

# State Of Uttarakhand And Another ... vs Neeru Garg And Another on 26 May, 2026

2026:UHC:4183-DB

Approved For Reporting

IN THE HIGH COURT OF UTTARAKHAND  
AT NAINITAL  
HON'BLE THE CHIEF JUSTICE SRI MANOJ KUMAR GUPTA  
AND

HON'BLE SRI JUSTICE SUBHASH UPADHYAY

DATED: 26.05.2026

WRIT PETITION (S/B) No. 305 OF 2026

State of Uttarakhand and another .....Petitioners  
Versus  
Neeru Garg and another. ...Respondents

&

WRIT PETITION (S/B) No. 306 OF 2026

State of Uttarakhand and another. ....Petitioners  
Versus  
Arun Mohan Joshi and another. ...Respondents

Counsel for the petitioners/State : Sri S.N. Babulkar, learned Advocate General for the State of Uttarakhand, Sri Sukumar Pattijohsi, Senior Advocate (through V.C.), , Sri Amrendra Pratap Singh, learned Additional Advocate General, Sri Anil Kaushik, learned Senior Counsel, Sri Kaushal Pati Gautam, learned AAG, Sri Rajeev Singh Bisht, learned Deputy Advocate General, Sri P.S. Bisht, Sri B.P.S. Mer and Sri Gajendra Tripathi, learned Standing Counsels, Ms. Vanshika Singh, Sri Mrinal Sharma, Sri Harsh Dahiya and Ms. Snehpreet Kaur, Advocate.

Counsel for the respondents : Sri Kapil Sibbal, learned Senior Advocate assisted by Sri Nikhil Singhvi (through V.C.), Ms. Sumedha Ray Sarkar, Sri Vipul Sharma and Ms. Khushboo Tiwari Sharma, learned counsel for the caveator.  
Sri Anil Kaushik, learned Additional Solicitor General (through V.C.) with Mr. Lalit Sharma, learned Deputy Solicitor General, Sri Pankaj Chaturvedi and Sri Manoj Kumar, learned Standing Counsels for the Union of India.

JUDGMENT :

(Per Sri Manoj Kumar Gupta, C.J.)

1. These writ petitions arise out of the same set of facts and challenge a common order, therefore, were heard together and are being decided by this common order.

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2. Respondent No.1, Neeru Garg in WPSB No. 305 of 2026 is an officer of the Indian Police Service of the 2005 Batch of the Uttarakhand Cadre. Pursuant to a request made by the Union of India for nomination of IPS officer for central deputation, the State of Uttarakhand nominated Neeru Garg vide letter dated 16.02.2026. Thereafter, the Ministry of Home Affairs, with the approval of the Appointment Committee of the Cabinet, appointed Neeru Garg as Deputy Inspector General in Indo-Tibetan Boarder Police (ITBP) vide appointment letter dated 05.03.2026. Consequent thereto, she was relieved by the petitioner-State vide order No. 376722 dated 06.03.2026. Neeru Garg assailed the order of her deputation in ITBP vide appointment letter dated 05.03.2026 and the relieving order dated 06.03.2026 by filing WPMS No. 139 of 2026 before this Court. The said writ petition was, however, withdrawn on 23.03.2026 with liberty to approach the Central Administrative Tribunal. Thereafter, she challenged the order of her deputation in ITBP dated 05.03.2026 and the relieving order dated 06.03.2026 by filing O.A. No. 1181 of 2026 titled 'Neeru Garg vs. Union of India and others' before the Central Administrative Tribunal, Principal Bench, New Delhi.

