The Armed Forces Tribunal, Regional Bench, Chandigarh,
at Chandimandir.

Original Application No. 1229 of 2017

Tuesday, the 31st day of July, 2018

Coram:

Hon'ble Shri Justice M.S. Chauhan, Judicial Member.

Hon'ble Shri Lt. Gen. Munish Sibal, Administrative Member.

Major Amit Kumar Mishra .. Applicant

[By Legal Practitioner, Shri N.K. Kohli, Advocate]

Versus

Union of India and others. .. Respondents

[Respondents No. 1 to 4 by Legal Practitioner, Shri Gurpreet Singh, Central Government Counsel, respondent No. 5 by Shri Arun Singla, Advocate]

O R D E R

01. Correctness and sustainability of order dated 08 February, 2016, *Annexure A7*, sanctioning deduction of 27.5% per month from applicant's pay and allowances for payment to Shrimati Vibhuti Dutta, respondent No. 5 (22%) and Miss Veronica (5.5%) with effect from 27 October 2014 as maintenance allowance, is under attack in this Original Application (OA) brought by applicant, Major Amit Kumar Mishra under Section 14 of the Armed Forces Tribunal, 2007.

02. Shorn of unnecessary details, applicant's plea in the OA is that he was married to respondent No. 5 on 12 February 2010 when she was working with a share trading company at New Delhi and he was posted at Leh (J&K). On 02 September 2013 a daughter (Veronica) was born of the wedlock. The parties to the marriage could not pull on well as the fifth

respondent treated the applicant with cruelty and withdrew from his society without sufficient cause which prompted the applicant to prefer a petition, *Annexure A1*, for restitution of conjugal rights before a Court of competent jurisdiction. As a counterblast, fifth respondent filed a petition dated 27 October 2014, *Annexure A2*, under Section 125 of the Code of Criminal Procedure, 1973 (CrPC, for short) before jurisdictional Magistrate at Kurukshetra. Respondent No. 5 by her acts and conduct having exhibited her disinclination to return to the matrimonial fold, applicant withdrew the petition for restitution of conjugal rights and preferred a petition, Annexure A3, for dissolution of marriage on the twin grounds of desertion and cruelty. Petition for dissolution of marriage of the parties was still pending when the respondent No. 5 returned to the matrimonial home unannounced after making unfounded complaints against the applicant. On 28 April 2015, the day on which the petition for dissolution of marriage was listed for hearing at Gurgaon (now Gurugram), applicant told the fifth respondent that since she had returned to the marital fold he was not keen to pursue that petition. Respondent No. 5 misbehaved with his parents (who had come for treatment at military hospital) and left for Gurgaon with her parents. She again came to applicant's place (at Hisar) on 31 April 2015 and got herself admitted in military hospital there by alleging that she was beaten by the applicant and his parents. On 02 May 2015 she returned to Kurukshetra and took the minor daughter Veronica along. On 02 July 2015 she lodged FIR No, 314 of 2015 against the applicant and his parents under Sections 406, 498-A, 323, 377 read with Section 34 of the Indian Penal Code, 1860.

03. While posted at MHOW applicant received a show cause notice dated 14 August 2015, *Annexure A4*, calling upon him why suitable maintenance allowance from his pay and allowances be not granted to his wife and daughter. Applicant submitted his reply dated 15 October 2015, *Annexure A5*, narrating therein, *inter alia*, the circumstances obtaining in his matrimonial life, known sources of income of the fifth respondent and steps taken by him to maintain her and the minor child. Copies of the documents, if any, furnished by fifth respondent in support of her claim

were not supplied to the applicant alongwith the show cause notice. In the meantime, notice, *Annexure A6*, of the petition for maintenance filed by the fifth respondent was served upon the applicant through his Commanding Officer.

04. Though the Commanding Officer of the applicant and General Officer Commanding (GOC), 33 Armed Division, on having acquainted themselves with the facts of the case viz. refusal, without sufficient cause, of the fifth respondent to live with the applicant and applicant having put in all possible efforts to save the marriage and having never neglected the fifth respondent and the minor daughter in the matter of maintenance, did not recommend grant of maintenance allowance to the fifth respondent and wanted the matter to be settled by a court of law, but by ignoring all this as also reply submitted by the applicant, the third respondent passed order dated 08 February 2016, *Annexure A7*, sanctioning deduction of maintenance allowance for the fifth respondent and minor daughter from applicant's pay and allowance.

05. To seek reconsideration/ review of order dated 08 February 2016 applicant submitted a representation dated 09 April 2016, *Annexure A8*, before the third respondent and another representation dated 05 January 2017, *Annexure A9*, before respondent No. 05 under whose command the applicant stood transferred in the meantime, but without any result.

06. Forced by the circumstances the applicant has approached this Tribunal alleging that the impugned order is unreasoned, without jurisdiction, illegal and has been passed by usurping jurisdiction of the court of law under Section 125, CrPC and Section 24 of the Hindu Marriage Act, 1955 (for short, 'the HM Act') and without taking into account the relevant facts and circumstances.

07. Respondents No. 1 to 4 have filed their written response jointly while respondent No. 5 has filed her written reply separately from respondents No. 1 to 4.

08. In their written counter the official respondents have stated that marital discord between the applicant and fifth respondent came to light

on receipt of copy of the petition dated 27 October 2014 filed by the fifth respondent before Judicial Magistrate, Kurukshetra, in Head Quarters, South Western Command from Integrated Head Quarters, Ministry of Defence (Army) vide letter dated 13 November 2014, *Annexure R1*. Respondent No. 5 also submitted an application, *Annexure R2*, before respondent No. 3 for grant of maintenance. Pursuant to this application efforts at reconciliation between the husband-wife were undertaken but without success. Ultimately, case for grant of maintenance was processed under Section 90(i) of the Army Act, 1950 (for short, 'the Act') and on due consideration of relevant records and comments and recommendations of the Commanders in chain, show cause notice dated 14 August 2015, *Annexure A4*, was served upon the applicant to which he submitted a reply. Commanders in chain, including Commanding Officer of the applicant, had concurrently recommended grant of maintenance in favour of respondent No. 5. As such the impugned order dated 08 February 2015, Annexure A7, was passed under Section 90(i) of the Act, and Rule 193 of the Army Rules, 1954 (for short, 'the Rules') read with Army Order 02 of 2001, where-under the Army Authorities have power to grant maintenance independently of Section 125, CrPC and Section 24, HM Act.

