State Of Sikkim vs Surendra Prasad Sharma on 19 April, 1994

Equivalent citations: 1994 AIR 2342, 1994 SCC (5) 282, AIR 1994 SUPREME COURT 2342, 1994 AIR SCW 2309, (1994) 3 SCR 563 (SC), 1994 (3) SCR 563, 1994 (5) SCC 282, (1994) 3 JT 372 (SC), (1994) 1 CURLR 956, (1994) 2 LABLJ 1220, (1994) 2 SERVLR 685, (1994) 3 SCT 686

Author: A.M. Ahmadi

Bench: A.M. Ahmadi, N Venkatachala

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           PETITIONER:
STATE OF SIKKIM

        Vs.

RESPONDENT:
SURENDRA PRASAD SHARMA

DATE OF JUDGMENT19/04/1994

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
VENKATACHALA N. (J)

CITATION:
 1994 AIR 2342            1994 SCC  (5) 282
 JT 1994 (3)   372        1994 SCALE  (2)609


ACT:



HEADNOTE:



JUDGMENT:
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The Judgment of the Court was delivered by AHMADI, J.- A short but interesting question arises in these appeals by special leave bearing on the true scope and meaning of Rule 4(4) of the Sikkim Government Establishment Rules, 1974, (hereinafter called 'the Rules'), which were in force before Sikkim became a part of the territory of India. The relevant part of the said rule with which we are concerned reads as a follows :

> "4.(4) Appointment.- (A) Appointment to service under the Government shall be by one or both the methods indicated below:
>
> (a) Direct recruitment;
>
> (b) Promotion from one grade to another.
>
> (B) Direct recruitment shall include appointment on contract, and appointment on deputation:
>
> Provided these two types of appointment shall be made having due regard to the exact nature of specific duties and responsibilities and the qualifications required for the post, and further provided that (i) non-Sikkimese nationals may be appointed only when suitably qualified and experienced Sikkimese nationals are not available, and (ii) replacement of such appointees by suitable Sikkimese candidates may be made as and when available." Fortunately, the facts on which this group of cases arise were admitted in the High Court. The admitted facts were recorded by the High Court on 14-9-1983 and the said record was signed by the learned counsel for the parties in token of their having accepted them as forming the factual matrix for the decision of the writ petitions. But before we set out the factual matrix we may take note of the historical developments leading to Sikkim becoming one of the States of India.

2. Pursuant to an agreement reached between the Chogyal of Sikkim and leaders of the political parties representing the people of Sikkim on the one hand and the Government of India on the other, the Sikkim Assembly unanimously passed the Government of Sikkim Bill, 1974, which was duly promulgated by the Chogyal on 4-7-1974 as the Government of Sikkim Act, 1974. By this Act the Government of Sikkim was empowered to take steps for seeking representation of the people of Sikkim in India's parliamentary system. A formal request to this effect was made to the Government of India which gave effect to the Will of the people of Sikkim by amending the Constitution of India. By the Constitution 35th Amendment Act, 1974, Article 2-A was inserted in the Constitution which ran as under:

> "2-A. Sikkim to be associated with the Union.- Sikkim, which comprises the territories specified in the Tenth Schedule, shall be associated with the Union on the terms and conditions set out in that X X Schedule."

The terms and conditions of Sikkim's association with the Union of India were set out in Part B of the Tenth Schedule of the Constitution. Thereafter a special opinion poll was conducted by the Government of Sikkim on 14-4-1975 on the basis whereof the Chief Minister of Sikkim requested the Government of India to admit Sikkim as a full-fledged State in the First Schedule to the Constitution. Consequently by the 36th Amendment Act, 1975, Entry 22 was added and inserted in the First Schedule whereby Sikkim became a part of India. Article 371-F was also introduced in our Constitution, clauses (k) and (i) whereof provided as under:

> "371-F. Special provisions with respect to the State of Sikkim.-a Notwithstanding anything in this Constitution,-
>
> (k) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority-b (1) for the purpose of facilitating the application of any such law as is referred to in clause (k) in relation to the administration of the State of Sikkim and for the purpose of bringing the provisions of any such law into accord with the provisions of this Constitution, the President may, within two years from the appointed day, by order,c make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon, every such law shall have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law."

By the said amendment which came into force w.e.f. 26-4- 1975, Article 2-A was repealed since it had lost significance once Sikkim was added as a territory of India.

(3) We may now briefly outline the undisputed factual matrix. After Sikkim became the 22nd State of the Union of India, the Directorate of Survey and Settlement of the Government of Sikkim created and advertised certain posts and invited applications for filling up the said temporary Posts. The respondents in this group of appeals applied for the posts and were appointed in different capacities in 1976. As and when the survey work was completed the surplus employees were relieved of their jobs in 1980, 1981 and 1982. In 1982 some of the surplus employees who were 'non-locals' filed writ petitions in the High Court of Sikkim challenging the Government's decision terminating their services. A learned Single Judge of the High Court by his judgment and order dated 29-2-1984 allowed the writ petitions and quashed the termination orders. It is against the view taken by the learned Single Judge that the present appeals have been preferred.

