NO.175 OF 2016

The Maharashtra Co-operative Court
Bar Association. .. Petitioner

Vs

The Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai – 400 032 and Others. .. Respondents

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Shri Rahul Rai i/b Ms. U.M. Jhaveri for the Petitioner.

Shri A.B.Vagyani, Government Pleader along with Shri Manish Pabale,
AGP for the Respondent Nos.1 to 8.

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PUBLIC INTEREST LITIGATION NO.133 OF 2012

Major Prabhakar Murlidhar Bhagat (Retd),
Consumer Protection Activist. .. Petitioner

Vs

State of Maharashtra,
Through Secretary,
Food, Civil Supplies and Consumer Protection,
Department of Consumer Affair,
Mantralaya, Mumbai – 400 032. .. Respondent

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None for the Petitioner.

Shri A.B.Vagyani, Government Pleader along with Shri Manish Pabale,
AGP for the Respondent State.

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WRIT PETITION NO.8352 OF 2016

Dr. Ashok Narayanrao Somwanshi. .. Petitioner

Vs

The State of Maharashtra and Others. .. Respondents

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Shri M.P. Kariya along with Shri Virendra Dalne, Shri Vedchetan Patil
and Shri Rajesh Chauhan for the Petitioner.

Shri A.B.Vagyani, Government Pleader along with Shri Manish Pabale,
AGP for the Respondent State.

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WRIT PETITION NO.2547 OF 2015

The Maharashtra State District Consumer
Redressal Forum Members Association. .. Petitioner
Vs
The State of Maharashtra and Others. .. Respondents
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Shri P.R. Patil, Petitioner in person.
Shri A.B.Vagyani, Government Pleader along with Shri Manish Pabale,
AGP for the Respondent State.

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WRIT PETITION NO.2544 OF 2015
ALONGWITH
CIVIL APPLICATION NO.1133 OF 2016
AND
CIVIL APPLICATION NO.2703 OF 2016

Smt.Jaishri Deepak Yengal. .. Petitioner
Vs
The State of Maharashtra and Others. .. Respondents
-

Ms. Jaymala Ostwal and Ms. Sonali Holage i/b JJ Associates for the
Petitioner and for the Applications in CA No.1133 of 2016 and CA
No.2703 of 2016.
Shri A.B.Vagyani, Government Pleader along with Shri Manish Pabale,
AGP for the Respondent No.2 - State.
Shri S.R. Nargolkar for the Respondent No.3.

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PUBLIC INTEREST LITIGATION NO.52 OF 2015

Consumer Service & Research Association. .. Petitioner
Vs
The Chief Secretary,
Government of Maharashtra and Others. .. Respondents
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None for the Petitioner.

Shri A.B.Vagyani, Government Pleader along with Shri Manish Pabale,
AGP for the Respondent No.1-State.

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PUBLIC INTEREST LITIGATION NO.31 OF 2014

Madhav Balwant Karmarkar. .. Petitioner
Vs
Secretary,
Ministry of Law and Justice,
New Delhi – 110 001 and Others. .. Respondents

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Shri Sanjay Kshirsagar for the Petitioner.
Shri S.M. Gorwadkar, Senior Advocate appointed as Amicus Curiae.
Shri Amit B. Borkar, Advocate appointed as Amicus Curiae.
Shri S.R.Nargolkar for the Respondent No.8.
Shri A.B.Vagyani, Government Pleader along with Shri Manish Pabale,
AGP for the Respondent Nos.1 to 3 and 7.

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SUO MOTO PUBLIC INTEREST LITIGATION NO.7 OF 2011

The High Court of Bombay
in its own Motion,
Through Registrar General. .. Petitioner
Vs
The Chief Secretary and Others. .. Respondents

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Shri S.R.Nargolkar for the Petitioner.
Shri A.A. Kumbhakoni, Senior Advocate appointed as Amicus Curiae.
Shri Amit B. Borkar, Advocate appointed as Amicus Curiae.
Shri A.B.Vagyani, Government Pleader along with Shri Manish Pabale,
AGP for the Respondent Nos.1 to 9.

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PUBLIC INTEREST LITIGATION NO.14 OF 2012

Litigants Association,
Maharashtra (Pakshakar Sangh). .. Petitioner
Vs
Law and Judiciary Department and Others. .. Respondents
-
Shri Amit B. Borkar, Advocate appointed as Amicus Curiae.
Shri S.R.Nargolkar for the Respondent No.4.
Shri A.B.Vagyani, Government Pleader along with Shri Manish Pabale,
AGP for the Respondent State.

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PUBLIC INTEREST LITIGATION NO.216 OF 2010

Shri Sandeep Pandurang Patil. .. Petitioner
Vs
High Court Administration,
Through the Registrar General,
High Court, Mumbai and Others. .. Respondents
-
Shri D.S. Mhaispurkar for the Petitioner.
Shri Rahul Nerlekar for the Respondent Nos.1 and 2.
Shri A.B.Vagyani, Government Pleader along with Shri Manish Pabale,
AGP for the Respondent Nos.3 and 4.

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ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.61 OF 2012

Dr.V.Thanumoorthy. .. Petitioner
Vs
Prothonotary and Senior Master,
High Court of Judicature at Bombay,
Mumbai – 400 032 and Others. .. Respondents
-

Shri Shekhar Jagtap along with Shri Akshay Kapadia for the Petitioner.
 Shri Vishwajeet S. Kapse for the Respondent Nos. 1 and 2.
 Shri Dushyant Kumar, AGP fr the Respondent Nos.3 to 5 and 9.
 Ms. Geeta Joglekar for the Respondent Nos.6, 7 and 8 (BMC).

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ORDINARY ORIGINAL CIVIL JURISDICTION
 WRIT PETITION NO.1543 OF 2016

Raghunath R. Shingte. .. Petitioner
 Vs
 State of Maharashtra and Others. .. Respondents

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Shri Sameer Vaidya i/b Baldev H. Bhalwal for the Petitioner.
 Shri L.T. Satelkar, AGP for the State Respondent Nos.1, 2 and 4.
 Shri Siddhesh Ashok Pilankar for the Respondent No.5.
 Shri Dhanesh Shah for the Respondent No.3 Union of India.

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ORDINARY ORIGINAL CIVIL JURISDICTION
 PUBLIC INTEREST LITIGATION NO.59 OF 2013
 ALONGWITH
 CHAMBER SUMMONS NO.311 OF 2015

Help Mumbai Foundation and Another. .. Petitioners
 Vs
 Secretary,
 Ministry of Consumer Affairs and Others. .. Respondents

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Shri Sameer Vaidya i/b Shri Ashok Tajne for the Applicants in Chamber
 Summons.
 Shri Dushyant Kumar, AGP for the Respondent State.
 Shri Vinod Joshi for the Respondent Union of India.

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CHAMBERSUMMONS ST.NO.339 OF 2016
IN
WRIT PETITION NO.2331 OF 1990

The Maharashtra Co-operative Courts
Bar Association and Others. .. Petitioners
Vs
State of Maharashtra and Others. .. Respondents

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Shri Rahul Rai i/b Ms. U.M. Jhaveri for the Petitioners.
Shri Abhay Patki, Additional Government Pleader for the Respondent
State.

Shri Dhanesh R. Shah for the Union of India.
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PUBLIC INTEREST LITIGATION NO.81 OF 2012
(Transferred from Nagpur Bench- PIL NO.35 OF 2010)

The Court's on its own Motion. .. Petitioner
Vs
State of Maharashtra and Others. .. Respondents

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Shri S.M. Gorwadkar, Senior Advocate, appointed as Amicus Curiae.
Shri A.B.Vagyani, Government Pleader along with Shri Manish Pabale,
AGP for the Respondent Nos.1 to 3.
Shri Sanjay Udeshi i/b M/s. Sanjay Udeshi & Co for the Respondent
No.6.
Shri S.S. Pakale with Ms. Trupti Puranik for the Respondent Nos.8 and
10.
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CORAM : A.S. OKA & A.A. SAYED, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 31ST MARCH 2017

DATE ON WHICH JUDGMENT IS PRONOUNCED: 5TH MAY 2017

JUDGMENT (PER A.S. OKA, J)

OVERVIEW

1. Though submissions were fully heard on 26th October 2016, the Petitions were fixed for re-hearing on 31st January 2017 and 31st March 2017 to enable the parties to make submissions on the basis of the Judgment of the Apex Court in the case of Imtiyaz Ahmed.

2. This group of Public Interest Litigations/Writ Petitions concerns the issues of infrastructure of Civil and Criminal Courts in the State, Consumer Fora at State level and District level under the Consumer Protection Act, 1986 (for short “the said Act of 1986”), the Co-operative Courts and the Co-operative Appellate Courts established under the Maharashtra Co-operative Societies Act, 1960 (for short “the said Act of 1960”) and the Motor Accident Claims Tribunal in Mumbai established under the Motor Vehicles Act, 1988 (for short “M.V. Act”). The judiciary is considered to be a vital pillar of democracy. The

common man has a lot of hopes and expectations from the Courts and Tribunals. Therefore, almost all Courts and Tribunals in the State of Maharashtra suffer from over flow of dockets. Almost all the Courts and Tribunals in the State lack proper infrastructure.

3. As on 4th May 2017, going by the figures available on National Judicial Data Grid, in Civil and Criminal Courts, Co-operative Courts and Co-operative Appellate Courts, Labour Courts and Industrial Courts as well as Family Courts in the State, total 32,39,623 cases were pending. Out of which, 21,30,614 were criminal cases. 15.32% cases were more than five years' old cases. Total 33,711 cases were pending as of 4th May 2017 in the Family Courts in the State. On that date, total 9590 case were pending in the Motor Accident Claims Tribunal at Mumbai. We are reproducing these figures only to show the importance of the issue of lack of availability of adequate number of Judges and lack of proper infrastructure to the Courts and Tribunals in the State. There are 407 Court Complexes in the State of traditional Civil and Criminal Courts out of which 72 are in the properties taken on rent.

LEGAL POSITION

4. Before we go into the factual details, the legal position will have to be restated so that the facts can be considered in light of the

legal position. Part IV of the Constitution of India contains the Directive Principles of the State Policy. The Article 39A incorporated in Part IV of the Constitution of India reads thus:

“39A. Equal justice and free legal aid.- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

5. The obligation of the State to the Judiciary will have to be considered in the light of the aforesaid directive principle of the State Policy. The issue of obligation of the State Government to provide infrastructure to the Judiciary came up for consideration in the case of *Purshottam Manohar Kamone V. State of Maharashtra*¹. The Paragraph 6 of the said decision reads thus:

“6. It is no longer debatable and rather it is well settled that the speedy justice is an ingredient of Article 21 of the Constitution of India and, therefore, each litigant has a fundamental right of a speedy justice. That being so, it is the corresponding obligation of the State to constitute sufficient number of Courts, Tribunals and forums so that a litigant, who has knocked the door of the Court or Tribunal, is able to get justice speedy. Taking into consideration the huge pendency of motor accident claim cases at Nagpur, expected future filing and slow disposal of such cases, it is necessary for the State Government to provide sufficient Motor Accident Claims Tribunals at

1 2001(4)Mh.L.J. 320

Nagpur. This is essential to ensure the speedy disposal of cases and in consonance with Article 39-A of the Constitution of India, which provides that the State shall secure that the operation of the legal system promotes justice. As observed by the Apex Court in *S.C. Advocates-on-Record v. Union of India*,: AIR 1994 SC 268, with reference to Article 216 of the Constitution of India, which deals with the constitution of High Courts, "This is essential to ensure speedy disposal of cases, to 'secure that the operation of the legal system promotes justice' - a directive principle 'fundamental in the governance of the country' which, it is the duty of the State to observe in all its actions; and to make meaningful the guarantee of fundamental rights in Part III of the Constitution." The Apex Court further observed that the failure to perform this obligation, resulting in negation of the Rule of law by the laws' delay must be justiciable, to compel performance of that duty. **Applying the same principle, in our view, it must be held that the constitution of Motor Accident Claims Tribunal, as required by the State under section 165 of the Motor Vehicles Act is justiciable issue and if it is shown that the existing Tribunal is inadequate to provide speedy justice to the people, a direction can be issued to the State Government to take appropriate steps in discharge of their duty, commensurate with the need to fulfill the State obligation of providing speedy justice to the victims or the dependent of the victims of motor accident".**

(emphasis added)

6. In the case of *Brij Mohan Lal v. Union of India and Others*², In Paragraphs 136 and 137, the Apex Court observed thus:

"136. However, as far as functioning of the courts i.e. dispensation of justice by the courts is concerned, the Government has no control over the courts. Further, in relation to matters of appointments to the judicial services of the States and even to the higher judiciary in the country, the Government has

² (2012)6 SCC 502

some say, however, the finances of the judiciary are entirely under the control of the State. It is obvious that these controls should be minimised to maintain the independence of the judiciary. The courts should be able to function free of undesirable administrative and financial restrictions in order to achieve the constitutional goal of providing social, economic and political justice and equality before law to the citizens.”

“137. Article 21 of the Constitution of India takes in its sweep the right to expeditious and fair trial. Even Article 39-A of the Constitution recognises the right of citizens to equal justice and free legal aid. **To put it simply, it is the constitutional duty of the Court to provide the citizens of the country with such judicial infrastructure and means of access to justice so that every person is able to receive an expeditious, inexpensive and fair trial. The plea of financial limitations or constraints can hardly be justified as a valid excuse to avoid performance of the constitutional duty of the Government, more particularly, when such rights are accepted as basic and fundamental to the human rights of citizens.**”

(emphasis added)

7. In a decision in the case of *New Bombay Advocates Welfare Association, through its President and Another v. State of Maharashtra and Others*³, a Division Bench of this Court had an occasion to consider the aforesaid decisions. In Paragraph 4, the Division Bench of this Court observed thus:

³ Decided on 7th & 13th August 2015 in PIL No.239 of 2009 along with other connected matters 2015 SCC OnLine Bom 5754

“4. Hence, now the law is crystalized. The law is that the State Government is under obligation to constitute sufficient number of Courts, Tribunals or Forums so that a litigant, who has knocked the door of the Court or Tribunal, is able to get speedy justice. Even the access to justice is a facet of fundamental right available under Article 21 the Constitution of India.”

8. After considering the aforesaid decisions and the decision of the Apex Court in the case of *Hussainara Khatoon v. State of Bihar*⁴, the Division Bench of this Court in Paragraphs 6 and 7 held thus:

“6. The Apex Court also relied upon its earlier decision in the case of *Hussainara Khatoon v. State of Bihar* wherein the Apex Court observed that it is also the constitutional obligation of the Apex Court to enforce setting up new Court buildings and Court houses providing more staff and equipment to the Courts and to take all measures calculated to ensure speedy trial. The Apex Court in the said decision observed that the Government cannot plead financial or administrative inability to avoid its constitutional obligation to provide speedy trial to an accused.

7. **The Apex Court has reiterated that it is the constitutional duty of the Government to provide to the citizens of the country with such judicial infrastructure and means of access to justice so that every citizen is able to receive an expeditious, inexpensive and fair trial.** What is more important is the categorical declaration made by the Apex Court that the plea of financial limitations or constraints cannot be a valid excuse to avoid the performance of the constitutional duty of the Government to provide

4 (1980)1 SCC 98

a proper judicial infrastructure. **The fundamental right to access to justice and right to speedy justice available to the citizens can be effectively exercised by them provided adequate judicial infrastructure is available. The said right can be effectively exercised provided adequate number of Courts are established and a proper infrastructure is provided therein for the litigants, Judges, the members of the Bar and the Court staff. The existence of aforesaid fundamental right creates a corresponding obligation in the State Government to ensure that adequate number of Courts are established as may be decided by the High Court and a proper infrastructure is provided therein for the litigants, Judges, the members of the Bar and the Court staff. The litigants are entitled to have basic facilities such as clean drinking water, clean toilets and proper sitting arrangement in every Court. While performing the constitutional duty of ensuring that the citizens are able to exercise the said right, the State Government cannot come out with an excuse of financial limitations or constraints.”**

(emphasis added)

9. In the decision in the case of *New Bombay Advocates' Welfare Association*, the Division Bench of this Court dealt with the issue of financial constraints which is always raised by the State Government when it comes to providing proper infrastructure to the Judiciary. The Paragraph 21 of the decision in the case of *New Bombay Advocates' Welfare Association* reads thus:

“21. In some detail, we have already discussed constitutional obligation of the State Government of

establishing the Courts in the City and of providing all the infrastructures to the Courts. As far as the decision of establishing the Courts is concerned or as far as the requirement of constructing new Court buildings or new judicial quarters is concerned, the same will have to be taken by the High Court Administration after considering all the relevant factors. The views/opinion of High Court Administration on the aspect of establishing new Courts must get primacy. **However, as laid down by the Apex Court in the case of *Brij Mohan Lal*, once the High Court Administration decides to set up a new Court or to construct a new building for housing the Courts or new building for the judicial quarters, the plea of financial constraints or financial limitations is not available to the State. The Courts should be free of undesirable administrative and financial restrictions. The State cannot refuse to perform its constitutional obligation of providing adequate judicial infrastructure and means of access to justice to citizens.** As pointed out by Shri Kumbhakoni, the learned senior counsel appointed as Amicus Curiae, there are delays involved at every stages right from the sanction of the initial proposal for construction of Court building. At every stage, the State Government comes out with an excuse of financial constraints. In view of the law laid down by the Apex Court in the decision in the case of *Brij Mohan Lal*, the said excuse is no longer available to the State Government. As held therein, the Courts should be free of undesirable financial restrictions.”

(emphasis added)

10. Thus, the obligation of the State is to provide adequate number of Courts, proper infrastructure to the Courts and proper facilities to the Judicial Officers, litigants as well as to the members of the Bar. Most essential part of the infrastructure will be adequate lands/buildings for the Court Complexes and residential quarters of

Judges. The issues involved in this group of PILs/WPs will have to be decided in the light of the following settled legal principles.

- (a) It is the constitutional obligation of the State Government to provide lands and/or adequate premises for establishing adequate number of Courts;
- (b) It is an obligation of the State Government to appoint sufficient number of Judicial officers consistent with pendency and filing in the concerned Courts and Tribunals. The cadre strength should be such that there will be no pendency of old cases;
- (c) It is the obligation of the State Government to provide all necessary infrastructure to the newly established as well as the existing Courts and Tribunals for the benefit of the Judicial Officers, litigants, members of the staff as well as members of the Bar;
- (d) The infrastructure has to be provided in such a manner that the Courts and Tribunals are able to function very efficiently;

- (e) The infrastructure has to be consistent with the concept of dignity of the Court;
- (f) Speedy disposal of cases in consonance with the mandate of Article 39A of the Constitution of India cannot be achieved unless adequate number of Courts and Tribunals are established and adequate and proper infrastructure is provided to all the Court premises;
- (g) Financial constraints is no ground to deny permission for establishing new Courts and Tribunals and for denying the essential infrastructure to all the Courts, whether existing or new;

These principles will have to be applied to the Tribunals as well.

11. On the aspect of infrastructure and especially the judge strength, there is a recent judgment of the Apex Court, which is relevant. It is in the case of *Imtiyaz Ahmad v. State of UP. & Others*⁵. The said decision deals with the infrastructure of the Courts and judge

⁵ Decided on 2nd January 2017 in Criminal Appeal Nos.254-262 of 2012

strength in the context of the arrears and backlog of cases. The Apex

Court in Paragraphs 18 to 20 held thus:

“18. In prescribing the judge strength it is necessary to ensure that a backlog does not result in the future as a result of an increase in annual filings. The rate of increase in future filings has to be anticipated. Anticipation of what the future holds is an estimate. One method of estimating the extent of the increase in future filings is to have regard to the increase reflected over a comparable period in the past for which data is available. Those figures can be extrapolated to determine the increase in annual filings. **The enhancement in the strength of the district judiciary should be such that a ‘five plus zero’ pendency is achieved (wiping out the backlog within a target period of five years).**

19. In response to the recommendations submitted by the Chairperson, NCMSC, an affidavit has been filed on behalf of the Union of India in the Ministry of Law and Justice. The Union government has stated that while it is broadly in agreement with this approach, the methodology suggested by NCMSC can be adopted subject to certain stipulations. The relevant part of the response is extracted below :

“6. The Ministry of Law and Justice, Government of India is broadly in agreement with the recommendations made by NCMS Committee as indicated above. The methodology suggested by NCMS Committee can be adopted for determining the adequacy of judge strength with following stipulations.

(i) All High Courts must evolve uniform data collection and data management methods under the ongoing E-Courts Mission Mode Project and make

available online Real time Data on pendency of various categories of cases to the respective State Governments and Central Government.

- (ii) The trigger for creation of new posts must be activated only after 90% of the sanctioned strength has been filled up, failing which the creation of additional posts will have no impact or consequence on reduction of pendency”.

20. The report which has been submitted to this Court by the Chairperson, NCMSC observes that in the long term, the judge strength of the courts in the district judiciary will have to be assessed by a scientific method to determine the total number of judicial hours required for disposing of the case load of each court. In the interim, a weighted disposal approach, as explained above has been suggested. Since the Union government is broadly in agreement with this approach, we deem it appropriate and proper to permit it to be utilized at this stage for the purpose of determining the required judge strength of the district judiciary. The Union government has, however, suggested two broad stipulations. The first is that all the High Courts must make available real time data on the pendency of various categories of cases. In this regard, both the NCMSC as well as E-Committee are actively engaging with the High Courts. An endeavour should be made to ensure that real time data is duly compiled and made available online by the High Courts as part of the National Judicial Arrears Grid. We are not inclined to accept the second stipulation that new posts should be created only after 90 per cent of the sanctioned strength has been filled up. For one thing, filling up of vacancies in the district judiciary is an on-going process. In many states, the process of filling up posts is pursued in conjunction with the State Public Service Commissions. Many of the delays are not in the control of the High Courts. Moreover, it

is necessary to provide for the required judge strength in every state district judiciary so as to facilitate the creation of infrastructure. In several states, the available infrastructure is inadequate and insufficient to meet even the existing judge strength. Hence, a scientific assessment of the required judge strength will form the basis of ensuring that the state governments put into place the infrastructure required for tackling judicial delays.”

(emphasis added)

12. The Paragraph 21 of the said decision deals with the funds which should be made available to the judiciary under the 14th Finance Commission. The said Paragraph reads thus:

“21. By an order of this Court dated 29 November 2016, this Court had permitted the Union government to place on the record the following information in regard to funds made available by the Fourteenth Finance Commission for meeting the needs of the state judiciary and the modalities for disbursement and utilisation :

- “i) Whether any break-up of the said allocation has been provided for by the Finance Commission and/or Government of India or any guidelines as to the areas in which the said amount will be expended.
- ii) In case such a break-up is prescribed, a copy of the communication/order under which the same has been provided be placed on record.
- iii) What is the manner by which the Government of India proposes to monitor the utilization of the amount set apart for judiciary by the States. State wise allocation be also indicated.”

In pursuance of these directions, an affidavit has been filed on behalf of the Union Ministry of Law and Justice. The affidavit indicates that the Department of Justice had submitted the following proposals to the Fourteenth Finance Commission involving a total requirement of Rupees 9749 crores :

| | | |
|------|--|------------------|
| I. | Pendency Reduction | Rs.858.83 crore |
| II. | Establishment of Fast Track Courts | Rs.4144.11 crore |
| III. | Establishment of Family Courts in districts without such courts Establishment of Family Courts in districts without such courts | Rs.541.06 crore |
| IV. | Re-designing existing court complexes to become more litigant friendly | Rs.1400 crore |
| V. | Augmenting technical support for ICT enabled courts | Rs.479.68 crore |
| VI. | Scanning and Digitalisation of Case Records of High Courts and District Courts | Rs.752.50 crore |

VII. Enhancing Access to
Justice

i) Support for Law School based Legal Aid Clinics with focus on undertrials`

Rs.50.50 crore

ii) Organizing Lok Adalats

iii) Support for Mediation /conciliation in ADR centres

Rs.93.61 crore

iv) Incentives to Mediators/ Concilators

Rs.300 crore

VIII.(a) Training and capacity building of judges, public prosecutors, mediators, lawyers: Refresher,

Rs.503.44 crore

(b) Establishment of State Judicial Academies in Manipur, Meghalaya and Tripura

Rs.550 crore

Rs.75 crore

सत्यमेव जयते Total Cost Rs.9749 crore”

State-wise and sector-wise details have been annexed to the affidavit. The Fourteenth Finance Commission endorsed the proposals of the Department of Justice and has urged the state governments to use the additional fiscal allocation provided in the form of tax devolution to meet the requirements of the state judiciaries. The Prime Minister of India has addressed a letter dated 23 April 2015 to the Chief Ministers calling upon them to allocate funds required for the activities recommended by the Fourteenth Finance Commission in the state budgets from 2015-2016 to improve the working of the judicial system and provide speedy justice. Following the joint conference of Chief Justices of High Courts

and Chief Ministers of States held in April 2015, the Union Minister of Law and Justice addressed letters to the Chief Justices and Chief Ministers in June 2015 requesting them to institute a mechanism for regular interaction to resolve outstanding issues particularly those relating to infrastructure and man-power needs of the judiciary. It may be noted here that at the Conference of Chief Justices of High Courts held in April 2016, the following resolution was adopted :

“Resolved that the following strategy be adopted by the High Courts:

i) Constitution of a dedicated cell for the utilization of funds. The composition of the Cell should consist of policy makers, experts in planning and budgeting, senior judicial officers and persons to be nominated by the Chief Justice. The Cell shall be assigned the task of:

- (a) Preparing perspectives/annual plans and time lines;
- (b) Drawing up budget estimates;
- (c) Monitoring and review of the implementation of each scheme;
- (d) Taking up the matter with the State Government to ensure release of funds.

ii) Submitting a request for funds from the State Government within time for financial years 2016-17 to 2019-2020;

iii) Ensuring that funds are spent in accordance with the budgetary allocation and speedy and effective utilization. For this purpose, periodical meetings and reviews be conducted; and

iv) Monitoring of schemes and outcomes through special on-line portals and ICT tools. Progress made be reviewed in State Court Management System meetings and quarterly progress reports be forwarded

to the Supreme Court for review by National Court Management System”.

Thereafter, in the Conference of Chief Justices and Chief Ministers, the following resolution was adopted :

“With a view to facilitate proper and timely utilization of funds made available by the 14th Finance Commission to the State judiciaries, it was resolved that:

- (i) Finance Secretaries of each State be associated with the work of the High Court committees in-charge of monitoring 14th Finance Commission funds;
- (ii) Proper coordination be ensured between the Central and State Governments in regard to the submission of utilization certificates in relation to infrastructure projects of the state judiciaries;
- (iii) In respect of the e-Court Scheme and Infrastructure scheme which are being monitored by the Department of Justice, intimations of funds remitted to the State Governments under these two Schemes shall also be forwarded by the Department of Justice to the High Courts.
- (iv) State Governments shall (i) lend such assistance to the High Courts as is required for proper utilization of 14th Finance Commission funds; and (ii) grant a one time exemption for 2016-17 to facilitate proper utilization”.