09. Written response of the official respondents further goes on to state that since October 2014 respondent No. 5 had submitted various complaints against the applicant to diverse Army Authorities praying for grant of maintenance, issue of dependents card and CSD Canteen card etc., whereupn comments of applicant were obtained and reconciliation proceedings were carried out. Respondent No. 5 had also submitted an affidavit dated 22 May 2015, *Annexure R3*, stating therein that she was unemployed, had no source of income, applicant was neglecting to maintain her and the minor daughter and her application under Section 125 CrPC had been dismissed as withdrawn vide order dated 23 March 2015, whereas, on the contrary, applicant had filed a petition for dissolution of marriage.

10. In her separate written reply respondent No. 5 by way of preliminary objections has stated that the OA deserves dismissal because minor

daughter Veronica has not been arraigned as a party respondent, it has been filed after expiry of prescribed period of limitation and is based on false averments, and applicant has not annexed with the OA relevant documents such as Army Group Insurance Fund statement, Last Will, PLI and LIC policies, Bank account statement and salary statement. On merits respondent No. 5 has stated that she has always been and is still ready and willing to return to the matrimonial fold and it the applicant and his parents who have ill-treated and thrown her out of her marital abode. Providing maintenance to her apart, the applicant did not bear pre and post delivery expenses when Veronica was born and sent some money to her only to mislead the court that was dealing with her application for maintenance which she had filed on the advice of Commanding Officer of the applicant and was compromised with the applicant vide order dated 23 March 2015, *Annexure R5/1*. She had accompanied the applicant to Hisar on 23 March 2015 alongwith the minor daughter in view of applicant's statement before the Lok Adalat. But he did not withdraw the divorce petition even after making a statement before the Lok Adalat to withdraw it and repeated his acts of cruelty qua her. Reconciliation efforts put in by and at the instance of the Commanding Officer of the applicant had failed because the applicant is into adultery/bigamy. Further, she was thrashed and thrown out of the matrimonial home on 30 April 2015 by the applicant and his parents and as such had to be admitted to military hospital from where she went to her parental home after her discharge on 02 May 2015 and lodged FIR No. 314 of 2015 against the applicant and his parents and trial arising therefrom is in progress. Another application filed by her under Section 125, CrPC, on 02 November 2015 was withdrawn by her vide order dated 01 August 2016, *Annexure R5/3*, after maintenance had been granted to her and the minor child by the Military Authority vide order dated 08 February 2016.

11. We have heard learned counsel for the parties and have scanned the record very carefully.

12. Learned counsel for the applicant has taken us through S. 90(i) of the Act and has argued that this section is not a substantive provision

authorizing adjudication of a claim for maintenance, rather it authorizes deduction from pay and allowances of an army officer any sum required by order of the Central Government or any prescribed officer to be paid for maintenance of his wife and child. By referring to Sections 25 and 28 of the Act it is argued that pay and allowances of an officer can neither be reduced nor attached in execution of a decree of a civil court even with the aid of Note 22(i)(a) appended to Section 90 of the Act which is not a statutory rule. Therefore, the impugned order sanctioning deduction of 27.5% from applicant's pay and allowance for payment of maintenance to his wife and minor daughter is without jurisdiction.

13. Learned counsel for the applicant has further submitted that maintenance can be granted only on proof of the fact that the claimant-wife is neglected by the army officer-husband and she does not have any independent source of income and is not guilty of forsaking the company of her husband without sufficient cause etc., which is not possible without permitting the parties to lead evidence and cross-examine the witnesses appearing against their interests but neither the Act nor the Rules lay down any such procedure and the Army Order 02 of 2001 prescribing procedure to be adopted in such cases is without jurisdiction in so far Section 191 of the Act empowers only the Central Government to make rules but Army Order 02 of 2001 is not a rule framed by the Central Government, rather Section 191 of the Act does not empower even the Central Government to frame rules to regulate the procedure for processing claims for maintenance. Learned counsel has referred to report of *Raksha Mantri's Committee of Experts-2015*, which was constituted for review of service and pension matters including potential disputes, minimizing litigation and strengthening institutional mechanisms related to redressal of grievances, and has highlighted that the Committee had expressed grave dissatisfaction and concern about the procedure adopted by the military authorities in processing the claims for maintenance and acting on the said report Ministry of Defence had directed the Joint Secretaries to take immediate action on the report and submit action taken report. Findings of the

Committee also militate against the impugned order which, even otherwise is a non-speaking and unreasoned order, thus bad in law.

14. According to learned counsel for the applicant respondents' plea that Army Authorities and civil courts have concurrent jurisdiction to decide claims for maintenance cannot be accepted because were it so there would have been some mechanism in place to resolve the conflict of jurisdiction on the lines of Section 475, CrPC, and Section 125 of the Act pertaining to resolution of conflict of jurisdiction between the jurisdictional criminal court and the courts martial under the Act. Not only this, an aggrieved wife if not granted maintenance by the military authorities can always approach the civil court for grant of maintenance but no such remedy is available to an officer-husband to air his grievance against an order of maintenance passed by the military authorities against him.

15. *Per Contra*, learned counsel for the respondents have argued that while Section 90(i) and 91(i) of the Act read with Section 193 of the Rules empower Army Authorities to process a claim for maintenance of a wife of an army officer/soldier, Army Order 02 of 2001 provides the procedure for processing such a claim and as has been held in *Vivekananda Mondal versus Union of India and others-Mil L J 199 Cal 109* exercise of such power cannot be said to be usurpation of or interference with jurisdiction of the Court under CrPC.

