(41) In the result, the petition is allowed, removal of the petitioner from membership of the Board declared illegal and a writ of *certiorari* directed to issue quashing the impugned order of the Governor of Punjab as passed on 25th April, 1969. There is no order as to costs.

B. R. TULI, J.—I agree.

B. S. G.

FULL BENCH

Before D. K. Mahajan, Prem Chand Pandit, Gurdev Singh, H. R. Sodhi and Bal Raj Tuli, JJ.

BAXI AMRIK SINGH,—*Appellant*

versus

THE UNION OF INDIA,—*Respondent.*

First Appeal from Order No. 31 of 1969

October 10, 1972.

Law of Torts—Master and servant—Constitution of India (1950)—*Article* 300(1)—*Tortious acts of the government servants—Liability of the State for damages for—Nature and extent of—Stated—Member of Military Police driving a military vehicle rashly and negligently for proceeding to check military personnel on duty—Injuries caused to a citizen by such rashness and negligence—Union of India—Whether liable for damages.*

Held, (per Full Bench) that the following are the propositions of law and rules of guidance for determining the liability of the State for damages for the tortious acts of its servants :—

(1) The Union of India and States are liable for damages occasioned by the negligence of servants in the service of the Government if the negligence is such as would render an ordinary employer liable ;

(2) The State is not liable if the tortious act complained of has been committed by its servants in exercise of sovereign powers that is powers which cannot be lawfully exercised except by a sovereign or a person by virtue of delegation of sovereign rights ;

(3) The Government is vicariously liable for the tortious acts of its servants or agents which are not proved to have been committed in the exercise of its sovereign functions or in exercise of the sovereign powers delegated to such public servants ;

(4) The mere fact that the act complained of is committed by a public servant in course of his employment is not enough to absolve the Government of the liability for damages for injury caused by such act ;

(5) When the State pleads immunity against claim for damages resulting from injury caused by negligent act of its servants, the area of employment referable to sovereign powers must be strictly determined. Before such a plea is upheld, the Court must always find that the impugned act was committed in the course of an undertaking or an employment which is referable to the exercise of the delegated sovereign powers ;

(6) There is a real and marked distinction between the sovereign functions of the Government and those which are not severeign, and some of the functions that fall in the latter category are those connected with trade, commerce, business and industrial undertakings ;

(7) Where the employment in the course of which the tortious act is committed is such in which even a private individual can engage, it cannot be considered to be a sovereign act or an act committed in the course of delegated sovereign functions of the State ;

(8) The fact that the vehicle, which is involved in an accident, is owned by the Government and driven by its servant does not render the Government immune from liability for its rash and negligent driving. It must however be proved that at the time the accident occurred, the person driving the vehicle was acting in discharge of the sovereign function of the State, or such delegated authority ;

(9) Though maintenance of Army is a sovereign function of Union of India, it does not follow that the Union is immune from all liability for any tortious act committed by an army personnel ;

(10) In determining whether the claim of immunity should or should not be allowed, the nature of the act, the transaction in the course of which it is committed, the nature of the employment of the person committing it and the occasion for it, have all to be considered. (Para 48).

Held, (per full Bench) that only a Military man can be deputed to check the military personnel on duty. The checking of the Army personnel on duty is a function which is intimately connected with the Army discipline and it can only be performed by a member of the Armed Forces and that too by such a member of that Force who is detailed on such duty and is empowered to discharge that function. Hence Union of India cannot be held liable for damages for injuries sustained by a citizen as a result of rash and negligent driving of Army vehicle by a member of the Military Police, who in discharge of the duty entrusted to him was proceeding to check the military personnel on duty. (Paras 50 and 52).

Case referred by Hon'ble Mr. Justice Prem Chand Pandit,—vide *order dated 9th January,* 1970 *to a Full Bench for decision of an important question of law involved in the case and the case was finally decided by the Full Bench consisting of Hon'ble Mr. Justice* **D. K. Mahajan,** *Hon'ble Mr. Justice Prem Chand Pandit, Hon'ble Mr. Justice Gurdev Singh, Hon'ble Mr. Justice H. R. Sodhi and Hon'ble Mr. Justice Bal Raj Tuli on 10th October,* 1972.

First Appeal from the order of Shri Jagdish Parshad Gupta, Motor Accidents Claims Tribunal, Ambala, dated 2nd December, 1968 *dismissing the application for claim.*

KULDIP SINGH BARRISTER AT LAW, L. M. SURI, R. S. MONGIA, R. M. SURI, AND V. P. GANDHI, ADVOCATES, for the appellant.

JAGAN NATH KAUSHAL, ADVOCATE-GENERAL, HARYANA WITH ASHOK BHAN, ADVOCATE, for the respondent.

JUDGMENT.

GURDEV SINGH, J.—(1) The question of law that arises for consideration of this Full Bench out of the award of the Motor Accidents Claims Tribunal, Ambala, dated 21st of February, 1968, dismissing the claim of the appellant Amrik Singh against the Union of India, may be stated thus :

> "Is the Union of India liable for injury caused by a sepoy employed in the Military Police to a private citizen by rash and negligent driving of the army vehicle in which he was proceeding to check military personnel on duty ?"

(2) The matter has arisen in the following manner :

(3) The appellant Amrik Singh sustained injuries on the 14th of May, 1967, in a motor accident because of the rash and negligent driving of the Military truck No. SL-8085 in Ambala Cantonment by

Sepoy Man Singh, who was detailed on duty to check military personnel on duty for the whole day. He claimed Rs. 50,000 as compensation under section 110-A of the Motor Vehicles Act from the Union of India, who, besides denying the allegation of rash and negligent driving against the said Sepoy Man Singh, claimed immunity on the plea that the driver was acting in discharge of the sovereign functions of the Union of India and no action for torts thus lay against the Government. Though the Accidents Claims Tribunal, Ambala, found that Amrik Singh sustained injuries because of the rash and negligent driving of the truck by Sepoy Man Singh, it held that no action lay against the Union of India as Sepoy Man Singh was engaged in Military duty of checking the Military personnel on duty at the time of the accident. On appeal against this award dated 21st of February, 1968, the sole contention raised before our learned brother P. C. Pandit, J., as is obvious from his Lordship's referring order, was that at the time the accident occurred, Sepoy Man Singh, who was driving the Military truck, was not acting in discharge of any sovereign powers of the State, which would absolve the Union of India from any liability for the tortious act committed by him. Though it was argued at one stage that the driver of the truck was returning to the Unit after dropping military personnel at Nigar Cinema, later in view of the evidence available on record it was conceded before P. C. Pandit, J., "that at the time of the accident Sepoy Man Singh was detailed on duty for checking military personnel on duty for the whole day", which admission is also specifically recorded in the referring order.