The Union Minister of Law and Justice has since addressed communications to the Chief Ministers of States requesting that the state Finance Secretaries should assist the registries of the High Courts to prepare perspective plans/individual plans for activities to be undertaken in the justice sector. A

letter has been addressed to the Chief Justices on 26 September 2016. The affidavit explains that necessary mechanisms have been set up under the resolutions of the Conference of Chief Justices and Chief Ministers and of the Chief Justices respectively.”
(emphasis added)

13. The directions issued by the Apex Court in Paragraph 22 read thus:

“22 Having regard to the above background, we now proceed to formulate our directions in the following terms :

- i) **Until NCMSC formulates a scientific method for determining the basis for computing the required judge strength of the district judiciary, the judge strength shall be computed for each state, in accordance with the interim approach indicated in the note submitted by the Chairperson, NCMSC;**
- ii) NCMSC is requested to endeavour the submission of its final report by 31 December 2017;
- iii) A copy of the interim report submitted by the Chairperson, NCMSC shall be forwarded by the Union Ministry of Law and Justice to the Chief Justices of all the High Courts and Chief Secretaries of all states within one month so as to enable them to take follow-up action to determine the required judge strength of the district judiciary based on the NCMSC interim report, subject to what has been stated in this judgment;
- iv) **The state governments shall take up with the High Courts concerned the task of implementing the interim report of the**

Chairperson, NCMSC (subject to what has been observed above) and take necessary decisions within a period of three months from today for enhancing the required judge strength of each state judiciary accordingly;

- v) **The state governments shall cooperate in all respects with the High Courts in terms of the resolutions passed in the joint conference of Chief Justices and Chief Ministers in April 2016 with a view to ensuring expeditious disbursement of funds to the state judiciaries in terms of the devolution made under the auspices of the Fourteenth Finance Commission;**
- vi) **The High Courts shall take up the issue of creating additional infrastructure required for meeting the existing sanctioned strength of their state judiciaries and the enhanced strength in terms of the interim recommendation of NCMSC;**
- vii) The final report submitted by NCMSC may be placed for consideration before the Conference of Chief Justices. The directions in (i) above shall then be subject to the ultimate decision that is taken on receipt of the final report; and
- viii) A copy of this order shall be made available to the Registrars General of each High Court and to all Chief Secretaries of the States for appropriate action.”

(emphasis added)

These directions take care of the issue of number of Judges in the District Judiciary. Though the State Government has contended that the directions apply only to Civil and Criminal Courts, there is no

sng
infrastructure

PIL-156.11group-

reason why the same principles should not be applied for determining the cadre strength of Members/Judges of the Tribunals.

14. In the light of the legal position which we have summarized above, now we proceed to deal with the factual aspects of the cases before us.

THE STRUCTURE OF THE COURTS AND TRIBUNALS IN
THE STATE

15. At present, there are 33 Judicial Districts (in case of some newly created Revenue Districts, separate District Courts have not been established for want of infrastructure). The working strength of the Judicial Officers (including those working in ex-cadre posts) in the State is as under:

| | | |
|---------|------------------------|------|
| 1. | District Judges | 395 |
| 2. | Ad-hoc District Judges | 100 |
| 3. | Senior Civil Judges | 464 |
| 4. | Civil Judges | 1200 |
| Total - | | 2159 |

As stated earlier, there are 407 Court Complexes in the State of Maharashtra.

As far as the traditional Courts are concerned, broadly there are two categories of Courts in the State. The first broad category is of “Civil Courts” and the second broad category is of “Criminal Courts”.

CIVIL COURTS

16. The Civil Courts are established in the State mainly under the Maharashtra Civil Courts Act, 1869. The Courts established thereunder are as under:

- (a) The District Judges - As per Section 7 of the Maharashtra Civil Courts Act, 1869 (for short “the Civil Courts Act”), the District Judge shall be the Principal Judge of Original Civil Jurisdiction in the District within the meaning of the Code of Civil Procedure, 1908. The District Judges have original civil jurisdiction as well as the appellate jurisdiction. Under the many statutes such as the Maharashtra Public Trusts Act, 1950 and the laws relating to the Intellectual Properties etc., the original civil jurisdiction to entertain suits vests in the District

Courts. In every Districts, there is one Principal District Judge who is normally the senior most District Judge posted in the District. The Principal District Judge has general control over all the Civil Courts and their establishments within the District. As provided in Section 9 of the Civil Courts Act, there are other District Judges who are designated as District Judge-I, District Judge-II and District Judge-III, etc. At many Taluka Head Quarters, there are District Judges posted who exercise the jurisdiction of the District Court within the limits of that Taluka or more Talukas. The District Courts have the appellate jurisdiction to entertain Appeals from the decrees and orders from the Civil Courts as provided in the Civil Courts Act. The appellate jurisdiction of the District Judge is confined to a decree or order passed in suits or proceedings, the value or subject matter of which does not exceed to rupees one crore;

- (b) The Courts of the Civil Judges.- Under Section 21 of the Civil Courts Act, in each District, Civil Courts subordinate to District Courts are required to be established. Section 24 provides for two classes of

Civil Judges. The first class is of Civil Judges (Senior Division) who are also known in the State as “Senior Civil Judge”. The jurisdiction of a Civil Judge (Senior Division) extends to all the original suits and proceedings of civil nature irrespective of the value of its subject matter (Section 24 of the Civil Courts Act). The second class is of Civil Judges (Junior Division) known as Civil Judges. The jurisdiction of a Civil Judge (Junior Division) extends to all the original suits and proceedings of civil nature wherein subject matter does not exceed its amount or value of Rs. 5 lakhs;

- (c) The Court of Small Cause - In the City of Mumbai, which is a Presidency Town, the Court of Small Cause has been established under the provisions of the Presidency Small Cause Courts Act, 1882. The jurisdiction of the Courts of Small Cause is confined to suits between landlords and tenants as well as licensors and licensees. Certain categories of money suits lie in the Courts of Small Cause. In addition, under the provisions of the Mumbai Municipal Corporations Act, 1888, appeals against

levy of taxes lie before the said Court. The second category of the Small Cause Courts is under the Provincial Small Cause Courts Act, 1887. Broadly speaking, the jurisdiction of the Small Cause Courts under the said Act is similar to the one under the Presidency Small Cause Court Act.

CRIMINAL COURTS

17. The Criminal Courts in the State are established under the Code of Criminal Procedure, 1973 (for short "CrPC"). Broadly, there are three following classes of Criminal Courts under the CrPC.

- (i) The Courts of Session consisting of the Sessions Judges, Additional Sessions Judges and the Assistant Sessions Judges;
- (ii) The Chief Judicial Magistrates and in Mumbai, the Chief Metropolitan Magistrates;
- (iii) The Judicial Magistrates of the First Class and in Mumbai, the Metropolitan Magistrates;
- (iv) Judicial Magistrates of the Second Class.

18. In the State of Maharashtra, the consistent practice is that the Principal District Judge is the Sessions Judge. The other District Judges in the District are either Additional Session Judges or Assistant Session Judges. There are provisions in the CrPC which specify which cases shall be tried by Session Judges and the Assistant Session Judges. The Court of Sessions has Appellate Jurisdiction against the orders of conviction and acquittal (in some cases) passed by the learned Magistrates. Moreover, the said Court has revisional jurisdiction against the orders of the Magistrates. All Civil Judges (senior or otherwise) are also designated as the Judicial Magistrates of the First Class. The Chief Judicial Magistrates and all Metropolitan Magistrates are of the cadre of the Senior Civil Judges. As far as the Judicial Magistrates of the First Class are concerned, as per Sub-section (2) of Section 29 of the CrPC, the Judicial Magistrates of the First Class and the Metropolitan Magistrates are empowered to pass a sentence of imprisonment for a term not exceeding three years or of fine not exceeding ten thousand rupees, or both. The Courts of Magistrates of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding five thousand rupees, or of both. Under Sub-section (1) of Section 12 of the CrPC, this Court possesses the power to appoint a Judicial Magistrate of the first class to be a Chief Judicial Magistrate. There is a power conferred to appoint Additional Chief

Judicial Magistrates as well. Under Sub-section (1) of Section 17 of the CrPC, this Court is empowered to appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate. Under Sub-section (2) of Section 17, a power is conferred on this Court to appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate who can exercise such powers of the Chief Metropolitan Magistrate as this Court may direct. A Chief Judicial Magistrate as provided in Sub-section (1) of Section 29 of the CrPC may pass any sentence authorized by law except the sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years. The same is the power of the Chief Metropolitan Magistrate.

19. There is another category of Courts which can fall in the category of Criminal Courts. The said Courts are the Juvenile Justice Boards constituted under Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 which are headed by a Judicial Magistrate of the First Class or a Metropolitan Magistrate. There are Special Criminal Courts under the various statutes. The powers of the Special Courts are conferred on the Criminal Courts which are already established under the CrPC.

CITY CIVIL AND SESSIONS COURTS IN MUMBAI

20. In the City of Mumbai, the Bombay City Civil and Sessions Court has been established under the Bombay City Civil Court Act, 1948. The Judges of the said Court also exercise the powers of the Session Judges/Additional Session Judges. The said Court is headed by the Principal Judge who is also the Session Judge. It is not the Court of Ordinary Original Civil Jurisdiction for the City of Mumbai, but it exercises the jurisdiction to entertain civil suits of which the value or subject matter does not exceed the sum of Rupees one crore. There is no Appellate Civil Jurisdiction vested in the said Court except the Appellate Jurisdiction under the Special Statutes such as the Government Premises Act, Public Premises (Eviction) Act, etc. However, the Criminal Appellate and Revisional Jurisdiction of the Sessions Court is vested in the said Court.

21. Under Section 165 of the Motor Vehicles Act, 1988 (for short “the said Act of 1988”), establishment of Motor Accident Claims Tribunal is contemplated. Section 165 reads thus:

“165. Claims Tribunals.—(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals

(hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.—For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles” includes claims for compensation under Section 140 [and Section 163-A][1](#).

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he—

- (a) is, or has been, a Judge of High Court, or
- (b) is, or has been, a District Judge, or
- (c) is qualified for appointment as a Judge of a High Court [or as a District Judge][2](#).

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.”

In almost all the Districts, the powers of the Tribunal have been conferred on the District Judges. However, in Mumbai, there is a separate Motor Accident Claims Tribunal established under the said Act of 1988.

TRIBUNALS UNDER THE SAID ACT OF 1986

22. Under the said Act of 1986, under Clause (b) of Section 9, there is a provision to establish Consumer Dispute Redressal Commission (for short “State Commission”). Under Clause (c) of Section 9, there is a provision to establish a Consumer Disputes Redressal Forum (for short “District Forum”) which is required to be established in each District of the State. The jurisdiction of the District Forum is governed by Section 11 of the said Act of 1986 which reads thus:

“11. Jurisdiction of the District Forum

(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed [does not exceed rupees twenty lakhs].

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction, -

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or [carries on business or has a branch office or] personally works for gain; or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or [carries on business or has a

branch office], or personally works for gain, provided that in such case either the permission of the District Forum is given or the opposite parties who do not reside or [carry on business or have a branch office], or personally work for gain, as the case may be, acquiesce in such institution; or

- (c) the cause of action, wholly or in part, arises.”

23. A person who is or has been qualified for the post of a District Judge is the President of the District Forum. There are two other members of a District Forum.

24. The State Commission has original jurisdiction which is governed by 17 of the said Act of 1986 which reads thus:

“17. Jurisdiction of the State Commission.--

(1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction --

(a) to entertain -

(i) complaints where the value of the goods or services and compensation, if any, claimed [exceeds rupees twenty lakhs but does not exceed rupees one crore]; and

(ii) appeals against the orders of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so

vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

[(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.]”

25. Apart from the Original Jurisdiction, there is a jurisdiction vesting in the State Commission of entertaining an Appeal under Section 15 of the said Act of 1986 against the orders made by District Fora. Clause (b) of Sub-section (1) of Section 17 also confers revisional jurisdiction on the State Commission. Apart from the revisional jurisdiction, under Section 17A, there is a power vesting in the State Commission to transfer complaints pending before one District Forum to another District Forum. The President of the State Commission is a

person who is or has been a Judge of a High Court. The State Commission consists of two or more members. Some of the retired District Judges are being regularly appointed as members of the State Commission. As per the information available on the official website Confonet, as of 4th May 2017, 20,030 cases are pending before the State Commission, out of which 13,130 are the Appeals under Section 15.

CO-OPERATIVE COURTS

26. Now we turn to the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short “the said Act of 1960”). Section 91-A thereof deals with the constitution of Co-operative Courts. It provides for establishing one or more Co-operative Courts for the adjudication of disputes under Section 91 or Section 105 of the said Act of 1960. Section 91 confers wide powers on the Co-operative Courts as provided in Sub-section (1), which reads thus:

“91. Disputes.- (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers other than elections of committees of the specified societies including its officer, conduct of general meetings, management or business of society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, to the Co-operative Court if both the parties thereto are one or other of the following :

- (a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or Liquidator of the society; or the Official Assignee of a de-registered society;
- (b) a member, past member or a person claiming through a member, past member or a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society;
- (c) a person other than a member of the society, with whom the society has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under section 43, 44 or 45, and any person claiming through such person;
- (d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society;
- (e) Any other society or the Liquidator of such a society or de-registered society or the Official Assignee of such a de-registered society.

Provided that, an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society other than a notified society under section 73-IC or a society specified by or under section 73-G, or refusal of admission to membership by a society to any person qualified there for or any proceeding for the recovery of the amount as arrears of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or sub-section (1) of Section 137 or

the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156 [or any orders, decisions, awards and actions of the Registrar against which an appeal under section 152 or 152A and revision under section 154 of the Act have been provided] shall not be deemed to be a dispute for the purposes of this section.”

27. Section 97 of the said Act of 1960 provides for an Appeal against any decision of the Co-operative Court before the Co-operative Appellate Court. The Maharashtra Co-operative Appellate Court (for short “the Co-operative Appellate Court”) is established under Section 149 of the said Act of 1960. Sub-section (9) confers the power on the Co-operative Appellate Court to entertain a revision against the orders of the Co-operative Court.

28. As far as the qualifications for appointment of the Judges of Co-operative Courts and Co-operative Appellate Court are concerned, the Rule 77-A of the Maharashtra Co-operative Societies Rules, 1961 (for short “the said Rules of 1961”) provides that no person shall ordinarily be eligible for appointment as a Judge of a Co-operative Court, unless he is holding or has held a judicial office not lower in rank than that of Civil Judge (Junior Division). The Rule 77A(4) empowers the State Government to appoint an Advocate to be a Judge of a Co-operative Court who has practiced as such for at least three years or an

Advocate or a person holding a qualification entitling him to register as an Advocate and either (i) who has held an office not lower in rank than the office of the Deputy Registrar of the Co-operative Societies for not less than five years, or (ii) possesses good knowledge of co-operative law and practice. As far as the Co-operative Appellate Court is concerned, under Rule 104 of the said Rules of 1961, a person who is qualified to be appointed as a Judge of the High Court or is holding or has held a judicial office not lower in rank than that of the District Judge is eligible to become a President of the Maharashtra State Co-operative Appellate Court. Any person holding the said qualification or who has held office not lower in rank than that of the Joint Registrar of Co-operative Societies for not less than one year or a person who is enrolled as an Advocate or who is qualified to enroll as an Advocate and either (i) has held office not lower in rank than that of Deputy Secretary to Government for not less than three years, or (ii) who in the opinion of the Government possesses good knowledge and experience of co-operative law and practice. During the last several years, a consistent practice has been followed to appoint an in-service District Judge as the President of the Co-operative Appellate Court.

FAMILY COURTS

29. Under the Family Court Act, 1984, eleven Family Courts have been established in the State. The jurisdiction of the Family

Courts is very wide as specified in Section 7 of the said Act of 1984,

which reads thus:-

“7. Jurisdiction.- (1) Subject to the other provisions of this Act, a Family Court shall-

- a. have and exercise all the jurisdiction exercisable by any district Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and
- b. be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation -The suits and proceedings referred to in this subsection are suits and proceedings of the following nature, namely:

- a. a suit or proceeding between the parties to a marriage for decree of a nullity marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;
- b. a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
- c. a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;
- d. a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

- e. a suit or proceeding for a declaration as to the legitimacy of any person;
- f. a suit or proceeding for maintenance;
- g. a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act a Family Court shall also have and exercise;

- a. the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
- b. such other jurisdiction as may be conferred on it by any other enactment.”

As narrated earlier, as on 28th April 2017, 33,617 cases are pending in the Family Courts in the State.

BRIEF FACTS OF CASES

30. Before we deal with the issues, a brief reference to the facts of individual cases will have to be made.

ORIGINAL SIDE PUBLIC INTEREST LITIGATION NO.61 OF
2012

31. This PIL is essentially filed for seeking a writ of mandamus for implementation of the provisions of the Maharashtra Fire Prevention

and Life Safety Measures Act, 2006 (for short “Fire Prevention Act”) in case of all the buildings in the State which are used for the Courts. There are consequential prayers made such as making inventory of fire prevention equipment and machinery in the Court Complexes and providing fire extinguishing equipment and fire preventing machinery to the Courts. Reliance is placed on the report named as “Review of Fire Codes and Byelaws” submitted by Shri G.B. Menon, the Fire Advisor, Government of India (Retired) Cochin. Apart from relying upon the report, attention of the Court is invited to the various provisions of the Fire Prevention Act.

32. The main contention raised by the Petitioner who is a citizen of the City of Mumbai is that the provisions of the Fire Prevention Act are not being implemented especially in relation to the Courts. He has invited the attention of the Court to the fact that there was a serious fire which broke out in Mantralaya. The first prayer in the Petition is for issuing a writ of mandamus directing the Respondents to strictly implement the provisions of the Fire Prevention Act in all the Courts in Maharashtra. There are consequential directions sought against the Mumbai Municipal Corporation to ensure that sufficient infrastructure is made available for protecting the Courts and Court record. Our attention is invited to the fact that there is always a threat of fire to the valuable Court record.

ORIGINAL SIDE WRIT PETITION NO.1543 OF 2016

33. Writ Petition No.1543 of 2016 has been filed by Shri Raghunath R. Shingte, who is the President of the Bar Association of the Motor Accident Claims Tribunal, Mumbai which is an Association of lawyers practicing before the Accidents Claims Tribunal at Mumbai. The Petition is filed mainly for inviting our attention to the fact that the present premises available to the Motor Accident Claims Tribunal at Mumbai situated near Old Administrative Building, Opposite CST Railway Station, Mumbai, are grossly insufficient. In fact, on behalf of the Tribunal, the State Government was moved for allotment of premises in possession of the State Commission under the said Act of 1986. By a communication dated 12th January 2016 issued by the State Government, the said request was rejected. There is an additional affidavit filed by the Petitioner on 6th October 2016 giving figures of pendency and setting out the requirements of the said Motor Accident Claims Tribunal.

WRIT PETITION NO.175 OF 2016

34. Writ Petition No.175 of 2016 has been preferred by the Maharashtra Co-operative Court Bar Association. By filing the said Petition, it is pointed out that four Co-operative Courts in Mumbai were

earlier housed on the second floor of Contractor Building in Fort, Mumbai in a rented premises admeasuring 5,005 sq. ft. in which the bar room, canteen, record room and four Court halls and offices were accommodated. An area of 5005 sq. feet on the ground floor of the Old Secretariat Building, Fort, Mumbai was occupied by the Co-operative Appellate Court.

35. As per the order dated 24th January 2008 passed by a Division Bench of this Court in Writ Petition No.2331 of 1990, an area of 1,800 sq. ft. on the second floor of D.D. Building, Old Custom House, Fort, Mumbai, was ordered to be allotted to the Co-operative Courts. A liberty was granted to make a fresh representation to the State Government for grant of more space. The said order was passed in the aforesaid Writ Petition filed by the present Petitioner. The said premises was accordingly handed over to the Co-operative Courts.

36. It is pointed out that by the orders dated 30th August 2007 and 27th June 2008 issued by the State Government, premises having area of 930 sq. ft. and 390 sq. ft. respectively in the said D.D building were ordered to be allotted to the Co-operative Courts. However, the possession of both the premises has not been handed over as the same have been occupied by the Departments of the Government. The Deputy Secretary of the Department of Co-operation by his letter dated 14th

July 2010 requested the Deputy Secretary of the General Administration Department to grant an area of 10,000 sq. ft. on the 3rd floor of the same building (DD Building) for four Co-operative Courts on priority basis. Reliance is placed on the correspondence made in that behalf. There was a further order passed on 24th January 2011 by the State Government directing allotment of an area of 3,958 sq. ft. on the 3rd floor of DD building to the Co-operative Courts. By an order dated 2nd January 2014, an area of 7,958 sq. ft. was ordered to be allotted to the Co-operative Courts on the third floor of D.D. Building. The said order records that this area of 7,958 sq. ft. was inclusive of an area of 3,958 sq. ft. allotted under the order dated 24th January 2011. Thus the additional area of 4,000 sq. ft. was allotted on the third floor of the D.D. Building. The President of the Maharashtra State Co-operative Appellate Court (for short "Co-operative Appellate Court") addressed a letter dated 21st April 2015 to the Registrar (Inspection-II) of this Court. The said letter records that as per a decision taken in the meeting dated 10th March 2014, the premises on the ground floor of the Old Secretariat Building, which was earlier used by the Co-operative Appellate Court shall be used as a record section of the Co-operative Appellate Court. The President of the Co-operative Appellate Court informed the Registry that it is not possible to hand over the said premises in the Old Secretariat Building for the use of the City Civil Court.

37. It appears that a decision was taken vide Government Resolution dated 22nd May 2015 to allot the said premises of the Co-operative Appellate Court on the ground floor of the Old Secretariat Building to the State Commission. By a letter dated 27th May 2015 addressed by the President of the Co-operative Appellate Court to the Registrar of the State Commission, Desk Officer of the Government of Maharashtra and the Executive Engineer of the Public Works Department, a request was made for cancellation of the allotment made under the Government Resolution dated 22nd May 2015 to the State Commission. Reliance is placed on an order dated 29th May 2015 issued by the President of the Co-operative Appellate Court posting seven staff members mentioned therein to sit in the Old Secretariat Building premises. By a letter dated 2nd July 2015, the President of the Co-operative Appellate Court informed the Registrar (Judicial-II) that there are serious difficulties in the way of parting with possession of the premises in the Old Secretariat Building to the State Commission. He stated that if the possession thereof is required to be parted with, an area equivalent to 7,000 to 8,000 sq. ft. be allotted to the Co-operative Courts.

38. Public Interest Litigation No.156 of 2011 filed by the Mumbai Grahak Panchayat and Another and the Public Interest

Litigation No.59 of 2013 filed by the Help Mumbai Foundation and Another contain various grievances about the failure of the State Government to implement various provisions of the said Act of 1986 and about the lack of proper infrastructure available to Consumer Fora under the said Act of 1986. In these Petitions, the Division Bench of this Court by an order dated 21st September 2015 passed a detailed order directing the State Government to hand over the possession of the area of 5005 sq. ft on the ground floor of the Old Secretariat Building to the State Commission which was in possession of the Co-operative Appellate Court. The Division Bench directed that the record of the disposed of cases of the Co-operative Courts shall be maintained in the same premises by the State Commission till the record is scanned and the scanned files are handed over to the Co-operative Court. The State Government was directed to transfer the files to some other premises in Navi Mumbai or nearby Districts. It appears that the present Petitioner filed an Application for intervention in the said two Petitions and prayed for vacating the order dated 21st September 2015.

39. The Petitioners pointed out that against the order dated 24th January 2008 in Writ Petition No.2331 of 1990, a Special Leave Petition was filed before the Apex Court which was disposed of by an order dated 14th March 2016.

40. We must note here that extensive amendment was carried out to this Petition. Earlier, the prayers have been deleted and a writ of mandamus is prayed for directing the State Government to provide atleast an area of 25,000 sq. ft. to the four Co-operative Courts and three Co-operative Appellate Courts. A direction is sought to bring the staff of the Co-operative Courts and the Co-operative Appellate Courts under the administrative control of the President of the Co-operative Appellate Court. A prayer was made to provide additional staff. On 15th October 2016, the Petitioners have filed affidavit of their Secretary setting out the requirements of the Co-operative Courts and the Co-operative Appellate Courts.

PUBLIC INTEREST LITIGATION NOS.156 OF 2011, 59
OF 2013 AND 133 OF 2012.

41. Public Interest Litigation No.59 of 2013 has been filed by the Help Mumbai Foundation, a registered NGO under Section 25 of the Companies Act, 1956. The main prayer in this Petition under Article 226 of the Constitution of India is for issuing a writ of mandamus directing the State of Maharashtra to provide adequate space to the State Commission. There is also a prayer for directing the State Government to create additional six Benches of the State Commission.

42. Public Interest Litigation No.156 of 2011 is filed by the Mumbai Grahak Panchayat which is a Society registered under the Societies Registration Act, 1860 and a Public Trust under the Maharashtra Public Trusts Act, 1950. There are diverse prayers made in this Petition. Some of the prayers have been worked out. While discussing the issues raised, we propose to deal with various compliances made on the basis of the interim orders passed by this Court from time to time in this Petition. We have already made a reference to the order dated 21st September 2015 passed in Public Interest Litigation No.156 of 2011 and Public Interest Litigation No.59 of 2013. After the said order was passed, the Maharashtra Co-operative Court Bar Association filed a Civil Application No.155 of 2015 for intervention. Even this Court on the administrative side and the President of the Co-operative Appellate Court applied for intervention vide Civil Application No.157 of 2015. The prayer made in both the Applications for intervention was allowed by an order dated 13th October 2015. By the order dated 13th October 2015, it was directed that the possession of the premises in the Old Custom House shall not be handed over to the State Commission. The said order of stay was vacated on 20th October 2015.

43. Public Interest Litigation No.133 of 2012 is filed by the Petitioner who claims to be an activist. The prayer made in this PIL is

for enforcement of the Government Resolution dated 22nd March 2005 and for establishing State and District Consumer Protection Councils.

WRIT PETITION NO.2544 OF 2015

44. Writ Petition No.2544 of 2015 has been transferred from the Bench at Nagpur. The first prayer is for issuing a writ of mandamus directing the State Government to take steps for implementation of the recommendations which are annexed as Annexures 2, 3 4 and 5 in respect of the salary of the members of the State Commission. The second prayer which is added by way of amendment is of quashing the Government Resolution dated 15th December 2014. This Petition is filed by the Petitioner who is a full time member of the State Commission. There is a Civil Application No.2703 of 2016 filed by the Petitioner seeking a direction to pay salary and perquisites to her which are equivalent to the salary payable to the President of the State Commission for the period between 16th December 2015 to 10th January 2016 on the ground that she was holding the charge of the post of the President during the said period.

WRIT PETITION NO.8352 OF 2016

45. Writ Petition No.8352 of 2016 has been transferred from the Bench at Aurangabad. The Petitioner is a member of the District

Forum at Yeotmal. The prayer in this Petition under Article 226 of the Constitution of India is firstly for issuing a writ of mandamus directing the State Government to pay equal salary to all the members of the District Forum on the basis of the doctrine of “equal pay for equal work”. The second challenge in this Petition is to the constitutional validity of Rule 10.3 of the Maharashtra Consumer Protection Rules, 2000 (for short “the said Rules of 2000”). There is a detailed additional affidavit is filed by the Petitioner based on the subsequent increase in the salary for pointing out the alleged discrimination.

PUBLIC INTEREST LITIGATION NO.52 OF 2015

46. The Petitioner Association is a voluntary Consumer Service and Research Association registered under the Societies Registration Act, 1860. Public Interest Litigation No.52 of 2015 has been transferred from the Bench at Nagpur. The first prayer in this PIL is for directing the State Government to issue an order of separation of cadres and recruit suitable Registrar and other staff for smooth and effective functioning of District Fora as well as the State Commission. The Petitioner has referred to various Government Resolutions.