16. It has further been argued on behalf of the respondents that it was on due consideration of relevant records and comments and recommendations of the Commanders in chain, that show cause notice dated 14 August 2015, *Annexure A4*, was served upon the applicant and the impugned order has been passed after Commanders in chain, including Commanding Officer of the applicant, had concurrently recommended grant of maintenance in favour of respondent No. 05. Not only this, since October 2014 respondent No. 5 had submitted various complaints against the applicant to diverse Army Authorities praying for grant of maintenance, issue of dependents card and CSD Canteen card etc., whereupn comments of applicant were obtained and reconciliation proceedings were carried

out. Respondent No. 5 had also submitted an affidavit dated 22 May 2015, *Annexure R3*, stating therein that she was unemployed, had no source of income, applicant was neglecting to maintain her and the minor daughter and her application under Section 125, CrPC, had been dismissed as withdrawn vide order dated 23 March 2015.

17. No other or further point has been urged on either side.

18. At the very outset, it needs to be noted that the impugned order makes provision for payment of maintenance to the extent of 5.5% of pay and allowances of the applicant for applicant's minor daughter, Veronica also. She has not been arrayed as a party respondent in the OA. It is not permissible to pass an order adversely affecting her at her back. Challenge to the impugned order, therefore, is restricted only to the extend it directs grant of maintenance to the extent of 22% of the pay and allowances of the applicant in favour of applicant's wife-respondent No. 5.

19. The whole concept of maintenance was introduced in order to see that if there is a spouse who is not independent financially then the other spouse should help him/her in order to make the living of the other person possible and independent. Maintenance is the amount which a husband is under an obligation to make to a wife either during the subsistence of the marriage or upon separation or divorce, under certain circumstances. It, thus, emerges that maintenance is meant to tide over a difficult financial situation and not to lead life on someone else's expense. When determining the amount of maintenance, reasonable needs of the spouse seeking maintenance against the ability of the other spouse to pay must be balanced. Further, grant of maintenance in favour wife, necessarily results into deprivation of the husband of his property and it is well settled by now that no one can be deprived of his life, liberty and property except after affording him a fair and reasonable opportunity to defend against such action.

20. Section 125, CrPC, contains the general rule of maintenance. It reads as under:

"**Section-125. Order for maintenance of wives, children and parents**.

(1) If any person having sufficient means neglects or refuses to maintain-
(a) His wife, unable to maintain herself, or
(b) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
(c) His legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
(d) His father or mother, unable to maintain himself or herself,

A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of' sufficient means.

Provided further that the Magistrate may, during the pendency of the Proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation. For the purposes of this Chapter.

(a) Minor means a person who, under the provisions of the Indian Majority Act, 1975 (9 of 1875) is deemed not to have attained his majority;
(b) "Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.
(2) Any Such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.
(3) If any Person so ordered fails without sufficient cause to company with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the dare on which it became due:

> Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.
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> Explanation. If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to just ground for his wife's refusal to live with him.
> (4) No wife shall be entitled to receive an allowance from her husband under this section she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.
>
> (5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to, live with her, husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

21. From a perusal of Section 125, CrPC, it is manifestly evident that a wife becomes entitled to maintenance only if she is able to establish to the satisfaction of the jurisdictional magistrate that (i) she is legally wedded wife of the person from whom she claims maintenance; (ii) is unable to maintain herself; and (iii) her husband inspite of having sufficient means has neglected or refused to maintain her. Further, the wife loses her right to maintenance if she is living in adultery, or if, without any sufficient reason she refuses to live with her husband. The words “upon proof of such neglect or refusal” appearing in Section 125, CrPC, are of great importance because these words imply that maintenance cannot be granted in favour of a wife until it is proved that the husband has neglected or refused to maintain her despite being possessed of sufficient means and the wife has no means to maintain herself. According to Section 03 of the Indian Evidence Act, 1872 (for short, ‘the Evidence Act’), “A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.” Proving a fact requires evidence which, according to Section 03 of the Evidence Act “means and includes all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence; all documents including electronic records produced for the inspection of the Court, such documents are called documentary

evidence." The term "statement" means a statement of a witness whose veracity has been tested by cross-examination and the term "Document" means a document genuineness of which has been established in accordance the law of evidence. It, therefore, emerges that the requirements of the law of maintenance have to be proved by leading evidence including statements of witnesses tested on the touchstone of cross-examination and documents veracity of which has been established.

22. The impugned order purports to have been passed in exercise of powers conferred upon the author thereof by Section 90(i) of the Act and Rule 193 of the Rules, which read as under:

> "**S. 90. Deductions from pay and allowances of officers** .—The following penal deductions may be made from the pay and allowances of an officer, that is to say-
>
> …. ….
>
> …. ….
>
> (i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child."
>
> "**Rule 193. Prescribed officer under sections 90(i) and 91(i)**.—The prescribed officer for the purposes of clause (i) of section 90 and clause (i) of section 91 shall be the Chief of the Army Staff or the officer commanding the Army."

23. It is seen that while Section 90(i) of the Act permits deductions from the pay and allowances of an army officer the sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or child, Rule 193 of the Rules says that the Chief of the Army Staff (COAS) or the officer commanding the Army are the prescribed officers referred to in Section 90(i) of the Act. Neither Section 90(i) nor Rule 193 provides the procedure to be adopted nor the circumstances entitling such deductions. At this stage we are inclined to concur with view of the '*Raksha Mantri's Committee of Experts*' Report-2015 (here-in-after referred to as, 'the Experts Committee') that Section 28 of the Act provides that the pay and allowances of persons subject to the Act are immune from attachment on direction of any Civil or Revenue Court

or Revenue Officer in satisfaction of any decree or enforceable order. It, therefore, follows that if a Civil Court allows maintenance to the wife/ child of a person subject to the Act and the person subject to the Act refuses to pay the amount of maintenance, his pay and allowances cannot be attached on the orders of the Civil Court in satisfaction of a decree or order of maintenance. This, perhaps, necessitated the insertion of Sections 90(i) and 91(i) in the Act where-under in such a situation on an award of maintenance passed by a competent Court and refusal of the person against whom such an award has been passed, to part with part of his pay and allowances in view of the protection provided under Section 28 of the Act, the Central Government (or any prescribed officer) can order payment of such maintenance if the wife/child approached the Government, and pursuant to such order the amount of maintenance then can be deducted from pay and allowances of the person for satisfaction of the award. It is, thus, clear that the authorities under the Act have no jurisdiction to adjudicate a claim for maintenance. This view is fortified by the fact that the Act and the Rules do not provide any mechanism and procedure for adjudication of claims of maintenance. It also needs a mention here that Section 191 of the Act empowers the Central Government to make rules for carrying into effect the provisions of the Act and sub-section (2) of Section 191 enumerates the subjects on which rules can be framed. However, subject of award of maintenance is conspicuous by its absence from the list of subjects in sub-section (2) of Section 191. This also indicates that the Legislature did not intend to empower the authorities under the Act to adjudicate claims for maintenance of wives/ children of the personnel subject to the Act. Section 191 of the Act is reproduced below:

> "191. Power to make rules .—(1) The Central Government may make rules1 for the purpose of carrying into effect the provisions of this Act.
>
> (2) Without prejudice to the generality of the power conferred by sub-section (1), the rules made there-under may provide for—
>
> (a) the removal, retirement, release or discharge from the service of persons subject to this Act;
>
> (b) the amount and incidence of fines to be imposed under section 89;
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> [* * *]

> (d) the assembly and procedure of Courts of inquiry, the recording of summaries of evidence and the administration of oaths or affirmations by such Courts;
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> (e) the convening and constituting of Courts-Martial and the appointment of prosecutors at trials by Courts-Martial;
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> (f) the adjournment, dissolution and sitting of Courts-Martial;
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> (g) the procedure to be observed in trials by Courts-Martial and the appearance of legal practitioners thereat;
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> (h) the confirmation, revision and annulment of, and petitions against, the findings and sentences of Courts-Martial;
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> (i) the carrying into effect of sentences of Courts-Martial;
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> (j) the forms of orders to be made under the provisions of this Act relating to Courts-Martial, transportation and imprisonment;
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> (k) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependants under section 99, and the due carrying out of such decisions;
>
> (l) the relative rank of the officers, junior commissioned officers, warrant officers, petty officers, and non-commissioned officers of the regular Army, Navy and Air Force when acting together;
>
> (m) any other matter directed by this Act to be prescribed."

24. Note 22 (a) to Section 90(i) of the Act (appearing in Manual of Military Law, Volume-II) also supports the view that deductions from pay and allowances of a person subject to the Act are permissible only to give effect to a decree for maintenance granted by a Civil Court. Note 22(a) is to the following effect:

> 22. Clause (i) - (a). This clause, like Clause (i) of AAs. 91, was enacted mainly in order to prevent financial hardship being caused to the wife or children by the provisions of AAs. 28 under which the pay and allowances of a person subject to AA cannot be attached in satisfaction of any decree of a civil court. In other words, if in a suit for maintenance or payment of alimony a civil court grants a decree in favour of the wife or children, the amount decreed can be deducted from the pay and allowances of a person and paid to the wife or children under this clause. Such being the intention, deductions should not, as a rule, be ordered under this clause or clause (i) of AAs. 91 except to give effect to a decree for maintenance granted by a civil court." (Emphasis supplied)

25. It would be of benefit to cull out here observations and recommendations of the Experts Committee. It observed as under:

> "It must however be placed on record here that such matrimonial disputes are essentially family/civil/private in nature and the Services do not have the wherewithal, capacity or ability to examine the veracity or truthfulness of the allegations, counter-allegations, replies and

averments made by both parties, which is basically a matter of evidence. It is thus imperative that such disputes must be dealt with by civil courts and authorities under the proper law of the land legislated for this specific purpose, that is, Section 125 of the Criminal Procedure Code, 1973, the relevant Marriage Acts, Protection of Women from Domestic Violence Act, 2005, etc. as the case and circumstances may be, rather than the employer getting into what may fundamentally be a civil dispute between a husband and his wife.

It is correct that defence personnel have the bounden duty to maintain their families but the exercise of looking into the aspect of whether there has actually been an abdication of such responsibility or duty and the truthfulness of allegations from both sides cannot be conducted by the defence services and hence for the purposes of maintenance it should be made clear that recourse to civil courts or statutory authorities is the correct procedure where evidence can be weighed for reaching the conclusion on the veracity of statements and the amount that would be appropriate in a particular case. Grant of maintenance by military authorities, therefore, should be an exception rather than the rule. However, the powers of the competent military authority must definitely be invoked for giving effect to orders of a civil court/statutory authority in cases where they may have granted maintenance but the individual concerned is not releasing the amount to the wife/family, for which such powers are apparently primarily meant. It may also be kept in mind that grant of maintenance by military authorities or rejection thereof may amount to endorsing the statements of the wife or the husband directed towards each other and may influence the proceedings under family law/civil law that may be underway in civil courts or which may arise in the future. Such grant of maintenance may also interfere or cause confusion in the totality of what is essentially a civil/private issue between two individuals.

It is also a cause of great concern that maintenance is being granted by way of non-speaking orders on which the Army HQ has also expressed anxiety. Orders that result in civil consequences and in taking away the pay and allowances of an officer or a soldier must be preceded by a minimum amount of inquiry on the allegations and counter-allegations and a proper speaking order by the competent authority explaining what went in his mind before granting maintenance and also explaining why was he considering the maintenance of a particular percentage as appropriate. An opportunity of hearing whenever sought by an individual also needs to be granted. Non-speaking and bald orders just conveying the grant of maintenance from an individual's pay and allowances cannot stand the scrutiny of law being opposed to the principles of natural justice. It must be put on record here that the Indian Air Force is passing such orders after rudimentary authentication of allegations (though all three Services are handicapped in this regard due to lack of any investigative powers) and by way of proper speaking orders while the Army is not, though the Army HQ has itself expressed concern on this aspect. It must also be realized that maintenance is meant to tide over a difficult financial situation and not to lead life on someone else's expense and hence the wife's capacity to earn must be kept in mind before passing any such orders. The question to be put is not whether the spouse is earning/employed or not, but whether she has the capacity or capability to earn or not. It is also brought to our notice that income tax on the total amount of maintenance awarded to the wife is being paid by the personnel from whom the pay and allowances are being deducted, the legality of this action also seems suspect and a clarification needs to be sought by the Services HQ.