(4) The question that thus survived for consideration of the learned Single Judge was, whether Sepoy Man Singh was acting in exercise of the sovereign powers of the Government and, in the circumstances, the Union of India was immune from all liability for the tortious act committed by him. In the course of arguments reference was made to the Bench decision of this Court in *Union of India* v. *Harbans Singh and others*, (1), and Full Bench decisions of this Court in *Rup Ram Kalu Ram Aggarwal* v. *The Punjab State*, (2), and *Union of India* v. *Smt. Jasso* (3). *Rup Ram's case* (2), was distinguished on the ground that it did not relate to tort committed by a person employed in the Military Department, while the correctness of the rule

(1) A.I.R. 1959 Pb. 39—61 P.L.R. 30.
(2) A.I.R. 1961 Pb. 336.
(3) A.I.R. 1962 Pb. 315.

laid down in the other Full Bench case (*Union of India* v. *Smt. Jasso*, (3), was questioned by the learned Advocate-General appearing for the Union of India. Being of the opinion that the question of law that had thus arisen be authoritatively settled, our learned brother P. C. Pandit, J., directed that the case be heard by a larger Bench. This is how the matter has come up before this Full Bench.

(5) Though the entire appeal has been placed before us, its fate turns on the question of law stated in the opening part of this order relating to the liability of the Union of India for tortious acts of its servants, as this alone had survived for consideration before the learned Single Judge when the order of reference was made.

(6) It is a settled and undisputed principle of the law of torts that master is answerable for every such wrong of his servant as is committed in the course of his service, though no express command or privity of the master be proved and the wrongful act may not be for the master's benefit. In fact, there is a catena of authority even for the proposition that although the particular act which gives the cause of action may not be authorised, still, if the act is done in course of employment which is authorised, the master is liable. It would suffice to refer in this connection to *Citizens' Life Assurance Co.* v. *Brown*, (4), *Machay* v. *Commercial Bank of New Brunswick*, (5), and *Trading Corporation Ltd.* v. *M. M. Sherazee* (6). In *Gah Choon Seng* v. *Lee Kim Soo*, (7), it has been ruled that when a servant does an act which he is authorised by his employer to do under certain circumstances and under certain conditions and he does them under circumstances or in a manner which is unauthorised and improper, even in such cases the employer is liable for the wrongful act.

(7) This doctrine of liability of the master for the acts of his servant is based on the maxim *respondent superior*, which means 'let the principle be liable' and it puts the master in the same position as if he had done the act himself. It also derives validity from the maxim *qui facit per alium facit per se*, which means 'he who does an act through another is deemed in law to do it himself'. The true

(4) (1904) A. C. 423.
(5) (1874) L. R. 5 P. C. 394.
(6) (1878) I I. A. 130.
(7) (1925) A. C. 550.

principle, as is stated by Ratan Lal at page 79 of his book 'The Indian and English Law of Torts' 19th Edition, is :

> "A person who puts another in his place to do a class of acts in his absence, necessarily leaves him to determine according to the circumstances that arise, when an act of that class is to be done, and trusts him for the manner in which it is done; consequently, he is answerable for the wrong of the person so entrusted either in the manner of doing such an act, or in doing such an act under circumstances in which it ought not to have been done ; provided that what is done is not done from any caprice of the servant, but in the course of the employment."

The general principles of law of torts with regard to the liability of the master for the acts of his servant as summarised above are not disputed before us and it is conceded that had Sepoy Man Singh been at the time of the accident in the employment of a private individual and not the Union of India or the State and driving in the course of his duty, his employer would certainly be liable to compensate the appellant for the injuries sustained by him. The learned Advocate-General, Haryana, appearing for the Union of India has, however, urged that since the accident took place when Sepoy Man Singh was engaged in Military duty which is a sovereign function, the Union of India is immune from all liability for his rash and negligent driving. Reliance in this connection is placed upon Supreme Court decision in *M/s. Kasturi Lal Ralia Ram Jain* v. *State of Uttar Pradesh*, (8), and several other authorities of various Courts, besides the Division Bench decision in *Union of India* v. *Harbans Singh and others*, (1). In the latter case it was held by this court that the Union of India was not liable for rash and negligent driving of a truck of the Military Department while the driver was engaged in Military duty of supplying meals to the Military personnel on duty.

(8) As against this, the learned counsel for the appellant has cited two Full Bench decisions of this Court. In *Rup Ram* v. *The Punjab* State, (2), the Full Bench (G. D. Khosla, C.J., S. S. Dulat, and Harbans Singh, JJ.) ruled that the State is not absolutely immune from liability merely because the act complained of may have been done in the exercise of its governmental or executive powers, and what has to be

(8) A. I. R. 1965 S. C. 1039.

seen is whether the same reasons, which would impel a Court to fasten liability on an employer, exist or not. It was further observed in that case that should it appear that a servant employed by the State had acted for the benefit of the State and had in the process committed a tort, the State would be liable to make good the damages. In that particular case a truck belonging to the Public Works Department driven by the driver in the employment of the Department struck against a motor cycle, causing injuries to the person riding the motor cycle by rash and negligent driving. The Full Bench held that the employer of the driver of the truck, although the State, must shoulder the responsibility for his negligent act committed in the course of his employment just as the ordinary employer would do and the fact that the Public Works Department was not a commercial department in the sense that it was not concerned with making profits was too far removed from the tortious act complained of to be of any help. Later, another Full Bench (D. Falshaw, Mehar Singh and A. N. Grover. JJ.) of this Court in *Union of India* v. *Smt. Jasso,* (3), was called upon to deal with the liability of a Military driver who while transporting coal to the General Headquarters at Simla in discharge of his duties, caused an accident by rash and negligent driving. The rule laid down by the earlier Full Bench in *Rup Ram* v. *The Punjab State,* (2), was noticed, but reliance was placed upon the following observations of the Bench decision of the Rajasthan High Court in *Mt. Vidhyawati* v. *Lokumal,* (9), a case that had been referred to with approval by the earlier Full Bench :

> "There is a great and clear distinction between acts done in exercise of what are usually called sovereign powers and acts done in the conduct of undertakings which may as well be carried on by private individuals".