WRIT PETITION NO.2547 OF 2015

47. Writ Petition No.2547 of 2015 has been transferred from the Bench at Nagpur. The Petitioners are relying upon the resolution adopted in the Conference of Hon'ble Ministers along with the Secretaries of the Consumer Affairs Departments of the States as well as the Union Territories which was also attended by the Presidents of the respective State Commissions. The said meeting was held on 15th March 2012 in which several resolutions were adopted. One of the resolutions which was unanimously adopted was to the effect that the pay scales of the full time members of the State Commission and the District Fora should be as applicable to a Joint Secretary and Director, respectively in the Central Secretariat of the Government of India. It was also resolved that till the pay scales are brought to the aforesaid level, the State Governments should adopt the pay and perquisites fixed by the Governments of Kerala or Andhra Pradesh or Haryana. It was also resolved to adopt the amounts recommended by the Committee headed by Dr. P.B. Shenoy for payment of conveyance allowance and daily allowance per sitting for the part time members of the State Commission and part time members of the District Fora. The grievance is that the said resolution which was approved in the subsequent meeting held on 14th and 15th March 2013 has not been implemented. The said meeting held on 14th and 15th March 2013 was attended by the Hon'ble Ministers of the Departments of the Consumer Affairs of all the

State Governments, Secretaries of Consumer Affairs Department of all the States as well as Union Territories and the Presidents of the State Commissions. In the said meeting, a resolution was passed reiterating the aforesaid decision taken in the meeting held on 15th March 2012. The grievance made in this Petition is about the non-implementation of both the Resolutions.

PUBLIC INTEREST LITIGATIONS AND WRIT
PETITIONS CONCERNING THE INFRASTRUCTURE OF
COURTS

48. Public Interest Litigation No.14 of 2012 is filed for raising the issue regarding failure of the State Government to provide proper infrastructure to the judiciary.

49. Public Interest Litigation No.7 of 2011 is a Suo Motu PIL. The issues raised therein have been set out in Paragraph 2 of the order dated 7th March 2011. The Paragraph 2 of the order dated 7th March 2017 reads thus:-

“2. The learned Additional Government Pleader is seeking time to take instructions. We direct the registry to make available a copy of the note dated 14th December 2010 submitted by the Registrar General to the Hon'ble the Chief Justice to the learned Additional Government Pleader after deleting the portion of the order passed by the Hon'ble the Chief Justice. It is not necessary for us to reproduce what is stated in the said note as the State will have to look into it. The

sum and substance of the said note is that situation in the matter of providing essential infrastructure to the Courts in the State of Maharashtra is very grim. It is stated that considering gravity of situation, it is necessary to take up the matter on the judicial side by initiating suo motu action for espousing the cause of the general public. Though the scope of this suo motu petition is very wide, for the time being we direct the State Government to consider the aspects set out under the heading 1 to 7 in the said Note. One of the issues is about reservation of 19 Plots in the development plan in Mumbai for the purpose of judiciary. Apart from the response of the State, the response of the Mumbai Municipal Corporation is also necessary. We, therefore, direct the appropriate Officer of the State Government to file a reply on the 7 points highlighted in the said Note. The reply shall be filed on or before 17th April 2014. Reply must deal with the all the factual aspects set out in the Note. Reply will also contain action taken plan.”

50. Note dated 14th December 2010 submitted by the Registrar General of this Court reads thus:

1. Reservation of 19 Plots under Development Plan of Mumbai.
2. Dilapidated condition of the Building which houses the School Tribunal.
3. Accommodation for Co-operative Courts;
4. Proposal pending for acquisition of Land;
5. Family Courts in the State of Maharashtra;
6. Status of Gramnyayalays; and
7. Issue of Meager Budget.

sng
infrastructure

PIL-156.11group-

51. The Public Interest Litigation No.216 of 2010 raises various issues about the infrastructure in the Courts at Kalyan in the District Thane and issue of cleanliness of the Court premises.

52. Public Interest Litigation No.31 of 2014 is tagged along with this group. Some of the prayers and issues made in this PIL may be covered by this Judgment. The main issue raised in this Petition is as regards the implementation of the ideal Judge-Population Ratio. There are directions sought to make available adequate number of Judges in all the Courts in the State.

ISSUES FOR CONSIDERATION

53. Thus, broadly speaking, the issues raised can be categorized into the following categories:-

- (i) Issues raised in PIL No.7 of 2011;
- (ii) Issue regarding making available updated copies of the State Acts and Rules in physical form and real time updation of the State Acts and the Rules on the State Government Website;

- (iii) Issue of providing proper infrastructure to all Civil and Criminal Courts and Tribunals;
- (iv) The issue of providing proper infrastructure and adequate space to Co-operative Courts and Co-operative Appellate Courts in the State and in particular in Mumbai;
- (v) The issue of administrative control over the staff employed in the Co-operative Courts and Co-operative Appellate Courts;
- (vi) The issue of providing infrastructure and adequate space to the State Commission and to the District Fora;
- (vii) The issue of payment of adequate remuneration to the members of the State Commission as well as District Fora;
- (viii) The issue of providing adequate space and infrastructure to the Motor Accident Claims Tribunal in Mumbai;

- (ix) The issue of grant of expeditious approval to proposals concerning infrastructure and the release of funds by the State Government for infrastructure of Courts and Tribunals in the State and the procedure to be followed for the release of funds;
- (x) The Court Infrastructure Policy submitted by the State before this Court.

54. There are diverse arguments made on behalf of the Petitioners in this group of PILs/WPs and on behalf of the State Government. Detailed submissions have been made from time to time by Shri A.A. Kumbhakoni, the learned senior counsel who was appointed in PIL No.7 of 2011 and other PILs concerning infrastructure of Civil and Criminal Courts in the State. He was ably assisted by Shri Borkar, the learned counsel. We may note here that when we requested Shri Kumbhakoni to assist the Court on the issues concerning infrastructures of the Civil and Criminal Courts, he disclosed to the Court that he was earlier representing the Government of Maharashtra as a Special Counsel in the Petitions dealing with the infrastructure of the State Commission and District Fora. Notwithstanding this disclosure, we requested him to appear and assist the Court as far as the

infrastructure provided to the Civil and Criminal Courts in the State of Maharashtra is concerned.

INFRASTRUCTURE

55. As mentioned above, one of the main issues involved in this group of PILs/WPs is of providing proper infrastructure to the Courts and Tribunals. On this aspect, while dealing with the infrastructure of the Courts in the State, the law has been laid down by this Court in Public Interest Litigation No.239 of 2009 and other connected matters decided on 7th & 31st August 2015 in the case of New Bombay Advocates' Welfare Association. Paragraphs 4 to 9 of the said Judgment read thus:

“4. Hence, now the law is crystalized. The law is that the State Government is under obligation to constitute sufficient number of Courts, Tribunals or Forums so that a litigant, who has knocked the door of the Court or Tribunal, is able to get speedy justice. Even the access to justice is a facet of fundamental right available under Article 21 the Constitution of India.

5. Our attention is invited to a decision of the Apex Court in the case of ***Brij Mohan Lal v. Union of India and Others***. It will be necessary to make a reference to Paragraphs 136 and 137 of the said decision which reads thus:-

“136. However, as far as functioning of the courts i.e. dispensation of justice by the courts is concerned, the Government has no control over the courts. Further,

in relation to matters of appointments to the judicial services of the States and even to the higher judiciary in the country, the Government has some say, however, the finances of the judiciary are entirely under the control of the State. It is obvious that these controls should be minimised to maintain the independence of the judiciary. The courts should be able to function free of undesirable administrative and financial restrictions in order to achieve the constitutional goal of providing social, economic and political justice and equality before law to the citizens.”

“137. Article 21 of the Constitution of India takes in its sweep the right to expeditious and fair trial. Even Article 39-A of the Constitution recognises the right of citizens to equal justice and free legal aid. **To put it simply, it is the constitutional duty of the Court to provide the citizens of the country with such judicial infrastructure and means of access to justice so that every person is able to receive an expeditious, inexpensive and fair trial. The plea of financial limitations or constraints can hardly be justified as a valid excuse to avoid performance of the constitutional duty of the Government, more particularly, when such rights are accepted as basic and fundamental to the human rights of citizens.**”

(emphasis added)

6. The Apex Court also relied upon its earlier decision in the case of *Hussainara Khatoon v. State of Bihar* wherein the Apex Court observed that it is also the constitutional obligation of the Apex Court to enforce setting up new Court buildings and Court houses providing more staff and equipment to the Courts and to take all

measures calculated to ensure speedy trial. The Apex Court in the said decision observed that the Government cannot plead financial or administrative inability to avoid its constitutional obligation to provide speedy trial to an accused.

7. The Apex Court has reiterated that it is the constitutional duty of the Government to provide to the citizens of the country with such judicial infrastructure and means of access to justice so that every citizen is able to receive an expeditious, inexpensive and fair trial. What is more important is the categorical declaration made by the Apex Court that the plea of financial limitations or constraints cannot be a valid excuse to avoid the performance of the constitutional duty of the Government to provide a proper judicial infrastructure. The fundamental right to access to justice and right to speedy justice available to the citizens can be effectively exercised by them provided adequate judicial infrastructure is available. The said right can be effectively exercised provided adequate number of Courts are established and a proper infrastructure is provided therein for the litigants, Judges, the members of the Bar and the Court staff. The existence of aforesaid fundamental right creates a corresponding obligation in the State Government to ensure that adequate number of Courts are established as may be decided by the High Court and a proper infrastructure is provided therein for the litigants, Judges, the members of the Bar and the Court staff. The litigants are entitled to have basic facilities such as clean drinking water, clean toilets and proper sitting arrangement in every Court. While performing the constitutional duty of ensuring that the citizens are able to exercise the said right, the State Government cannot come out with an excuse of financial limitations or constraints.
8. When it comes to the construction of new Courts, this Court on the administrative side takes into consideration number of relevant aspects, such as,

population, pendency of cases, easy accessibility to the the litigants to the place where Court is proposed to be established. After having considered all the relevant factors that this Court submits proposals to the State Government to establish new Courts.

9. **Only by providing lands for establishing Courts, the State Government does not discharge its constitutional obligation. It is an obligation of the State Government to provide all the necessary infrastructure to the newly established as well as the existing Courts, to the judicial officers, to the members of the staff as well as to the members of the Bar. The infrastructure has to be provided in such a manner that the Courts are able to function effectively. The infrastructure to be provided has to be consistent with the concept of dignity and decorum of the Court. The speedy disposal of cases in consonance with Article 39A of the Constitution of India cannot be achieved unless adequate number of Courts are established and adequate and proper infrastructure is provided to all Court premises.”**

(emphasis added)

The State Government has accepted the said decision and the said decision has become final as of today.

56. A Judicial notice about lack of proper infrastructure to the Courts in the State has been taken by this Court in the case of *Partur Advocates' Bar Association v. State of Maharashtra and other*⁶.

Paragraph 13 of the said decision reads thus:-

⁶ Writ Petition No.5098 of 2012 decided on 5th May 2016

“13. There are large number of Courts in the State which are housed in privately owned rented properties. At many stations, there are no judicial quarters available and wherever they are available, the same are not adequate in number. In a city like Mumbai, the judicial officers do not get quarters immediately after they are posted and, therefore, they are required to stay in a make-shift hostel facility at Small Causes Court at Mumbai. In other bigger Cities in the State , even such transit facility is not available. Most of the Taluka and District Courts lack elementary infrastructure. In fact, in large number of PILs pending in the Court wherein the issues of lack of infrastructure has been raised, this Court has issued directions from time to time to the State Government to provide funds and or infrastructure. In many cases, this Court was required to issue writs directing release of funds for construction of Court buildings. In many cases, the Court premises which are situated in rented properties require repairs but the landlords are refusing to co-operate and permit repairs. The Judiciary has no financial independence in the sense that for carrying out even a small work of repairs or for buying furniture, the Courts have to seek sanction of the State Government for release of funds. The orders passed by this Court shows that it is difficult to get funds from the Government even for basic needs of the Court. Various orders passed by this Court in PILs show that from time to time, this Court was required to issue directions to the State Government for providing elementary facilities to the litigants such as availability of washrooms, water purifiers, water filters, etc. Many buildings of the Courts are being constructed only after a writ of mandamus is issued by this Court for the release of funds. For establishment of new Courts, land and buildings are required for the Courts and judicial quarters. Additional Judges are required and additional posts of staff are required to be created by the State Government. Additional furniture, computers, printers etc are required. Perhaps, that is the reason why the High Court Administration took a policy decision that unless all the infrastructure/ facilities are provided by the State Government, new Courts should

not be established. It is true that there are cases of departure from the said decision. But, they are only by way exceptions. That is the reason why there are inherent limitations on the implementation of the ideal concept of the justice at door-steps.”

(emphasis added)

57. The Motor Accident Claims Tribunal established under the M.V. Act, the Co-operative Courts and the Co-operative Appellate Court established under the said Act of 1960, the State Commission as well as the District Fora established under the said Act of 1986 and Labour as well as Industrial Courts are also a part of the legal system in the State. The aforesaid Tribunals are vested with the power to decide a lis between the parties. In the case of *State of Maharashtra v. Labour Law Practitioners' Association*⁷, the Apex Court held that the Labour and Industrial Courts decide disputes which are of Civil nature and they perform judicial function. Their duty and function is to dispense justice to common man. Needless to say that the complaints under the said Act of 1986 are required to be expeditiously dealt with and decided by the State Commission and the District Fora. That is all the more true in case of the claims before the Motor Accident Claims Tribunals. The citizens who approach these Fora/Tribunals have also a fundamental right of getting speedy justice. Therefore, the principles laid down by this Court in the decision in the case of *New Bombay Advocates' Welfare Association* and other connected matters, will squarely apply

⁷ (1998)2 SCC 688

even to the aforesaid Tribunals. Thus, it is an obligation, both constitutional and legal, of the State to provide adequate infrastructure to the Motor Accident Claims Tribunal at Mumbai, Co-operative Courts and Co-operative Appellate Courts in the State, the State Commission and District Fora. The essential ingredients of infrastructure are the adequate number of Judicial Officers/Members of the staff, adequate space for Courts and Tribunals and their offices, for Members of the Bar, Litigants and Witnesses. It follows that the facilities such as adequate remuneration and allowances, residential accommodation (if required as per respective service conditions), transport arrangement, etc. ought to be provided for the benefit of the Judges/Judicial Officers/Members. Facilities such as proper sitting arrangements, clean and equipped washrooms/toilets(separate for men and women), supply of clean drinking water, information kiosks etc ought to be made available to the litigants and witnesses. The members of the Bar need adequate Bar rooms with necessary facilities. As held in the aforesaid decisions, the financial constraint is no ground to deny infrastructure. It is in light of this legal position that this group of matters will have to be decided.

58. After the judgment in this group of Petitions/PILs was reserved, this Court noticed the Judgment and Order dated 2nd January 2017 passed by the Apex Court in the case of *Imtiyaz Ahmad v. State*

*of Uttar Pradesh and Others*⁸. In the said decision, the Apex Court has dealt with the reasons for judicial delay. The Apex Court observed that the access to justice is also a fundamental right guaranteed under Article 21 of the Constitution of India. Mainly the Apex Court was dealing with the issue of inadequate strength of Judges. In Paragraphs 7 and 8 of the said decision, the Apex Court dealt with the issue of adequate number of Judicial Officers. The said paragraphs read thus:-

“7. This Court in a judgment delivered on 21 March 2002 in All India Judges Association v. Union of India[1] endorsed the views of the Law Commission in its 120th Report and directed that a judge to population ratio of fifty judges per million be achieved within a period of five years and not later than ten years in any case. This Court observed :

“The increase in the Judge strength to 50 Judges per 10 lakh people should be effected and implemented with the filling up of the posts in phased manner to be determined and directed by the Union Ministry of Law, but this process should be completed and the increased vacancies and posts filled within a period of five years from today. Perhaps increasing the Judge strength by 10 per 10 lakh people every year could be one of the methods which may be adopted thereby completing the first stage within five years before embarking on further increase if necessary”.

The Report of the Parliamentary Standing Committee on Arrears in Courts (2002) supported the application of the demographic norm

⁸ In Criminal Appeal Nos.254-262 of 2012

as the starting point for determination of judge strength. **In a letter dated 2 April 2013, the then Prime Minister of India also accepted the recommendation of the Chief Justice of India to double the existing number of courts. When this issue was taken up at the Joint Conference of Chief Ministers and Chief Justices in 2013 it was resolved to create new posts of judicial officers with requisite staff and infrastructure.**

8. In order to address the issue of arrears, a policy decision was taken by the Union government to constitute fast track courts and funds were allocated under the Eleventh Finance Commission for a period of five years (2000-05). When the issue of the discontinuation of fast-track courts came up, this Court in *Brij Mohan Lal v. Union of India*[2] held that the policies of the State should not derogate from undermining judicial independence and if a policy was counter-productive or liable to increase the case load, the court intervene judicially. Though this Court desisted from interfering with the policy decision in regard to discontinuing fast track courts, keeping in mind the huge pendency of cases, a direction was issued for the creation of additional posts in the district judiciary to the extent of ten per cent of the total regular cadre within a stipulated period.”

(emphasis added)

59. The said judgment and order further notes that the task of laying down the formula for calculating the required Judges' strength was entrusted to the National Court Management System Committee (NCMSC). In the said judgment, the suggestions of NCMSC have been taken into consideration. The judgment refers to the recommendations of the 14th Finance Commission for allocation of funds for the Courts.

In Paragraph 22 of the said decision, the following directions have been issued.

“22. Having regard to the above background, we now proceed to formulate our directions in the following terms :

Until NCMSC formulates a scientific method for determining the basis for computing the required judge strength of the district judiciary, the judge strength shall be computed for each state, in accordance with the interim approach indicated in the note submitted by the Chairperson, NCMSC;

NCMSC is requested to endeavour the submission of its final report by 31December 2017;

A copy of the interim report submitted by the Chairperson, NCMSC shall be forwarded by the Union Ministry of Law and Justice to the Chief Justices of all the High Courts and Chief Secretaries of all states within one month so as to enable them to take follow-up action to determine the required judge strength of the district judiciary based on the NCMSC interim report, subject to what has been stated in this judgment;

The state governments shall take up with the High Courts concerned the task of implementing the interim report of the Chairperson, NCMSC (subject to what has been observed above) and take necessary decisions within a period of three months from today for enhancing the required judge strength of each state judiciary accordingly;

The state governments shall cooperate in all respects with the High Courts in terms of the resolutions passed in the joint conference of Chief Justices and Chief Ministers in April 2016 with a view to ensuring expeditious disbursement of funds to the state judiciaries in terms of the devolution made under the auspices of the Fourteenth Finance Commission;

The High Courts shall take up the issue of creating additional infrastructure required for meeting the existing sanctioned strength of their state judiciaries and the enhanced strength in terms of the interim recommendation of NCMSC;

The final report submitted by NCMSC may be placed for consideration before the Conference of Chief Justices. The directions in (i) above shall then be subject to the ultimate decision that is taken on receipt of the final report; and

A copy of this order shall be made available to the Registrars General of each High Court and to all Chief Secretaries of the States for appropriate action.”

60. After 31st January 2017, these Petitions were adjourned from time to time to enable the learned Government Pleader to take instructions. This Court expressed a prima facie view that the number of members of the Tribunals which are the subject matter of this group of Petitions will have to be also determined on the basis of the principles adopted by the Apex Court. We may note here that on the last date of hearing, the learned Government Pleader made a statement before this Court that according to the State Government, the formula laid down by the Apex Court will apply only to the traditional Courts like Civil and Criminal Courts and not to the Tribunals. The formula which was accepted by the Apex Court which is a part of the interim report submitted by the Chairman of the NCMSC is basically evolved to reduce the arrears before the traditional Courts both Civil and Criminal. The Tribunals with which we are concerned also decide the lis between

the parties. Some of the Tribunals deal with the action under the Law of Torts. Therefore, there is no reason why the interim report of NCMSC should not be taken into consideration for calculating the member strength of Tribunals.

THE IMPLEMENTATION OF THE SAID ACT OF 1986

61. Firstly, we are dealing with the Petitions filed seeking implementation of certain provisions of the said Act of 1986. It was enacted to provide better protection to the interests of consumers and for making provision for establishment of Consumer Councils and other Authorities for settlement of consumer disputes and for matters connected therewith. Perusal of the provisions of the said Act of 1986 shows that the same provide for establishing (a) Central Consumer Protection Council (Section 4); (b) the State Consumer Protection Council (Sections 7 and 8); (c) the District Consumer Protection Council (Sections 8-A and 8-B); (d) A Consumer Disputes Redressal Forum for a District (“District Forum”) [Section 9(a)]; (e) A Consumer Disputes Redressal Commission (“The State Commission”) [Section 9(b)]; and (f) A National Consumer Disputes Redressal Commission [Section 9(c)].

62. As far as the State Consumer Protection Council is concerned, the constitution thereof is defined under Section 7 of the said Act of 1986, which reads thus:

“7. The State Consumer Protection Councils

(1) The State Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council for (hereinafter referred to as the State Council).

(2) The State Council shall consist of the following members, namely:-

- (a) the Minister in-charge of consumer affairs in the State Government who shall be its Chairman;
- (b) such number of other official or non-official members representing such interests as may be prescribed by the State Government.
- (c) such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

(3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.”

63. Section 8 provides that the object of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of Section 6 of the said Act of 1986. Therefore, Section 6 is relevant, which reads thus:-

“6. Objects of the Central Council .-- The objects of the Central Council shall be to promote and protect the rights of the consumers such as, -

- (a) the right to be protected against the marketing of goods and services which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
- (d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- (f) the right to consumer education.”

64. The constitution of a District Consumer Protection Council is provided in Section 8A, which reads thus:-

“8A. The District Consumer Protection Council.—

(1) The State Government shall establish for every district, by notification, a council to be known as the District Consumer Protection Council with effect from such date as it may specify in such notification.

(2) The District Consumer Protection Council (hereinafter referred to as the District Council) shall consist of the following members, namely:—

- (a) the Collector of the district (by whatever name called), who shall be its Chairman; and

(b) such number of other official and non-official members representing such interests as may be prescribed by the State Government.

(3) The District Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The District Council shall meet as such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.]”

65. As specified in Section 8-B, the object of every District Council is to promote and protect within the District the rights of the consumers laid down in clauses (a) to (f) of Section 6. Thus, the State Council and District Councils are expected to discharge very important functions. The essential object of establishing the said Councils is to protect the very important rights of consumers which are specified in Clauses (a) to (f) of Section 6 of the said Act of 1986. The duty of the State as well as District Councils is to promote and protect the rights of the consumers.

66. For the sake of convenience, we may make a reference to the definition of “Consumer” under Clause (d) of Section 2 of the said Act of 1986, which reads thus:

“(d) “consumer” means any person who,—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose]

Explanation. – For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment.”

67. The definition of “Consumer” is very wide. The object of the said Act of 1986 is to provide protection to all those who fall in the wide definition of “Consumer”. The State and the District Councils may not have adjudicatory powers, but the Councils are under an obligation

to play a pro-active role for promoting and protecting the rights of the consumers which are under Clauses (a) to (f) of Section 6 of the said Act of 1986.

68. A District Forum also plays a very important role considering the jurisdiction vested in it under Section 11, which reads thus:-

“11. Jurisdiction of the District Forum.—

(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed 1[does not exceed rupees twenty lakhs].

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or 2[carries on business or has a branch office or] personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or 3[carries on business or has a branch office], or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or 4[carry on business or have a branch office], or personally work for gain, as

the case may be, acquiesce in such institution;
or

(c) the cause of action, wholly or in part, arises.”j

69. The procedure for dealing with the complaints filed before the State Commission/District Forum is laid down in Section 13 which shows that various powers including the powers of a Civil Court under the Code of Civil Procedure, 1908 of summoning and enforcing the attendance of parties and witnesses, receiving evidence on affidavits, discovery and production of documents, requisitioning of the reports from the appropriate laboratory and issuing of any commission for the examination of witnesses have been conferred on the State Commission and District Fora. For the purposes of provisions of Sections 193 and 228 of the Indian Penal Code, the proceedings before the District Forum and State Commission shall be deemed to be a judicial proceeding. It is also provided that the District Forum and State Commission shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. The powers which can be exercised by the District Forum while dealing with and disposing of the complaints are listed in Section 14, which reads thus:-

“14. Finding of the District Forum.— (1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the

complaint about the services are proved, it shall issue an order to the opposite party directing him to 1[do] one or more of the following things, namely:—

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party: [Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;]

(e) to [remove the defects in goods] or deficiencies in the services in question;

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

(g) not to offer the hazardous goods for sale;

(h) to withdraw the hazardous goods from being offered for sale;

(ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(hb) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has

been suffered by a large number of consumers who are not identifiable conveniently: Provided that the minimum amount of sum so payable shall not be less than five per cent. of the value of such defective goods sold or services provided, as the case may be, to such consumers: Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;]

(i) to provide for adequate costs to parties.]

(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together: [Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.]

(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding: Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.]

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of

the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.”

70. The State Commission has original jurisdiction as well. An Appeal against an order passed by the District Forum lies before the State Commission. Section 17 of the said Act of 1986 which deals with the jurisdiction of the State Commission, reads thus:-

“17. Jurisdiction of the State Commission.—

(1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed 2[exceeds rupees twenty lakhs but does not exceed rupees one crore]; and

(ii) appeals against the orders of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.]”

71. Sub-section (1-B) of Section 16 lays down that the jurisdiction, powers and authority of the State Commission may be exercised by the Benches thereof. Section 17-B provides that the State Commission shall ordinarily function in the State Capital but may perform its functions at such other places as the State Government may, in consultation with the State Commission, notify in the Official Gazette, from time to time. Section 15 of the said Act of 1986 confers the appellate powers, which reads thus:-

“15. Appeal .-- Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a

period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

[Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent of that amount or twenty-five thousand rupees, whichever is less.]”

72. There is an elaborate provision made for enforcement of the orders of the District Forum and State Commission. Section 25 confers the said power which reads thus:

“25. Enforcement of Orders by the Forum, the State Commission or the National Commission.-- Every order made by the District Forum, the State Commission or the National Commission may be enforced by the District Forum, the State Commission or the National Commission, as the case may be, in the same manner as if it were a decree or order made by a court in a suit pending, therein and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the court within the local limits of whose jurisdiction, -

- (a) in the case of an order against a company, the registered office of the company is situated, or
- (b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated, and thereupon, the court to which the order is so sent, shall execute the orders

as if it were a decree or order sent to it for execution.”

73. If there is a failure or omission on the part of a trader or a person against whom a complaint is made or the Complainant, such a person shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees.

74. Thus, very comprehensive powers have been conferred on the State Commission as well as District Forum. Not only that there are powers to issue directions as provided in Sections 14 and there are sufficient powers conferred to enforce those directions in accordance with Section 25. Therefore, for enforcement of the rights of the consumers, the District Fora at the District Level and the State Commission at State Level play a pivotal role.

75. Now, we may make a reference to the relevant Rules framed under the said Act of 1986. We are referring to the Maharashtra Consumer Protection Rules, 2000 (for short “the said Rules of 2000”). Rule 3 is relevant for deciding the controversy raised in some of the Petitions, which reads thus:-

“3. Salaries and other allowances and terms and conditions of the President and other Members of the District Forum-(1) The President of the District Forum shall receive salary at the minimum stage, of the District Judge appointed in the State Judicial Service, if appointed on whole time basis. However, if on a part time basis, i.e. on a sitting basis the President shall be paid Rs.400* per day as honorarium. Such of the President who is appointed after selection from the retired District Judges, shall get his pay fixed as per rule 157(2) of the Maharashtra Civil Services (Pension) Rules, 1982. Deputation allowance in addition to pay and allowances shall be payable to such of the President who is appointed from the cadre of sitting District Judges. The members of the District Forum, if appointed on whole-time basis, shall be paid a consolidated honorarium of Rs.8,000* per mensem. For attending sittings of the Forum on per sitting basis a sitting fee of Rs.400*or such amount as the Government may decide from time to time, shall be paid.