> This is not to state that the Services should not interfere in exceptional circumstances. There still would be cases which may be difficult to categorize and extremely exceptional which may require extraordinary measures, but then the process must meet the above parameters since reaching such conclusions is not an easy matter and is a highly technical evidentiary route which is treated even by Courts, which are fully empowered to deal with the subject, gingerly and carefully."

26. In view of the above-cited observations, the Experts Committee made following recommendations:

> "In view of the above, the Committee recommends the following guidelines, to also be incorporated in the respective internal instructions/orders issued by the Services:
>
> a) We agree with the Army HQ that requests for grant of maintenance of marital and family disputes are essentially civil and private in nature and should be ordinarily dealt with by civil courts and statutory authorities under specific laws meant for the said purpose. The defence services do not have the wherewithal, capacity or ability to check the veracity of allegations and counter allegations in such disputes which are essentially based upon appreciation of evidence, a role that cannot be performed by the defence services but only by competent civil courts.
>
> b) Grant of maintenance by the defence services must be an exception and not the rule however the said powers can definitely be invoked in extraordinary circumstances or when an individual is not complying with the orders of a civil court for paying maintenance to his family under the garb of protection of Sections of the Service Acts which prescribe immunity from attachment of pay and allowances.
>
> c) Maintenance, wherever awarded, must be preceded by some kind of inquiry (not just based on interviews by the chain of command) related to the allegations and counter-allegations of the parties, and executed by way of a proper speaking order discussing all issues raised by both parties, as is being currently done by the Indian Air Force and also with an opportunity of hearing before the competent authority as is being done by the Air Force whenever sought. This issue has already been adjudicated upon by the Kolkata Bench of the Armed Forces Tribunal OA 13/2010 Maj Arjun Singh Tomar Vs GOC-in-C Eastern Command decided on 12.04.2011.
>
> d) Award of maintenance results in a grave form of civil consequences for an individual wherein a cut is imposed on his pay and allowances, and should be taken as a serious matter and not dealt with a routine manner. Moreover, it may not be initiated only based on the fact whether the spouse is working or not but on the fact whether she has the capacity to work or not. A situation cannot be allowed to prevail wherein an otherwise qualified/educated spouse stops working or refuses to work or refuses to take up a job in order to claim maintenance. Again, evidence to this effect is a subject matter which can only be dealt with by a civil court. Elements of sympathy cannot override law and this is not to suggest that the family should be rendered remediless but the correct recourse is to civil courts by invoking laws which are specially legislated to cater for such disputes by weighing evidence.

> e) The issue of deduction of income tax from the individual concerned even on the amount of maintenance released to the family needs clarification from the concerned authorities.
>
> f) All internal orders/instructions issued by the Defence Services dealing with maintenance may be suitably amended in light of the above and all cases pending for initial grant or review of maintenance and all cases/petitions arising in the future seeking grant of maintenance or review of maintenance by defence personnel may be dealt with in the view of the above guidelines without affecting the amount already released."

27. Considering the importance of the matter and the impact of the orders passed under Sections 90(i) and 91(i) of the Act on the personnel subject to the Act, ministry of Defence, Government of India, vide communication No. MoD ID No. 61 (A)/D(CMU)/2015 dated 08 August 2016, while agreeing with the recommendations of the Experts Committee requested all joint secretaries "to take immediate action on the recommendations and send an action taken report within 45 days of issue of this letter" and suitable instructions to be issued by the Head Quarter. The matter, it seems, is resting in peace in the files as nothing is shown to have been done in the matter and the authorities are still banking upon the procedure laid down in Army Order 02 of 2001. Relevant portion of this Army Order reads as under:

> Procedure for Processing Maintenance Cases:
>
> 4. The procedure given in the succeeding paragraphs will be followed scrupulously on receiving a request for maintenance allowance:-
>
> (a) While acknowledging the wife's request she will be asked to intimate by means of an affidavit whether she is employed, and if so, indicate her emoluments. She will also be asked to intimate details of any independent source of income and movable/immovable property she may possess and any income therefrom.
>
> (b) CDA (O)/PAO(OR) will be asked to intimate the latest details of pay and allowances of the individual concerned.
>
> (c) Details of wife/children will be checked from the unit record and in case of doubt cross checked/confirmed from Adjutant General's Branch/ Manpower (Policy and Planning) Directorate at Army Headquarters and Record Offices concerned.
>
> (d) Each case will be processed on its merits for which it will be imperative to ensure the following:-
>
> (i) The petitioner is the legally wedded wife of the person, or his legitimate/illegitimate child.
>
> (ii) The person complained against is neglecting to maintain the petitioner.

(iii) The wife is unable to maintain herself and dependent children.

(e) Having ascertained the above aspects, a show cause notice, duly signed by the 'A' staff officer of appropriate rank, for and on behalf of the competent authority to sanction maintenance allowance after having obtained the formal approval of the latter, will be served on the individual concerned under Sections 90(i) or 91(i) of the Army Act, as applicable, and reply of the individual will be considered by the authorities in chain commencing from the OC Unit. At any stage of processing if the individual has moved out permanently under the jurisdiction of a different Command, the entire correspondence will be transferred to the new command for further processing the case, from the stage the case already stands processed by the previous command. The case, duly analysed, will then be put up to the GOC-in-C for grant of maintenance allowance based on the total emoluments; as given in para (k) below. In a case where the individual is away on temporary duty/attachment, the parent unit of the individual should obtain his reply and submit the same with their recommendations to the concerned Headquarters Command.

(f) Maintenance allowance may not be granted to wife or/and children in case the petitioner has sufficient income/means to maintain herself and the children.

(g) In cases where it is clearly established that the wife is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent, she should be advised to take recourse to a court of law and should not normally be granted maintenance allowance.