(9) After this quotation Falshaw, J. (as his Lordship then was) recording the opinion of the Full Bench, observed as follows :—

> "Applying this test to the present case it is difficult to see how it can possibly be held that such a routine task as the driving of a truck loaded with coal from some depot or store to the General Headquarters' building at Simla presumably for the purpose of heating the rooms, is something done in exercise of a sovereign power since such a thing could obviously be done by a private person. Such

(9) A.I.R. 1957 Raj. 305.

being the case, I do not consider that the mere fact that the truck happened to be an army truck and the driver a military employee can make any difference to the liability of the Government for damages for the tortious act of the driver."

(10) The earlier Bench decision to which his Lordship himself was also a party was distinguished with these words :

"As I have observed earlier, I do not think that any difficulty would have been felt by my learned brothers in this case, but for the decision in *Harbans Singh's case*, (1), which happened to involve a military truck and in which on the peculiar facts of that case we came to the conclusion that the driver was acting in exercise of a sovereign power and doing something which could not be done by private individuals. It can be said regarding that case that the truck was being driven for supplying the needs of the army personnel engaged on military duties which could not be performed by civilians.

It is at any rate safe to say that that case cannot be regarded as an authority for the general proposition that in no case can an action for damages be brought against the Government merely because the vehicle involved in the accident is an army truck driven by a military employee in the performance of some duty or other."

(11) Besides relying upon the three decisions of this Court that have been referred to above, Mr. Kuldip Singh, appearing for the appellant, has cited several authorities of various other High Courts in support of his contention that the Union of India cannot escape liability for the injuries caused to the appellant by the rash and negligent driving of the truck by Sepoy Man Singh. As has been observed by their Lordships of the Supreme Court in *Prakash Chandra* v. *State of U.P.*, (10), every case is an authority on its own facts and no two cases on facts are alike. Thus, the various decisions that have been cited before us turn on their own peculiar facts and the conclusions reached in most of these cases can be justified on facts.

(12) The principles of law governing the liability of an employer for the tortious acts of its servants were well settled and there is not

(10) A.I.R. 1960 S. C. 195.

much dispute between the learned counsel for the parties about them. The learned Advocate-General of Haryana claims immunity for the Union of India on the plea that Sepoy Man Singh was acting in discharge of his duty of checking military personnel on duty that had been entrusted to him in connection with sovereign functions of the State and, accordingly, no suit or proceedings for damages for a tortious act committed in the course of such duty lay against the Union of India. It thus becomes necessary to examine if the Union of India enjoys any immunity and, if so, the extent thereof.

(13) The provisions regarding suits and proceedings against the Government of India and that of the States are contained in Article 300 of our Constitution, the relevant part of which runs thus :

> "300 (1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or corresponding Indian States might have sued or been sued if this Constitution had not been enacted.
>
> * * * * * * * *."

(14) As has been held by their Lordships of the Supreme Court in *State of Punjab* v. *O.G.B. Syndicate Ltd.*, (11), this Article does not give rise to any cause of action but merely says that the State can sue or be sued as a juristic personality in matters where a suit would lie against the Government had not the Constitution been enacted, but subject to legislation. It is an admitted fact that so far no such legislation has been enacted. In dealing with the scope and purpose of this provision, Article 300 (1), their Lordships of the Supreme Court observed as follows in *M/s. Kasturi Lal Ralia Ram Jain* v. *The State of U.P,* (8).

> "It would be noticed that this Article (300) consists of three parts.
>
> The first part deals with the question about the form and the cause-title for a suit intended to be filed by or against the

(11) A.I.R. 1964 S. C. 669.

Government of India, or the Government of a State. The second part provides, *inter alia,* that a State may sue or be sued in relation to its affairs in cases like those in which a corresponding Province might have sued or been sued if the Constitution had not been enacted. In other words, when a question arises as to whether a suit can be filed against the Government of a State, the enquiry has to be made; could such a suit have been filed against a corresponding Province if the Constitution had not been passed ? The third part of the article provides that it would be competent to the Parliament or the Legislature of a State to make appropriate provisions in regard to the topic covered by Article 300(1). Since no such law has been passed by the respondent in the present case, the question as to whether the respondent is liable to be sued for damages at the instance of the appellant, has to be determined by reference to another question and that is, whether such a suit would have been competent against the corresponding Province.

This last enquiry inevitably takes us to the corresponding proceeding provisions in the respective Constitution Acts of India; they are S. 65 of the Government of India Act, 1858; S. 32 of the Government of India Act, 1915, and S. 176 of the Government of India Act, 1935. It is unnecessary to trace the pedigree of this provision beyond S. 65 of the Act of 1858, because the relevant decisions bearing on this point to which we will presently refer, are ultimately found to be based on the effect of the provisions contained in the said section."

(15) After examining the relevant provisions of the various Government of India Acts, it has been ruled that under the present Constitution the Union of the India or the State Governments can be sued only for the same tortious act complained of as the East India Company would have been liable for damages. Thus, it becomes necessary to find out to what extent the East India Company was liable for the tortious acts of its servants. This question came up for consideration before the then Supreme Court of Calcutta as far back as the year 1861 in *Peninsular and Oriental Steam Navigation*

Co. v. *Secretary of State for India-in-Council,* (12), the head note of which reads:

> "The Secretary of State in Council of India is liable for the damages occasioned by the negligence of servants in the service of Government if the negligence is such as would render an ordinary employer liable."

16. This is the basic authority on which the entire case-law on the subject proceeds and it has been accepted as such by our Supreme Court in *Kasturi Lal's case,* (8). To appreciate what is laid down in that case, it is here necessary to refer to its facts, which briefly stated are these :

(17) A servant of the Company was proceeding in a carriage drawn by a pair of horses on a highway through Kiddarpore Dockyard managed wholly by the persons in the service of the Government, when workmen in Government employ, who were carrying a piece of heavy iron funnel casing about 9 feet long, suddenly dropped it on the road while attempting to get out of the way of the plaintiff's carriage. The noise thus caused by the fall of the iron casing startled the plaintiff's horses which rushed forward violently, and fell on the iron, resulting in damage to one of them. The plaintiff-Company claimed damages against the Secretary of State for India for the damage caused by this accident. The Supreme Court of Calcutta held that the Secretary of State in Council for India would be liable for the damages occasioned by the negligence of servants in the service of Government if the negligence was such as would render an ordinary employer liable.