** 3(1)(a) If the Member is selected from the retired Under Secretary or its equivalent post in the Government of Maharashtra on whole time basis, shall get his pay fixed as per rule 157(2) of the Maharashtra Civil Services (Pension) Rules, 1982.

Explanation –

- (1) Whenever the President attends the work of the Forum, it shall be treated as a sitting.
- (2) When a Member is present and attends the work of the Forum like giving dates, admitting cases, etc. it shall be treated as a sitting.

(2) The President and the Members of the District Forum shall be entitled for such conveyance allowance and daily allowance, on official tour at such rate, as may be specified by the State Government, from time to time.

* Substituted by Notification dated 22nd March, 2005

** Rule No.3(1)(a) added by Notification dated 29th May, 2007

Provided that the Members of the District Forum, except the members of the Mumbai District Forum, shall be entitled to conveyance allowance at the rate that Government decides from time to time.

*(2A) For the purpose of attending sittings of the District Forum, the members of the District Forum shall be entitled to actual conveyance charges, on production of the certificate that they have not been provided with Government conveyance, subject to the ceiling mentioned below :-

- (i) in Mumbai District and Mumbai Suburban District, Rs.200 per day.
- (ii) in the local limits of any Municipal Corporation other than Mumbai Municipal Corporation, Rs.100/- per day.
- (iii) in rest of the area of the State, other than the area mentioned in clauses (i) and (ii) above, Rs.75/- per day.

(3) Before appointment, the President and Members of the District Forum shall have to make an undertaking that he does not and will not have any such financial or other interests, as is likely to affect prejudicially his functions as a President or a Member, and he shall not have any association with any political party. *Rule No.2A inserted by Notification dated 22nd January, 2009 and further the figures substituted by Notification dated 15th April, 2009

(4) In addition to provisions of sub-section (2) of Section 10, the State Government may remove from the office, the President and Member of a District Forum who:-

- (a) has been adjudged an insolvent, or
- (b) has been convicted of an offence which in the opinion of the State Government, involves moral turpitude, or
- (c) has become physically or mentally incapable of acting as such member, or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member, or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
- (f) has remained absent for not less than three consecutive sittings of the District Forum, without permission of the President of the State Commission, in case he is President of the District Forum and of the President of the concerned District Forum, in case he is a member. Under special circumstances such permission may be obtained post facto, however, strictly within thirty days from the first day of such absence, failing which he shall be treated as absent;

* Provided that the President or Member of the Forum shall not be removed from his office on the grounds specified in clause (d) and (e) of this sub-rule, except on an inquiry held by the President of State Commission, in which the President or Member of the District Forum, as the case may be, has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and found guilty.

- (5) The terms and conditions of the service of the President and the Members of the District Forum shall

not be varied to their disadvantage during their tenure of office.

(6) Where any vacancy occurs in the office of the President of the District Forum, by resignation, removal or he is unable to discharge the functions owing to absence, illness or any other cause, the senior most (in order of appointment) Member of the District Forum, who is qualified to be appointed as President of the Forum under clause (a) of sub-section (1) of Section 10, holding office for the time being, shall discharge the functions of the President until the person appointed to fill such vacancy assume the office of the President of the District Forum. In absence of both the members of the District Forum, or if none of the member is qualified to hold the office of the President, the President or any senior-most (in order of appointment) member of the District Forum of adjacent district, qualified to be appointed as a President shall discharge the functions of the President of the District Forum;

* Substituted by Notification dated 22nd March, 2005

Provided that if the Member of the District Forum of any adjacent District is qualified to be appointed as President, preference shall be given to such Member over the President of such adjacent District;

Provided further that the Government shall, by order specify the District which shall be treated as adjacent District for such purposes;

Provided also that where there are more than one Forum in the District, the President of any other Forum, in the District or any Member of any other Forum in the District, who is qualified to be appointed as a President shall discharge the functions of the President;

Provided also that, where the President or Member of the adjoining District Forum attends the work of the District Forum such President or the Member shall be paid traveling allowance and daily allowance in accordance with these Rules.

Explanation – If the Members, are not eligible under clause (a) of sub-section (1) of Section 10 of the Act, such Members shall attend the work of the Forum like giving of dates for hearing of complaints, accepting applications, complaints, etc. and bring the same to the notice of the President. Every such work shall be deemed to be a sitting. However, they shall not hear and dispose of the complaints.

It shall be the duty of the Registrar and the other Members of the staff to assist the Members in discharging such functions.

(7) The President or any Member ceasing to hold office as such shall not hold any appointment in or be connected with the management or administration of an organization which have been the subject of any proceeding under the Act during his tenure for a period of five years from the date on which he ceases to hold such office.

(8) The President of the District Forum shall discharge the judicial functions, while the Registrar of the District Forum shall discharge the administrative functions.”

DETAILS OF IMPLEMENTATION OF THE SAID ACT OF

1986:

76. Now we come to the various directions sought in this group of PILs/WPs.

(A) The constitution of State Consumer Protection Council as well as the District Consumer Protection Councils :-

77. The affidavit dated 10th October 2016 filed by Shri Uday Dattatraya Walunj, the Deputy Secretary of the Food and Civil Supplies Department deals with the compliance. There is a chart tendered by the learned Government Pleader which also deals with the compliance. Under the Government Resolution dated 19th October 2013, the guidelines relating to non-official members of the District State as well as the District Consumer Protection Council have been notified. Under the Government Resolution dated 3rd September 2014, the State Consumer Protection Council has been constituted. We may note here that there were objections raised by some of the Petitioners to certain nominations of the members. The State Government has accepted most of the objections and have taken remedial measures. The term of the State Consumer Protection Council is of three years which will come to an end on 2nd September 2017. In the affidavit of Shri Udhav D. Walunj, a specific statement has been made in Clause 2 that the District Consumer Protection Councils have been established in all the Districts in the State. We accept the said statement. As per the directions issued on 18th April 2012 in Public Interest Litigation No.156

of 2011, it is stated that the meetings of the State Council have been held.

78. We propose to issue directions to ensure that the meetings of the State Council are held atleast once in every quarter. We also propose to issue a direction to the State Council to exercise power under Sub-Rule (5) of Rule 2B of the said Rules of 2000 by constituting working groups so that the specific issues concerning the rights of the consumers can be addressed properly.

79. We also propose to issue direction to the State Government to start the process of reconstituting the State Council on or before 3rd June 2017 as the term of the State Council is to expire on 2nd September 2017. The State Government will have to take steps hereafter to commence the process of reconstitution of the State Council atleast three months before the expiry of the term of the State Council.

80. As far as the District Councils are concerned, in the affidavit of Shri Walunj, reliance is placed on the Government Circular dated 22nd March 2016. The said Circular states that meeting of the District Council be held on any other date except the Lokshahi Din. However, the same lays down that a gap between the two meetings shall not be more than 30 days. Thus, the District Councils are required

to hold meetings once in every calendar month. Even the process of reconstituting District Councils will have to be initiated at least three months before the expiry of its term.

81. The vacancy caused by the resignations, death or removal of the members of the State Council as well as the District Councils will have to be filled in as expeditiously as possible and in any event within a period of three months from the date on which the vacancy occurs.

(B) Separation of Cadres :

82. There was one more issue canvassed in some of the PILs/WPs. A grievance was made that the State Government has not separated the cadre of various posts created for the State Commission and the District Fora from the Weights and Measures Department. By a Government Resolution dated 16th November 2013, the State Government has brought about the separation and 497 posts have been separately carved out for the State Commission and District Fora.

(C) Framing of Recruitment Rules:

83. On one more issue, there is a compliance made. That is regarding framing of the Recruitment Rules for various posts on the

cadres of State Commission and District Fora. By the Government Resolution dated 1st January 2015, the Rules regulating recruitment of Group “A” and Group “B” Gazetted Posts in the office of the State Commission and the District Fora have been framed. By another Gazette Notification dated 3rd January 2015, the Recruitment Rules for various posts of Group “B” (Non-Gazetted) and Group “C” on the establishment of the State Commission and District Fora have been framed.

(D) Administrative control over the Staff of State Commission and District Fora :

84. A grievance was made in one of the Wps/PILs that the State Commission has no control over the staff on the establishment of the State Commission. By a Government Resolution dated 24th September 2015, the President of the State Commission has been appointed as the Head of the Department. By a Government Resolution dated 20th February 2015, the senior most Judicial Members of the principal seat at Mumbai and Benches at Nagpur and Aurangabad have been appointed as the heads of the establishment/offices. Therefore, the said members will have administrative control over the staff of the State Commission.

(E) Establishment of Benches of State Commission:

85. Another prayer was for issuing a direction for establishment of Benches of the State Commission at various other places in the State. By exercising the power under Section 17B of the said Act of 1986, a Government Resolution is issued on 29th January 2015 for establishing Circuit Benches of the State Commission at Kolhapur, Pune, Nashik and Amravati. Needless to add that the State Government will have to provide all infrastructure to the State Commission when its sittings are held at Circuit Benches at Kolhapur, Pune, Nashik and Amravati. We propose to direct the State Commission to submit a proposal for creating infrastructure such as adequate staff, space, furniture, computers, printers, servers, etc. for the Circuit Benches. The State Government will have to provide infrastructure on the basis of the proposal submitted by the State Commission. Needless to add that the State Government will have to make a provision for payment of travelling allowances and daily allowances to the members of the State Commission when they work at Circuit Benches and also make arrangements for their stay at their respective places consistent with their respective status.

(F) Remuneration payable to Members of the State
Commission and District Fora:

86. One of the main grievances canvassed is as regards the remuneration payable to the members of the State Commission as well as District Fora. In the earlier part of the judgment, we have referred to the Resolution dated 15th March 2012 adopted by the Conference of the Hon'ble Ministers along with the Secretaries of the Consumer Affairs Departments of various States and Union Territories as also the Presidents of the State Commissions. The said Resolution was confirmed in the subsequent Conference held on 14th and 15 March 2015. Clauses 2 to 4 of the order dated 6th August 2014 passed by a Division Bench of this Court in PIL No.156 of 2011 read thus:

“2 Our attention is invited to the resolution dated 15th March 2012 adopted by the conference of the Hon'ble Ministers along with the Secretaries of the Consumer Affairs Departments of various States and Union Territories as also Presidents of the State Consumer Dispute Redressal Commissions. **The gist of the resolution reads thus:**

“a Full Time Members of State Commissions and District for a should get pay and perquisites as applicable to Joint Secretary and Director in the Central Secretariat of the Government of India

b It is further resolved that till the finalization of these aspects by the respective State Governments so as to bring

parity the pay and perks fixed by either the State of Kerala or Andhra Pradesh or Haryana may uniformly be adopted by other States.

C As regards, part time members of State Commission and district for a it was resolved to adopt the recommendations of committed head by Dr. P.D.Shenoy (Former Member, National Commission) viz. Rs.1000/- as honorarium and Rs.300/- as conveyance allowance per day per sitting to the State Commission, Part Time members and Rs.600/- and Rs.150/- respectively for the part time members of the District Fora.”

3 It is stated that the said resolution was affirmed in the subsequent conference held on 14 and 15th March 2013. The Hon'ble Ministers of Consumer Protection Department of all the State Governments and Secretaries of the Consumer Affairs of the State Governments are parties to the said Resolution. What is now proposed by the State Government is not in conformity with the said resolution. The resolution also provides that till the finalization of the remuneration payable as per the resolution, the respective State Governments shall ensure that the pay and perks fixed by the States of Kerala or Andhra Pradesh or Haryana should be uniformly adopted by the other States.

4 We have perused the file tendered across the bar on the basis of which the proposal has been finalized by the Ministry of Consumer Affairs which has been submitted to the Ministry of Finance. We find that the detailed note and the supplementary note prepared by the Department do not make a reference to the resolution dated 15th March 2012 to which the Hon'ble Ministers of all the States are parties. **Therefore, we are of the view that the State Government will have to act in accordance with the resolution dated 15th March 2012 which is confirmed in the conference held on 14th and 15th March 2013. The Ministry of Consumer Affairs of the State Government shall submit a fresh proposal in terms of the resolution dated 15th March 2012 to the finance ministry for**

its approval. A separate proposal shall be submitted to the financial ministry in terms of clause (b) of the resolution dated 15th March 2012 set out above. The proposal in terms of clause (b) set out above, shall be submitted by the concerned ministry to the finance ministry within a period of two weeks from today. Appropriate decision shall be taken by the Finance Ministry on the said proposal within a period of six weeks from the date of the receipt of the said proposal.”

(emphasis added)

87. In Paragraph 7 of the said order, this Court recorded that the recommendations made by the Resolutions were reasonable. A Special Leave Petition preferred by the State Government against the said order was dismissed by the order dated 1st October 2015. Therefore, it is necessary to make a reference to the steps taken by the State Government to implement the said directions which have attained finality.

88. The first step taken by the State Government was by issuing a Government Resolution dated 15th December 2014. It provided that a remuneration of Rs.40,000/- per month shall be paid to the full-time members of the State Commission and remuneration of Rs.20,000/- per month shall be provided to the full-time members of the District Fora. For part-time members of the State Commission, it was resolved to pay Rs.1,000/- per sitting and Rs.300/- per day per sitting as a conveyance allowance. For the part-time members of the District Forum, a

remuneration of Rs.600/- per sitting was provided and Rs.150/- per sitting was made payable as vehicle allowance. Thus, for the part-time members, effect was given to the recommendations of the Committee headed by Dr.P .D. Shenoy (Former Member of the National Commission). For the full-time members, it was provided that remuneration was fixed at par with the remuneration fixed by the State of Haryana. There is a challenge to this notification in some of the Petitions which will not survive due to the subsequent Resolution of the Government.

89. On 15th October 2016, another Government Resolution was issued by which the effect was given to the Resolution passed on 15th March 2012 by directing that the remuneration payable to the Members of the State Commission will be Rs.62,000/- per month and the remuneration payable to the Members of the District Fora will be Rs.40,000/- per month. By the said Government Resolution, a direction was issued that all the complaints should be disposed of within a period of 90 days and the reports shall be submitted to the State Government. Thus, a substantial compliance is made with the recommendations made in the meeting held on 15th March 2015. However, the State Government could not have issued a direction to the State Commission and District Fora to dispose of all the complaints in 90 days. The State Government had no jurisdiction to give such a direction to a Quasi

Judicial Authority. The State Government has not applied its mind to the present status of pendency, extent of filing and number of members available to deal with the complaints. Moreover, the infrastructure provided is far from being ideal. This direction will not bind the State Commission and District Fora. The State Government cannot impose such a condition whilst complying with the order of this Court. The direction infringes the principle of the independence of judiciary and separation of powers. But at the same time, it is the duty of the State Commission and District Fora to dispose of the proceedings as expeditiously as possible.

(G) Applicability of the Government Resolution of 15th October 2015 with retrospective effect:

90. In Writ Petition No.2547 of 2015, in the written submissions, it is contended that even the amount of Rs.40,000/- and Rs.62,000/- fixed is discriminatory. There is an Application for amendment moved for challenging the Government Resolution dated 15th October 2016. The reliance is placed on the order dated 1st October 2015 passed by the Apex Court by which the order dated 6th August 2014 passed by this Court was confirmed.

91. Another issue raised by the Petitioners in PIL No.156 of 2011 is that the conveyance allowance payable to the part-time members as per the Government Resolution dated 15th December 2014 is on the lower side. The submission is that the conveyance allowance should be made realistic.

92. We have already made a reference to the contents of the Resolution passed in the meeting dated 15th March 2012 adopted in the Conference of Hon'ble Ministers along with the Secretaries of the Consumer Affairs Department of the States as well as the Union Territories. Initially, the State Government gave effect to the interim measures suggested under the said Resolution by fixing the monthly remuneration of a full-time member of the State Commission at Rs.40,000/- and the remuneration of a full-time member of the District Forum at Rs.20,000/-.

93. The Government Resolution dated 15th December 2014 claims that the remuneration was fixed as per the remuneration paid to the Members in the State of Haryana and for the part-time members, the remuneration was fixed as per the recommendations of Dr. P. D. Shenoy. The Government Resolution dated 15th October 2016 seeks to implement Resolution dated 15th March 2012 by which it was resolved to pay remuneration equivalent to the remuneration payable to Joint

Secretary and Director respectively in the Central Secretariat of the Government of India to full-time members of the State Commission and the District Commission. There is no material placed on record to show that the pay of Joint Secretary and Director in the Central Secretariat of the Government of India is more than what is provided in the Resolution dated 15th October 2016. If the members of the State Commission or District Fora have any grievance about the said quantum and non-providing perquisites as applicable to Joint Secretary and Director in the Central Secretariat of the Government of India, they can always make an appropriate representation to the State Government which will be decided by it in accordance with law. We may note here that in Writ Petition No.2547 of 2015, a writ of mandamus was sought for implementation of the Government Resolution passed on 15th March 2012 and confirmation thereof in the meeting held on 14th and 15th March 2013 with effect from January 2013. The said Writ Petition was filed on 7th May 2014. The interim measures as per the said Resolution dated 15th March 2012 which were expected to be taken immediately were taken by the State Government as late as on 8th December 2014. In fact, by that time, a final decision of paying pay and perquisite in terms of the Resolution ought to have been taken. There is a prayer made for directing that the Resolution dated 15th October 2016 be given retrospective effect. The submission is that as the Hon'ble Ministers and Secretaries of the Consumer Affairs Departments of all the States

including the State of Maharashtra were parties to the Resolution dated 15th March 2012, the said Resolution ought to have been implemented within a reasonable time. We must note here that the Resolution passed on 15th March 2012 contained recommendations. It is true that the State Government ought to have given importance to the said Resolution as its Hon'ble Minister of the concerned Department was a party to the said Resolution. The learned Government Pleader relied upon several decisions of the Apex Court on this aspect. He relied upon a decision of the Apex Court in the case of *Union of India and another v. S.Thakur*⁹. The said decision holds that the revision of pay scales are the matters which are primarily administrative in nature and the scope of Judicial review is limited. Another decision relied upon by him is in the case of *Chandrashekar A.K. v. State of Kerala and Another*¹⁰. In Paragraph 14, the Apex Court held thus:

“14. The question as to whether the scale of pay would be revised or not is a matter of policy decision for the State. No legal right exists in a person to get a revised scale of pay implemented. It may be recommended by a body but ultimately it has to be accepted by the employer or by the State which has to bear the financial burden. This aspect of the matter has been considered by this Court in *HEC Voluntary Retd. Employees Welfare Society v. Heavy Engg. Corpn. Ltd.* [(2006) 3 SCC 708 : 2006 SCC (L&S) 602] stating: (SCC p. 716, para 19).”

9 (2008)13 SCC 463

10 (2009)1 SCC 73

94. In view of the settled legal position, we are unable to issue a writ directing that the pay prescribed by the Government Resolution dated 15th October 2016 should be implemented from an earlier date. However, the State Government can always take such a decision. Therefore, it will be always open for the concerned Petitioners to move the State Government with a representation in that behalf which will have to be decided by the State Government in accordance with law.

(H) Violation of the doctrine of “Equal Pay for Equal Work”:

95. Writ Petition No.8352 of 2016 is filed by the Full-time Member of a District Forum. There is a challenge to Rule 10.3 of the State Rules of 2000. The Rule 3 provides that when the President of the District Forum is appointed who is a Retired District Judge, his pay shall be as per the Sub-Rule (2) of Rule 157 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short “the Pension Rules”). The Rule also provides that if a District Judge appointed in the State Judicial Service is appointed as a member of the District Forum, he will be entitled to a deputation allowance. The challenge is on the footing that the principle of equal pay for equal work has been violated. It is pointed out that if the President of the District Forum or a member is appointed from the category of the Advocates, he gets much less remuneration than the

remuneration which is payable to the President or the member of a District Forum who is from the category of the Retired District Judges. The submission is that a Member or a President of the District Forum who does not belong to the category of District Judges gets less remuneration though the same work is being done by all the persons appointed to the posts of President and member.

96. Even in Writ Petition No.2544 of 2015 filed by the Member of the State Commission, a similar issue has been raised. In addition, there is a prayer made directing the State Government to pay salary or honorarium to her for a period between 16th December 2015 and 10th January 2016 when she worked as the Acting President of the State Commission. This prayer cannot be granted as she merely officiated as the President of the State Commission. It was not a substantive appointment.

97. Now, we deal with the issue of the discrimination between the remuneration of the full-time members of the State Commission and District Fora who have not held any judicial office on one hand and the remuneration payable to those who have been either Judges or Retired Judges of this Court or District Court. The contention is that the salary and allowances payable to the members of the State Commission who are the District Judges or Retired District Judges or who have been

Judges of a High Court is much higher than the pay scale of other members. Same is the contention in respect of the members of District Fora. As per Rule 3 of the State Rules, the Presidents who have been District Judges and Members who have been under Secretary are entitled to the pay as provided in Rule 157(2) of the Maharashtra Civil Services (Pension) Rules. Rule 157(2) reads thus:-

“157. Fixation of pay of re-employed pensioner -

(1) A person, who is in receipt of a Superannuation or Retiring Pension, shall not be re-employed or continue to be employed in service paid from Consolidated Fund of India or of State or from a Local Fund, except on public grounds and in a purely temporary capacity.

(2) The authority who is competent to re-employ a pensioner shall fix the pay on re-employment subject to the following conditions, all of which must be satisfied:-

(a) Pay on re-employment plus pension (including pension equivalent of retirement gratuity or gratuity in lieu of pension) should not exceed the substantive pay drawn before retirement, or the officiating pay, if the Government servant was continuously officiating in that post for at least one year before retirement. In cases, where the substantive/officiating pay drawn before retirement is less than the minimum of the time-scale of the post in which a pensioner is re-employed, pay on re-employment may be the minimum of the time-scale minus pension (including pension equivalent of retirement gratuity or gratuity in lieu of pension).

(b) Pay (i.e., gross pay minus pension) on re-employment should not except with the sanction of Government under rule 40 of Maharashtra

Civil Services(pay) Rules, 1981 exceed the minimum of the time-scale of post in which the Government servant is re-employed.

(c) Pay on-re-employment plus pension (including pension equivalent of retirement gratuity or gratuity in lieu of pension) should not exceed the maximum of the time-scale of the post in which the Government servant is re-employed.

(d) Special pay can be drawn in addition to pay on re-employment provided –

(i) the total of pension and pay on re-employment plus special pay is restricted to the substantive pay last drawn or officiating pay, if the Government servant was continuously officiating in that post for at least one year before retirement plus special pay last drawn; and

(ii) the special pay is attached to the post in which he is re-employed.

(3) (a) In the case of persons retiring before attaining the age of fifty-five years, the competent authority while fixing the pay under sub-rule (2) above, shall ignore :-

(i) In the case of Civil Pensioners holding Class I post at the time of retirement, first Rs.1(500) of pension ;

(ii) In the case of others, the entire pension.

(b) The pension for the purposes of sub-clause (a), shall include pension equivalent of retirement gratuity or gratuity in lieu of pension.

Note 1.- Cases of Government servants who were subject to Contributory Provident Fund should be referred to Government for fixing the initial pay on-re-employment.

Note 2.- Once the pay on re-employment is fixed, the Government servant shall be entitled to receive the benefits of increments even though the total of pension including pension equivalent of retirement gratuity or gratuity in lieu of pension and pay exceeds the substantive pay drawn before retirement, or officiating pay if the Government servant was continuously officiating in that post for at least one year before retirement, but it should not exceed the maximum of the time –scale of the post in which he is re-employed.

1. Substituted by Notification No.RES-1086/CR-52/SER-7,dated 21-11-1986.

Note 3.- When a Government servant is re-employed and his pension is shared between Maharashtra Government and another Government or Local Body, his pension should not be held in abeyance but should be drawn as separate entity.

Note 4- Where, on re-employment, pension is not held in abeyance, increments accruing after re-employment should be based on the consolidated pay, i.e., pay on re-employment plus pension (including pension equivalent of retirement gratuity or gratuity in lieu of pension).

Note 5- If the pay-scale of the post in which the Government servant is re-employed is revised and the Government servant's pension has not been held in abeyance, his existing pay for the purpose of rule 15 of Maharashtra Civil Services (pay) Rules, 1981 should be taken to be his consolidated pay i.e. pay on re-employment plus pension (including pension equivalent of the retirement gratuity or gratuity in lieu of pension).

Note 6- The upper limit, viz, substantive/ officiating pay at the time of retirement minus pension

laid down in sub-rule (2) (a) above is also applicable to re-employment in a part-time post whether carrying a time-scale or an honorarium.”

98. The argument is that there is no difference between the nature of duties as well as the work done by the members of District Fora who have been District Judges and the other members. The same argument is made in respect of the work done by the members of the State Commission who have been Judicial Officers and those who have not been Judicial Officers. The argument is that the principle of equal pay for equal work be applied. In this behalf, it will be necessary to consider the decision of the Apex Court in the case of *State of Punjab and another v. Surjit Singh and others*¹¹. In Paragraph 24, the Apex Court held thus:

“24. It is no longer in doubt or dispute that grant of the benefit of the doctrine of “equal pay for equal work” depends upon a large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity. This Court, even recently, in *Union of India v. Mahajabeen Akhtar* [(2008) 1 SCC 368 : (2008) 1 SCC (L&S) 183] , categorically held as under: (SCC pp. 376-77, paras 19 & 24)

“19. The question came to be considered in a large number of decisions of this Court wherein it unhesitatingly came to the conclusion that a large number of factors, namely, educational qualifications, nature of duty, nature of responsibility, nature of method of recruitment, etc. will be relevant for determining equivalence in the matter

¹¹ (2009)9 SCC 514

of fixation of scale of pay. (See *Finance Deptt. v. W.B. Registration Service Assn.* [1993 Supp (1) SCC 153 : 1993 SCC (L&S) 157 : (1993) 24 ATC 403], *State of U.P. v. J.P. Chaurasia* [(1989) 1 SCC 121 : 1989 SCC (L&S) 71 : (1988) 8 ATC 929], *Union of India v. Pradip Kumar Dey* [(2000) 8 SCC 580 : 2001 SCC (L&S) 56] and *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* [(2002) 6 SCC 72 : 2002 SCC (L&S) 822])

24. On the facts obtaining in this case, therefore, we are of the opinion that the doctrine of equal pay for equal work has no application. The matter may have been different, had the scales of pay been determined on the basis of educational qualification, nature of duties and other relevant factors. We are also not oblivious of the fact that ordinarily the scales of pay of employees working in different departments should be treated to be on a par and the same scale of pay shall be recommended. The respondent did not opt for her services to be placed on deputation. She opted to stay in the government service as a surplus. She was placed in list as Librarian in National Gallery of Modern Art. She was designated as Assistant Librarian and Information Assistant. Her pay scale was determined at Rs 6500-10,500 which was the revised scale of pay. Her case has admittedly not been considered by the Fifth Pay Revision Commission. If a scale of pay in a higher category has been refixed keeping in view the educational qualifications and other relevant factors by an expert body, no exception thereto can be taken. Concededly it was for the Union of India to assign good reasons for placing her in a different scale of pay. It has been done. We have noticed hereinbefore that not only the essential educational qualifications are different but the nature of duties is also different. Article 39(d) as also Article 14 of the Constitution of India must be applied, inter alia, on the premise that equality clause should be invoked in respect of the people who are similarly situated in all respects.”