4. Before we proceed to deal with the submissions made before us it would be advantageous to notice the controversy projected before the High Court. The grievance of the employees was that in effecting termination of the services of surplus employees, the employees were classified as 'locals'and 'non-locals' and while the employees belonging to the former class were retained, the employees belonging to the latter class were relieved, their interse seniority notwithstanding. There is no dispute that the services of the respondents were terminated on the ground that they were 'non-locals' regardless of their seniority. On behalf of the State, this discriminatory treatment was sought to be supported under the proviso to Rule 4(4) read with clauses (k) and (1) of Article 371-F of the Constitution. The action was also sought to be supported on the ground that in the advertisement issued for the posts in question it was specifically stated that "preference will be given to local candidates, whose name/parent's name has been included in the relevant Sikkim Government Registee". It was urged on behalf of the State that under the extant laws candidates from outside could not be directly recruited so long as 'locals' were available for such work. Lastly it was said that since they were temporary hands their services could be terminated on a month's notice. The learned Single Judge, on the basis of the above averments, framed two questions for

determination, namely, (i) whether the termination of employment on the basis of the aforesaid classification is justified under the extant laws and (ii) if so, whether the relevant jaws are valid and constitutional? The learned Judge answered these posers in paragraph 19 of his judgment as under:

> "... the relevant provisions of Rule 4(4) of the Sikkim Government Establishment Rules, 1974, which, when these Rules were framed, directed the 'Sikkimese nationals' to be preferred to the non-Sikkimese nationals in all employments or appointments under the then Government of Sikkim, have become unworkable as a result of Sikkimese nationality having ceased to exist as a legally cognizable concept with the incorporation of Sikkim as a component State in the Union of India in 1975. I have also held further that even assuming that the construction of the expression 'Sikkimese nationals' in the relevant Rules to mean permanent residents of Sikkim would have made the Rules workable in the post-1975 context, such a construction is not possible or locally permissible as one can be a national of one country without being a resident thereof and with his domicile in another country. And I have also held that even if such a construction was possible or permissible, the relevant Rules, so construed, would be violative of Article 16 of the Constitution as being discriminatory on the ground of residence and I have also pointed out hereinbefore in considerable detail that nothing in Article 371-F(k) or Article 35(b), their non obstante clauses notwithstanding, would protect them from the challenge of Article 16(1) and (2) read with Article 14 of the Constitution."

Thus, the learned Judge held that the discrimination based solely on the ground of the employees being 'non-locals' was impermissible under Articles 14 and 16 of the Constitution and consequently struck down the orders of termination based on that ground.

5. Now before Sikkim became a part of India under the Sikkim Subjects Regulations, 1961, every person domiciled in the territory of Sikkim immediately before the commencement of the said Regulations, i.e., 3-7-1961 was declared to be a Sikkim subject if he (a) was born in the territory of Sikkim and was a resident thereof or (b) he had been ordinarily residing in the territory of Sikkim for not less than 15 years immediately preceding the commencement of the Regulations or (c) is the wife or minor child of a person mentioned in (a) or (b) above. Provision was also made in the said Regulations for conferment of the said status by registration, descent and naturalisation. Any person who renounces his status as a Sikkim subject or voluntarily acquires the citizenship of any other country or a Sikkimese woman marries a non-Sikkim subject or one who severs his connection with Sikkim are treated under the Regulations as non-Sikkimese. As pointed out earlier certain historical developments led to the enactment of the 35th Amendment which came into force w.e.f. 1-3-1975 whereby Article 2-A was introduced in the Constitution of India. By the said newly added provision Sikkim, comprising the territories specified in the Tenth Schedule, was associated with the Union of India on the terms and conditions set out therein. Certain consequential amendments were also made in Articles 80 and 81 of the Constitution. In Part B of the said Schedule the responsibilities of the Government of India came to be mentioned in clauses (a) to (e) but they were made not enforceable by any court. Provision was also made giving Sikkim representation in Parliament. However, shortly thereafter this newly added article was repealed by the 36th Amendment which

came into effect from 26-4-1975. By the said amendment Sikkim was added to the list of States at Serial No. 22 in the First and Fourth Schedules. Article 371-F was inserted making special provisions with respect to the new State of Sikkim. The said article begins with a non obstante clause notwithstanding anything contained in the Constitution and, thereafter mentions the various provisions in clauses (a) to (p) thereof, of which clauses

(k) and (1) reproduced earlier are relevant for our purpose. By clause (k) all laws in force in the State of Sikkim immediately before the appointed date were to continue in force therein until amended or repealed, notwithstanding anything contained in the Constitution. By clause (1) the President was empowered to make, within two years from the appointed date, provision for adaptations and modifications of the law for the purpose of bringing the provisions of the extant law into accord with the provisions of the Constitution and thereupon such law had to have effect subject to such adaptations or modifications. It was further provided by clause (m) that neither the Supreme Court nor any other court shall have jurisdiction in respect of any dispute or other matter arising out of any treaty, agreement, engagement or other similar instrument relating to Sikkim which was entered into or executed before the appointed day. Pursuant to Article 371-F(1) the President made the Adaptation of Sikkim Laws (No. 1) Order, 1975, which was brought into force w.e.f. 26-4-1975 i.e. the appointed day. By this order the laws set out in the First Schedule were repealed whereas those mentioned in the Second Schedule were to have effect, subject to the adaptations and modifications directed by that Schedule. By a subsequent order called the Adaptation of Sikkim Laws (No. 1) Amendment Order, 1975, which by a deeming fiction was also brought into force w.e.f. 26-4-1975, a new provision was inserted in the previous order whereby review petitions pending before the appointed day were ordered to be transferred to the High Court. Taking note of these changes the High Court held:

> "But with the incorporation of Sikkim as a component State within the Union of India in 1975, Sikkimese nationality as a separate legal and political concept obviously came to an end and thenceforward all in Sikkim are either citizens of India or aliens. And Sikkimese nationality as a legal and political concept having thus ceased to exist on and from 26-4-1975, the relevant provisions of Rule 4(4) of the Sikkim Government Establishment Rules, 1974 giving preference to Sikkimese nationals in matters relating to employments or appointments under the State could not but cease to be workable and to have legal force. On and from the incorporation of Sikkim as a component State of India with effect from 26-4-1975, Sikkimese nationals ceased to exist as such and, whether or not any express repealment of the Sikkim Subjects Regulation, 1961, was necessary, the same was nevertheless expressly repealed with effect from 26-4-1975 by the Adaptation of Sikkim Laws (No. 1) Order, 1975, promulgated under clause (1) of Article 371-F of the Constitution of India, inserted by the Constitution (Thirty-sixth Amendment) Act, 1975. And an order, being Sikkim (Citizenship) Order, 1975, was also issued by the President under Section 7 of the Indian Citizenship Act, 1955, declaring that 'every person who immediately before the 26th day of April, 1975, was a Sikkim subject under the Sikkim Subjects Regulation, 1961, shall be deemed to have become a citizen of India on that day'."