(18) Examining the position in the light of section 65 of the Government of India Act, 1858, their Lordships of the Supreme Court of Calcutta found that if the accident had been caused by the negligence of the servants of the Government, the East India Company would have been liable and the same liability attached to the Secretary of State, who was liable to be sued for the purpose of obtaining satisfaction out of the revenue of India. Peacock, C.J., delivering the judgment of the Court observed thus at page 9 of the Report :

> "In determining the question whether the East India Company would, under the circumstances, have been liable to an

(12) 5 Bm. HCR App. A-1.

action, the general principles applicable to Sovereigns and States, and the reasoning deduced from the maxim of the English law that the King can do no wrong, would have no force. We concur entirely in the opinion expressed by Chief Justice Grey in the case of the *The Bank of Bengal* v. *The East India Company*, (13), which was cited in the argument, that the fact of the Company's having been invested with powers usually called sovereign powers did not constitute them sovereigns."

(19) Going further into the matter, at page 12 the learned Chief Justice said :

"Now if the East India Company were allowed, for the purpose of government, to engage in undertakings, such as the Bullock Train and the conveyance of goods and passengers for hire, it was only reasonable that they should do so, subject to the same liabilities as individuals. If, by reason of their having been entrusted with the powers of Government, they were exempted from the ordinary liability of individuals in matters of business, exercised either for their own benefit, as it was at one time, or for the purposes of Government, as it was at another, private individuals would have had to compete with them upon very disadvantageous terms....."

Then at page 13 his Lordship proceeded on to say:

"We are of opinion that for accidents like this, if caused by the negligence of servants employed by Government, the East India Company would have been liable, both before and after the 3rd and 4th Wm. IV., c.85, and that the same liability attaches to the Secretary of State in Council, who is liable to be sued for the purpose of obtaining satisfaction out of the revenue of India. We are of opinion that this is a liability, not only within the words, but also within the spirit, of the 3rd and 4th Wm. IV., c.85, s.9, and of the 21st and 22nd Vict., c.106, s.65, and that it would be inconsistent with common sense and justice to hold otherwise."

(13) Bignell, Rep. P. 120.

(20) Dealing with the question whether the East India Company was sovereign or not, it was observed :

> "We are further of the opinion that the East India Company were not sovereigns, and, therefore, could not claim all the exemption of a sovereign and that they were not the public servants of Government, and, therefore, did not fall under the principle of the cases with regard to the liabilities of such persons, but they were a company to whom sovereign powers were delegated, and who traded on their own account and for their own benefit, and were engaged in transactions partly for the purposes of government, and partly on their own account, which, without any delegation of sovereign rights, might be carried on by private individuals. There is a great and clear distinction between acts done in the exercise of what are usually termed sovereign powers, and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them : *Moodaley* v. *The East India Company,* and *The same* v. *Morton,* (14).

(21) Reference was then made to the observations of the Master of the Rolls, afterwards Lord Kenyon, in *Moodaley's case,* (14), who had said :

> "I admit that no suit will lie in this court against a sovereign power for anything done in that capacity, but I do not think the East India Company is within the rule. They have rights as a sovereign power ; they have also duties as individuals. If they enter into bonds in India, the sums secured may be recovered here : so in this case as a private company they have entered into a private contract, to which they must be liable. Here is a *prima facie* ground of action : the Company has put other persons in the way of doing the plaintiffs an injury."

After examining the matter in the light of the various decisions, Peacock, C.J., stated the legal position in these words :

> "....where an act is done, or a contract is entered into, in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exercised

(14) 1 Bro. C.C. 469.

except by a sovereign, or private individual delegated by a sovereign to exercise them, no action will lie."

(22) Dealing with this dictum after detailed examination of the judgment of Peacock, C.J., Gajendragadkar C.J., who delivered the judgment of the Court in *Kasturi Lal's case*, (8), said :

"It is in respect of this aspect of the matter that the Chief Justice enunciated a principle which has been consistently followed in all subsequent decisions. Said the learned C.J., 'there is a great and clear distinction between acts done in the exercise of what are usually termed sovereign powers, and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them'. Having thus enunciated the basic principle, the Chief Justice stated another proposition as following from it. He observed that 'where an act is done, or a contract is entered into, in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exercised except by sovereign, or private individual delegated by a sovereign to exercise them, no action will lie'. And, naturally it follows that where an act is done, or a contract is entered into, in the exercise of powers which cannot be called sovereign powers, action will lie. That, in brief, is the decision of the Supreme Court of Calcutta in the case of the *Peninsular and Oriental Steam Navigation Co.*, 12."

(23) His Lordship then summed up the legal position as it emerges from this authority in these words :

"Thus, it is clear that this case recognises a material distinction between acts committed by the servants employed by the State where such acts are referable to the exercise of sovereign powers delegated to public servants, and acts committed by public servants which are not referable to the delegation of any sovereign powers. If a tortious act is committed by a public servant and it gives rise to a claim for damages, the question to ask is : was the tortious act committed by the public servant in discharge of statutory functions which are referable to, and ultimately based on, the delegation of the sovereign powers of the State to such

public servant ? If the answer is in the affirmative, the action for damages for loss caused by such tortious act will not lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power, an action for damages would lie. The act of the public servant committed by him during the course of his employment is, in this category of cases, an act of the servant who might have been employed by a private individual for the same purpose. This distinction which is clear and precise in law, is sometimes not borne in mind in discussing questions of the State's liability arising from tortious acts committed by public servants. That is why the clarity and precision with which this distinction was emphasised by Chief Justice Peacock as early as 1861 has been recognised as a classic statement on this subject."