How the said principle is to be applied in different fact situation is the only question. Whereas this Court refused to apply the said principle as the petitioners therein did not have the requisite qualification; in *Union of India v. Dineshan K.K.* [(2008) 1 SCC 586 : (2008) 1 SCC (L&S) 248] , the application of the rule was advocated to be left to an expert body, stating: (*Dineshan K.K. case* [(2008) 1 SCC 586 : (2008) 1 SCC (L&S) 248] SCC pp. 592-93, para 16)

“16. Yet again in a recent decision in *State of Haryana v. Charanjit Singh* [(2006) 9 SCC 321 : 2006 SCC (L&S) 1804] a Bench of three learned Judges, while affirming the view taken by this Court in *State of Haryana v. Jasmer Singh* [(1996) 11 SCC 77 : 1997 SCC (L&S) 210] , *Tilak Raj* [(2003) 6 SCC 123 : 2003 SCC (L&S) 828] , *Orissa University of Agriculture & Technology v. Manoj K. Mohanty* [*Orissa University of Agriculture & Technology v. Manoj K. Mohanty*, (2003) 5 SCC 188 : 2003 SCC (L&S) 645] and *Govt. of W.B. v. Tarun K. Roy* [*Govt. of W.B. v. Tarun K. Roy*, (2004) 1 SCC 347 : 2004 SCC (L&S) 225] has reiterated that the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a court of law. Inter alia, observing that equal pay must be for equal work of equal value and that the principle of equal pay for equal work has no mathematical application in every case, it has been held that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. Enumerating a number of factors which may not warrant application of the principle of equal pay for equal work, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert

body and the court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary proof and that there is equal work of equal quality and all other relevant factors are fulfilled.”

(emphasis added)

99. In the case of State of *Haryana and another v. Haryana Civil Secretariat Personal Staff Association*¹², in Paragraph 9, the Apex Court reiterated the aforesaid principles and in Paragraph 10, the Apex Court held thus:-

“10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of the complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government, courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative

¹² (2202)6 SCC 72

decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same. As noted earlier, in the present case the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of employees, one in the State Secretariat and the other in the Central Secretariat. It has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by the employers which govern the administration of the cadre.”

(emphasis added)

100. Thus, the applicability of doctrine of equal pay for equal work depends upon the large number of factors. One of the factors which is to be considered is a source of recruitment and manner of appointment. In the case of *Pralhad Bhaurao Ghule and others v. Government of Maharashtra and others*¹³, a Division Bench of this Court to which one of us (A.S.Oka, J) is a party, held that a similarity in the designation or a similarity in the nature or quantum of work is not determinative of equality in the matter of pay scales. This Court further held that if there is a complete identity between a group of employees

¹³ 2014(5) Mh.L.J 367

claiming identical benefits with another group getting such benefits, then the doctrine of 'equal pay for equal work' would apply. In the present case, when it comes to a sitting or retired Judge of the high Court or a retired or sitting District Judge, it cannot be said that there is a complete identity between this group and the group of other members of the State Commission and District Fora. The Judicial Officers have a long experience of doing Judicial work. Moreover, as far as the experience and source of recruitment and appointment is concerned, this class of Retired Judges of the Government stands on a different footing. It cannot be said that there is a complete identity between the members who do not belong to this group and the members who belong to this group.

101. In the present case, the argument for applying doctrine of equal pay for equal work is based only on the nature of the duty. If all other relevant factors are considered, we are of the view that the State was justified in not applying the doctrine of 'equal pay for equal work'.

(I) Conveyance allowance to part time members:

102. Now, coming to the grievance regarding the conveyance allowance payable to the part-time members, we propose to direct the State Government to reconsider the quantum of conveyance allowance

as substantial time has lapsed from the date on which the recommendations were made by the Committee headed by Dr. P.D. Shenoy. The cost of modes of transport has increased substantially. We propose to direct the State Government to reconsider the said issue within a period of three months from today.

(J) Infrastructure of State Commission and District Fora:

103. Now, we come to the issue of infrastructure provided to the State Commission as well as District Fora. A detailed proposal has been submitted by the President of the State Commission on 27th June 2016 for providing infrastructure to the State Commission and its Benches and the District Fora. In our order dated 8th July 2016, it is already observed that the said proposal itself shows that the State Commission as well as the District Fora are lacking elementary facilities such as adequate space, staff, etc. Under the same order, this Court directed the State Government to give priority for providing the requirements out of the said proposal which were identified as urgent by the President of the State Commission.

104. In the compliance affidavit as well as chart submitted by the learned Government Pleader, there is some reference to the issue of infrastructure. It is stated that a proposal was sent by the Finance

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Department for purchase of a vehicle for the President of the State Commission which was under consideration of the State Government. However, nothing is placed on record to show that what action has been taken by the State Government on the proposal submitted on 27th June 2016 by the President of the State Commission.

105. We propose to direct the State Government to immediately act upon the detailed proposal dated 27th June 2016 and to provide all infrastructure/facilities set out therein. The requirements which are identified as urgent by the Chairperson of the State Commission will have to be complied with within a period of three months from today.

106. On the National Judicial Data Grid, all the orders of the Civil and Criminal Courts in the State are being regularly uploaded. The orders of the State Commission and District Fora are being uploaded on website Confonet.nic.in. However, prompt uploading of orders and data accuracy will have to be ensured. The State needs to implement a project of computerization on par with the E-Court Phase I and Phase II devised by E-Committee of the Apex Court for the Civil and Criminal Courts in India. The State Government will have to also start the process of digitization of the record of the State Commission and the District Fora and to provide facility of E-filing. It is also necessary to have a dedicated website of the State Commission and the

District Fora in the State. All this is necessary to bring in more transparency in the functioning. We propose to issue appropriate directions in this behalf.

107. As regards the issue of providing adequate premises to the State Commission in the Old Secretariat Building, we will deal with the said issue while we deal with the issue of allocation of space to the Maharashtra Co-operative Appellate Courts.

APPOINTMENT OF MEMBERS OF THE STATE
COMMISSION AND DISTRICT FORA

A grievance made that the State Government is not prompt in filling in vacancies in the posts of President of District Fora, Members of the District Fora, President of the State Commission and Members of the State Commission. We are of the view that if vacancies are not promptly filled in, the very object of the said Act of 1986 will be defeated. Therefore, the process of filling in vacancies must be commenced four months prior to the date of expiry of tenure of the President or Member, as the case may be. The vacancies arising due to any other reason shall be filled in within a period of four months from the date on which the vacancies occur.

Another argument canvassed was that the appointments of the Presidents and Members of the State Commission as well as District Fora should be made under the supervision of High Court. However, the procedure for appointments is laid down in Sub-section (1)(A) of Section 10 and Sub-section (1)(A) of Section 16 of the said Act of 1986. In absence of any serious challenge to the validity of the said provisions, no such directions can be issued.

CO-OPERATIVE COURTS IN MUMBAI

108. Now we propose to deal with the Co-operative Courts. Writ Petition No.2331 of 1990 was filed by the Maharashtra Co-operative Courts Bar Association (the Petitioner in Writ Petition No.175 of 2016) along with its Chairman. The prayer in the said Writ Petition under Article 226 of the Constitution of India was for issuing a writ of mandamus directing the State Government to provide the entire second floor of the Contractor Building situated at Ballard Estate, Mumbai, or in the alternative to provide them adequate space of at least 7000 sq. ft in Fort area in Mumbai. There were other directions issued for appointment of more Judges in the Co-operative Courts and for carrying out repairs to the second floor of the Contractor Building, etc. By the Judgment and Order dated 24th January 2008, the said Writ Petition was disposed of by a Division Bench of this Court. The Paragraphs 3 and 4 of the said order read thus:

- “3. It will be difficult for this Court to direct as to which building shall be provided for the Courts. On instructions, the learned Asstt. Govt. Pleader submits and he has placed on record a communication dated 26.2.2007, which is taken on record and marked ‘X’ for identification, that an area of 1800 sq. ft. has been provided on 2nd floor, D.D. Bldg., Old Customs House, Mumbai, for constitution of Courts. We direct that this building be taken over, if not already taken over by the concerned authorities and after taking over of the building, if there is still dearth of accommodation, the Courts so constituted may communicate with the Government for providing additional accommodation. The petitioner-Association which has moved this petition may make a fresh representation to the Government for more space and other facilities which they want and if such a representation is made by the Bar Association, the Government shall decide that representation within a period of three months after it is presented. With these observations, the Writ Petition is disposed of.
4. The rule is partly made absolute in the aforesaid terms.”

109. A Petition for Special Leave to Appeal No.5221-5222 of 2009 was filed by the Petitioner-Maharashtra Co-operative Courts Bar Association before the Apex Court. We must note here that the said SLP was disposed of by the Judgment and Order dated 14th March 2016. The Apex Court while disposing of the said SLP observed thus:-

“.....We, however, see no reason to interfere at this stage. In our opinion, the proper course for the petitioner is to bring to the notice of the High Court the continued problem of congestion, lack of space and inaction, if any, on the part of the Government in finding a solution for the same. The High Court, as seen earlier, has already directed the Government to

look into the representation of the association. If the representation was made and has not been examined and disposed off by the Government, the petitioner-society shall be free to approach the High Court for further redress. Needless to say, that it is even otherwise much more convenient for the High Court to look into such matters rather than this Court monitoring provisions for accommodation and other facilities. Reserving liberty for the petitioner to approach the High Court for redress, we dismiss these special leave petitions. The petitioner, we make it clear, shall also be free to raise issues relating to paucity of staff and the administrative control not being with the President of Co-operative Courts in which event the High Court may examine that aspect also for appropriate directions. No costs.”

110. There is a Chamber Summons taken out in a disposed of Petition raising several issues regarding non-availability of infrastructure. However, the prayer in the Chamber Summons is for amendment of the Writ Petition which was finally disposed of. Nevertheless, in the light of the aforesaid order of the Apex Court, we allowed the parties to address us on the basis of the annexures to the Chamber Summons. The prayers which are sought to be added were the prayer clauses (a)(viii) and (a)(xi), which read thus:

“(a)(viii) directing the Respondent No.1 to provide at least 25,000 sq. ft. of area to accommodate 4 Co-operative Courts and 3 Co-operative Appellate Courts under one roof within the jurisdiction of South Mumbai with all the infrastructure including air-conditioned Court Rooms, Judges Chambers, Bar Room, Canteen, Washrooms for Judges, Advocates, Staff and Litigants (Gents and Ladies), Library Room, Office Rooms for staff, Record

Room, sitting arrangement for Litigants, Server Room, Lunch Room for Advocates, Staff and Litigants, Conference Room, Room for Court Commissioner to record evidence, etc. within time-bound period;

- (a)(xi) directing the Respondent No.1 to provide and complete the work as listed in Paragraph 27 of this writpetition.”

111. Reliance is placed in the Chamber Summons on the letter dated 12th March 2014 addressed by the then President of the Maharashtra State Co-operative Court to the Secretary of the Co-operation Department. Certain infrastructural issues were set out therein. Reliance is also placed on the decisions taken in the meeting convened by the learned Guardian Judges of the Co-operative Courts. Reliance is also placed on the representation dated 27th April 2016 made by the Petitioner Bar Association to the learned Guardian Judges.

112. We have already referred to the prayers made in Writ Petition No.175 of 2016. For the sake of completion, we are reproducing the two substantive prayers in the Writ Petition which are prayer clauses (a) and (b), which read thus:

“(a) that this Hon'ble Court will be pleased to issue appropriate direction and order under Article 226 and 227 of the Constitution of India and call for the records and proceedings in the matter of the passing of the Order dated 22nd may 2015 bearing No.SKJ-1114/P.No.69/2014/22 issued by the Respondent No.7 (General Administrative

Department) allotting the ground floor premises admeasuring about 5005 sq. ft. situated at Old Secretariat Building, Mumbai to the Respondent No.10 and after scrutinizing the same, this Hon'ble Court be pleased issue appropriate writ, order or other directions setting aside/quashing the Order dated 22nd May 2015 bearing No.SKJ-1114/P.No.69/2014/22 issued by the Respondent No.7 (General Administrative Department) allotting the ground floor premises admeasuring about 5005 sq. ft. situated at Old Secretariat Building to the Respondent No.10;

(b) that in the alternative to prayer clause (a), this Hon'ble Court be pleased to direct the Respondents to make available premises admeasuring at least 5000 sq. ft. in D.D. Building, Old Custom House, Mumbai or in the immediate nearby vicinity, fully furnished with all amenities before handing over possession of the premises admeasuring about 5005 sq. ft. on the ground floor on the Old Secretariat Building to any third party other than the Co-operative and/or Co-operative Appellate Courts.”

113. Broadly speaking, the issues raised before this Court as regards the Co-operative Courts and Co-operative Appellate Courts can be summarized as under:

- (a) Lack of adequate space for Courts and Court Offices in Mumbai;
- (b) Absence of adequate staff;
- (c) The President of the Maharashtra Co-operative Appellate Courts has no administrative control over the staff members;

STAFF OF THE CO-OPERATIVE COURTS:

114. We propose to deal with the last issue first. We have already referred to the Government Resolutions dated 20th February 2015 and 24th September 2015 by which administrative control over the staff of the State Commission has been given to the President and Senior-most Judicial Members of the State Commission at its Benches. Unless the Judges have administrative control over the staff, it is not possible to ensure that the members of the staff observe discipline and perform upto the mark. The Judges are often required to start working before office hours and continue to work after office hours. Ideally, a separate cadre is required to be formed for the staff of the Co-operative Courts and Co-operative Appellate Courts in the State. The cadre must be separated from the Co-operation Department. Recruitment Rules will have to be framed as done in case of State Commission. Till formation of a separate cadre, the President of the Co-operative Appellate Court, Senior-most Judicial Member of the Co-operative Appellate Court at its Benches and Senior-most Judicial Officers of various Co-operative Courts need to be given a complete administrative control over the staff of the respective Courts. As a decision has already been taken in respect of the State Commission, there is no impediment in the way of taking similar decision as regards the Co-operative Courts and Co-operative Appellate Courts. In the communication dated 12th

March 2014 addressed by the President of the the Co-operative Appellate Court, he has invited the attention of the Court to the fact that the Co-operative Courts need more Stenographers as only one Stenographer is provided to every Judge and there are no spare Stenographers. The Co-operative Courts and Co-operative Appellate Courts need to be provided staff on the basis of the present staffing pattern of the District and Civil Courts in the State. We, therefore, propose to direct the President of the the Co-operative Appellate Court to submit a proposal to the State Government for sanctioning additional posts on the establishment of the the Co-operative Courts and Co-operative Appellate Courts on the basis of the staffing pattern adopted in the District and Civil Courts in the State. It follows that if the said staffing pattern of the District and Civil Courts undergoes a change, the staffing pattern in the the Co-operative Courts and Co-operative Appellate Courts will also undergo a corresponding change.

115. The Co-operative Appellate Courts and the Co-operative Courts need infrastructure such as furniture, computers, printers, servers, etc. It will be open for the President of the Co-operative Appellate Court to submit an exhaustive proposal as regards the infrastructure to the State Government. As observed earlier, it will be the obligation of the State Government to provide adequate staff and adequate infrastructure to the said Courts.

ADEQUATE PREMISES TO CO-OPERATIVE COURTS IN
MUMBAI AND STATE COMMISSION:

116 Now we come to the important issue of the allotment of adequate space to the Co-operative Courts. In Mumbai, the issue is mainly of providing adequate space to the State Commission. The issue of providing adequate premises to additional District Forum at Bandra is already resolved.

117. As noted earlier, three Co-operative Appellate Court were functioning from the ground floor of the Old Secretariat Building in Mumbai having an area of about 5005 sq. ft. Four Co-operative Courts were functioning on the second floor of the Contractor Building at Ballard Pier, Mumbai, having an area of about 5000 sq. ft. Under the Government Order dated 15th January 2007, a premises admeasuring 1800 sq. ft. on the second floor of the D.D. Building, Old Custom House, Mumbai, was allotted to the Co-operative Courts. Thereafter, on 30th August 2007 and 27th July 2008, an area of 930 sq. ft. and 390 sq. ft. respectively was allotted to the Co-operative Courts. It appears that notwithstanding the said allotment, the said area was not actually handed over as some other Government Offices were functioning therein. By superseding the orders dated 15th January 2007, 30th August 2007 and 27th June 2008, another order was issued by the State Government on 24th January 2011. By the said order, an area of 3958

sq. ft on the third floor of the D.D. Building was allotted to the Co-operative Courts. Under the order dated 2nd January 2014, the remaining area of about 4000 sq. ft. on the third floor of D.D. Building was allotted to the Co-operative Courts.

118. It appears that the learned Principal Judge of the City Civil Court requested the High Court Administration to allot the ground floor premises in the Old Secretariat Building which was in possession of the Co-operative Appellate Court to the City Civil Court. By the communication dated 21st May 2015, the Registrar (Inspection-II) of this Court was informed by the learned President of the Co-operative Appellate Court that the premises on the ground floor of Old Secretariat Building was being used as the Central Record Room of the Appellate Court as per the decision taken in the meeting held on 15th March 2014 of the learned Guardian Judges of the Co-operative Courts. It was pointed out by the said letter that as the premises in the D.D. Building were insufficient as more than 150,000 files were stored in the Old Secretariat Building premises, and therefore, the said premises cannot be allotted to the City Civil Court. Thereafter, by the Government Resolution dated 22nd May 2015, the said ground floor premises admeasuring 5005 sq. ft. in possession of the Co-operative Appellate Court was allotted to the State Forum. At that time, the State Consumer Forum was in possession of an area of 6364 sq. ft in the

premises of Old Administrative College, Opposite CST Railway Station, Mumbai.

119. We have already referred to the order dated 21st September 2015 passed by a Division Bench of this Court in PIL No.156 of 2011 along with Original Side PIL No.59 of 2013. By the said order, the State Government was directed to hand over possession of the said area of 5005 sq. ft. on the ground floor of the Old Secretariat Building to the State Commission. In the said two PILs, an Application for intervention being Civil Application No.155 of 2015 was made by the Maharashtra Co-operative Courts Bar Association. Similarly Civil Application No.157 of 2015 was made by the High Court Administration for intervention and for recall of the order dated 21st September 2015. On the said Applications, on 13th October 2015, a Division Bench of this Court passed an order directing that the area of 5005 sq. ft. should not be handed over to the State Commission till 21st October 2015. The said order was vacated by the order dated 20th October 2015. A direction was issued to the State Government to take steps to hand over additional area required by the Co-operative Courts either in the premises in Old Custom House or two other premises in D.D. Building. Under the said order, the President of the State Commission was directed to ensure that the files of the Co-operative Courts are kept in any convenient room and are properly looked after. Under the said order, in Paragraph 4, a direction was issued that after the State

Consumer Forum shifted to the premises on the ground floor of the Old Secretariat Building, the State Government will consider of allotting a part of the area occupied by the State Commission in the Old Administrative College, Opposite the CST Railway Station, Mumbai. Under the order dated 18th February 2016, a Division Bench of this Court directed the State Government to constitute a Committee of Officers which will inspect all the Courts and Tribunals in Mumbai and will ensure that adequate space and infrastructure is made available. However, we find that the said Committee has not taken any concrete steps.

120. In PIL No.156 of 2011, a further order dated 17th March 2016 was passed by a Division Bench of this Court directing the High Court Administration to make a realistic assessment of the space required for Co-operative Courts, Motor Accident Claims Tribunal and the State Commission. The Committee which was ordered to be constituted under the order dated 18th February 2016 was directed to be constituted within a period of three weeks from that date (i.e. from 17th March 2016). It will be appropriate if a Registrar nominated by the Registrar General preferably Registrar (Judicial-I) or Registrar (Judicial-II) is made an ex-officio member of the Committee. If the committee has been already constituted, the constitution of the Committee be changed accordingly.

121. The scenario which emerges today is that the Co-operative Appellate Courts and the Co-operative Courts are not given any accommodation except the accommodation in D.D. Building. The premises of the Co-operative Appellate Court on the ground floor of the Old Secretariat Building are in possession of the State Commission, but a part of it is occupied by the record of the disposed of cases of the Co-operative Appellate Court. As far as allotment made to the State Commission in the Old Secretariat Building is concerned, as the State Commission is put in possession on the basis of an interim order of this Court, it will not be appropriate to disturb the said allotment.

122. We propose to direct the Committee constituted under the order dated 18th February 2016 to consider estimation of the required premises prepared by the High Court Administration and to immediately decide about the total requirement of the area of the State Commission, Co-operative Courts as well as the Co-operative Appellate Courts and the Motor Accident Claims Tribunal in Mumbai. Thereafter, the State Government will have to make available suitable premises in terms of the recommendations of the Committee.

123. The area of 5005 sq. ft. was in possession of the Co-operative Appellate Court on the ground floor of the Old Secretariat Building. The said entire area has been allotted to the State

Commission. Though we are not interfering with the said decision, we must record our dissatisfaction about the manner in which the allotment was made. There is material on record to show that the allotment was made by the State Government without even consulting the High Court Administration or without the knowledge of the High Court Administration and, therefore, it created a very awkward situation for all the concerned. The State Government was aware that the Co-operative Courts were using the premises in the Old Secretariat Building as a central storage of disposed of cases. More than a lac files are stored therein. The action of the State Government of withdrawing the said premises without allotting some other premises was unjust and arbitrary. Therefore, as an interim measure, we propose to direct the State Government to immediately allot a premises of substantial area to the Co-operative Courts. We are informed that a proposal to allot a premises of the Maharashtra Telephone Nigam Limited in Fort, Mumbai, to the Co-operative Courts is under consideration of the State Government. The Government was proposing to allow the Co-operative Appellate Court to take the said premises on leave and licence basis. We, therefore, direct the State Government to grant necessary approval to enable the Co-operative Courts to take the said premises on leave and licence basis at least for a period of five years. Needless to add that necessary funds will have to be released.

124. Only if it is not possible for the State Government to grant such permission, the State Government will have to immediately make available a suitable premises in the vicinity of the old Customs house or in nearby area to the Co-operative Appellate Court. The size of the premises shall not be less than the premises in Old Secretariat building which was in possession of the Co-operative Appellate Court.

ALLOTMENT OF THE ADEQUATE PREMISES TO THE
MOTOR ACCIDENT CLAIMS TRIBUNAL:

125. Now, we come to the immediate requirement of allotment of an adequate area to the Motor Accident Claims Tribunal, Mumbai. For that purpose, it will be necessary to make a reference to the order dated 3rd May 2016 passed by this Court. The said order records the statement of the learned Government Pleader on instructions of Shri V.S. Latkar, the Sub-Divisional Engineer of the Public Works Department that in the same precincts where the Motor Accident Claims Tribunal at Mumbai is situated, there is a bungalow occupied by the State Government and there are servants' quarters occupied by the State Government employees. The statement was that within a period of three months from the said date, vacant possession of the said premises will be obtained for the use of the Motor Accident Claims Tribunal. The Clauses 2 and 3 of the said order read thus:-

“2. On institutions of Shri.V.S.Latkar, Sub Divisional Engineer of Public Works Center, Sub Division, Mumbai the learned Government Pleader states

that in the same precincts where the Motor Accident Claims Tribunal, at Mumbai is located, there is a bungalow occupied by the State Government and there are servants' quarters occupied by the State Government employees. He states that within three months from today, the State Government will obtain vacant possession of the said premises and will hand over the same for the use of the Motor Accident Claims Tribunal, Mumbai.

3. The State Government shall inform the Chairman of the Motor Accident Claims Tribunal the details of the premises which would be made available after three months so that in the meanwhile, the Chairman can submit a proposal to the State Government through the High Court Administration for carrying out necessary changes and for providing furniture and other facilities in the additional premises.”

126. There is nothing placed on record to show that the said assurance has been complied with. Hence, the same will have to be immediately complied with by handing over the possession of the premises to the Motor Accident Claims Tribunal at Mumbai within a period of one month from today. Considering the huge pendency and large number of filing, even the said accommodation will not be sufficient. Today, the pendency of the cases is more than 9500. There are eight members of the Tribunal. The present premises are so inadequate that the members of the staff are required to work in most inhuman conditions. The Motor Accident Claims Tribunal is visited by a large number of the Claimants who are victims of the accidents. Many of them are handicapped. There is no space available for the litigants

even to sit and wait for their matters to reach. Therefore, pending allotment of a larger area, the State Government will have to immediately consider of allotting sufficient area in addition to area of bungalow and residential quarters for storage of the record of the Motor Accident Claims Tribunal so that the area occupied for storage in the existing premises can be more conveniently used by setting up additional Courts and for providing facilities to the litigants.

127. After the additional premises are provided to the Motor Accident Claims Tribunal, Mumbai, the Chairman of the Tribunal shall immediately submit a proposal to the State Government for providing furniture and other facilities. The State Government will immediately act upon the proposal and sanction the same.

128. As in case of Co-operative Courts, for the same reasons, a direction will have to be issued to create a separate cadre of staff for the Motor Accident Claims Tribunal, Mumbai and make the Chairman as the Administrative head.

CONSIDERATION OF THE PREMISES REQUIRED BY
THE COURTS AND TRIBUNAL IN MUMBAI

129. There are norms fixed by this Court regarding size of the Court Rooms, Chambers, Offices etc. in the Civil, Criminal and District

Courts in the State. The Committee appointed by this Court which will be deciding the requirement of the aforesaid Tribunals will take into consideration the said norms. In fact, the estimation made by the Registry of the requirement of the area required by the said Tribunals in Mumbai is available. The Members of the Tribunals who are entitled under the service conditions to residential quarters, need the designated quarters. The Committee will have to also ascertain the requirement of designated quarters which exists at present and which is likely to arise in future.

130. The recommendations of the Committee will have to be submitted to the State Government within the time specified by this Court. Thereafter, the State Government will have to take a final decision on the area required by the Tribunals as well as the area required for the designated quarters. Thereafter, the State Government will have to actually locate the premises/plots and will have to do the exercise of allotment thereof. In our view, the said Tribunals in Mumbai have been neglected for such a long time and therefore, today, the Tribunals are lacking elementary facilities thereby the litigants are suffering. Even the Members of the staff of the Tribunals are working in the inhuman conditions.

AVAILABILITY OF THE UPTO DATE VERSIONS OF
STATE ACTS AND RULES:

131. Before we come to the issue of infrastructure of various Civil and Criminal Courts in the State, we must consider one issue which concerns not only the Courts and Tribunals in the State but the entire administration of justice in the State. One of the long standing principles of our jurisprudence is that every citizen is presumed to know the law. In the past, the State Government had published Maharashtra Code containing the Bare Acts of the Enactments. The Maharashtra Code was being regularly updated. Today the scenario is that the updated versions of the State Laws and the Rules are neither being published in the physical form nor are being uploaded on the website. The orders passed by this Court from time to time will show that there is a complete failure in uploading the updated versions of the Bare Acts and the Statutory Rules and Regulations on the website of the State Government.

132. However, going by the law as it stands, today, we will have to consider the matter in the light of a decision of the Division Bench of this Court in the case of *Sanjeev M. Gorwardkar and another v. State of Maharashtra and others*¹⁴. We have carefully perused the said

¹⁴ 1997(2) Mh.L.J. 152

decision. The second paragraph of the said Judgment quotes the prayer clause (b) of the said Petition, which reads thus:-

“(b) Respondents Nos.1, 2, 5 be directed to make available adequate number of authenticated copies of the bare Acts, Legislation, Rules, Regulation and other statutory instruments having force of law in the State of Maharashtra to all the three benches of the High Court of Judicature of the State as well as to all the mofussil courts in the State of Maharashtra immediately.”