Therefore, according to the High Court, with the incorporation of Sikkim as a component State of the Indian Union w.e.f. 26-4-1975, Sikkimese nationality ceased to exist as a politico-legal concept and hence Rule 4(4) ceased to have any efficacy in law. The High Court also found it not possible to construe the expression 'Sikkimese nationals' as equivalent to 'locals' even with the aid of paragraph 11 of the Constitution (Removal of Difficulties) Order No. XI of 1975. It further observed that assuming the said expression could be equated with and read as 'locals' in view of the non obstante clause in Article 371-F read with clause (k) thereof, the classification between 'locals' and 'non-locals' cannot be sustained on the strength of the non obstante clause because it stared in the face of the equality clause enshrined in Articles 14, 15 and 16 of the Constitution. Even if it is assumed that by virtue of the non obstante clause in Article 371-F, the rules saved by clause (k) thereof enjoyed immunity from the rigour of Articles 14, 15 and 16, it must be remembered that the existing rules of 1974 had undergone a change when by notification dated 17-11-1980 the following paragraph was added:

> "In exercise of the powers conferred by the provision of Article 309 of the Constitution of India, the Governor of Sikkim is pleased to adopt the Sikkim Government Establishment Rules, 1974 as the rules regarding recruitment and conditions of service of persons appointed to the services and posts in connection with the affairs of the State of Sikkim with modifications set out hereinbelow with effect from the 26th day of April, 1975."

The High Court observes that the Rules so adopted under Article 309 acquired a distinct legal entity from the Rules as they existed prior to 26-4-1975 and hence when the impugned orders terminating the services were passed the said orders were governed by the Rules adopted under Article 309 which Rules were required to satisfy the equality test enshrined in Articles 14, 15 and 16 of the Constitution. The submission based on Article 35(b) read with Article 372(1) was repelled on the ground that the said provisions applied to the territories forming part of India on 26-1- 1950 and not to those included in the Union of India thereafter. On this line of reasoning the High Court quashed the termination orders.

6.Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 15(1) prohibits the State from discriminating against any citizenon grounds of religion, race, caste, sex, place of birth or any of them. Article 16(1) provides that there shall be equality of opportunity for all citizens in matters relating to employment/appointment to any office under the State. Article 16(2) next provides that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. Article 16(3), however, empowers Parliament to make law prescribing, in regard to a class or classes of employment or appointment to an office (under the Government of, or any local or other authority within, a State or Union Territory) any requirement as to residence within the State or Union Territory prior to such employment or appointment. These briefly are the relevant parts of Articles 14, 15 and 16 with which we are concerned.

7. It is well settled that while Article 14 prohibits discrimination and requires that all persons subjected to any legislation shall be treated alike, it does not forbid classification for implementing the right of equality guaranteed by it provided the classification is based on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and that the said differential has a rational nexus to the object sought to be achieved by the said legislation. Of course, the classification must not be arbitrary but must be based on some distinct qualities and characteristics peculiar to the persons included in the group and absent from those excluded and those peculiarities must have a reasonable nexus to the object proposed to be achieved. In other words, the doctrine of classification evolved by the courts permits equals to be grouped together and does not permit unequals to be' treated by the same yardstick. Differential treatment becomes unlawful if it is arbitrary and not based on rational relation with the statutory objective. The emphasis is not only on de jure equality but also on de facto equality.

8. Article 15(1) prohibits discrimination inter alia on the ground of place of birth. So also Article 16(2) prohibits discrimination on grounds of descent, place of birth, residence or any of them in respect of, any employment or appointment. The former prohibits the State from discriminating against any citizen whereas the latter prohibits discrimination in matters of employment or office under the State. However, Article 16(3) empowers Parliament to make law prescribing requirement of residence in employment as stated earlier. Thus, Article 14 prohibits the State from denying to any person equality before the law and equal protection of the laws within the territory of India whereas Articles 15(1) and 16(2) protect the citizen against discrimination on stated counts. This, in brief, is the import of these provisions.

9. The next question is whether the law protected by virtue of the power conferred by Article 371-F is immune from being tested on the touchstone of the requirement being consistent with the basic structure of the Constitution in view of the non obstante clause with which the said provision opens. For example, in view of clause (k) of that article can an existing law continue to remain in force in the territory of erstwhile Sikkim even if it is inconsistent with the fundamental rights conferred by Articles 14, 15 and 16 of the Constitution? Or will the said provision be protected by the omnibus non obstante clause notwithstanding anything in this Constitution? In R. C. Poudyal v. Union of India' this Court was required to consider the scope and validity of clause (f) of Article 371-F, since it was challenged on the ground that it violated the 'one person one vote' rule and, therefore, contravened the essence of democracy, a basic feature of the Constitution. This Court by majority upheld the validity of the said provision and held that the non obstante clause therein cannot be construed as taking clause (f) of Article 371-F outside the limitations of the amending power itself. The majority held that the provisions of clause (f) of Article 371-F read with Article 2 have to be harmoniously construed, which construction must accord with the basic features of the Constitution. It, therefore, rejected the contention that the vires of the said provision and its effect are not justiciable. Agrawal, J. while concurring with the said view observed that the power conferred by Article 2 is not wider in ambit than the amending power under Article 368 and must, therefore, be read as subject to the limitation that it must conform to the basic structure concept. The scope of the power was, therefore, held to be subject to judicial review although the area of justiciability was restricted. Sharma, J. pointed out that in the case of Sikkim the power was not exercised under Article 2 read with Article 371-F but under Article 2-A read with the relevant clause

of Article 371-F. Sharma, J. however, held that since the impugned provisions were inconsistent with the basic concept of democracy, namely, 'one man, one vote' clause (f) of Article 371-F was ultra vires. Thus, the majority upheld the constitutionality of Article 371-F with which we are concerned.