(h) The amount of maintenance allowance sanctioned will not exceed 33% of the pay and allowances and will not be at a rate higher than the following:-

(i) 22% of the pay and allowances in respect of wife.

(ii) 5.5% of the pay and allowances in respect of each legitimate/illegitimate child dependent on the mother, who, too, is entitled to be maintained by the officer. However, the amount of maintenance allowance may be increased upto 25% of the pay and allowances, where the said child is dependent on the mother who is not entitled to be maintained by the officer.

(iii) 25% of the pay and allowances in respect of any legitimate/illegitimate child not dependent on the mother. In such an eventuality if the mother is also entitled to maintain allowance, it will be restricted to maximum 8% in her case.

(j) The maintenance allowance will be sanctioned from the date of application submitted by the claimant for maintenance.

(k) For the purpose of sub-para (h) above the expression pay and allowances includes all sums payable to a person in respect of his service other than allowances in lieu of lodging, rations, clothing, travelling and kit maintenance.

(l) To make provision for the payment of the arrears of the maintenance allowance, a maximum deduction upto 50% from the pay and allowances of the individual for that month will be permissible. It would also include the monthly allowance as sanctioned. Provision of Army Act section 94 need to be kept in view in the case of JCOs and OR, while realizing the arrears of maintenance allowance till liquidated.

> (m) The prescribed authority sanctioning the maintenance allowance initially shall quantify the allowance in terms of percentage of the pay and allowances which will obviate the requirement of using any fresh show cause notice and follow up procedure when a request for increase in maintenance allowance is made by the wife consequent to increase in pay and allowance of the individual. In old cases, for increase in maintenance allowance, a fresh show cause notice shall be served on the individual concerned.

28. Army Order 02 of 2001, we may note, was in existence when the Experts Committee submitted its recommendations in the year 2015. It did not even notice this Army Order, its approval apart. Learned counsel for the respondents have not been able to show legal sanctity of Army Order 02 of 2001. This Army Order is not in the nature of the rules framed under Section 191 of the Act nor is it shown to have been laid before the Parliament in terms of Section 193A of the Act. It runs contrary to the provisions of the Act in so far it says that authorities under the Act have concurrent jurisdiction alongwith the Civil Court to adjudicate claims for maintenance of the wives/ children of the persons subject to the Act (whereas the Act nowhere gives such power to the Army Authorities) and permits adjudication of such claims on the basis of affidavit of the claimants without giving an opportunity to the other side to cross-examine the deponent and to submit a counter affidavit. We may add that this Army Order, however, requires that the wife be asked to intimate by means of an affidavit whether she is employed, and if so, indicate her emoluments; to intimate details of any independent source of income and movable/immovable property she may possess and any income therefrom. It also enjoins the authority deciding the claim for maintenance to ascertain that (i) the petitioner is the legally wedded wife of the person, or his legitimate/illegitimate child; (ii) the person complained against is neglecting to maintain the petitioner; and (iii) the wife is unable to maintain herself and dependent children. Further, in case it is clearly established that the wife is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent, the wife should be advised to take recourse to a court of law and should not normally be granted maintenance allowance.

29. In *Major Arjun Singh Tomar Vs. General Officer Commanding-in- chief Eastern Command and Others, OA No. 13 of 2010, decided on 12 April 2011*, Kolkata Bench of this Tribunal was called upon to adjudicate an order directing deduction from applicant's pay allowances amount of maintenance to be paid to his wife and minor child. According to the applicant therein, the impugned order was passed without giving any opportunity of hearing to him, which was clear violation of the principles of natural justice; there was no logical basis in granting 22% of the salary of the applicant in favour of the respondent/wife towards maintenance; and the authority who passed the order had failed to take into consideration the fact that the applicant was to look after his widow mother and grandmother who were totally dependent on him. However, in the reply to the show cause notice, in para 6, the applicant had clearly stated that he was willing to pay maintenance allowance in favour of his son but had expressed apprehension that such money might be misutilised by the respondent/wife and for that he requested the authority to make proper safeguard in that respect. The impugned order was set aside by the Kolkata Bench with the following observations:

> "12. That apart, we have already pointed out that there is nothing on record to show that the husband was given an opportunity of hearing. We have also pointed out that the case of the husband/applicant is that the wife willfully deserted the husband and she has got income of her own. We do not know as to how the competent authority dealt with such claim in granting the maintenance allowance. Even if we presume that he rejected such contentions, even then the principle of natural justice demands that before rejecting such claim of the husband, he should be heard personally and reason should be assigned for rejecting such claim. It is the settled position of law that the authority exercising powers u/s 90(i) of the Army Act must act reasonably and fairly, apart from giving a reasonable opportunity to the army personnel concerned. There cannot be any two opinions that before the deduction is made from the salary of an Army Officer, an opportunity of hearing must be provided to him. To our surprise, we find that there is nothing on record to show that any attempt was made for giving opportunity of hearing to the applicant to establish his case. Under such circumstances, we have got no hesitation to hold that the impugned order, as passed by the competent authority in this respect, cannot be sustained being in violation of the principle of natural justice. As such, we hold that the said impugned order should be set aside. In our considered opinion, we think that the matter should be referred back to the respondent No.1 for taking a fresh decision by way of giving an opportunity of hearing to both the sides and to pass a reasoned order after such hearing is completed."