(24) Gajendragadkar C.J. then referred to *Secretary of State for India in Council* v. *Moment* (15), *Shivabhajan Durgaprasad* v. *Secretary of State for India* (16), *Secretary of State for India in Council* v. *A. Cockcraft* (17), *Secretary of State for India in Council* v. *Shreegobinda Chaudhuri* (18), *Mohammad Murad Ibrahim Khan* v. *Government of United Provinces* (19), and *Uma Parshad* v. *Secretary of State*, (20), as representative decisions in which the 'basic principle' enunciated by Peacock, C.J. in *Peninsular and Oriental Steam Navigation Company's case* (12), had been consistently followed in dealing with the liability of the State in respect of negligent or tortious acts committed by public servants.

(25) It may be observed here that the learned Chief Justice did not comment on any of these decisions, except that of the Lahore High Court in *Uma Parshad's case*, (20), with regard to which, while observing that some of the reasons given by the High Court in support of its conclusions may be open to doubt, his Lordship said

(15) 40 I. A. 48(P.C.).
(16) I.L.R. 28 Bom. 314.
(17) I.L.R. 39 Mad. 351=A.I.R. 1915 Mad. 993.
(18) I.L.R. 59 Cal. 1289.
(19) I.L.R. (1957) 1 All. 94.
(20) I.L.R. (1937) 18 Lah. 380.

that the decision could be justified on the basis that the act which gave rise to the claim for damages had been done by a public servant who was authorised by a statute to exercise his powers, and the discharge of the said function can be referred, to the delegation of the sovereign power of the State, and as such the criminal act which gave rise to the action, could not validly sustain a claim for damages against the State.

(26) It must thus be taken as authoritatively settled that under Article 300(1) of the Constitution, the Union of India and the States in our Republic have the same liability for being sued for torts committed by their employees as was that of the East India Company.

(27) The nature and the extent of the East India Company's liability, as has been noticed earlier, for the tortious acts of servants was settled as far back as the year 1861 and the law on that point as stated by learned Peacock, C.J. in *The Peninsular and Steam Navigation Company* v. *The Secretary of State for* India, (12) still holds the field. That view is that the Government is liable for the damages caused by its servants if the negligence is such as would render an ordinary employer liable for such damages and the necessary inference that follows is that the State is not liable if the tortious acts complained of have been committed by its servants in discharge of sovereign functions of the State. This rule of law stands settled by the decisions of our Supreme Court in *State of Rajasthan* v. *Mst. Vidhyawati and another* (21), and *M/s. Kasturi Lal Ralia Ram Jain* v. *The State of Uttar Pradesh* (8), to which a reference has already been made. In the latter decision it was emphasised that there is a clear distinction between the acts committed by a public servant in discharge of statutory functions which are referable to and ultimately based on the delegation of sovereign powers of the State to such public servant, and the acts committed by him during the course of his employment which are not in discharge of any sovereign powers of the State and which could have been performed by a servant who might have been employed by a private individual for the same purpose. To determine the liability, we have to look to the nature and the quality of the duty in the course of which the tortious act complained of is committed. In this connection, it is necessary to keep in mind the following observations of Gajendragadkar, C.J. in *M/s. Kasturi Lal's case,* (8), (supra) :

> "In dealing with such cases, it must be borne in mind that when the State pleads immunity against claims for damages

(21) A. I. R. 1962 S. C. 933.

resulting from injury caused by negligent acts of its servants, the area of employment referable to sovereign powers must be strictly determined. Before such a plea is upheld, the Court must always find that the impugned act was committed in the course of an undertaking or employment which is referable to the exercise of delegated sovereign power."

(28) The legal position thus stated with regard to the liability of the State in such cases has not been disputed and is otherwise uncontestable being firmly settled by the Supreme Court of India. The difficulty, however, arises in actual application of this principle to the various cases, since in most cases controversy centres around the question whether the act complained of was committed actually in the course of an undertaking or employment which is referable to the exercise of sovereign powers or delegated sovereign powers. At this stage it becomes necessary to determine as to what is a sovereign act.

(29) *In District Board of Bhagalpur* v. *Province of Bihar* (22), it has been observed that governmental functions may be divided into three categories ; (1) act of State, (2) governmental activities or sovereign powers, and (3) commercial activities. The acts falling under the 2nd category, namely, governmental activities or sovereign powers, are stated to be those which could not be lawfully exercised by a private individual or under his direction save by sovereign authority or persons to whom sovereign authority might delegate those powers. It has, however, not been elaborated in that decision as to what sovereign function or power means.

(30) The concept of sovereignty came up for consideration before a Full Bench of Pepsu High Court in *Gurdwara Sahib Siri Teg Bahadur Gaja* v. *Piyara Singh* (23), though in a different connection and dealing with it the learned Chief Justice after observing that sovereignty, as observed by Hibbert in his jurisprudence, being a human institution and the result of historical development, does not admit of an absolute definition, adverted to the definition given by Mr. Hibbert at page 58 of his book on jurisprudence, which is in these words :—

"The term 'sovereign' means a political superior who is not subject to any other political superior."

(22) A. I. R. 1954 Patna 529.
(23) A. I. R. 1953 Pepsu 1.

Reference was then made to Prof. Holland's jurisprudence wherein at page 50 of his book he has stated—

> "The sovereignty of the ruling part has two aspects. It is 'external' as independent of all control from without ; 'internal' as paramount over all action within."

(31) Under the Constitution of our country, which is now a welfare State, increasing emphasis is on the socialistic activities. The State is not confining itself to the functions that in olden days vested in the sovereign for ensuring law and order, efficient administration and saving the country from external aggression, but is engaging in ever increasing trade business and commercial ventures industrial undertakings and welfare activities, which hitherto have never been considered as essential functions or attributes of a Government or sovereign. Acts which are connected with the business industrial or commercial activities of the Government can obviously be not classified as acts done in discharge of its sovereign functions, as such activities are open to the private individuals and may well be undertaken by them. However, the functions connected with the administration, including the maintenance of law and order and peace within the State, as well as those of meeting the external aggression, are such as the State alone can perform and they, in all ages and in all forms of Governments, whether monarchical or democratic, have been considered to be the essential functions of the Government alone as sovereign authority.