10. But Mr Parasaran contended that while the terms and conditions imposed under Article 2 may have to be consistent with the basic features of the Constitution, the same cannot be said of existing law protected by the non obstante clause in Article 37 1-F read with clause (k) thereof. He pointed 1 1994 Supp (1) SCC 324: JT (1993) 2 SC 1 out that in Poudyal casel the question of recognition and enforcement of the rights which the petitioners had as residents of the ceded territory against their own sovereign did not actually arise, vide paragraph 31 of that decision, a and hence the said decision is not an authority for the proposition that even the law as it existed before Sikkim became a part of India, which stands protected by clause (k) of Article 371-F, must comply with the basic feature doctrine for its enforcement. He invited our attention to Article 16(3) which in terms permits Parliament to make a law prescribing, in regard to a class or classes of employment or appointment to an office, any requirement as to residence within the State or Union Territory, notwithstanding the other clauses of the said article. He next invited our attention to Article 35. This article begins with a non obstante clause notwithstanding anything in this Constitution and then clause (a)(i) proceeds to add that Parliament alone shall have power to make laws with respect to any of the matters which under clause (3) of Article 16, clause (3) of Article 32, Article 33 and Article 34 may be provided for by Parliament. Clause (b) of that Article lays down that notwithstanding anything in the Constitution any law in force immediately before the commencement of the Constitution in the territory of India with respect to any of the matters referred to in sub-clause

(a)(i) shall, subject to the terms thereof or any modifications made therein under Article 372, continue in force until altered, repealed or amended by Parliament. Article 372(1) says that subject to the provisions of the Constitution, all the laws in force in the territory in India immediately before the commencement of the Constitution shall continue in force therein until repealed, altered or amended by a competent legislature or authority. But these provisions have to be read with Article 13 which lays down that all laws in force in the territory of India before the commencement of the Constitution, insofar as they are inconsistent with the provisions of Part III, shall, to the extent of such inconsistency, be void.

11. From the above constitutional scheme what emerges is that the laws which were in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered, repealed or amended by a competent legislature or authority except to the extent inconsistent with Part III of the Constitution. However, notwithstanding anything in the Constitution, Parliament was empowered to make laws inter alia with respect to any matter referred to in Article 16(3). Thus, Parliament could prescribe by law the requirement as to residence within a State or Union Territory and if such a law is made nothing in Article 16 will stand in the way of such prescription. Since Article 16(3) is in Part III of the Constitution, the law, if made, would clearly be intra vires the Constitution. By virtue of Article 35(b) any law in force immediately before the commencement of the Constitution in relation to any matter in Article 16(3) shall continue in force, notwithstanding anything in the Constitution. The expression 'law in force' has the meaning assigned to it in Article 372, Explanation 1. This is the conjoint effect of Articles 13, 16(3), 35(b) and

372 of the Constitution. Since Sikkim was never a part of the territory of India immediately before the commencement of the Constitution, the High Court has ruled out the applicability of the said provisions in this case. Article 2 provides that Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit. The law so made must conform to the requirements of Article 13. That is the view expressed in Poudyal casel. But the historical events preceding its inclusion in the territory of India must be home in mind. Sikkim during the British period was ruled by a monarch called the Chogyal. After India became free there was a popular demand from the people of Sikkim for its merger with India. Pursuant to the sentiments expressed by the People of Sikkim, a treaty was entered into between India and the Chogyal short of merger which was followed up by consequential changes. However, the public demand became violent forcing the Chogyal to request the Union Government to assume the responsibility for good Government. Ultimately, on 8-5-1973, a formal agreement was signed between the Chogyal and the political leaders of Sikkim on the one side and the Government of India on the other in pursuance whereto the people of Sikkim were to enjoy certain democratic rights. This development would show that Sikkim which was a British protectorate under the British paramountcy until 1947 came within the protectorate of India under the treaty of 3-12-1950 and later became an associate State by the insertion of Article 2-A in the Constitution by the 35th Amendment on the terms and conditions set out in the Tenth Schedule and soon thereafter by the 36th Amendment Article 2-A was deleted and full statehood under the Union of India was conferred on the terms and conditions incorporated in the newly added Article 371-F. These constitutional changes had to be introduced in 1975 in reciprocation of the understanding on which Sikkim agreed to its merger with India and to fulfil the aspirations of the Sikkimese people. The terms and conditions for merger of Sikkim found in Article 371-F have, therefore, to be viewed in this background.