3. Similarly, respondent No. 1, Sri Arun Mohan Joshi in WPSB No. 306 of 2026 is also an IPS officer of the Uttarakhand Cadre of the Batch-2006. On the request of the Union of India for nomination of IPS officers for central deputation, the State of Uttarakhand nominated him vide its letter dated 16.02.2026. In 2026:UHC:4183-DB his case also, the Ministry of Home Affairs, with the approval of the Appointment Committee of the Cabinet, appointed him as Deputy Inspector General in the Boarder Security Force vide appointment letter dated 05.03.2026 and in consequence of which, he was relieved by the State of Uttarakhand for joining the new assignment vide relieving order dated 06.03.2026. He, initially, challenged his appointment in BSF vide appointment letter dated 05.03.2026 and the relieving order dated 06.03.2026 by filing WPSB No. 138 of 2026 titled 'Arun Mohan Joshi vs. Union of India' before this Court. Subsequently, the writ petition was got withdrawn on 23.03.2026 with liberty to approach the Central Administrative Tribunal. He, thereafter, filed O.A. No. 1180 of 2026 titled 'Arun Mohan Joshi vs. Union of India and others' before the Central Administrative Tribunal, Principal Bench, New Delhi assailing the order of his appointment dated 05.03.2026 and the relieving order dated 06.03.2026.

4. In both the Original Applications, filed before the Tribunal, a common interim order was passed by the Tribunal on 07.04.2026 in favour of the original applicants and, thereby, the operation and implementation of the appointment orders dated 05.03.2026 and the relieving orders dated

06.03.2026 and all consequential actions pursuant thereto were stayed till the next date of hearing. While passing the interim order, the Tribunal directed the State of Uttarakhand to file a detailed counter-affidavit and place on record all relevant documents to enable it to examine 2026:UHC:4183-DB its contentions. Relevant portion of the order of the Tribunal dated 07.04.2026 is extracted below:-

"22. Accordingly, in order to enable this Tribunal to effectively adjudicate upon these aspects, a comprehensive and detailed counter affidavit is required to be filed by the State of Uttarakhand, addressing the applicability and interpretation of Rule 6(2) and its proviso, the relevant provisions of the Tenure Policy, and the rules relating to pay protection, along with all supporting records and justifications for the impugned action.

23. In these circumstances, we are satisfied that the applicant has been able to make out a prima facie case for grant of interim relief. The balance of convenience also lies in favour of the applicant, as any irreparable prejudice caused to her in terms of loss of status and service position may not be adequately compensated at a later stage, whereas no serious prejudice would be caused to the respondents if the operation of the impugned orders is kept in abeyance for the time being.

24. Accordingly, as an interim measure, it is directed that the operation and implementation of the impugned order/letter dated 05.03.2026, the relieving/discharge order dated 06.03.2026, and all consequential actions pursuant thereto shall remain stayed till the next date of hearing.

25. The respondent State of Uttarakhand is directed to file a detailed counter affidavit/reply, placing on record all relevant documents, including those pertaining to the alleged revocation of debarment, empanelment considerations, and applicable policy provisions, within a period of four weeks. Rejoinder, if any, be filed within two weeks thereafter.

26. List the matter for further consideration after completion of pleadings on 07.05.2026."

5. It seems that the Union of India, aggrieved by the interim order passed by the Tribunal, approached the High Court of Delhi by filing two separate writ petitions being WP(c) Nos. 6182 of 2026 and 6183 of 2026. However, the said writ petitions were withdrawn on 06.05.2026, with liberty to apply for vacation of the 2026:UHC:4183-DB interim order by moving appropriate application before the Tribunal.

6. On 07.05.2026, the very next day, the matter again came-up before the Tribunal, but by that time, stay vacation application was not filed. However, counter-affidavit was already on record. The Tribunal, therefore, considering the request of the original applicants, granted three weeks' time to them to file rejoinder-affidavit(s) and extended the interim order till further orders. Thereafter, in