(32) No precise definition of a sovereign act or power of the State has been pressed before us. It is not disputed, and it cannot be, that the sovereign functions of the State include the maintenance of the Army, the setting up of various departments, including that of Police for preservation of law and order and proper administration of the country and the machinery for the administration of the justice etc. The appellant's learned counsel Mr. Kuldip Singh started by defining sovereign powers of the State as those which are necessary for the administration of the country and such acts as are performed by virtue of the powers conferred by competent legislative authority. Realising that statute may even confer power on various government functionaries in connection with business or commercial undertakings and other non-sovereign functions of the State, he, however, modified his submission and argued that sovereign powers are those which

flow from a statute but are not connected with business or commercial activities of the Government. The learned Advocate-General for Haryana appearing for the respondents, however, urged that "sovereign powers are those powers which cannot be lawfully exercised except by a sovereign or by a private individual delegated by a sovereign to exercise those powers". This is the very dictum of Peacock, C.J., in *The Peninsular and Oriental Steam Navigation Company's case* (12) (supra), which has been approved by their Lordships of the Supreme Court in *M/s. Kasturi Lal's case* (8), to which reference has already been made.

(33) It is true that ordinarily the functions of the sovereign State are performed by government officials concerned by virtue of the authority conferred on them by a statute or by rules and regulations, but we agree with Mr. Kaushal that the exercise of such an authority need not be confined to the authority conferred by a statute. Mr. Kaushal has rightly pointed out that apart from the governmental powers conferred by various statutes on various Government functionaries there are other governmental powers which can be exercised in connection with the affairs of the State and which are known as executive powers. This is apparent from Articles 73 and 162 of the Constitution of India. In the former it is laid down that the executive power of the Union shall extend to all matters with respect to which Parliament has power to make laws, while in the latter it is similarly provided that the executive power of a State shall extend to all matters with respect to which the State has the power to make law. Under the scheme of our constitution, legislative and executive functions are distinct and there can be no doubt that apart from the executive power, which may be entrusted to the Executive under various Statutes or Rules made by competent authority, the Executive, both in the States and at the Centre, exercises other executive powers. This is apparent from Article 53 of the Constitution which provides that the executive power vests in the President and he is also the Supreme Commander of the Armed Forces of the country under law. Article 352 which relates to the proclamation of an emergency by the President further makes it clear that in certain cases and in certain circumstances the President exercises executive functions which ordinarily would be exercisable by various functionaries of the State under the law made by an appropriate legislature. It is thus apparent that the contention of Mr. Kuldip Singh that unless a function or an act is authorised by a statute, it cannot be

considered to be a governmental function or an act done in the exercise of the sovereign power of the State is untenable. In any case, it is beyond controversy that the setting up and maintenance of Army is a primary, and infact one of the most essential, functions of the State or the Government and, accordingly, any act connected with the maintenance and functioning of the Armed Forces performed by one of its functionaries to whom such duties are entrusted must be considered to have been done in exercise of sovereign authority of the State. It, however, does not follow that all the acts done by the military personnel in connection with the maintenance or setting up or functioning of the Army can be called sovereign act. The test as laid down by their Lordships of the Supreme Court in the various decisions referred to above is whether the act done is one which might be done by a private individual without having sovereign power delegated to him. If the undertaking is such that a private individual cannot engage in those acts, such acts must be held to be in respect of the sovereign power of the State.

(34) In urging that the tortious act complained in the case before us committed by the driver of the truck cannot be considered to have been done in exercise of any sovereign functions of the State, Mr. Kuldip Singh has emphasised the fact that the driving of a vehicle is not a function which can exclusively be discharged by a person employed in the Army but could have been entrusted to a private individual and as such no immunity could be claimed in respect of it. It is true that a vehicle can be driven even by a person who is not employed in the Army and the act of driving a vehicle is not something peculiar to the functions of the Army or an employee of the Government. The question whether the act of rash and negligent driving of a vehicle was done in the exercise of sovereign functions of the State has to be considered not in this isolated way but in the context of the facts and circumstances in which the act complained of was committed. To appreciate the correct position, guidance can be had from various decided cases on the point, which we now proceed to consider.

(35) The earliest is the one reported in *The Peninsular and Oriental Steam Navigation Company* v. *The Secretary of State for India* (12), which has been noticed earlier in detail. In that case the East India Company was held liable for the damages caused by the negligence of its servants who had been employed by the Government at the dockyard and had dropped a piece of iron funnel on the

road in such a manner as to cause injury to one of the horses that were driving the plaintiff's carriage. This was on the finding that the servants of the East India Company were not engaged in any function connected with the sovereign powers of the Government.

(36) In *Secretary of State* v. *A. Cockcraft* (17), damages were claimed for injuries sustained by a person whose carriage capsized by one of its wheels running over a heap of gravel carelessly stacked on a military road by a contractor of the Public Works Department. It was a military road leading to the barracks where the soldiers were housed. A Division Bench of the Madras High Court held that the plaintiff had no cause of action against the Secretary of State, as the provision and maintenance of roads, especially a military road, was one of the functions of Government carried on in exercise of its sovereign powers and is not an undertaking which might have been carried on by private persons. After quoting various cases, including *Peninsular and Oriental case* (12) (supra), Seshagiri Aiyar, J. disposed of the matter in these words:

> "In the first place, this is not a road maintained by a Local Board or Municipality. Consequently, it is strictly within the exercise of Governmental duties that this road is made and maintained. In the second place, if the position of the East India Company is analogous to that of Municipal Corporation in America, even then it is clear that the company will not be liable for the negligence of its servants in failing to keep the road in good repair.
>
> I must hold, therefore, that this case comes under the exception suggested by Sir Barnes Peacock in *P. and O.S.N. Company* v. *Secretary of State* (12). The subject of liability for the negligence of public servants is elaborately discussed by the learned Chief Justice in *Roos* v. *Secretary of State* (24)."

(37) In *Harbans Singh's case* (1) (supra), the accident occurred as a result of rash and negligent act of the driver of a military truck while he was engaged in the military duty of supplying meals to military personnel on duty. A Division Bench of this Court (D. Falshaw and Mehar Chand, JJ.) held that the Union of India was not liable. Mehar Singh, J., delivering the judgment of the Court,

(24) A.I.R. 1915 Mad. 434.

relying upon P. & O. *Steam Navigation Company's* case (12) (supra), observed as follows :

> "It is thus evident that the act of defendant No. 2 was done whilst he was engaged in military duty in supplying meals to military personnel on duty and for tort committed by him while performing that duty, East India Company could not have been liable and could not be sued. The position of defendant No. 1 is in this respect the same and no action lies against it."