12. Mr Parasaran buttressed his submission by inviting our attention to three decisions, (i) P.L. Lakhanpal v. State of J & K2, (ii) Sampat Prakash v. State of J & K3 and (iii) Abdul Ghani v. State of J & K4 which arose in the context of the modifications in the Constitution in relation to the provisions of Article 22 in their application to the detention law in force in Jammu and Kashmir having regard to Article 35(c) as it then existed and Article 370 which confers full discretion in the President to apply the Constitution subject to such exceptions, and modifications as he may by order specify. This Court held that since the modification in Article 35 by the introduction of clause (c) was at the initial stage itself it could not be challenged on the ground that it abridged the fundamental rights conferred by Part III of the Constitution in relation to preventive detention. Since no such fundamental right existed in Jammu and Kashmir at the time of 2 (1955) 2 SCR 1101:AIR 1956 SC 197 3 (1969) 2 SCR 365: AIR 1970 SC 1118 4 (1970) 3 SCC 525: 1971 SCC (Cri) 131: (1971) 3 SCR 275 applying the Constitution they came into operation in that State by virtue of the Presidential Order applying the Constitution in the modified form itself. By Article 35(c) the validity of any law of preventive detention made by the legislature of that State could not be questioned on the ground that it contravened any of the fundamental rights enshrined in Part III of the Constitution, initially for 5 years which period was extended later. Counsel submitted that these decisions clearly show that even provisions inconsistent with Part III of the Constitution will be valid until the expiry of the period prescribed by Article 35(c) of the Constitution. If a fundamental right touching life and liberty can be abridged for specified period by the introduction of clause (c) in Article 35, so also it would be permissible to make provision in clause (b) of that article which may have the effect of

impinging on certain rights enumerated in Part III of the Constitution on the basis of the protection conferred by clause (k) of Article 371-F. We will examine this provision shortly but before we do so we must examine the character of the Rules issued by the Chogyal before the merger of Sikkim into the Union of India.

13.The Establishment Rules of 1974 were in existence before the historical developments led to Sikkim becoming an associate State in the first instance and later a full- fledged State of the Union of India. The President of India in exercise of power conferred by clause (1) of Article 371- F made the Adaptation of Sikkim Laws (No. 1) Order, 1975, which defined the expression 'existing law' to mean any law in force before the appointed day i.e. 26-4-1975, in the whole or any part of the territories comprised in the State of Sikkim and the term 'law' was defined to include any enactment, proclamation, regulation, rule, notification or other instrument having, immediately before the appointed day, the force of law in the whole or any part of the territory now comprised in the State of Sikkim. It is, therefore, obvious from the broad definition of the term 'law' that the Establishment Rules of 1974 would fall within the fold of the expression ` existing law' and in any case 'law in force' within the meaning of clause (k) of Article 371-F of the Constitution. In this connection, we may usefully refer to the Constitution Bench decision in Union of India v. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd.5, by which this Court approved the ratio of the decision in Rajkumar Narsingh Pratap Singh Deo v. State of Orissa6 in which it was held that whenever a dispute arises as to the true character of the order passed by an absolute ruler it is necessary to realise that an absolute monarch combines in himself all the three functions, legislative, judicial and executive and therefore all relevant factors must be considered before deciding whether the Act in question is legislative i.e. law. What is necessary to be home in mind is the nature of the order, the scope and effect of its provisions, the setting and context thereof, the method of its promulgation and allied methods before pronouncing on the character of the order. These observations were quoted with approval once again in State of 5 (1964) 7 SCR 892: AIR 1964 SC 1903 6 AIR 1964 SC 1793:(1964) 7 SCR 112 M.P. v. Lal Bhargavendra Singh7 (SCR at pp. 58-59). Applying this test and bearing in mind the definition of the expression 'existing law' read with the definition of 'law', there can be no doubt that the Rules in question fall within the meaning of 'laws in force' under clause (k) of Article 37 1 -F. It is for that reason that the President exercised power in relation to the said law under clause (1) of Article 371-F of the Constitution. This is further reinforced by the fact that these Rules were adopted with modification under Article 309 of the Constitution, vide Establishment Department Notification No. 202/Gen/Est. dated 17-11-1980.

14. We may now notice a decision on which considerable reliance was placed by the learned counsel for the appellant. In Director of Industries & Commerce, Govt. of A.P. v. V. Venkata Reddy8, a question arose whether the Hyderabad Civil Service Regulations promulgated by the Nizam's Firman, popularly known as the Mulki Rules, could be described as 'laws in force' at the commencement of the Constitution and therefore continued in force by virtue of Article 35(b) notwithstanding the States Reorganisation Act, 1956, by which the Telangana area of Hyderabad State and the State of Andhra were combined to form the new State of Andhra Pradesh. The Mulki Rules were promulgated before the merger of the State of Hyderabad with India. They laid down certain qualifications as to residence in the State for appointment to State services. The respondents challenged their validity. The High Court declared them invalid whereupon the matter was brought

to this Court in appeal. The main question was whether the Mulki Rules could be described as 'laws in force' immediately before the commencement of the Constitution in the territory of India and, if yes, could they be treated as continuing in force by the thrust of Article 35(b) of the Constitution? On the first part of the question this Court held that the words 'laws in force in the territory of. India' occurring in Article 35(b), which also occur in Article 372, can only mean all laws which existed not only in the provinces of British India but also all Indian States. It would be remarkable if it were otherwise, thought the Court. On the second part of the question this Court pointed out that Article 35(b) in terms saves 'law in force' existing immediately before the commencement of the Constitution if it is a law in respect of any matter referred to in Article 35(a)(i) which includes any matter coming within the scope of Article 16(3). Relying on the interpretation placed in relation to the matter under Article 16(3), this Court in A. V.S. Narasimha Rao v. State of A.P.9 held that the impugned Rules could have been provided for by Parliament. On the question whether the said Mulki Rules continued in force even after the formation of the State of Andhra Pradesh under the States Reorganisation Act, 1956, this Court concluded in the affirmative. Counsel submitted that this decision applied on all fours to the facts of the present case and hence the High Court's decision cannot be allowed to stand. He reinforced his submission by pressing into 7 (1966) 2 SCR 56: AIR 1966 SC 704 8 (1973) 1 SCC 99: 1973 SCC (L&S) 75: (1973) 2 SCR 562 9 (1969) 1 SCC 839:(1970)1 SCR 115 service the rule of contemporanea exposito in view of the exposition it had received from the authorities whose duty it was to construe, apply and implement the same. He supported his submission with reference to the decision in Desh Bandhu Gupta & Co. v. Delhi Stock Exchange Assn. Ltd. 10 (SCR atp. 383: SCC p. 572) and in K.P. Varghese v. ITO. 1 (SCR at p. 650: SCC pp.187-88).