30. In similar circumstances in *Lt. Col. Kulwant Singh versus Union of India and others, OA No. 1077 of 2012, decided on 05 December 2012*, this Bench of the Tribunal ruled as under:

> "In any case, the maintenance allowance cannot be deducted from the pay and allowances of the petitioner without complying with the provisions contained in Section 90(i) of the Army Act, Rule 193 of Army Rules as well as in AO 2/2001 which gives a detailed procedure for disposing of the application of the wife for grant of maintenance allowance to her and the children. It is the responsibility of the competent authority to satisfy itself about the prima-facie genuineness of the complaint as submitted by the wife. It is imperative for the competent authority to ensure the following:-
>
> (i) The petitioner is the legally wedded wife of the person or his legitimate/illegitimate child.
> (ii) The person complained against is neglecting to maintain the petitioner.
> (iii) The wife is unable to maintain herself and dependent children.
>
> Para 4(a) of the Army Order No.2 of 2001 lays down that the wife will be asked to intimate by means of an affidavit whether she is employed, and if so, indicate her emoluments. She will also be asked to intimate details of any independent source of income/movable/immovable property she may possess and any income therefrom. At the time of hearing of the arguments the wife was asked as to whether she has filed any affidavit in support of the application, she filed the copy of the affidavit which has been taken on record as paper No.127 of the paper book. Thus, the affidavit of wife was before the authority. It is also clear from the record that in response to the show cause notice the petitioner had submitted a detailed reply containing as many as 48 paragraphs.
>
> There is nothing on record to show as to how this application and affidavit of the wife as well as the reply of the petitioner were dealt with by the competent authority and whether the competent authority passed any order sanctioning maintenance allowance as has been communicated to the petitioner. At the time of arguments the learned counsel for the respondents stated that there is no separate order of GOC-in-C granting maintenance and the only order is the letter dated 03.02.2012 filed by the petitioner. It is quite shocking that the husband has been saddled with the liability of paying 25% of his pay and allowances without there being any order of the competent authority. The letter dated 03.02.2012 can by no stretch of imagination be treated as an order and it is merely a communication of the fact that the GOC-in-C has accorded sanction for grant of maintenance as aforesaid.
>
> It is evident that the competent authorities dealing with the petitions regarding maintenance allowance are exercising quasi-judicial functions and they are supposed to dispose them of by passing a speaking order.
>
> Hon'ble the Supreme Court in the case of The Siemens Engineering & Manufacturing Co. of India Ltd. Vs. Union of India and another, (1976) 2SCC 981, has held as under:-
>
> "*6……If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper*

> *hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."*

31. In *Hav. Ravindra Singh versus Union of India and others, RA No. 12 of 2012 in OA No. 305 of 2010, decided on 17 April 2012*, Principal Bench of this Tribunal held as under:

> "6. We reiterate here that order of Civil Court will always have precedence over the order passed by the Army authorities under AO 2/2001. The Army order is always an administrative order whereas the maintenance order passed by the Civil Court is a judicial order, therefore, the Judicial order will have a precedence over the Army order. But for the purpose of resolving this kind of contradiction, we lay down the proposition that if such application for grant of maintenance allowance is moved before the Army authorities under AO 2/2001, the Army authorities shall always ask the party concerned that whether any matter is pending in the Civil Court or not, if matter is pending with the Civil Court, then Army authorities shall advise the party concerned to approach the Civil Court in terms of AO 2/2001. That will enable the Civil Court to extend the limit of maintenance allowance upto 22% of the salary to be paid to the wife and 5.5% for each child. This will avoid the confrontation between the Army order and Civil (court) order. However, whenever there is no matter pending before the Civil Court, then it will be open for the Army authorities to exercise their powers as per AO 2/2001 and pass the maintenance order. But in cases where matter is pending with the Civil Court then Army authorities will advise the party concerned to approach the Civil Court in terms of AO 2/2001. This proposition is not going to put ceiling on the powers of the Civil Court. The Civil Court has powers to grant maintenance allowance more than the limit fixed as per AO 2/2001 and even less the same. That is the discretion of the Civil Court."

32. Respondents have relied upon *Vivekananda Mondal versus Union of India and others-Mil L J 199 Cal 109* to contend that passing an order of maintenance by the Army Authorities does not amount to usurpation of or interference with the jurisdiction of the civil court.

33. With respect, we wish to differ with the observations made in the cited judgments as regards jurisdiction of the Army Authorities to adjudicate claims for maintenance and hold that the Army Authorities have no jurisdiction to adjudicate such claims and Sections 90(i) and 91(i) of the Act only empower the prescribed officers to pass an order directing deductions from the pay and allowances of a person subject to the Act,

only to give effect to a decree passed by a Court of competent jurisdiction granting maintenance in favour of the wife and or child of such person, not otherwise.

34. Reverting to the case on hand, the impugned order dated 08 February 2016, *Annexure A7*, reads as under:

"Headquarters
South Western Command
PIN 908546
C/o 56 APO

47201/47/A1 (DV-2) 08 Feb 2016
PCDA (O)
Golibar Maidan
Pune 411001

GRANT OF MAINTENANCE ALLOWANCE TO MRS VIBHUTI DUTTA W/O C-68741W MAJOR AMIT KUMAR MISHRA OF 33 ARMOURED DIVISION SIGNAL REGIMENT CDA A/C NO. 07/124/207769K

1.In exercise of the powers conferred under Section 90 (i) of the Army Act, 1950 (Act 46 of 1950, read with Army Rule 193, as amended, GOC-in-C South Western Command has accorded sanction for the deduction of 27.5% per month from the pay and allowances of IC-68741W Major Amit Kumar Mishra of 33 Inf Div Sig Regt (AREN) and its payment to Mrs.Vibhuti Datta (wife) and Miss Veronica (daughter) with effect from 27 Oct. 2014 (date of application) in the following manner:

(a)Mrs Vibhuti Dutta, wife	22% }	
	}	27.5%
(b)Miss Veronica, daughter	5.5% }	

2.The deduction of the maintenance allowance will continue till the marriage of the lady with the officer subsists or till her death whichever is earlier. In respect of daughter it will continue till she gets married or till her death. The deduction of maintenance allowance, including the arrears in any given month will not exceed more than 50% of the pay and allowances of the officer. The amount already paid by the officer to the lady to be adjusted accordingly.

3.The amount, as and when deducted, will be remitted at the expense of the officer directly to Mrs.Vibhuti Datta at the following address, or any other address she may intimate from time to time:-

Mrs.Vibhuti Datta W/o Maj AK Mishra D/o Dr.Raman Datta
#395/5, Urban Estate Kurukshetra, Haryana-136118.