(38) This decision was later cited before a Full Bench of this Court in *Union of India* v. *Smt. Jasso* (3), D. Falshaw, J. (who was himself a member of both the Benches), delivering his opinion, emphasised that the decision in *Harbans Singh's case* (1), turned on peculiar facts of that case that led to the conclusion that the army driver "was acting in exercise of a sovereign power and doing something which could not be done by private individuals" and added :

> "It can be said regarding that case that the truck was being driven for supplying the needs of army personnel engaged on military duties which could not be performed by civilians.
>
> "It is at any rate safe to say that that case cannot be regarded as an authority for the general proposition that in no case can an action for damages be brought against the Government merely because the vehicle involved in the accident is an army truch driven by a military employee in the performance of some duty or other."

(39) From this it is apparent that the act of supplying meals by a military employee to military personnel on duty was considered to be in connection with the sovereign functions of the Union of India. In the case in which Falshaw, J. (as his Lordship then was) made the observations set out above, the Full Bench held that the Union of India was liable to be sued for rash and negligent driving of a military truck that was engaged in transporting coal to the General Headquarters at Simla, though the driver was acting in discharge of his duty. In coming to this conclusion Falshaw, J. categorically observed :

> "A routine task as the driving of a truck loaded with coal from some depot or store to the General Headquarters' building

at Simla, presumably for the purpose of heating the rooms, cannot be held to be something done in exercise of a sovereign power, since such a thing could obviously be done by a private person."

(40) In *Rup Ram* v. *The Punjab State* (2), another Full Bench of this Court dealt with rash and negligent conduct of a driver employed by the Public Works Department, who was carrying some material that was to be used in building a bridge on a public highway. In holding that the State must shoulder the responsibility for the negligent act of its driver, Dulat J., speaking for the Court, said :

"It is not suggested that the truck driver had any peculiar duties assigned to him by any law or rule, nor that there was anything special about his employment."

(41) The rule of guidance in such cases was stated thus :

"The liability would depend not only on the nature of the act in which, the servant may have been engaged but also on the nature of the employment and, of course, of the nature of the tort committed. The mere fact that the act may or may not have been done in the course of governmental activity, is not, one way or the other, conclusive."

(42) Rejecting the contention of the learned Additional Advocate-General that the Public Works Department of the State, to whith the truck belonged, was not a commercial department in the sense that it was not concerned with making profits, the learned Judge said :

"That matter is, in my opinion, too far removed from the tortious act complained of in the present case, to be of any help."

(43) In *State of Rajasthan* v. *Mst. Vidhyawati* (21), the question that arose was regarding the liability of the State for rash and negligent driving of a jeep owned by the State of Rajasthan for official use of the Collector of a District. The accident resulting in fatal injuries to a pedestrian occurred when the jeep was being brought from the workshop after repairs. It was held by their Lordships of the Supreme Court that the State of Rajasthan could not escape its liability as the mere fact that the car was being maintained for the use of the Collector, in discharge of his official duties,

was not sufficient to take the case out of the category of cases where the vicarious liability of the employer could arise even though the car was not being used for any purpose of the State. On review of case-law on the subject relying upon Article 300 of the Constitution, Sinha, C.J. observed as follows :—

> "In India, ever since the time of the East India Company, the sovereign has been held liable to be sued in tort or in contract, and the Common Law immunity never operated in India. Now that we have, by our Constitution, established a Republican form of Government and one of the objectives is to establish a Socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle or in public interest, that the State should not be held liable vicariously for the tortious act of its servant ..... when the rule of immunity in favour of the Crown, based on Common Law in the United Kingdom, has disappeared from the land of its birth, there is no legal warrant that it has any validity in this country, particularly after the Constitution. As the cause of action in this case arose after the coming into effect of the Constitution, in our opinion, it would be only recognising the old established rule, going back to more than 100 years at least, if we uphold the vicarious liability of the State."

(44) In *Satya Wati* v. *Union of India* (25), the facts were that as an army driver, who had been detailed with a vehicle, went to report to the Guard Room about his return and was about to park his vehicle, he struck against the motor cycle driven by a permanent commissioned officer of the Indian Air Force and thereby caused him injuries resulting in his death. The Union of India pleaded that it was not liable for the tortious act of its driver, but this plea was turned down, holding that the act of the driver in this case was not committed in the course of an undertaking or employment which is referable to the exercise of the delegated sovereign power or even to the exercise of statutory powers. Referring to the evidence in the case, S. K. Kapur, J., summed up his conclusions in these words :

> "Reference to Exhibit P. 10 would show that the vehicle was engaged in carrying hockey and basket ball teams to

(25) A.I.R. 1967 Delhi 98.

> Indian Air Force Station, New Delhi, to play a match against Indian Air Force, New Delhi. It appears that after the match was over, the driver went to the Guard Room to report about his return and was, at the time of the accident, going to park the vehicle at the Sub-Motor Terminus. Such activity can hardly be referable to the exercise of any of the powers mentioned above which can entitle the State to a claim for immunity."

(45) In *Joginder Kaur* v. *Punjab State and others* (26), a police lorry owned by the State of Punjab and driven by one of its constables struck against a Punjab Roadways Bus. As a result of this accident between two vehicles of the State, a grazier, who was nearby, lost his life. This Court held that the State was liable as the tortious Act was not in any way connected with the exercise of its sovereign powers.

(46) A Military truck, while proceeding to the Railway Station for picking up a military officer, caused fatal injuries to a hand-cart puller because of rash and negligent driving. The plea of the Union of India that it was immune from liability for compensation was turned down by a learned Judge of the Madras High Court in *Union of India* v. *Varadambal and others* (27), with the following observations :

> "The Court is thus left in a state of doubt as to the purpose for which the vehicle was engaged. Further, even assuming that it was going to the Central Station, we cannot straightaway hold that it was in connection with the functions of the Union as a sovereign power. There were ever so man y possibilities. It may be that Major Kurup had gone even on a private visit somewhere and was returning back to the Central Station."

(47) In *Amulya Patnaik* v. *State of Orissa* (28), it was held that for a tortious act committed by a State employee in the course of his employment the State will be vicariously liable if such act is not proved to have been committed in connection with the sovereign powers of the State. Accordingly, the State's claim for immunity

(26) 1969 P. L. R. 85.

(27) 1969 A. C. J. 220.