15. Now we have already noticed that the Establishment Rules of 1974 were promulgated by the Chogyal of Sikkim as its absolute monarch for regulating the appointments to the Civil Services of the State and they were undoubtedly in existence before Sikkim acquired the status of an associate State by the 35th Amendment and a full-fledged State of the Indian Union by the 36th Amendment. In view of the developments and political activity that had preceded these constitutional changes to bring the people of Sikkim within the mainstream of a democratic polity, certain provisions in the nature of transitory provisions had to be made. They are to be found in Article 371-F. This article begins with a non obstante clause which, to the extent relevant and contextually permissible, applies to all the clauses of that article and cannot be read as limited in its application only to those clauses which run contrary to the provisions of the Constitution. The article is a special provision relating to the State of Sikkim. The article begins with a non obstante clause and goes on to add in clause (f) that Parliament may, with a view to protecting the rights and interests of different sections of the population of Sikkim make provision for the number of seats in the Legislative Assembly of the State of Sikkim which may be filled by candidates belonging to such sections, etc. This provision was scrutinised by this Court in Poudyal casel to which we have referred earlier. By majority the constitutional validity of this provision was upheld by this Court in that case. For our purpose, however, clause (k) of Article 37 1

-F is relevant which we have extracted earlier. That clause provides that notwithstanding anything in the Constitution, all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue in force therein until amended or repealed

by a competent legislature or other competent authority. On a plain reading of this provision it becomes clear that all laws which were in force prior to 26-4-1975 in the territories now falling within the State of Sikkim or any part thereof were intended to continue to be in force until altered or repealed. Although the expression 'all laws in force' has not been defined the said expression must receive its ordinary, natural and grammatical meaning. The latter part of the clause 'until amended or repealed. by a competent legislature or other competent authority' is indicative of the fact that the said expression was not intended to be confined to only legislative enactments but also laws which could be altered or amended or repealed by 'other competent authority' i.e. other than the legislature itself. This supplies a clear indication that the said expression is wide enough to include subordinate legislations, 10 (1979) 4 SCC 565:(1979)3 SCR 373 11 (1981) 4 SCC 173: 1981 SCC (Tax) 293: (1982) 1 SCR 629 e.g., rules, regulations, orders, etc. The expression existing law' is defined by Article 366(10) to include any rule, regulation, bye-law, etc., and we think the expression 'all laws in force' means all existing laws. But quite apart from the definition in Article 366(10), on a plain reading of clause (k) in which this expression occurs, it seems clear to us that the said expression is wide enough to include the Establishment Rules of 1974. If any authority is needed reference could be made to the decision of this Court in Edward Mills Co. Ltd., Beawar v. State of Ajmer12 (AIR at pp. 30-31) wherein a similar expression used in Article 372 was construed. There can, therefore, be no doubt that Establishment Rules of 1974 which were in force in the territories comprised in the State of Sikkim prior to 26-4-1975 would stand covered by the expression 'all laws in force' used in clause (k) of Article 371-F and would continue in force even after the appointed date as existing law until amended or repealed. This meaning given to the said expression is consistent with the definitions of 'existing law' and 'law' employed in the Adaptation of Sikkim Laws (No. 1) Order, 1975.

16. In the proviso to Rule 4(4) extracted earlier there is reference to Sikkimese nationals and non-Sikkimese nationals. The said proviso posits that non-Sikkimese nationals may be appointed only when suitably qualified and experienced Sikkimese nationals are not available and further provides for replacement of such non-Sikkimese nationals by Sikkimese candidates as and when the latter become available. The High Court has refused to construe the said proviso to mean local residents of Sikkim were to be preferred to non-residents of Sikkim. The High Court answers the contentions thus:

> "But even with the aid of these provisions, it is not possible to construe the expression 'Sikkimese nationals' as 'locals' or permanent residents of Sikkim, as one can be a national of one country without being a resident in that country and may in fact be a permanent resident of another country with his domicile, whether of origin or of choice, in that country."

And caps the same as under:

> "I have already noted that the provisions of Rule 4(4) of the Sikkim Government Establishment Rules, quoted hereinbefore, provided for preferential treatment to Sikkimese nationals in matters relating to employments or appointments under the then Government of Sikkim and that with the incorporation of Sikkim as a

> component State in the Union of India with effect from 26-4- 1975, Sikkimese nationality having ceased to exist as a politico-legal concept, the preference sought to be given by Rule 4(4) has become ineffective and unworkable."

With respect we find it difficult to accept this highly technical approach. In the first place since this was an existing law which was continued in force, it would naturally contain expressions which were in vogue before the appointed day. These expressions had to be understood in the sense in which 12 AIR 1955 SC 25: (1955) 1 SCR 735: (1954) 2 LLJ 686 they were defined in the Sikkim Subjects Regulations, 1961. Regulation 3 defines Sikkim subjects and Regulation 7 explains who shall not be Sikkim subjects. Therefore, if the expressions 'Sikkimese nationals' and non-Sikkimese nationals' used in the proviso to Rule 4(4) are read and understood in the context of the provisions of the aforesaid regulations, the difficulty expressed by the learned Judge in the High Court would appear to be imaginary.