4.The bank details of the lady are as under (cancelled cheque att)

Mrs.Vibhuti Datta State Bank of India, Sector-5, Kurukshetra
Account No.10139725460, Bank Code: 16253
IFSC Code: SBIN0001600

Sd/
(Sajal Thapa)

Lt. Col.
Offg Col A (DV)
For GOC-in-C"

35. In the first instance it needs to be pointed out that the impugned order, *Annexure A7*, does not even refer to the reply submitted by the applicant to the show cause notice, consideration and disposal of the contentions raised therein and affording an opportunity of hearing being provided to him apart. It also does not refer to any statements of the parties, affidavits of the parties, documents or any other materials which the prescribed officer might have considered. The order does not state that the fifth respondent is unable to maintain herself and the applicant has neglected or refused to maintain her inspite of being possessed of sufficient means. It also does not talk of liabilities, if any, of the applicant. It is also not discernible from the order how the magic figure 22% has been reached by the prescribed officer. Even the requirement of Army Order 02 of 2001 calling upon the fifth respondent to intimate by means of an affidavit whether she is employed, and if so, indicate her emoluments, has not been complied with. The order also does not give reasons in support of the conclusions arrived at. The impugned order, thus, besides being without jurisdiction, is violative of the principles of natural justice.

36. We may add here that when a decision adversely affects any person it is necessary to give reasons in support of such decision. Recording reasons serves many purposes. It spells out the mind of the maker of the order; informs the person affected of the circumstances that worked against him besides providing him the grounds to challenge it before the higher echelons; rules out, to a great extent, arbitrariness and unfairness; and facilitates the appellate/ revisional authority to know whether or not discretion has been used judiciously and without bias. Hon'ble Supreme Court in *Namit Sharma v. Union of India, 2012 (8) SCALE 593*, underlined the importance and necessity of recording reasons in support an administrative or quasi judicial order, as under:

> "97. It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the

> three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of *Siemens Engineering & Manufacturing Co. of India Ltd.* v. *Union of India* [(1976) 2 SCC 981]; and *Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota* v. *Shukla & Brothers* [(2010) 4 SCC 785*]."*

37. To impress that if a decision affects somebody prejudicially, it is imperative to give reasons, Hon'ble Apex Court in *Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496*, has ruled as under:

> 47. Summarising the above discussion, this Court holds:
> (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
>
> (b) A quasi-judicial authority must record reasons in support of its conclusions.
>
> (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
>
> (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
>
> (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
>
> (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
>
> (g) Reasons facilitate the process of judicial review by superior courts.
>
> (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.
>
> (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

> (j) Insistence on reason is a requirement for both judicial accountability and transparency.
>
> (k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
>
> (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.
>
> (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)
>
> (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija* v. *Spain EHRR*, at 562 para 29 and *Anya* v.*University of Oxford*, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,
> "adequate and intelligent reasons must be given for judicial decisions".
>
> (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

38. The official respondents have very loudly stated in their written response under the head "Brief facts" that marital discord between the applicant and fifth respondent came to light when the petition dated 24 October 2014 filed by respondent No. 5 in the Court of Judicial Magistrate, Kurukshetra was received in HQ South Western Command from IHQ of MoD (Army) vide their letter dated 13 November 2014, *Annexure R1*. Further, respondent No. 5 had also submitted an application, *Annexure R2*, to respondent No. 3 for grant of maintenance and other amenities and all the Commanders in chain, including Commanding Officer of the applicant, had concurrently recommended grant of maintenance to respondent No.5. However, the application stated to be submitted by respondent No. 5 and recommendations of the Commanders in chain have neither been referred to in the impugned order nor have these been made part of the record of this case nor shown to us during the course of hearing. Annexure R2, we note with surprise, is not an application submitted by respondent No. 5 to

respondent No. 3, rather it is a copy of the petition dated 27 October 2014 filed by respondent No. 5 before the jurisdictional Judicial Magistrate for grant of maintenance. Even the impugned order grants maintenance in favour of respondent No. 5 from the date of this very petition, viz. 27 October 2014 and, still more amazingly, respondent No. 5 in her written response has stated on affidavit that she met Commanding Officer of the applicant on 05 October 2014 and it was on the advice of said Commanding Officer that she had filed the petition for grant of maintenance before the jurisdictional Judicial Magistrate. From these circumstances the only conclusion that can be reached is that the applicant did not make an application before respondent No. 3 who has passed the impugned order only on the petition dated 27 October 2014 (Annexure R2/ A2) which was filed by respondent No. 5 before the jurisdictional Magistrate, that too without the recommendations of the Commanders in chain, in clear transgression of his jurisdiction.

39. Fact of the matter is that respondent No. 5 had filed a petition dated 27 October 2014, *Annexure A2/R2*, before Judicial Magistrate, Kurukshetra which was dismissed as withdrawn vide order dated 23 March 2015, *Annexure R5/1*, and immediately thereafter she filed another petition for grant of maintenance before Judicial Magistrate, Kurukshetra on 02 November 2015, notice of this petition was served upon the applicant through his Commanding Officer vide his letter dated 31 December 2015, *Annexure A6*, and the impugned order, *Annexure A7*, was passed on 08 February 2016 in full knowledge of pendency of second petition filed by respondent No. 5 before a Court of competent jurisdiction. That petition was withdrawn by respondent on 01 August 2016 (Annexure R5/3) after maintenance had been granted in her favour by respondent No. 3 on 08 February 2016. These circumstances clearly establish usurpation of jurisdiction of the jurisdictional Magistrate by respondent No. 3. It cannot be allowed to happen.

40. In view of what has been said and discussed here-in-above, the impugned order dated 08 February 2016, *Annexure A7*, in so far it relates to

respondent No. 5, is held to be without jurisdiction, illegal and unsustainable and, as such, is hereby quashed. Natural consequences shall follow. We may clarify that we have deliberately not discussed the merits of the case because such discussion would have prejudiced either of the parties if respondent No. 5 should decide to have recourse to a court of competent jurisdiction to claim maintenance.

41. In the facts and circumstance of the case parties are left to bear their own costs.

[**Lt. Gen. Munish Sibal**]
Member (A)

[**Justice M. S. Chauhan**]
Member (J)

Chandimandir
31 July 2018
'OKG'

Approved for Reporting Yes/ No