(28) A I. R. 1967 Orissa 116.

for rash and negligent driving of its own vehicle by one of its employees was rejected. In that case A.S.I. trainees were being taken in a police van when it dashed against a tree because of the rashness of the driver.

(48) Though sovereign functions of a State have nowhere been exhaustively enumerated nor is there any authoritative definition of what constitutes the sovereign functions, from a review of the ratio of the various authorities that have been noticed above, certain rules of guidance, which appear to be well settled, emerge and they may be stated thus :

(1) Under Article 300(1) of the Constitution of India, the Union of India and the States in our Republic have the same liability for being sued for torts committed by their employees as was that of the East India Company.

(2) The nature and extent of this liability, as stated in *P. & O. Steam Navigation Company's* (12) (supra) and authoritatively settled by their Lordships of the Supreme Court in *Kasturi Lal's case* (8) (supra), is that the Union of India and States are liable for damages occasioned by the negligence of servants in the service of the Government if the negligence is such as would render an ordinary employer liable.

(3) That in view of the rule stated above, the Government is not liable if the tortious Act complained of has been committed by its servant in exercise of its sovereign powers, by which we mean powers that cannot be lawfully exercised except by a sovereign or a person by virtue of delegation of sovereign rights.

(4) The Government is vicariously liable for the tortious acts of its servants or agents which are not proved to have been committed in the exercise of its sovereign functions or in exercise of the sovereign powers delegated to such public servants.

(5) The mere fact that the act complained of was committed by a public servant in course of his employment is not enough to absolve the Government of the liability for damages for injury caused by such act.

(6) When the State pleads immunity against claim for damages resulting from injury caused by negligent act of its servants, the area of employment referable to sovereign powers must be strictly determined. Before such a plea is upheld, the Court must always find that the impugned act was committed in the course of an undertaking or an employment which is referable to the exercise of the delegated sovereign powers.

(7) There is a real and marked distinction between the sovereign functions of the Government and those which are not sovereign, and some of the functions that fall in the latter category are those connected with trade, commerce, business and industrial undertakings.

(8) Where the employment in the course of which the tortious act is committed is such in which even a private individual can engage, it cannot be considered to be a sovereign act or an act committed in the course of delegated sovereign functions of the State.

(9) The fact that the vehicle, which is involved in an accident, is owned by the Government and driven by its servant does not render the Government immune from liability for its rash and negligent driving. It must further be proved that at the time the accident occurred, the person driving the vehicle was acting in discharge of the sovereign function of the State, or such delegated authority.

(10) Though maintenance of Army is a sovereign function of Union of India, it does not follow that the Union is immune from all liability for any tortious act committed by an army personnel.

(11) In determining whether the claim of immunity should or should not be allowed, the nature of the act, the transaction in the course of which it is committed, the nature of the employment of the person committing it and the occasion for it, have all to be considered.

(49) In the light of these principles, let us now examine the facts of the case that is before us. The Tribunal has found the following facts proved and there is no controversy over

them before us; in fact, the entire argument has proceeded on the assumption that these facts are correct.

(50) The truck which caused injuries to Amrik Singh appellant was an army truck. It was being driven by an army driver, who had been detailed on duty for checking Army personnel on duty throughout the day. It was engaged in that duty when it caused the accident resulting in injuries to the appellant. The question that has to be asked in deciding whether the accident occurred in the course of discharge of sovereign functions of the State, is whether the act in which the driver of the truck was engaged could be performed by a private individual. It cannot be disputed that only a Military man could be deputed to check the military personnel on duty. It was for that purpose that the army vehicle was placed at the disposal of the person who was put on this duty and he himself drove the vehicle to go about from place to place. As the evidence disclosed, it was while he was so going about that he caused the accident. In view of all these facts, the case with which we are dealing is quite different from those to which the decision of this court, which have been referred to above, relate. In fact, it is a much stronger case, from the point of view of the Government, than the one with which the learned Judges of this Court were dealing in *Harbans Singh's case* (1), in which the driver was on duty for distribution of food to the Army personnel. That duty was considered to be part of the sovereign functions of the State. In that case, it could possibly be urged that the work of distributing food to the Army personnel could be entrusted to a person other than an Army Officer, but no such argument can at all be raised in this case as the checking of the Army personnel on duty is a function which is intimately connected with the Army discipline and it could only be performed by a member of the Armed Forces and that too by such a member of that Forces who is detailed on such duty and is empowered to discharge that function.

(51) As has been noticed in an earlier part of this order, it was conceded before the learned Single Judge that Sepoy Man Singh, whose rash and negligent driving of the military truck had resulted in injuries to the appellant, was on duty to check the military personnel on duty throughout that day. In the course of arguments before us, the appellant's learned counsel Mr. Kuldip Singh, however, attempted to get out of that admission and

urged that it was not a part of the duty of Sepoy Man Singh to check the Army personnel on duty that day in the Cantonment area of Ambala, and in any case the evidence adduced before the Tribunal went to prove that at the time of the accident he was not discharging the duty of checking the military personnel, but was returning after dropping some members of the Armed Forces at Nigar cinema. The learned Advocate-General besides vehemently disputing these contentions has, on the other hand, urged that Sepoy Man Singh was, in fact, and validly detailed on duty to check the military personnel that day. In this connection, he has referred to the various provisions of the Indian Army Act and the Rules and Regulations made thereunder. All these are matters which could be urged before the learned Single Judge and since they relate primarily to questions of fact, we would not like to go into them.

(52) In view of the state of law that emerges on review of the various authorities, we answer the legal question, that has been set out in the opening part of this order, in the negative. In our opinion, the Union of India cannot be held liable for injuries sustained by a person as a result of rash and negligent driving of Army vehicle by a member of the Military Police, who in discharge of the duty entrusted to him was proceeding to check the military personnel on duty. In this view of the matter the appeal is dismissed with no order as to costs.

D. K. Mahajan, J.—(53) I entirely agree, but suggest that necessary legislation be enacted in this behalf.

P. C. Pandit, J.—(54) I agree with the order proposed that the appeal be dismissed but with no order as to costs.

H.R. Sodhi, J.—(55) I too agree that the appeal be dismissed with no order as to costs.

B.R. Tuli, J.—(56) I agree with the order and reasoning recorded by my learned brother, Gurdev Singh J, and have nothing to add.

K. S. K.