133. The Petitioners before the Division Bench were practicing Advocates in this Court. Their contention was that under Article 21 of the Constitution of India, they have a right to know the law which governs them. The Division Bench made a reference to Section 57 of the Indian Evidence Act, 1872 which provides that the Court shall take a judicial notice of all the laws in force in the territories of India. In Paragraph 5, after considering Section 57, the Division Bench held thus:-

“5. The concluding portion of the section says that if the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so. The petitioners' contention is that even if an attempt is made to get the copies of the bare Acts, leave alone the rules and regulations framed thereunder, the same are not easily available. We may incidentally mention that it has also been our unfortunate experience not to be able

to get the copies of authenticated publications in the matter of Acts, Rules and Regulations. The petitioners, therefore, contend that in the absence of authenticated copies of the Acts, Rules, Regulations and other statutory instruments being made available, it will be difficult for the Courts to act upon the mandate of section 57 of the Indian Evidence Act requiring the Court to take judicial notice of certain facts such as of laws in force in India. In this behalf, the petitioners have rightly contended that if ignorance of law is no excuse it presupposes that a citizen is able to know law. The elementary requirement in this country is that the citizen is able to obtain an authenticated copy of the Act, Rules and Regulations. If a citizen is not able to obtain these documents, the argument is that it would be difficult to implement the rule that ignorance of law is not an excuse. Our attention is also invited to the fact that in certain enactments requirement of *mens rea* has been recognised. **It is, therefore, necessary for the citizen to know the set of laws, rules and regulations which govern his conduct and it is obvious that in case of breach of any such act, rule or regulation, he may be faced with penal consequences.”**

(emphasis added)

134. Thereafter, the Division Bench considered Section 78 of the Evidence Act and recorded a finding that for proving the public documents, it would be necessary to have copies of these documents. Ultimately, the Division Bench proceeded to grant prayer clause (b) which is quoted above. The said direction continues to operate even today which binds the State Government.

135. The Judges of this Court have repeatedly noticed that there are errors in the Bare Acts published by the private publications. It is

revealed that in some publications, the amendments to the Enactments or to the Rules are not incorporated. In some cases, the amendments are not correctly reproduced. Only by way of illustration, we may state here that the Maharashtra Amendment of 1983 made to Clause (r) of Rule 1 of Order XLIII of the Code of Civil Procedure, 1908 is very rarely published in any private publication containing the Bare Acts of Code of Civil Procedure, 1908.

136. Therefore, a writ issued in the case of *Sanjeev M. Gorwadkar and another* will have to be enforced. The report of the Librarian of this Court placed on record shows that up to date versions of the State Enactments and Rules are not at all published by the State Government.

137. In addition to the above, there were several directions issued by this Court in the pending PILs from time to time. The first direction was issued in Paragraph 7 of the order dated 6th February 2015 which reads thus:-

“7. Another issue is regarding the updation State Laws and Rules which are on the website of the State Government. The second issue is regarding providing updated printed versions of all the Bare Acts of the State Laws and Rules. The report submitted by the Chief Librarian of this Court dated 6th February 2015 shows that though there are new editions published

after 2000, some of them do not contain amendments. This issue is again of great deal of urgency. Several Bombay enactments were amended and the word 'Bombay' was substituted by the word 'Maharashtra'. As the updated versions are not published by the State, many of the private publications have not incorporated the corrected name of the Statutes. Important enactments like Court Fees Act, Stamp Act, MRTP Act have undergone very important and crucial amendments in the recent past. Same is the case with all the Municipal Laws. It is absolutely necessary that the State should make all possible efforts to immediately update the Enactments and Rules available on website. The State will have to also ensure that there is a real time updation of the Acts and Rules on the web site. The learned Amicus Curiae pointed out that on the website there is an unamended text of the Maharashtra Co-operative Societies Act, 1960 and separately, the amended text of the said enactment is also uploaded on the website. This may create a confusion. Ideally, the State should provide only updated versions on the website and the copies of all the Amendment Acts should be also uploaded on the website. The Amendment Acts should be uploaded so that it is possible to know as to how the statute has undergone amendments from time to time. As stated in one of the earlier orders, priority will have to be given to the updation of the Statutes and Rules on website and the publication printed versions of the Acts and Rules which are required to be used by the Courts and Tribunals in the State day in and day out. A list of such important statutes has been placed on record by Shri Borkar, Amicus Curiae."

138. The second direction issued is under the order dated 29th September 2015 and in particular Paragraph 3 thereof. The most important order on this aspect is the order dated 25th February 2016 in PIL No.7 of 2011 and PIL No.14 of 2012. Paragraphs 3 and 6 of the said order read thus:

“3. At the intervention of the learned Amicus Curiae and other learned counsel representing parties including the learned Government Pleader, now a solution is found. We must make a reference to the affidavit filed by the state of Shri Avinash Hiran Bankar on 10th February, 2016. In the said affidavit, there is a reference to meetings held with the Central Project Coordinator of the E-Court Project of this Court. The outline of the project which was drawn with the assistance of the Central Project Co-ordinator Shri Nhavkar have been incorporated in paragraph 9 of the said affidavit which reads thus:

“9... I. It is to be treated as total new project. Under the said project, it is necessary to design a Program of Page making and Act making in such manner, so that the following features can be included,-

1. Act name;
2. Preamble;
3. Definition;
4. Sections;
5. Marginal note;
6. Foot note;
7. Citation;
8. Amendment part.

These features will be carried into an independent columns, so that the ext would remain intact. The font size would be fixed. It would display the existing Act alongwith the amended text. The Act is amended in three ways, such as substitution, addition and deletion. All the text is to be preserved in pdf file only. Therefore, it requires fresh data entry of entire text.

II. This project would involve the following 4 stages;

- (a) First stage is to appoint a “consultant”.
- (b) Secondly, the consultant would work for fixing the programme technically and would develop the software according to the need. The consultant would provide the estimates about the time bound programme and its costs;
- (c) Thirdly, as per the recommendation of the consultant, necessary funds should be arranged; and
- (d) Lastly, as soon as the fund is available, the actual work of data entry of every text of the Act would begin.

III. For monitoring entire functions, process and proof checking, additional manpower should be provided, as the project would be time-bound, and it would not be possible to undertake such activity in the existing staffing pattern having regard to the priority of legislative work.

IV. It would take about six to eight months for completing such process.

10. In view of the above, I humbly submit that, as the uploading and updating the State Acts on the website in an accurate and proper manner is highly technical and voluminous task, the Law and Judiciary Department needs some more time to do the task of process reengineering to initialise the entire process.”

As per the suggestions made by this Court, the learned Government Pleader contacted Dr. R. Premkumar, Registrar of the Indian Institute of Technology (IIT) Powai, Mumbai. The letter dated 25 th February, 2016 addressed by Dr. R. Premkumar to the learned Government Pleader is tendered across the Bar and marked “ C-3” for identification. The communication refers that in principle, the IIT has agreed to extend its services. Clause (2) of the outline of the project

incorporated above provide for an appointment of a consultant as a first step. The State Government will have to appoint IIT, Mumbai as the Consultants for the project. The IIT will have to submit a project report which will include development of software which will provide for real time updation of the State Acts and Rules. Needless to add that necessary facilities of search etc., will have to be also made available. We propose to issue directions in terms of what is incorporated in paragraph 9 of the aforesaid affidavit of Shri Bankar. Shri Bankar has stated that it will take about eight months time to complete the entire process starting with the appointment of Consultant.

- 4 Therefore, on the last date, we had requested the learned Amicus Curiae and other counsel representing various parties to work out what should be the interim measures. Now suggestions have been submitted by the learned senior counsel who is appointed as Amicus Curiae, marked as “C-2” . He has suggested that till the final measures are implemented, only the latest updated version of all Acts and Rules should be retained on the dedicated website which is already made available. Further suggestion is that as soon as there is an amendment made to the existing Acts or Rules, by deleting the existing updated versions, the amended versions should be uploaded so as to avoid any confusion. The suggestion is that this exercise be done after every amendment in a time bound schedule. It is pointed out that as soon as an Ordinance is issued or an amendment to Acts or Rules is made, within two days from its publication in the official gazette, the copies of the said gazette are received by the Legislature Branch of the Law and Judiciary Department of the State. For doing this exercise, apart from Ministry of Law and Justice other two Ministries, Industry and General Administration Department (IT) are involved. The suggestion made by Shri Kumbhakoni is that the representatives of the two Ministries with the Representative of the Law and Judiciary department and the office of the

Directorate of Printing and Stationary should work as a team and ensure that the amended versions of the Acts and Rules are updated at the earliest. We may note here that important State Acts have been uploaded in E-Library on the official website of this Court. If the Deputy Registrar incharge of the Library gets gazettes containing the Acts of Legislature or Ordinance at the earliest, the updated versions can be also uploaded on the E-Library available on the Bombay High Court Website. We, therefore, propose to issue comprehensive directions on these aspects.

- 5 Even at the risk of repetition, we may note here that if the updated versions of the State Acts and Rules are not made available not only that it will adversely affect the administration of justice but the common man would be a real sufferer. Shri Borkar, the learned Counsel pointed out that on the State Government website only very recently issued government gazette are uploaded. He pointed out that old gazettes are available in the Department of Archives of the State Government. He urged that in several cases, old gazettes containing important notifications issued under the Statues or Rules as well as the gazette notifications containing amending Acts are required for a ready reference. His suggestion is that all old gazettes should be uploaded on the State Government Website so that they are readily available. Even this suggestion will have to be considered by the State Government. We find that in several Writ Petitions in this Court both of the Civil and Criminal sides, the Courts are required to repeatedly grant time as the Government Pleaders are not able to make available a copy of a particular notification or a particular amending Act. All this can be avoided if all the State Government gazettes including old gazettes are uploaded on the High Court website. The successors in office of the officers nominated shall continue to coordinate with each other for implementation of the orders passed by this Court.

- 6 Hence, we issue the following interim directions:
- (i) The State Government shall implement the project, the outline of which is incorporated in paragraph (9) of the affidavit of Shri Avinash Hiran Bankar dated 10th February, 2016 which is reproduced in this order;
 - (ii) The State Government shall take immediate steps for appointing IIT Mumbai as the Consultant in terms of the said Guidelines. The terms of the reference along with the work order be issued as expeditiously as possible and in any event within a period of six weeks from today;
 - (iii) The time line incorporated in the paragraph (9) of the affidavit shall become operative from the date on which the IIT submits the Project Report. Considering the urgency involved, needless to state that the IIT shall endeavour to give priority to do the work of the preparation of Project Report which will include development of software;
 - (iv) As per the suggestion of the Court, the learned Government Pleader has suggested the names of the officers of the Law and Judiciary Department, General Administration Department (IT) department and the Directorate of Printing and Stationary. The officers suggested by the learned Government Pleader are (1) Shri Avinash H. Bankar, Draftsman- cum-Joint Secretary of Law and Judiciary Department; (2) Shri M. Shankarnarayan, Director of IT or his nominee Shri Somkuar, Desk Officer; and (2) Shri Dhamkar, Deputy Director of Directorate of Printing and Stationary;
 - (v) The aforesaid three officers shall coordinate with each other and ensure that as soon as

a gazette containing Amendment Acts or Ordinance or amended Rules is published, within three working days from the date of publication, all the copies of the gazette are made available to the Law and Judiciary Department. This direction will apply to the newly enacted Laws, Statutory Rules as well;

- (vi) Within a period of one week from the day on which gazette notifications are received by the Law and Judiciary Department of the State Government, latest updated versions of the State Laws and Rules shall be uploaded on the dedicated website and simultaneously, the older versions shall be deleted;
- (vii) The Law and Judiciary Department shall ensure that as soon as copies of the gazettes as aforesaid are received, the same are scanned and forwarded to the Deputy Registrar of this Court, who is incharge of the Library on E-mail ID : judlib-bhc@nic.in. The scanned copies shall be forwarded by E-mail at the said E-mail ID within two working days from the date on which the gazettes are received by the said Law and Judiciary Department. In case there is any difficulty in scanning, printed gazettes shall be forwarded to the Deputy Registrar within a period of two working days from the date on which the gazettes are received;
- (viii) To avoid any delay, an endeavour shall be made by the Deputy Director of the Directorate of Printing and Stationary to forward soft versions of the gazettes to the Law and Judiciary Department in addition to the printed versions;
- (ix) It is pointed out that the dedicated website is accessible only through Microsoft based Internet Explorer. An endeavour shall be

made to make it accessible by use of all web based browsers such as Google Chrome, Firefox, Safari etc;

- (x) Steps shall be taken within a period of six weeks from today for making available a link to the dedicated website used for uploading State Acts on the official website of the State Government;
- (xi) Within a period of six weeks from today, steps shall be taken which will enable the users to access a particular statute or Rules and to save the same on his personal computer/device in the PDF format in the same way that as the PDF versions of the orders of this Court are available on the High Court website;
- (xii) Steps shall be taken to identify the statutory Rules which are required for day to day functioning of all the Courts. Steps shall be taken to upload the statutory Rules on the dedicated website within a period of three months from today. The updation of the said Rules shall be made in similar fashion, as directed above;
- (xiii) The State Government shall favourably consider the suggestion of uploading all the old gazettes which are available in the department of Archives on the State Government Website by providing necessary search;
- (xiv) Action taken report shall be submitted by the State Government reporting compliance with the aforesaid directions within a period of six weeks from today.”

139. Compliance report with the said directions is not filed and in fact, we find that there is hardly any compliance with the said

directions. We, therefore, propose to continue the directions contained in the order dated 25th February 2016 and fix an outer limit of six months to comply with all the said directions. We propose to fix an outer limit of one year to comply with the directions contained in the Judgment rendered in the Petition filed by ***Shri Sanjeev M. Gorwadkar and Another***. We propose to direct the State Government to comply with the directions in the said Judgment as an one time measure till the directions to upload all the State Laws, Rules and Regulations are complied with and its real time updation is successfully commenced. We may note here that under the Judgment of this Court, time was granted only till 30th April 1997 to make compliance. The Judgment of this Court in the case of ***Sanjeev M. Gorwadkar and Another*** was rendered on 19th December 1996.

OTHER IMPORTANT ASPECTS OF INFRASTRUCTURE

140. Now we come to the issue of the other aspects of the infrastructure provided to the Courts in the State. A litigant is said to be a consumer of justice and, therefore, there is a need to provide basic facilities and amenities to the litigants who visit the Court premises. Even the witnesses summoned by the Courts are entitled to such facilities. The said facilities are :-

- (a) A facility of clean and adequate drinking water;
- (b) A facility of clean wash-rooms and toilets with separate facilities for women litigants;
- (c) Proper arrangements for sitting in the Courts premises; and
- (d) Availability of information about the status of their litigations through Kiosks provided in each Court Complex;

141. We need to emphasis here that every Judicial Officer ought to have a facility of separate wash-room attached to his/her chamber. There is also a need to provide adequate number of wash-rooms and toilets separately for men and women lawyers.

142. As far as the first three facilities are concerned, in PIL No.14 of 2012, certain directions were issued. Under the order dated 7th March 2014, in Paragraph 5, following observations weremade.

“5. There are other issues. In most of the Courts due to non availability of adequate space, there is no sitting arrangement or a lounge for the litigants to sit and wait for their matters. The litigants have to sit or stand in the open spaces. Barring few selected Courts, there is no separate sitting facility available for the witnesses. The witnesses have to stand outside the

concerned Court and wait for their turn. There is a need to provide a separate sitting space for litigants and witnesses. Ideally, a separate Lounge must be provided. Therefore, the State Government in consultation with the High Court will have to evolve a scheme for ensuring that basic amenities as aforesaid are made available in each Court in the State for the benefit of litigants and witnesses. Adequate facilities deserve to be made available to the members of the staff as well.”

143. The order dated 7th May 2014 notes that a compilation of charts was produced for perusal of the Court by the learned counsel appearing for the High Court Administration showing details of the facilities lacking in various Courts. The orders dated 7th May 2014 and 17th June 2014 deal with the issue of cleanliness of the Court premises and availability of facilities. Paragraphs 3 to 5 of the said order read thus:

“3. The affidavit deals with another aspect. The said aspect is as regards the availability of drinking water facility to the litigants, sitting arrangements for the litigants and separate washrooms for the judicial officers. **Annexure -2 of R-3 indicates that in 35 Courts in the State, there is no drinking water facility to the litigants and in six Courts facility of drinking water is inadequate. In 53 Courts, there is no sitting arrangement for the litigants and in 21 Courts sitting arrangement for the litigants is inadequate. In 18 Courts in the State, there are no separate washrooms for the judicial officers and in 14 courts, the washrooms for the judicial officers are inadequate.**

4. The counsel representing the High Court administration has submitted a Chart showing the details of the funds required for making adequate provision for clean drinking water facility in the Court premises, wash room facility in the chamber of each judicial officer and even for cleanliness of the Court premises. Learned counsel representing the High Court administration submits that the charts together with copies of the proposals which are submitted for sanction have been already forwarded to the State Government. As the learned AGP seeks time to take instructions as regards the time span required for considering the pending proposals, we propose to issue appropriate directions on the next date.
5. Another aspect which needs to be looked into. The said aspect is about the availability of adequate number of clean and convenient washrooms for the litigants in the Court premises. This aspect would be of considered on the next date. It is obvious that in every Court, facility of adequate washrooms has to be made available separately for the male and female litigants. The State Government shall endeavour to obtain information about availability of washrooms in the Court premises in the State. The State shall obtain the said information and present the same before the Court on the next date. We direct the Petitioner to implead the High Court Administration as party respondent. Place this Petition under the caption "directions" on 23rd June, 2014."

(emphasis added)

144. As far as the issue of cleanliness is concerned, we are dealing with the same separately.

145. Further orders passed by this Court show that the State Government took an inordinately long time to make budgetary allocation for providing one water filter and water cooler each to every Court Complex in the State. Allocation was not made for construction of wash-rooms and toilets for the litigants within a reasonable time.

146. After making allocation of funds for supply of water filters and water coolers, the same were not installed in most of the Court Complexes as there was no budgetary allocation sanctioned for Civil and plumbing work required for installation.

147. The State Government has filed charts on record showing compliance with the directions issued for providing wash-rooms and toilets to the litigants and water filters and water coolers for the benefit of the litigants. The issue of maintenance of toilets is being separately dealt with. As far as the water filters and water coolers are concerned, if there are no contracts executed for maintenance thereof, the Public Works Department will have to make arrangements for the execution of maintenance contracts in respect of water filters and water coolers in all Court Complexes. It is the duty of the Public Works Department to ensure that the water filters and water coolers are maintained in proper working condition throughout the year. Wherever it is necessary to

replace the same, the Public Works Department will have to take immediate steps to replace the same.

148. Under the orders of this Court, there were directions issued to provide one water filter and water cooler for each Court Complex. In case of Court Complexes having large number of Courts, additional water filters and water coolers will have to be provided. We propose to direct the learned Principal District Judges or the Principal Judges to submit proposals for providing additional water filters and water coolers to the State Government. The Public Works Department will have to also submit estimates for civil work and plumbing work for installation of water filters and water coolers along with the estimates of the machines. We propose to direct the State Government to grant necessary sanction.

149. We hasten to clarify that as noted in the interim orders passed from time to time by this Court, the funds allocated for minor work cannot be used for providing water filters and water coolers. Similarly, for providing additional water filters and water coolers, the State Government cannot insist on using the amount under the head of "Minor Works".

150. The State Government has claimed that there are proper sitting facilities provided in each Court Complex for the litigants waiting for their matters to reach. The learned Principal District Judges will have to ascertain whether adequate and convenient facilities of proper sitting arrangements are available in each Court Complexes for litigants and witnesses as well. Needless to add that elementary facilities such as proper ventilation, fans and lights should be made available where the sitting arrangements are made. In Court Complexes where such facility is lacking, the State Government will have to provide necessary funds for making such facility available. On a proposal moved by the learned Principal District Judge/Principal Judges, the State Government is bound to sanction requisite funds.

INFORMATION KIOSKS

151. Under the E-Court Phase-II, certain selected Court Complexes will be provided with information kiosks on which the citizens can access to District Court Websites/National Judicial Data Grid. Now the data of all the cases is available on the National Judicial Data Grid as well as on the dedicated websites of the respective District Courts. At least one information kiosk should be made available in each Court Complex which will enable the litigants to have access to the District Courts Website and the National Judicial Data Grid. Near the

information kiosks, necessary information in simple language will have to be displayed for guiding the litigants to use the kiosks. Providing such information kiosks will be an important part of the project of e-Governance. The learned Principal District Judges/Principal Judges will have to submit proposals for providing at least one information kiosks in each Court Complexes. The State Government will have to make available funds for installing such information kiosks in the Court Complexes in a phase-wise manner.

CLEANLINESS OF THE COURT PREMISES:

152. Now we turn to the issue of cleanliness of the Court premises. This issue is of the paramount importance in view of “Swachha Bharat Abhiyan” initiated by the Government of India. The record shows that the State Government has taken a policy decision to outsource the work of cleaning of the Court premises in the State. It is a common experience in case of many Court Complexes in the State that the toilets and wash-rooms are stinking. Moreover, proper cleanliness is not at all maintained inside the Courts and in the precincts of the Court premises. It is true that there is a policy decision taken by the State Government to outsource the work of cleaning the Court premises. The orders passed by this Court from time to time will show that in many cases, contracts were permitted to be executed for a

short period of three or six months. Under the term of such contracts, the employees appointed by the Contractor work during the fixed hours. The learned Principal District Judges or the Principal Judges of various Courts have no direct control over the activities of such employees for ensuring that they discharge their duties properly. In many Court Complexes, the Judicial Officers work before and after office hours. Therefore, the presence of litigants and members of the Bar as well as staff members is required even before and after office hours. On many Court holidays, there are Lok Adalats and other activities of the Legal Services Authority. If adequate number of staff members are not deployed by the Contractors to work beyond office hours and Court holidays, the Principal Judges cannot take any action. The right to have a clean and pollution free environment is a part of the fundamental right guaranteed under Article 21 of the Constitution of India. If cleanliness is not maintained in the Court premises, there is a violation of the said fundamental right available to the litigants and the members of the Bar. As the learned Principal District Judges or the Principal Judges of various Courts have no administrative control over the staff employed by the Contractor, the Officers of the Court cannot effectively supervise the working of the employees of the Contractor. The Principal Judges cannot direct that additional hands should be made available whenever required. As the Court establishment is not permitted to employ its own employees for cleaning operation, in the

event of termination of the contract on account of gross breaches, the Court establishment is forced to continue with the same Contractor till the tenders are invited and a new Contractor is appointed. It is the obligation of the State Government to ensure that all the Court Complexes including the toilets and wash-rooms therein are always maintained in clean and hygienic condition. We are, therefore, of the view that either the State Government will have to reconsider its policy decision of outsourcing the work of cleanliness or will have to come out with a solution to ensure that a high standard of cleanliness and hygiene is maintained in all the Court Complexes.

SECURITY TO THE COURT PREMISES AND
RESIDENTIAL QUARTERS OF JUDGES:

153. The next issue will be of providing security to the Court Complexes and residential premises of the Judicial Officers. The order dated 7th September 2016 passed by this Court will show that the High Court Administration tendered across the bar a chart setting out the requirement of police protection to the Family Courts in the State. The chart is marked as "F1" for identification and the same has been taken on record. On 20th October 2016, a communication was tendered by the learned Government Pleader which was addressed by the Home Department of the State Government.

154. It is not necessary for us to record elaborate reasons to hold that the State Government is under an obligation to provide adequate security to all the Court Complexes in the State including the Family Courts in the State. The letter dated 20th October 2016 proceeds on the footing that there are only 1507 Judicial Officers in the State. At present, as far as the Civil and Criminal Courts are concerned, number of Judicial Officers are approximately 2159. The letter records that only 1496 security personnel have been deployed to take care of 478 Court Complexes. In almost all Civil Courts, cash and valuable articles are kept in the safe custody of Nazir. In case of Criminal Courts, muddemal property is kept in the Court Complexes. In some cases, loss of muddemal property results in acquittal. In many cases, there are valuable articles or cash which is a part of muddemal property. In the recent past, there were incidents of violence in the precincts of the Courts. Therefore, it is necessary to provide round the clock security in the form of police protection to all the Court Complexes in the State. Even the residential premises of the Judicial Officers require adequate protection. In some cases, residential premises as well as Court Complexes may require protection of armed security personnel.

155. We propose to direct the District Superintendent of Police as well as the Commissioners of Police to convene meetings of the local

learned Principal District Judges or Principal Judges within a period of three months from today for ascertaining security requirements of Court Complexes and residential premises of the Judicial Officers. When we refer to the Court Complexes, it will include (i) all Civil and Criminal Courts, (ii) Co-operative Courts and the Co-operative Appellate Courts, (iii) Industrial and Labour Courts, (iv) Offices of the Charity Commissioners, Joint Charity Commissioners, Deputy Charity Commissioners and Assistant Charity Commissioners, (v) Motor Accident Claims Tribunals including the Motor Accident Claims Tribunal in Mumbai, (vi) all Family Courts in the State and (vii) the State Commission as well as District Fora under the said Act of 1986. Needless to add that if the Court premises are in private properties and if Judicial Officers are residing in private properties, police protection will have to be made available wherever it is necessary. After holding meetings as aforesaid within a period of three months from today, the District Superintendent of Police and/or Commissioner of Police, as the case may be, shall take appropriate decision of providing adequate police protection to the Court Complexes as well as residential premises of the Judicial Officers including the police protection of armed constables wherever it is necessary. After taking appropriate decision within a period of three months from today, necessary police protection shall be provided by the the District Superintendent of Police and/or Commissioner of Police, as the case may be, within a period of one

month from the date of taking such decision. If any additional protection is required due to any exigency or due to temporary need such as, hearing of any sensitive cases, on the requisition made by the learned Principal District Judges or Principal Judges of various Courts in the State, the District Superintendent of Police or Commissioner of Police, as the case may be, shall provide adequate police protection. We make it clear that the police protection granted as aforesaid will not be withdrawn without concurrence of the learned Principal District Judges or Principal Judges of respective Courts and Tribunals. The District Superintendent of Police and/or Commissioner of Police shall hold yearly meeting in every June with the Principal District Judges/Principal Judges for review of the security arrangements.

FIRE SAFETY

156. As far as the aspect of fire safety is concerned, one of the arguments of the State was that the Fire Prevention Act is not applicable to the Court Complexes. Along with the letter dated 17th September 2016, a detailed chart was submitted to this Court which is marked as “F2” for identification. There was already a direction issued to the State Government to carry out fire audit and to provide all fire fighting equipment to all the Court Complexes. Though an argument was made that the Fire Prevention Act is not applicable to all the Court

Complexes, considering the fact that very sensitive voluminous records are stored in all the Court Complexes, all the provisions of the Fire Prevention Act will have to be substantially complied with the as far as the Court Complexes are concerned. All preventive measures have to be taken to avoid any mishap. The chart marked as "F2" shows that in case of 403 Court Complexes, fire audit was carried out and in case of 21 Court Complexes, fire audit was in progress. The details of the estimates for fire fighting arrangements submitted are a part of the said chart.

157. The fire audit will have to be conducted in all the Court Complexes. Wherever fire audit is not carried out, the same will have to be carried out within a reasonable time and proposals will have to be submitted to the learned Principal District Judges or the Principal Judges of various Courts containing estimates of the work which is required to be carried out taking into consideration the reports of the fire audit. We propose to fix an outer limit of one year to complete a fire audit and to make all Court Complexes fire safety. Needless to add that the Public Works Department shall ensure that all the provisions of the Fire Prevention Act are substantially complied with the as far as the newly constructed Court Complexes are concerned.