17. The High Court has then taken the view that since the Establishment Rules of 1974 were the subject-matter of Adaptation Orders issued by the President of India, they ceased to be existing law within the meaning of clause (k) of Article 371-F and therefore they did not enjoy the protection thrown by the non obstante clause. It was further submitted that this was all the more so because the said Rules were modified under Article 309 of the Constitution with effect from 26-4-1975. The High Court's approach in this behalf is twofold (i) the non obstante clause in Article 371-F in relation to clause (k) has no efficacy as the said clause can quite effectively operate, just like Article 372, without the aid of the non obstante clause as there is nothing to show that it conflicts with any other provision in the Constitution and (ii) its operation in relation to certain clauses like (i) and (j) would lead to an absurd situation. We are afraid the entire approach of the learned Judge is, with respect, wrong. In the first place in relation to clause (k) the non obstante clause seeks to extend protection to all existing laws even if they may conflict with any of the provisions of the Constitution and in the absence of such protection would be declared ultra vires the Constitution. Since the laws which were in force before the appointed day had not to go through the test of satisfying the requirements of the Constitution, the possibility of those laws being in conflict with the provisions of the Constitution could not be ruled out and hence they had to be protected by the non obstante clause. There is no question of clause (k) itself being in conflict with any of the provisions of the Constitution but there was every possibility of the laws in force immediately before the appointed day being in conflict and they had to be protected from being assailed to be unconstitutional. Secondly, Article 372(1) had a limited role to play. By Article 395, the Indian Independence Act, 1947, the Government of India Act, 1935, and all related enactments amending or supplementing the same, except the Abolition of Privy Council Jurisdiction Act, 1949, came to be repealed. Notwithstanding their repeal, all the laws in force in the territory of India immediately before the commencement of the Constitution were continued in force therein until altered or repealed or amended by a competent legislature or other competent authority, subject of course to the other provisions of the Constitution, a limitation which is not to be found in clause (k) of Article 371-F. It is, therefore, obvious that the scheme and scope of the two provisions is totally different, in that, Article 371-F extends a total protection to matters listed in clauses (a) to (p) thereof by the non obstante clause while the protection extended by Article 372(1) was qualified by the words "but subject to the other provisions of this Constitution", a phrase which is totally absent in the scheme of the former provision. So also the High Court missed

the efficacy of the non obstante clause in relation to clauses (i) and (i). The non-obstante clause insofar as it concerns clause (i) is intended to protect the constitution of the High Court, the appointments of judges of the High Court, etc., from being assailed on the ground that they lid not accord with Chapter V of Part VI of the Constitution. Similar appears to be the intendment of clause (j) also with this difference that the protected courts and authorities will henceforth exercise their respective functions, subject to the provisions of the Constitution. It is, therefore, obvious that the earned Judge in the High Court missed the real objective of qualifying all he clauses of Article 371-F with the omnibus notwithstanding anything in this Constitution.

18. The next question is whether the Establishment Rules of 1974 as modified in 1980 under Article 309 of the Constitution can be regarded to have come into force immediately before the appointed day, i.e., 26-4-1975 to attract the provision of clause (k) of Article 371-F? The High Court answers the poser thus:

"Therefore, as the Sikkim Government Establishment Rules, as they now stand after being adopted and promulgated by the Governor under the Proviso to Article 309, have been made effective only from, and not immediately before, 26th April, 1975 these Rules cannot acquire any immunity against the provisions of the Constitution, even assuming that any such immunity was sought to be and could be given by Article 371-F(k)."

As observed earlier the said Rules were in operation in the erstwhile State of Sikkim immediately before the appointed day and were, therefore, existing law. Did the Adaptation Orders issued after the appointed day on 16-5-1975 and 13-9- 1975 take the rules outside the scope of clause (k) of Article 371-F? In other words, did the said rules cease to be existing law? What is the impact of the subsequent notification dated 17-11-1980 by which certain modifications were made in the said rules in exercise of power under the proviso to Article 309 of the Constitution? Whether the said Rules have to pass muster of Articles 14/16 and, if yes, do they? These are some of the questions which will have to be answered.

19. We have already indicated the politico-legal scenario which existed immediately before the Sikkimese people through their leaders desired to associate themselves with India and the reasons which prevailed for introducing the 35th and 36th Amendments to the Constitution of India ultimately admitting the State of Sikkim as one of the States in the First Schedule to the Constitution. It also became necessary to make certain special provisions with respect to this new State and hence Article 37 1-F was simultaneously introduced by the 36th Amendment. These special provisions many of them transitory in nature had to be given immunity from the other provisions of the Constitution and hence Article 371-F began with a non obstante clause. The President of India was also empowered by clause (o) of the said article to do anything (including any adaptation or modification of any other article) which appears to him necessary for removing any difficulty which may be experienced in giving effect to the preceding provisions of the: article but the proviso stipulated that no such order shall be made after the expiry of two years from the appointed day. After the Sikkim Assembly' unanimously adopted a resolution on 10-4- 1975 which took note of the' prejudicial activities of the Chogyal and made a solemn declaration abolishing the institution of the Chogyal and resolved that Sikkim should be a constituent unit of India enjoying a democratic

and fully responsible Government, that the constitutional changes were introduced and Article 371-F was introduced to meet the special circumstances and needs of the people of Sikkim. It is well settled by a long line of decisions that constitutional provisions must be liberally construed to the extent the language permits it and should not be interpreted in a narrow and pedantic manner, more so in the case of transitory provisions. It would suffice to invite attention to the observations of this Court in this behalf in Synthetics & Chemicals Ltd. v. State of Up.13 (SCR pp. 672- 674: SCC pp. 150-151) and India Cement Ltd.-v. State of T.N. 14 (SCR p. 704: SCC pp. 21-22).