STRUCTURAL STABILITY OF COURT BUILDINGS:

158. A judicial notice will have to be taken of two the important events. One is concerning the building of the Court of Metropolitan Magistrate at Mazgaon in Mumbai. Few years back, this building which was in existence for about 18 years was required to be immediately vacated on the basis of the Structural Audit report of the reputed Institution like VJTI on the ground that the building had become structurally very weak. Very recently, a similar situation has arisen as regards a District Court Building at Thane where the building has been classified as falling in C-1 category which is required to be completely evacuated for the purposes of carrying out structural repairs. Therefore, structural audit of all Court buildings and the buildings having residential quarters of the Judicial Officers will have to be made. The State Government will have to take appropriate policy decision in this behalf laying down that in case of every building, after a particular number of years, Structural Audit must be carried out. Such policy decision shall be taken within a period of three months from today. After the policy decision is taken, the State Government shall forthwith implement the same in relation to all Court Buildings and residential buildings of Judicial Officers. We may note here that it may be a matter

of pure luck that in case of buildings at Mazgaon and Thane, there was no untoward incident. Needless to add that after the structural audit is carried out, necessary remedial measures will have to be taken by the Public Works Department in respect of such buildings. It must be borne in mind that on working days, the Court Complexes are overcrowded by presence of a large number of litigants, members of the bar and members of the staff, etc. Structural audit is necessary for protection of all the stakeholders.

ELEVATOR/LIFTS:

159. There is another issue about the elevators/lifts installed in the Court buildings as well as Courts housing residential quarters of the Judges. In case of many such lifts, there is no proper maintenance. For example, few lifts in the District Court Complex in Pune remained closed for few years. It is the duty of the Public Works Department to ensure that the lifts/elevators are properly maintained, and therefore, the State Government must issue directions for execution of service contract in relation to all such lifts/elevators in the Court Complexes as well as in the residential quarters of the Judicial Officers.

AVAILABILITY OF LANDS FOR THE COURTCOMPLEXES AND RESIDENTIAL QUATERS:

160. Ideally, all the Courts and Tribunals as well as residential quarters of the Judicial Officers should be in the buildings owned by the Courts/Tribunals and as far as possible, the same should not be housed in a rented premises. Apart from recurring cost of payment of rent, repairs of the rented buildings becomes a difficult issue. After the repeal of the Land Acquisition Act, 1894 and after coming into force the new Act i.e. the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the acquisition of private properties for public purposes has become a costly proposition. There is already a direction issued to all the Planning Authorities in the State within the meaning of the Maharashtra Regional Town Planning Act, 1966 (for short "MRTP Act") to ensure that suitable plots are reserved and earmarked for the Court Complexes and residential quarters for the Judicial Officers in the Draft Development Plan. Appropriate provision can be always made in the Development Control Regulations providing for the owner of the reserved land developing a part of the land subject to developing the other part of the land for the Court purposes at his cost. There can be also a provision made in the Development Control Regulations under Clause (m) of Section 22 of the MRTP Act providing for grant of

compensation in the form of Transferable Development Rights (TDR). The State Government shall take appropriate policy decision and issue directions to the Planning Authority under Section 154 of the said Act of 1966.

RESERVED PLOTS IN MUMBAI:

161. In PIL No.7 of 2014, an issue was raised regarding the reserved plots in the City of Mumbai for Judiciary. There are 19 such reservations provided in the sanctioned Development Plan of City of Mumbai. The affidavits on record show that 16 reserved plots are in Mumbai Suburban District. On the two reserved plots (CTS 1095 of Village Kandivali and CTS No.46-A of Village Chembur) which are vested in the State Government, there are encroachments. In the affidavit of Shri Mahesh Trimbakrao Ingle, the District Superintendent of Land Record, Mumbai Suburban District, Mumbai, there is an assurance given that the appropriate steps will be taken for removing the said encroachments.

162. There is an affidavit filed by Shri Vivek Raghunath More, the Deputy Chief Engineer in the Development Plan Department of the Mumbai Municipal Corporation. It is stated that on 27th May 2016, the Mumbai Municipal Corporation has republished the Draft Development

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Plan 2034 and has invited objections. It is stated that in the Draft Development Plan of 2034, total 29 plots are proposed as designated/reserved for the purposes of the Courts. A list of the said plots has been annexed to the said affidavit. It is stated that 19 reserved plots which are subject matter of PIL No.7 of 2011 which were designated/reserved in the Development Plan, 1991 have been retained as reserved/designated for the Courts in the said Draft. Exhibit-B to the said affidavit contains a list of 29 plots. We hope and trust that while finalizing the Development Plan of 2034, the State Government will ensure that the said reservations are maintained. This is of great deal of importance as the Motor Accident Claims Tribunal in Mumbai, the State Commission at Mumbai and the Co-operative Courts and the Co-operative Appellate Courts in Mumbai do not have even a reasonable premises available. The same is the case with some of the Courts of the Metropolitan Magistrates.

DELAYS IN CONSTRUCTION OF NEW COURT
COMPLEXES AND RESIDENTIAL QUARTERS:

163. Now we come to a very important issue. We have already made a reference to the relevant part of the judgment and order dated 7th & 13th August 2015 in the case of ***New Bombay Advocates Welfare Association, through its President and Another***. This Court noted

gross delays in the entire process of construction of new buildings for the Courts and Judicial Officers' Quarters right from the stage of acquisition of the lands. There are procedural delays in granting approvals. There are procedural delays in releasing funds. In Paragraphs 21 to 26, this Court has dealt with the said issue. The said Paragraphs read thus:-

“21. In some detail, we have already discussed constitutional obligation of the State Government of establishing the Courts in the City and of providing all the infrastructures to the Courts. As far as the decision of establishing the Courts is concerned or as far as the requirement of constructing new Court buildings or new judicial quarters is concerned, the same will have to be taken by the High Court Administration after considering all the relevant factors. The views/opinion of High Court Administration on the aspect of establishing new Courts must get primacy. However, as laid down by the Apex Court in the case of *Brij Mohan Lal*, once the High Court Administration decides to set up a new Court or to construct a new building for housing the Courts or new building for the judicial quarters, the plea of financial constraints or financial limitations is not available to the State. The Courts should be free of undesirable administrative and financial restrictions. The State cannot refuse to perform its constitutional obligation of providing adequate judicial infrastructure and means of access to justice to citizens. As pointed out by Shri Kumbhakoni, the learned senior counsel appointed as Amicus Curiae, there are delays involved at every stages right from the sanction of the initial proposal for construction of Court building. At every stage, the State Government comes out with an excuse of financial constraints. In view of the law laid

down by the Apex Court in the decision in the case of *Brij Mohan Lal*, the said excuse is no longer available to the State Government. As held therein, the Courts should be free of undesirable financial restrictions.

- 22.** We have pointed out in the earlier order passed in these three Petitions that there is invariably a gross delay in processing the proposals/estimates for construction of new Court buildings. Normally, there are various objections raised by the Finance Ministry. The High Court administration is told to justify the necessity of construction of new buildings. By way of illustration, we may state that in some cases, when construction of a judicial quarter is already approved, justification is demanded as to why a compound wall is necessary. Even after the funds are budgeted, invariably here is a delay in release of the funds. If proposals are not approved within the reasonable time from the date on which estimates are prepared, by the time the approvals are granted by the State and tender is floated, there is always an escalation in the cost of construction. There is further delay involved as the sanctioned amount is normally not released in the required time frame. Therefore, supplementary proposals/estimates are required to be submitted. At that stage also the Finance Ministry invariably raises all sorts of objections and demands justification which again causes the delay. That is how, apart from defeating constitutional obligation of the State Government, the delays put enormous burden on the State exchequer. Therefore, as rightly submitted by Shri Kumbhakoni, the procedure for grant of approval will have to be streamlined and the procedure should be such that within a time bound schedule, the decisions are taken and implemented.
- 23.** The delays start from the stage of acquisition of the land. There are several instances where from

the date on which the High Court Administration moves the Government for initiating the acquisition proceedings for taking over the land for the Court complex, the acquisition takes a decade or more. The provisions of the Maharashtra Regional and Town Planning Act, 1966 are applicable to the entire State. In those municipal areas where the Court premises/residential quarters may be required to be constructed in future or where the existing Courts/quarters are in rental premises or where the premises available to the existing Courts are insufficient, it is advisable that the State Government provides for reservations on suitable lands in the sanctioned development plans for the Court complexes including the judicial quarters. If such reservations are provided, it will facilitate early acquisition of the lands needed for the Court buildings or judicial quarters. By way of illustration, we may state that in the City of Mumbai, in the existing sanctioned Development Plan, there are more than 10 sites earmarked for the Court complexes. We are informed across the Bar that the Revised Development Plan has been published. It is the duty of the Law and Judiciary Department to ensure that if the revised development plan proposes deletion of some of the said reservations, the appropriate objections are raised. This will apply to Development Plan of all the Municipal Authorities. Before finalizing Development Plans, it is necessary for the State to consider the requirements of Judicial department.

24. After a suitable land is placed in possession of the Law and Judiciary Department for construction of a Court building and judicial quarters, the first step which is to be undertaken by the local public works department is of preparation of drawings of the proposed building as per the requirement of the judiciary. After the drawings are approved, the estimates are prepared by the Public Works Department. From the various orders already passed and the affidavits on record, we find that there is an inordinate delay in grant of administrative approval to the said proposals.

After the hurdle of the administration approval is cleared, then the proposals are sent to the Finance Department for approval. From the record, it appears to us that various queries are raised by the Finance Department including seeking justification for the construction of the Court buildings and judicial quarters. As stated earlier, the opinion of the High Court Administration has primacy in all these matters. Hence, when the proposal is approved by the High Court, normally, there is no reason to doubt the necessity of constructing a new Court building or new judicial quarters. Once a conscious decision is taken by the High Court Administration, in view of the law laid down by the Apex Court in the case of *Brij Mohan Lal*, the financial constraints cannot be an excuse to defeat the requirement of construction of a Court building and judicial quarters as well as provision for necessary infrastructure therein. Therefore, norms will have to be laid down as regards the category of the objections which can be raised by the Finance Ministry. The Ministry cannot impose undesirable financial and administrative restrictions on Courts. A time bound schedule is required to be laid down for administrative approvals to the project of construction and for financial approval. Unless all this is done in a time bound manner the delays will result in further escalation of cost. After all approvals are granted, even tender process is required to be completed in a time bound manner.

25. Then comes an issue of submitting supplementary estimates. The occasion for submitting supplementary estimates arises when there is a delay in granting financial approval and there is a delay in releasing the amount to the Contractors which results into delay in completion of construction. In such cases, the approvals have to be granted in much lesser time than the time which is required for the grant of approval to the original proposals. Then comes the practice which is followed consistently as regards the proposals for the internal work such as plumbing,

electrification etc as well as the external work such as work of gardening, drainage system, compound wall etc. There may be some valid reasons for not getting the estimates of the said work approved at the outset. The logic may be that only when the building is on the verge of completion that the appropriate decision can be taken as regards the said requirements and by that time, invariably there is an escalation of cost. A procedure will have to be laid down that such estimates and proposals shall be submitted at least six months prior to the proposed date of the completion of the construction of the buildings. As regards the furniture to be provided in the Court complex as well as judicial quarters, it will be appropriate if the State Government permits the High Court Administration/concerned Principal District Judges to procure furniture by following e-tender process.

NEED TO PREPARE A SCHEME CONSIDERING THE CONSTITUTIONAL OBLIGATIONS

- 26. Considering all the aforesaid aspects, the State Government will have to take appropriate policy decision laying down a standard procedure to be adopted for sanctioning proposals for construction of the Court buildings/ judicial quarters as well as the financial approval to the estimates. A procedure is also required to be laid down for the grant of approvals to the work of repairs or additions and alterations to the existing buildings. The State Government will have to lay down the procedure with a view to ensure that all the approvals are granted within a time bound limit considering the Constitutional obligation of the State to provide infrastructure to the Judiciary. The procedure which may be designed by the State Government must ensure that unnecessary correspondence and unnecessary movement of the files from one department to another is avoided. A single window system is required to be adopted when it comes to grant of**

approvals as it is found that the High Court Administration is required to run from pillar to post for getting the proposals approved. The State Government will have to consider one more aspect. In several cases which have come before this Court, it is noticed that the sanctioned funds are released at the fag end of the financial year and, therefore, it becomes impossible for the judicial department or the Court to use the said funds before the end of the financial year and invariably the funds lapse and that is how the requirement arises of again obtaining fresh financial approvals. Such practice of releasing the funds at the fag end of the financial year must be forthwith discontinued. We propose to direct the State Government to take appropriate policy decision laying down a comprehensive scheme dealing with the preparation of plans and estimates, sanction thereof, release of funds as well as completion of projects of the judiciary within a time bound schedule. We propose to grant reasonable time to the State Government to come out with a concrete scheme and policy decision on this aspect. Our suggestion to the State Government is that before a policy decision is taken, the State Government should involve a Registrar nominated by the High Court Administration as well as Shri Kumbhakoni, the learned senior counsel appointed as Amicus Curiae as well as the learned Government Pleader in the process of consultation. The policy decision to be taken must also provide a mechanism for fixing responsibility on the concerned officials in the event of delays in completion of projects of the Court buildings and judicial quarters.”

(emphasis added)

164. In the operative part of the said judgment and order, in clause (r), this Court directed the State Government to take a policy decision and to formulate a scheme dealing with the Court Complexes

and residential quarters for Judicial Officers. Accordingly, by Government Resolution dated 10th October 2016, a policy decision has been taken which is titled as “Court Infrastructure Policy”.

COURT INFRASTRUCTURE POLICY

165. We have heard learned senior counsel Shri A.A. Kumbhakoni appointed as the Amicus Curiae and the learned Government Pleader as well as other members of the Bar on the said Scheme. One of the suggestions made by the Court was that there should be a Single Window System for grant of various approvals. In Paragraph 5.1 of the Court Infrastructure Policy, the State Government has stated the reasons as to why a Single Window System cannot be developed. It is stated that if the entire procedure is streamlined providing greater delegation of power and re-engineering the processes, it may have the same effect as a Single Window System. It is stated that as the Public Works Department, Planning Department and Finance Department are involved, it is not possible to provide a Single Window System. Considering the limitation on the powers of a Writ Court, it is not possible to interfere with the said part of the policy decision.

166. In Clause B of the Court Infrastructure Policy, the stages of completion of the project have been set out. Clause B of the said policy reads thus:-

“B. Stages from conceptualization to the completion of the project :-

1. Initiation of the proposal by the Principal District Judge/Judge to construct a new court complex/residential quarter or redevelop the existing one.
2. Preparation of a plan/design by the local Public Works department.
3. Vetting and approval of the design by the Chief Architect/Deputy Chief Architect, Government of Maharashtra.
4. Preparation of final plans/estimates by the local Public Works Department (with the approval/sanction of the Executive/Superintending/Chief Engineer, Public Works Department).
5. Concurrence to the plans and estimates by the Principal District Judge/Judge of the concerned District/Court.
6. Transmission of the plans and estimates to the High Court Registry for approval .
7. Approval to the plans/estimates by the Building Committee of the High Court.
8. Transmission of the plans and estimates to the State Government for according Administrative approval and budgetary provision.
9. Processing of the proposal by the Law and Judiciary Department.
10. Obtaining technical sanction of Public Works Department.
11. Concurrence of the Planning Department
12. Concurrence of the Finance Department

13. Concurrence of the Committee of the Secretaries headed by the Hon'ble Chief Secretary, if the estimate is above rupees Five Crores.
14. Approval of the Government to accord administrative approval for the project.
15. Budgetary provision with the approval of the Hon'ble State Legislature.
16. Commencement of the work by following appropriate tendering procedure and
17. Completion of the project as per fund flow.

The above flow chart indicates the movement of the proposal in a normal course. The cases wherein the project gets delayed and/or there is cost overrun stand on a different footing.

Many a times, there is increase in the scope of work which necessitates revised estimation of the cost. At other times, somehow the project gets delayed and due to inflation and change in DSR the estimate overshoots the initial budgetary provision. In that event, for revised administrative approval, the proposal has to pass through all the aforesaid stages and thus constitutes a single major factor for the non completion of the project within the stipulated period and the original budgeted estimate.”

167. Clause 4 of the Court Infrastructure Policy deals with “Time Line”, which reads thus:-

“4. Time Line: -

After receipt of proposal from the High Court the Law and Judiciary Department shall process it within 3 weeks, and, if it is in order, the same shall be forwarded to the Public Works

Department. The Public Works Department shall also process the proposal within 3 weeks time.

After obtaining concurrence of the Public Works Department, the Law and Judiciary Department shall simultaneously forward the proposal to the Planning Department and Finance Department on two separate files. The Planning Department and Finance Department shall also take a decision on those proposals within 3 -4 weeks.

The approval of the State Government for according administrative approval (with the prior concurrence of the Secretaries Committee, wherever required) may be obtained, within 3 months therefrom, after following the prescribed procedure.

In this fashion, the proposal received from the Hon'ble High Court can be processed within 6 months, in the maximum.

Officers of the concerned department shall earnestly endeavour to maintain the aforesaid timeline. In the event of the inaction and omission to process the files, in terms of the aforesaid timeline, the concerned officers shall be liable to be dealt with in accordance with the provisions Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.”

168. The learned Amicus Curiae has made suggestions on the stages provided in Clause B above. The Stage 13 is of the concurrence of the Committee of the Secretaries headed by the Hon'ble Chief Secretary if the estimate is above Rs.5 Crores. In case of proposals having estimate of less than Rs.5 Crores, the Stage 13 does not come into picture and the proposal goes to Stage 14. The grant of the Stage

14 will be required if the Stage 13 is not applicable. But in cases where Stage 13 is applicable, the question is whether the Stage 14 is required. As and when there is a concurrence of the Committee headed by the Chief Secretary, approval of the Government will be a formality. On this aspect, reconsideration of the policy is necessary.

169. Secondly, the time line provided in Clause 4 of the Court Infrastructure Policy provides that the proposal received from the High Court Administration will be processed within a maximum period of six months from the date of receipt of the proposal. However, no time line is prescribed for the Stages 1 to 4. A time line needs to be specified for these stages so that the delay at these four stages can be avoided. We propose to issue directions to the State Government to provide for the time line. Providing time line is very necessary for the Stage 4. The estimates are prepared by the local Public Works Department with the sanction of the Superior Officers of the Public Works Department. If this process takes a long time, it will result into further delays. As far as the time line is concerned, there is one more aspect missing. As far as the budgetary provision is concerned, it must be provided that the proposal for the budgetary sanction should be placed immediately before the next Session of the State Legislature after approval is granted as per Stage 13 or 14. We propose to direct the State Government to fix the time line accordingly.

170. Another important issue dealt with by the Infrastructure Policy is regarding purchase of furniture, which is under Clause 9.

Clause 9 of the said Infrastructure Policy reads thus:

“9. Purchase of furniture:-

As regards the liberty to courts to purchase the furniture by adopting eTendering process without intervention of Public Works Department, the Public Works Department has conveyed its concurrence to adopt the process of purchase of furniture by competitive eTendering process to be conducted by the district courts. As a matter of policy there seems to be no objection to the proposal to invest the authority with the Principal District Judge/Principal Judge(s) and the Registrar, High Court to purchase the furniture by following competitive eTendering process.

It is, however, necessary to define the norms for the furniture to be installed and also standardise the requirement of furniture so as to ensure that there is uniformity in the procurement of furniture and the cost of furniture is not excessively disproportionate to the overall estimate and requirement.

However, the willingness of the High Court administration to undertake the said exercise may be obtained. Similarly, a mechanism may be devised whereby funds for the component of furniture are made available at the disposal of concerned Principal District Judge/Judge. Otherwise, moving a separate proposal for granting administrative approval for purchase of furniture and also making a budgetary provision for the same as an independent new item would prove more time consuming and will also entail duplication of efforts.

It is proposed that a necessary provision may be made in the Financial Power Rules, 1978 to authorise the purchase of furniture on the aforesaid line.”

171. It is a common experience that if furniture is purchased through the Public Works Department, the cost of furniture is very high. We are, therefore, of the view that the suggestions recorded in Clause 9 under the heading “purchaser of furniture” deserves a favourable consideration by the High Court Administration. The Registrar General of this Court will have to place the subject before the appropriate Committee of the High Court Administration. The proposal incorporated in Clause 9 will curtail delays and by accepting the said proposal, there will be a distinct possibility that burden on the exchequer will be reduced.

172. Another important feature of the Infrastructure Policy is Clause 10, which reads thus:-

“10. Approval to the work of repairs or addition and alterations to the existing buildings: -

As per the extant norms, the Registrar General accords administrative approval for works of repairs/minor works upto rupees Three Lakhs per work. It has been observed that the amount at the disposal of the High Court administration may not cater to the requirements of all the district courts. At times, the works of repair are urgent in

nature and cannot await administrative approval at the level of the State Government.

It is, therefore, proposed that the Principal District Judges/Judges may be invested with authority to incur expenditure for repairs/additions/alterations out of the grant made available under the head of 27-Minor works, up to rupees 20 lakh per year. The proposal for incurring expenditure for repairs and/or alterations shall, however, be forwarded by the Principal District Judges/Judges to the High Court administration and after approval by the High Court, the estimates be forwarded to the State Government and the Head of Department may be invested with the authority to sanction the expenditure for repairs /addition/alterations up to the upper limit of rupees twenty lakh per district per year.”

173. In our view, Clause 10.2 of the Policy is a very welcome step. However, the sum of Rs.20 lakhs for one Judicial District will be very insufficient. The State Government needs to suitably increase the said amount. Moreover, in case of larger Judicial Districts, more amount should be provided. In our view, it must be a sum of atleast Rs.30/- lakhs for smaller Districts and Rs.50/- lakhs for bigger Districts. We propose to direct the State Government to take a policy decision in this behalf and implement Clause 10.2. In the current financial year, allocation as per Clause 10.2 shall be made on pro-rata basis.

174. Another important issue which is not dealt with by the said Policy is as regards the release of funds. The orders passed by this

Court from time to time in this group of PILs/WPs will show that in large number of cases, there is a huge delay in releasing the funds for the projects. This delay has two serious consequences. The first is that the project gets delayed and the second is that there is a continuous escalation of cost. There is one more important issue which is dealt with by the orders passed by this Court in this group of Pils/WPs. The amounts for which there is a budgetary approval are released at the fag end of a financial year and in some cases, in the last week of month of March. Within such a short time, it becomes impossible to utilize the said amount and therefore, the grant lapses. In case of lapse of grant, a fresh proposal is required to be invited for sanction of grants. In fact, the orders passed by this Court from time to time will show that interim directions were required to be issued to ensure that the grant released at the fag end of the financial year does not lapse. It is absolutely necessary to create a mechanism under which the unutilized funds, either with the Court Administration or with the Public Works Department, do not lapse at the end of the financial year. If the grant lapses, it increases works of all the Departments of the State Government as well as the Courts. The budgetary allocation is made for the projects/works which have administrative approval of the State. Therefore, it serves no purpose by allowing the unutilized grant to get lapsed. If the grant is allowed to get lapsed, further procedure for release of fresh grant takes long time which not only increases the

paper work and delays the projects but it also escalates the cost of the project. We, therefore, propose to direct the State Government to create a mechanism to ensure that the unutilized funds do not lapse.

175. The Clause 6 of the said Policy reads thus:-

“6. Greater delegation of power to the Administrative Department (Law and Judiciary Department): -

As per the extant practice, in terms of Manual of Financial Power, 1978 Part I, Sub Section - 5, Sr. No.1, Maharashtra Public Works Rule Book Paragraph No.134, proposals up to rupees Five Crores can be processed by the Law and Judiciary Department, without the concurrence of Planning Department and Finance Department.

It is noticed that very few proposals, especially of the court complexes, fall within the limit of rupees Five Crores. It was, therefore, felt essential to recommend that this limit of rupees Five Crores may be enhanced as may be decided by the Government, so that the proposals of court complexes at taluka places and the residential quarters for judicial officers can be expeditiously processed by the administrative department without necessity of referring the files to the Planning Department and Finance Department.

As per the extant norms every proposal for revised administrative approval irrespective of the amount by which the revised estimate exceeds the original budgeted estimate is required to be submitted to the Planning Department and Finance Department. And, if it exceeds rupees Five Crore before the Secretaries Committee. The said stipulation

leads to considerable delay in according revised administrative approval.

It is, therefore, proposed that in cases where there is no change in the construction plan and scope of work, the administrative department may be permitted to grant revised administrative approval up to the limit of increase of 15% of the original estimate. These projects are essentially those wherein the estimate increases due to price escalation/change in DSR. If there is no change in the construction plan and scope of work there seems to be no propriety in seeking revised administrative approval. Therefore, a substantial number of projects can be granted revised administrative approval by the administrative department, albeit, after ensuring that there is no deviation from the approved plan and no change in the scope of work.”

176. Under Clause 6 of the Court Infrastructure Policy, there is a provision of greater delegation of power to the Administrative Department. As per the existing practice, the proposals upto Rs.5 Crores can be processed by the Law & Judiciary Department without concurrence of the Planning and Finance Departments. This practice is in terms of the Manual of Financial Power of 1978. There are few proposals which may fall within the limits of Rs.5 Crores. Accordingly, as provided in Clause 6.2, the limit of Rs.5 Crores deserves to be enhanced immediately. Concurrence of High Power Committee of the Secretaries of the Government of Maharashtra is required (Stage 13) if the estimate is above Rs.5 Crores. Even this amount needs to be

correspondingly enhanced which will reduce the time required for grant of sanction to the proposal.

177. The State Government has expressed its inability to provide a Single Window System. After a proposal is processed by the Law and Judiciary Department, there are four stages upto obtaining the budgetary approval. It becomes difficult for the High Court Administration to keep the track of proposals once the processing thereof is completed by the Law and Judiciary Department Therefore, it is necessary for the State Government to appoint a Nodal Officer not below the rank of Joint Secretary of the Law and Judiciary Department, who will be empowered to deal with all the Departments concerned with Stages 10 to 15. This will enable the High Court Administration to take up the matter with Nodal Officer in case of delay.

178. Another welcome feature in the said Policy is Clause 11 which reads as under:

“11. Mode of Communication:-

The time which is lost in communication between the District Court, High Court administration and the State Government is certainly avoidable. Earnest efforts be made by all the concerned departments to increasing use the electronic mode of

communication to ensure speedy clearance of the proposals.

A separate email ID for the desks dealing with the said proposals of the High Court and District Courts may be created and the concerned officials shall make greater use of eOffice mode for correspondence with the High Court and district courts.”

179. It is a common experience that the making of communication between the Department in the Mantralaya, Mumbai and High Court Administration is by sending letters by post. Therefore, the Registrar General of this Court will coordinate with the Government and implement Clause 11 of the said Policy.

WATER SUPPLY:

180. Another issue is of adequate water supply to the Court premises and to the Judicial Quarters. While preparing plans and estimates, the Public Works Department will have to consider whether a proper source of water supply is available. The Public Works Department will have to ensure that while preparing plans for construction of Court Complexes and Residential Quarters, a provision is made for digging bore wells (wherever adequate ground water supply is available) and rain water harvesting. Even in existing Court Complexes and Residential Quarters, the Public Works department must

explore possibility of digging bore wells as well as setting up plants for recycling the waste water. We propose to issue necessary directions in that behalf.

SCHOOL TRIBUNAL AT MUMBAI:

181. Another issue canvassed in PIL No.7 of 2011 is regarding failure of the State Government to make available a suitable premises to the School Tribunal at Mumbai which is at present housed in a Municipal School. We propose to direct the State Government to provide a suitable premises to the School Tribunal at Mumbai within a period of one year from today while making it clear that no further extension will be granted.

INFRASTRUCTURE FOR THE COURTS UNDER

POCSO ACT:

182. We need to clarify here that under the Protection of Children from Sexual Offences Act, 2012 (for short the "POCSO Act"), a particular set up of the Court premises is made mandatory. It will be the obligation of the State Government to ensure that whenever proposals are submitted for creating Special Courts under the POCSO Act as provided therein, the same are approved at the earliest. We may

also clarify that the directions issued in this Judgment and Order will also apply with equal force to the Juvenile Justice (Care and Protection of Children) Act, 2015. The Registry shall take steps to inform the Principal District Judges to ensure that the Court rooms as required by the POCSO Act be set up by moving the Public Works Department.

ISSUES IN PIL NO.216 OF 2010

183. In Public Interest Litigation No.216 of 2010, certain issues in connection with the Courts at Kalyan and Thane were brought to the notice of the Court. In the said Petition, it is demonstrated as to how a new building was constructed by compromising on Rules. The order dated 12th March 2014 passed in the said Petition records that a portion of Fast-track Court building has been affected by the road widening and in fact an undertaking has been given by the Executive Engineers of the Public Works Department that as and when the work of road widening is commenced, a portion of the building required for road widening will be handed over. The order dated 11th June 2014 notes that the Commissioner of Kalyan Dombivli Municipal Corporation exercised the power of relaxation by relaxing the Rule of compulsory open space as far as the western part of the Fast-track Court building is concerned. It must be noted here that notwithstanding the aforesaid position, a proposal was submitted and approved for construction of two

additional floors on the same building. The duty of the Public Works Department is to ensure that while finalizing the Building Plans, no violation is made of the Development Control Regulations. As regards the grievance made regarding failure to construct wash-rooms and toilets, the directions which we propose to issue in this Judgment will take care of the grievance. Even the issue regarding fire protection will be taken care of.

FACILITIES FOR PERSONS WITH DISABILITIES:

184. One more issue which arises is as regards the making all the Court Complexes in the State friendly for differently abled persons. Many litigants who are differently abled approach the Courts and Tribunals. Therefore, the facilities will have to be provided to them in the precincts of the Court Complexes in terms of the principles laid down under the Rights of the Persons with Disabilities Act, 2016. Necessary steps will have to be taken to make all the facilities in the Court Complexes easily accessible for the persons with disabilities. We propose to direct the Registrar General of this Court to place the matter either before the Building Committee or Infrastructure Committee so that the concerned Committee can take appropriate policy decision and issue directions to all the Principal District Judges and the Principal Judges to take steps for making Court Complexes including the Court

rooms disabled friendly. We are sure that when proposals are submitted for sanction of estimates for carrying out necessary work, the State Government will approve the same without any impediments.

PUBLIC INTEREST LITIGATION NOS.31 OF 2014 AND
81 OF 2012.

185. Public Interest Litigation No.31 of 2014 has been tagged along with this group of Petitions/PILs. Some of the prayers will be taken care of by the order which we propose to pass. However, for considering the wider prayers, though we are disposing of this group of PILs/WPs, PIL No.31 of 2014 will remain pending. Public Interest Litigation No.35 of 2010 was also tagged along with this group. This PIL is transferred from the Bench at Nagpur. It is renumbered as PIL No.81 of 2012. It is a Suo Moto PIL wherein the issue is regarding certain old buildings in Vidarbha Region having historical and architectural significance and importance. The issue raised in this PIL is regarding protecting the said buildings by framing a policy analogous to the policy on the basis of which Heritage Regulations are framed for preserving heritage structures in the City of Nagpur. We find that the submissions were not canvassed on this Petition and, therefore, we are not pronouncing judgment in this PIL and we direct that this PIL should be detached from this group and place the same for hearing separately.

CONCLUDING PART

186. Before we part with the judgment, we must again make a reference to the decision of the Apex Court in the case of *Imtiyaz Ahmad*. We have already quoted the relevant paragraphs which note that the Hon'ble Prime Minister of India has addressed a letter dated 23rd April 2015 to the Chief Ministers of the States to allocate funds required for the activities recommended by the 14th Finance Commission in the State Budgets from 2015-2016 onwards to improve the working of the judicial system and provide speedy justice. In view of what is observed in the said decision, the State Government is under an obligation to make available funds which are allocated to the Judiciary under the various heads.

187. We must record our appreciation for the services rendered by Shri A.A. Kubhakoni, learned senior counsel and Shri Amit Borkar, learned counsel, appointed as the Amicus Curiaes. We must also note here that Shri A.B. Vagyan, the learned Government Pleader has discharged duties of his Office by doing the balancing act. While protecting the interests of the State Government, he has acted as an Officer of this Court as well. Even the other members of the Bar who appeared in this group of PILs/WPs have rendered valuable assistance.

188. We are conscious of the fact that in some of the Petitions, very wide directions have been sought. We are unable to grant many such prayers in this group of Wps/PILs

189. We hope and trust that the State Government will not take these litigations as adversarial litigation. The State Government should be interested in ensuring that the Judiciary in the State is equipped with all the necessary and modern infrastructure so that citizens will be in a position to exercise their fundamental right of access to justice and access to speedy justice. The framers of the Constitution envisaged that all citizens of this Country will get easy access to the justice and they will get speedy justice. This object of the framers of the Constitution can be achieved only if the State Government ensures that adequate number of Judicial Officers are appointed and proper and adequate infrastructure is made available to the Courts and Tribunals.

190. All interim directions which are operative till today and which are not inconsistent with the final directions issued under this Judgment shall continue to operate.

191. Hence, we pass the following order:-

ORDER :

A] We hold that:

(a) It is the constitutional obligation of the State Government to provide lands and/or adequate premises for establishing adequate number of Courts;

(b) It is an obligation of the State Government to appoint sufficient number of Judicial officers consistent with pendency and filing in the concerned Courts and Tribunals. The cadre strength should be such that there will be no pendency of old cases;

(c) It is the obligation of the State Government to provide all necessary infrastructure to the newly established as well as the existing Courts and Tribunals for the benefit of the Judicial Officers, litigants, members of the staff as well as members of the Bar;

- (d) The infrastructure has to be provided in such a manner that the Courts are able to function efficiently;
- (e) The infrastructure has to be consistent with the concept of dignity of the Court;
- (f) Speedy disposal of cases in consonance with the mandate of Article 39A of the Constitution of India cannot be achieved unless adequate number of Courts and Tribunals are established and adequate and proper infrastructure is provided to all the Court premises;
- (g) Financial constraints is no ground to deny permission for establishing new Courts and denying essential infrastructure to all the Courts, whether existing or new.

These principles will apply to all Civil and Criminal Courts in the State, Co-operative Courts and Maharashtra State Co-operative Appellate Court, State Commission and District Forum under the Consumer

Protection Act, 1986, the Motor Accidents Claims Tribunals under the Motor Vehicles Act, 1988 as well as Labour and Industrial Court;

B] The State shall sanction requisite number of additional posts of Judges as directed in the decision of the Apex Court in the case of *Imtiyaz Ahmad v. State of U.P. & Others*. We hold that the principles laid down in the said decision deserve to be applied for determining the Judge/member strength of the aforesaid Tribunals as well;

C] As directed by the Apex Court in the decision in the case of *Imtiyaz Ahmad v. State of U.P. & Others*, the State Government shall ensure that the funds allocated under the 14th Finance Commission for the years 2015-2020 to the Judiciary in Maharashtra are promptly released. The funds set out under the heads I to VIII as mentioned in the case of *Imtiyaz Ahmad* shall be released. We clarify that the funds to be released under 14th Finance Commission are independent of the regular funds required by the Judiciary. The allocated funds under heads I to VIII

shall be released over and above the regular funds required by the Judiciary. The funds shall be released as expeditiously as possible considering the fact that the period of two years out of the period of five years has already expired;

D] We hold that the principles laid down by this Court in the decision in the case of *New Bombay Advocates' Welfare Association* and other connected matters, will squarely apply to the Civil and Criminal Courts including the Family Courts, Motor Accident Claims Tribunal, Co-operative Courts and Co-operative Appellate Court, Labour and Industrial Courts and State Commission and District Forum under the said Act of 1986. Thus, it is an obligation, both constitutional and legal, of the State to provide adequate infrastructure to the aforesaid Courts and Tribunals. The essential ingredients of infrastructure are the adequate number of Judicial Officers/Members and staff, adequate space for Courts and Tribunals and their offices, necessary facilities and amenities for Members of the Bar, Litigants and Witnesses. It includes the facility of well maintained quarters to those Judicial

Officers who are entitled to it under their service conditions. It follows that the facilities such as adequate remuneration and allowances, transport arrangement, etc. ought to be provided for the benefit of the Judges/Judicial Officers/Members of the Tribunals. Facilities such as proper sitting arrangements, clean and equipped washrooms/toilets (separate for men and women), supply of clean drinking water, information kiosks etc. ought to be made available to the litigants and witnesses. The members of the Bar need adequate Bar rooms with necessary facilities. Moreover, all the stakeholders have a right to have clean Court premises. As held in the aforesaid decisions, the financial constraints is no ground to deny essential infrastructure.

E] The directions regarding the implementation of the provisions of the Consumer Protection Act,1986:

(a) The meetings of the State Council shall be held atleast once in every quarter. The District Councils shall hold meetings once in every calender month. The State Council shall

endeavor to exercise the power under Sub-Rule (5) of Rule 2B of the said Rules of 2000 by constituting a working groups so that the specific issues concerning the rights of the consumers can be addressed properly;

(b) The State Government shall commence the process of reconstitution of the State Council and District Councils at least three months before the expiry of its respective terms;

(c) The vacancy caused by the resignations, death or removal of the members of the State Council as well as the District Councils shall be filled in as expeditiously as possible and in any event within a period of three months from the date on which the vacancy occurs;

(d) The State Government shall provide all infrastructure to the State Commission when it's sittings are held at various Circuit Benches. The State Commission shall submit a proposal for creating infrastructure such as adequate staff,

premises, furniture, computers, printers, servers, etc. for the Circuit Benches. The State Government shall provide infrastructure on the basis of the proposal submitted by the State Commission. The State Government shall make a provision for payment of travelling allowances and daily allowances to the members of the State Commission when they work at Circuit Benches. The State Government shall also make arrangements for their stay at their respective places consistent with their status;

- (e) We hold that the State Government has no power to issue a direction which has been issued under the Government Resolution dated 15th October 2016 that all the complaints should be disposed of by the State Commission and District for a within a period of 90 days and reports shall be submitted to the State Government. The State Government had no jurisdiction to give such administrative directions to a Quasi Judicial Authority. The State Government cannot impose such a condition whilst complying with the order

of this Court. But at the same time, it is the duty of the State Commission and District Fora to dispose of the proceedings as expeditiously as possible;

(f) For the reasons set out, the State Government shall consider of revising of conveyance allowance payable to the part time members of the State Commission and District Fora within a period of three months from today;

(g) We direct the State Government to immediately act upon the detailed proposal dated 27th June 2016 submitted by the President of the State Commission and to provide all infrastructure/ facilities set out therein within a period of six months from today. The requirements which are identified as urgent by the President of the State Commission shall be complied with within a period of three months from today;

(h) The State shall implement e-Court project in State Commission and District Fora on the lines

of the E-Court Phase I and Phase II devised by E-Committee of the Apex Court for the Civil and Criminal Courts in India. The State Government shall start the process of digitization of the record of the State Commission and the District Fora and to provide facility of E-filing. It is also necessary to have a dedicated website of the State Commission and the District Fora in the State. It will be open for the President of the State Commission to submit a proposal in that behalf to the State Government.

- (i) The State Government shall ensure that the process of filling in vacancies of the President and Members of the State Commission as well as District Fora is commenced four months in advance from the date on which their respective terms are likely to come to an end. The vacancies arising due to any other reason shall be filled in within a period of four months from the date on which the vacancies occur.

F] The Directions regarding the Cooperative Courts and Co-operative Appellate Court:

- (a) A separate cadre shall be formed for the staff of the Co-operative Courts and Co-operative Appellate Courts in the State. The cadre must be separate from the Co-operation Department. For that purpose, the Recruitment Rules shall be framed as done in case of State Commission and District Fora. Till formation of a separate cadre, the President of the Co-operative Appellate Court, Senior-most Judicial Members of the Co-operative Appellate Court at its Benches and Senior-most Judicial Officers of various Co-operative Courts be given a complete administrative control over the staff of the respective Courts. As such a decision has been taken in respect of the State Commission, there is no impediment in the way of taking similar decision as regards the Co-operative Courts and Co-operative Appellate Courts. Necessary Notifications shall be issued within a period of two months from today;

(b) The the Co-operative Courts and Co-operative Appellate Courts shall be provided staff on the basis of the staffing pattern of the District and Civil Courts in the State. The President of the the Co-operative Appellate Court shall submit a proposal to the State Government for sanctioning additional posts on the establishment of the the Co-operative Courts and Co-operative Appellate Courts on the basis of the staffing pattern adopted for the District and Civil Courts in the State. It follows that if the said staffing pattern of the District and Civil Courts undergoes a change, the staffing pattern in the the Co-operative Courts and Co-operative Appellate Courts will undergo a corresponding change;

(c) We are informed that a proposal to allot a premises of the Maharashtra Telephone Nigam Limited in Fort, Mumbai, to the Co-operative Appellate Court is under consideration of the State Government. We, therefore, direct the State Government to grant necessary approval

within a period of one month from today to enable the Co-operative Courts to take the said premises on leave and licence basis at least for a period of five years. Needless to add that necessary funds shall be released. Only if it is not possible for the State Government to grant such permission, the State Government shall immediately make available a suitable premises in the vicinity of the old Customs house or in nearby area to the Co-operative Appellate Court for its use. The size of the premises shall not be less than the premises in Old Secretariat building which was earlier in possession of the Co-operative Appellate Court. The premises shall be made available within the maximum period of three months from today. Within a period of three months from the date of receiving the possession of the premises, all the files in the premises allotted to the State Commission shall be removed by the Cooperative Appellate Court;

G] The directions regarding the Motor Accidents Claims Tribunal at Mumbai:

(a) In the order dated 3rd May 2016 passed by this Court, the following statement of Shri V.S. Latkar, the Sub-Divisional Engineer of the Public Works Department on behalf of the State Government has been recorded which reads thus:-

“2. On institutions of Shri.V.S.Latkar, Sub Divisional Engineer of Public Works Center, Sub Division, Mumbai the learned Government Pleader states that in the same precincts where the Motor Accident Claims Tribunal, at Mumbai is located, there is a bungalow occupied by the State Government and there are servants' quarters occupied by the State Government employees. He states that within three months from today, the State Government will obtain vacant possession of the said premises and will hand over the same for the use of the Motor Accident Claims Tribunal, Mumbai.

3. The State Government shall inform the Chairman of the Motor Accident Claims Tribunal the details of the premises which would be made available after three months so that in the meanwhile, the Chairman can submit a proposal to the State Government through the High Court Administration for carrying out necessary changes and for providing furniture and other facilities in the additional premises.”

The aforesaid statement of Shri Latkar and the direction shall be immediately complied with by handing over the possession of the said premises to the Motor Accident Claims Tribunal at Mumbai within a period of one month from today. Considering the huge pendency and large number of filing, pending allotment of a larger area, the State Government shall immediately consider of allotting a sufficient area in addition to the area as aforesaid for storage of the record of the Motor Accident Claims Tribunal so that the area occupied for storage in the existing premises can be more conveniently used by setting up additional Courts and for providing facilities to the litigants. This direction shall be complied with within a period of six months from today;

- (b) A separate cadre of the staff members of the said Tribunal shall be created by framing necessary recruitment Rules within a period of one year from today. In the meanwhile, within a period of two months from today, the Chairman of the said tribunal shall be appointed as the head of the

Department so that he can have administrative control over the staff. The staffing pattern of the District Courts shall apply to the Tribunal;

H] The directions regarding the Committee ordered to be constituted under the order dated 18th February 2016:

- (a) If the Committee ordered to be constituted under the order dated 18th February 2016 is not yet constituted, the same shall be constituted within a period of one month from today. A Registrar of this Court nominated by the Registrar General shall be made a member of the said Committee. The Committee shall consider the requirement of the premises by the Courts and Tribunals in Mumbai on the basis of the estimation prepared by the High Court Administration and decide about the total requirement of the area by the State Commission, Co-operative Courts as well as the Co-operative Appellate Courts and the Motor Accident Claims Tribunal in Mumbai. The Committee shall consult such stakeholders as may be found necessary. The Members of the three Tribunals who are entitled to residential

quarters as per the conditions of service need the designated quarters. The Committee shall also ascertain the requirement of designated quarters. The Committee shall determine the present requirement and the requirement in future for atleast 25 years;

- (b) The Committee shall consider the existing norms fixed by the High Court for the Civil and Criminal Courts. The Committee shall consider the present and and the future need for the twenty five years. The Committee shall submit its report to the State Government within four months from today. The recommendations of the Committee shall be considered by the State Government. The State Government will have to take a final decision on the area required by the Tribunals as well as the area required for the designated quarters. Thereafter, the State Government shall actually locate and allot the premises/plots. This exercise shall be completed within a period of one year from today;

I] The directions regarding making available uploaded versions of the State Enactments and rules:

(a) The directions contained in the order dated 25th February 2016 shall continue to operate as final directions. The compliance with all the said directions shall be made within a period of six months from today. Within the said period, updated versions of all the State Enactments and Rules shall be uploaded on the website of the State Government which shall be updated on real-time basis;

(b) Within a period of one year from today, the State Government shall comply with the directions contained in the Judgment rendered in the Petition filed by *Shri Sanjeev M. Gorwadkar and Another*.

J] The directions as regards supply of clean drinking water:

(a) The interim direction issued to provide one water filter and cooler in each Court Complex shall continue as a final direction. The Public Works Department shall make arrangements for the execution of annual maintenance contracts in

respect of water filters and water coolers in all Court Complexes. It is the duty of the Public Works Department to ensure that the water filters and water coolers are maintained in proper working condition throughout the year. The proposals for execution of maintenance contracts shall be forwarded through the Principal District Judges and Principal Judges. Whenever it is necessary to replace the same, the Public Works Department shall immediate steps to replace the same;

- (b) In case of Court Complexes having large number of Courts, additional water filters and water coolers shall be provided by the State Government. The learned Principal District Judges or the Principal Judges shall submit proposals for providing additional water filters and water coolers to the State Government. The Public Works Department shall submit estimates for civil work and plumbing work for installation of water filters and water coolers along with the estimates of the machines. Even the provision for

execution of service contract shall be made in the proposal;

K] The directions regarding Fire Safety and prevention:

(a) There shall be fire audit made of all Court Complexes. Wherever fire audit is not carried out, the same shall be carried out within a period of six months from today. The proposals shall be submitted by the Public Works Departments to the learned Principal District Judges or the Principal Judges of various Courts containing estimates of the work which is required to be carried out taking into consideration the reports of the fire audit. The State shall process the proposals and sanction requisite amounts;

(b) There shall be an outer limit of one year to complete a fire audit and to provide and install necessary equipment in all Courts. Needless to add that the Public Works Department shall ensure that all the provisions of the Fire Prevention Act are substantially complied with as

far as the newly constructed Court Complexes are concerned.

(L) Direction regarding providing additional source of water to Court Complexes:

The Public Works Department shall make a survey of all Court Complexes in the State for ascertaining whether it is possible to dig bore wells and/or to set up plants for recycling of waste water generated by the Court Complex which can be used for gardening/cleaning. This exercise shall be completed within six months from today. Wherever feasible, the work of digging bore wells, fixing pumps thereon and/or setting up waste water recycling plants shall be completed within a period of one year from today. This will ensure that the Court Complexes have their own additional source of water supply;

M] The directions regarding maintaining the Court Complexes in clean and hygienic condition:

(a) The right to have a clean and pollution free environment is a part of the fundamental right guaranteed under Article 21 of the Constitution

of India. If cleanliness is not maintained in the Court premises, there will be a violation of the said fundamental right. The State shall take all possible steps to keep the Court Complexes in clean and hygienic condition;

- (b) For the reasons set out in this Judgment, We direct the State Government either reconsider its policy decision of outsourcing the work of cleanliness in the Court Complexes or to come out with a comprehensive solution to ensure that a high standard of cleanliness and hygiene is maintained in all the Court Complexes. This exercise shall be completed within six months from today;

N] The directions regarding security to the Court Complexes and Residential Quarters:

- (a) It is the duty of the State to provide round the clock security in the form of police protection to all the Court Complexes and residential quarters of the Judicial Officers in the State;

- (b) We direct the District Superintendent of Police as well as the Commissioners of Police to convene meetings of the learned Principal District Judges or Principal Judges of various Courts in their respective jurisdictions within a period of three months from today for ascertaining security requirements of Court Complexes and residential premises of the Judicial Officers. The Court Complexes will include (i) all Civil and Criminal Courts, (ii) Co-operative Courts and the Co-operative Appellate Courts, (iii) Industrial and Labour Courts, (iv) Offices of the Charity Commissioners, Joint Charity Commissioners, Deputy Charity Commissioners and Assistant Charity Commissioners (v) Motor Accident Claims Tribunals including the Motor Accident Claims Tribunal in Mumbai, (vi) all Family Courts in the State and (vii) the State Commission as well as District Fora under the said Act of 1986. Needless to add that if the Court premises are in private properties and if Judicial Officers are residing in private properties, police protection shall be provided wherever it is necessary. After

holding meetings as aforesaid within a period of three months from today, the District Superintendent of Police and/or Commissioner of Police, as the case may be, shall take appropriate decision of providing adequate police protection to the Court Complexes as well as residential premises of the Judicial Officers including the police protection of armed constables wherever it is necessary. After taking appropriate decision within a period of three months from today, necessary police protection shall be provided by the the District Superintendent of Police and/ or Commissioner of Police, as the case may be, within a period of one month from the date of taking such decision. If any additional protection is required due to any exigency or due to temporary need such as, hearing of any sensitive cases, on the requisition made by the learned Principal District Judges or Principal Judges of various Courts in the State, the District Superintendent of Police or Commissioner of Police, as the case may be, shall provide additional police protection. We make it clear

that the police protection already granted will not be withdrawn without concurrence of the learned Principal District Judges or Principal Judges of respective Courts and Tribunals. The District Superintendent of Police and/or Commissioner of Police shall hold yearly meeting in every June with the Principal District Judges/Principal Judges for review of the security arrangements.

- O] The structural audit of Court buildings:
- (a) The structural audit of all Court buildings and the buildings having residential quarters of the Judicial Officers shall be made at periodical intervals;
 - (b) The State Government shall take appropriate policy decision in this behalf laying down that in case of every Court building, after a particular number of years, Structural Audit must be carried out. The appropriate decision shall be taken within a period of three months from today.

After the policy decision is taken, the State Government shall forthwith implement the same in relation to all Court Buildings and residential buildings of Judicial Officers. Needless to add that wherever necessary, remedial measures shall be immediately taken by the State Government on the basis of the recommendations of the structural audit reports;

P] Directions concerning the Lifts/Elevators in Court Complexes and Residential Quarters of Judicial Officers:

It is the duty of the Public Works Department to ensure that the lifts/elevators are properly maintained, and therefore, the State Government shall issue directions for execution of service contracts in relation to all such lifts/elevators in the Court Complexes as well as in the residential quarters of the Judicial Officers;

Q] Providing reservation for Judiciary in the Development Plans under the provisions of the MRTTP Act:

(a) The State Government shall issue necessary directions under Section 154 of MRTP Act to all the Planning Authorities to provide for reservation/designation for Judiciary in Development Plans. Necessary direction be issued within a period of three months from today;

(b) The State Government shall endeavour to ensure that 29 reservations/designations for Judiciary proposed in the Draft Development Plan 2034 of the City of Mumbai are maintained while finalizing the Development Plan;

R] Lapsing of amounts released for infrastructure of the Courts and Tribunals:

We direct the State Government to ensure that the unutilized amounts released on the basis of the budgetary allocation either to the Courts or to the Public Works Department for carrying out work for which administration sanction is granted do not lapse at the end of the financial year. The State Government

shall device a mechanism by which lapsing of the amounts/grant is avoided. The State Government shall take appropriate decision within a period of two months from today in the light of the observations made in Paragraph 174 above;

S] Facilities for persons with disabilities:

(a) We hold that it is necessary to ensure that all the facilities in the Court Complexes in the State are easily accessible for the persons with disabilities in the light of the principles laid down under the Right of Persons with Disabilities Act, 2016;

(b) We direct the Registrar General to invite attention of the Building Committee as the Infrastructure Committee of this Court to the aforesaid direction so that appropriate policy decision can be taken and directions can be issued to all the Principal District Judges and/or Principal Judges to take steps for making the Court Complexes including the Court Room disabled friendly;

T] Court Infrastructure Policy:

(a) We direct the State Government to provide a time line for Stages 1 to 4 of Clause B of the Infrastructure Policy. Necessary decision shall be taken by the State Government within a period of three months from today;

(b) The Registrar General shall place Clause 9 of the Infrastructure Policy before the appropriate Committee of the High Court Administration so that necessary policy shall be taken by the High Court Administration in the light of Clause 9 thereof. The decision shall be communicated to the State Government to enable it to implement the same;

(c) We direct the State Government to carry out suitable amendment to Clause 10.2 of the Policy in the light of the observations made in Paragraph 173 above. Appropriate decision shall be taken by the State Government within a period of three months from today;

- (d) We direct the State Government to consider the issue of enhancing the limit of Rs.5 Crore on the power of the Law & Judiciary Department. Corresponding change is required to be made in Stage 13 of Clause B of the Policy. Appropriate decision shall be taken by the State Government within a period of three months from today'
- (e) The State Government will nominate a Nodal Officer by designation in terms of the observations made in Paragraph 176 above within a period of one month from today;
- (f) The Registrar General will seek approval of the High Court Administration for implementation of Clause 11.2 of the Infrastructure Policy.

U] Direction regarding School Tribunal at Mumbai:

The State Government shall ensure that a suitable premises is allotted to the School Tribunal at Mumbai which is at present housed in a Municipal School within a period of three months from today.

V] Directions regarding Court rooms for conducting cases under POCSO Act:

Necessary action shall be taken by the Registry as well as by the State Government as regards setting up Court Rooms in all the Sessions Court in conformity with the requirement of the Protection of Children from Sexual Offences Act, 2012.

W] Direction regarding providing Government/ Public lands or public properties for all Court Complexes:

Wherever the Court Complexes in the State are in the private properties taken on rental basis, the State Government shall initiate process of identification of Government lands/Government properties for housing Court Complexes. This process shall be completed as expeditiously as possible and preferably within a period of one year from today;

X) All interim orders which are not inconsistent with these final directions shall continue to operate as final orders;

Y] All Writ Petitions/Public Interest Litigations (except PIL Nos.31 of 2014 and 81 of 2012) are disposed of. The prayers which are not specifically granted stand rejected. The pending Applications/Chamber Summons also stand disposed of;

Z] In view of disposal of the main PIL No.156 of 2011, in the Contempt Petition Stamp No.21807 of 2016, there is no reason to take action under the Contempt of Courts Act, 1971;

(AA) There will be no orders as to costs;

BB] The Disposed of Petitions shall be listed on 11th August 2017 under the caption of "Directions" for reporting compliance. The Registrar (Judicial-I) shall seek necessary directions for placing the disposed of Petitions before the same Bench or before a Bench of which one of us is a party.

(A.A. SAYED, J)

(A.S. OKA, J)