20. It may be noticed that even the laws which were prevailing in India under the British rule were not expected to accord with the Constitution of free India. That is why Article 13 provides that all laws in force in the territory of India immediately before the commencement of the Constitution, insofar as they are not consistent with the provisions in Part III thereof, shall, to the extent of such inconsistency be void. After having so provided it was further provided by Article 35(b) that notwithstanding anything in the Constitution, which would include Article 13, any law in force immediately before the commencement of the Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause

(a), which includes clause (3) of Article 16, shall, subject to the terms thereof and to any adaptations and modifications made therein under Article 372, continue in force until altered or repealed or amended by Parliament. Article 372(2) provides that for the purpose of bringing the provisions of any law in force into accord with the constitutional provisions, the President may by order make such adaptations and modifications of such law as may be necessary or expedient and specify the date from which the same would be effective whereupon such law will be effective therefrom, subject to such adaptations and modifications. Article 372(3)(a) makes it clear that this special power conferred on the President is transitory in nature and will not enure beyond three years from the commencement of the Constitution. This is one group of articles which has relation to laws in existence in the territory of India immediately before the commencement of the Constitution. We have referred to the scheme of this group of articles to understand the scheme of the special provisions relating to Sikkim.

13 (1990) 1 SCC 109: 1989 Supp 1 SCR 623 14 (1990) 1 SCC 12: 1989 Supp 1 SCR 692

21. From what we have said earlier it is crystal clear that certain political developments of considerable significance to the people of Sikkim had preceded its merger into the Union of India. This merger was based on certain solemn assurances given to the people of India. The constitutional provisions cannot be read as torn from the historical developments which preceded the merger. The laws which were in force immediately before merger were enacted at a time when Sikkim was under the Chogyal's rule and could not, therefore, be in accord with the constitutional mandates of the free democratic republic. Therefore, to give effect to the political commitments and assurances given to the people of Sikkim, special provisions had to be made in respect of the new State of Sikkim by the insertion of Article 371-F in the Constitution. Just as in the case of Article 35(b), this provision also had to begin with a non obstante clause to grant temporary immunity from the other provisions of the Constitution. If it were not to be so, the laws in force in the erstwhile territory of Sikkim would conflict with the provision of the Constitution and would be hit by Article

13. But at the same time it must be realised that the said article does not use the phraseology of making the same subject to the provisions of the Constitution. It must also be borne in mind that Article 2 does not make use of a non obstante clause and, therefore, the terms and conditions prescribed thereunder must accord with the other constitutional requirements. Thus Article 371-F occupies a special position to cope up with a special situation with a special historical backdrop.

22. Article 371-F, is as stated earlier, a special constitutional provision with respect to the State of Sikkim. The reason why it begins with a non obstante clause obviously is that the matters referred to in the various clauses immediately following required a protective cover so that such matters are not struck down as unconstitutional because they do not satisfy the constitutional requirement. Unless such immunity was granted 'the laws in force' would have had to meet the test of Article 13 of the Constitution. This being the objective, existing laws or laws in force came to be protected by clause (k) added to Article 371-F. The said laws in force in the State of Sikkim were, therefore, protected, until amended or repealed, to ensure smooth transition from the Chogyal's rule to the democratic rule under the Constitution. Inherent in clause (1) is the assumption that many of such existing laws may be inconsistent with the Constitution and, therefore, the President came to be conferred with a special power to make adaptations and modifications with a view to making the said rule consistent with the Constitution. Of course this power had to be exercised within two years from the appointed day. If any adaptation or modification is made in the law in force prevailing prior to the appointed day, the law would apply subject to such adaptation and modification. It is thus obvious that the adaptation and modification made by the President in exercise of this special power does not have the effect of the law ceasing to be a law in force within the meaning of clause (k) of Article 371-F. Therefore, on the plain language of the said provision it is difficult to hold that the effect of adaptation or modification is to take the law out of the purview of 'laws in force'.

23. The next question is whether the insertion of the introductory clause purporting to convey that the said rules are made under Article 309 of the Constitution with effect from 26-4-1975 amounts to substitution of the Establishment Rules of 1974 to deny them the immunity conferred by clause

(k) of Article 371-F? We have extracted the introductory part earlier which shows that the Establishment Rules were merely 'adopted' with modification with effect from 26-4- 1975. Rule 4(4) remains as it was and the Rules continue to be effective from 1-4-1974. As held by this Court in the Mulki Rules case the question to ask is: Has Parliament repealed or amended the said Rules which were continued in force by virtue of the Constitution, Article 35(b) in that case and Article 371-F(k) in the present case. Effect must be given to the intendment of the said provision specially introduced in the Constitution to comply with the understanding on which Sikkim had agreed to merge with India. And since all laws in force in the territory of erstwhile Sikkim immediately before the appointed day could not be changed overnight, those existing laws had to be continued, more so because transition had to be smooth and gradual so that it does not give a sudden and severe jolt to the establishment. Besides, provision as to residential requirement could always be made by virtue of Article 16(3) of the Constitution. Therefore, if a provision in the Establishment Rules appears to offend Article 16(2), since such a provision is permissible by virtue of Article 16(3) and Parliament permits its continuance by a special provision, Article 371-F(k), the said requirement giving preference to 'locals' cannot be struck down as unconstitutional and any action based on the said

provision would not be inconsistent with Part III of the Constitution. That being so we think that the line of reasoning adopted by the learned Judge in the High Court is not sustainable.

24. For the foregoing reasons we are of opinion that the view taken by the High Court is unsustainable. The appeals, therefore, succeed, the judgment and order of the High Court are set aside and the writ petitions filed in the High Court must stand dismissed. However, in the facts and circumstances of the case, we make no order as to costs throughout.