pursuance of the liberty obtained from the High Court to apply for vacation of the interim order, the Union of India as well as the State of Uttarakhand filed separate applications for vacation of the interim order, or, in the alternative, to hear the Original Applications finally. It appears that during the interregnum, the applicants initiated contempt proceedings before the Tribunal against the officials of the State of Uttarakhand alleging non-compliance of the interim order passed by the Tribunal. On 22.05.2026, the Tribunal passed the impugned order, whereby it granted two weeks' time to the applicants to file reply to the Misc. Applications filed by the petitioners and the Union of India seeking vacation of the interim order. On the same date, by same common order passed on the contempt petition, the Tribunal directed the officials of the State of Uttarakhand to report compliance of the interim order passed by it within two days, failing which the Tribunal would be constrained to draw proceedings against them under the provisions of the Contempt of 2026:UHC:4183-DB Courts Act, 1971. Accordingly, the contempt petitions were directed to be listed on 26.05.2026 at 03:00 P.M. Aggrieved by the said part of the order, the present writ petitions have been filed by the State of Uttarakhand and the Director General of Police, State of Uttarakhand, Dehradun.

7. Sri S.N. Babulkar, learned Advocate General for the State of Uttarakhand and Sri Sukumar Pattijohsi, Senior Advocate (through V.C.) submit that the interim order was passed by the Tribunal on 07.04.2026 on basis of the ex parte version of the original applicants. By the same order, the State of Uttarakhand was directed to file detailed counter-affidavit annexing therewith all relevant documents regarding revocation of the debarment of the Original Applications, empanelment considerations, and applicable policy provisions, and the matter was fixed for 07.05.2026 for further consideration. On 07.05.2026, when the matter was taken-up by the Tribunal, the counter-affidavit, on behalf of the petitioners, was already on record. On the said date, the Tribunal granted time to the applicants to file rejoinder-affidavit and extended the interim order till further orders. Thereafter, separate applications were filed for vacation of the interim order being Misc. Application Nos. 2597 / 2026 and 2566 / 2026 by the State of Uttarakhand and Misc. Application Nos. 2681/2026 and 2682 by the Union of India. However, on the next date, i.e. 22.05.2026, the Tribunal, instead of deciding the Stay Vacation Applications, has proceeded to grant two weeks' time to the applicants to reply 2026:UHC:4183-DB to the Stay Vacation Application. At the same time, it also directed the petitioners to report compliance of its interim order within two days under threat of initiation of contempt proceedings. It is urged that once the petitioners have applied for vacation of the stay order and the Tribunal had granted time to the applicants to reply to the same, it erred in directing the petitioners to ensure compliance of the interim order within two days, i.e. even before the Stay Vacation Application is taken-up for consideration and, thereby, rendering the same infructuous. Reliance has been placed on the judgments of State of J And K vs. Mohd. Yaqoob Khan and others, (1992) 4 SCC 167; Modern Food Industries (India) Ltd and another vs. Sachidanand Dass and another , 1995 Supp (4) SCC 465 and; Vinay Kumar Pandey vs. Committee of Management Shri Gandhi Inter College & another (Civil Appeal No. 4007-4008 of 2020, decided on 08.12.2020) in support of the contention that the Stay Vacation Application should have been disposed of first before insisting upon compliance of the interim order.

8. In rebuttal, Sri Kapil Sibbal, learned Senior Advocate assisted by Sri Nikhil Singhvi (through V.C.), Ms. Sumedha Ray Sarkar, Sri Vipul Sharma and Ms. Khushboo Tiwari Sharma, learned

counsel for the original applicants, submitted that the Union of India had approached the Delhi High Court assailing the interim order passed by the Tribunal, but it could not succeed in getting any relief and, thereafter, the petitions were withdrawn.

2026:UHC:4183-DB Learned Senior Counsel has invited our attention towards the order of the Tribunal dated 07.05.2026, whereby the Tribunal, while granting three weeks' time to the original applicants to file rejoinder-affidavit, also noted in its order passed on the contempt petition that the State of Uttarakhand and the Union of India have sought time to report compliance of the interim order. He submits that once the respondents have sought time before the Tribunal to comply with the interim order, they cannot challenge the order. He has also placed reliance on the Constitution Bench judgment of the Supreme Court in *L. Chandra Kumar vs. Union of India and others*, (1997) 3 SCC 261, and another judgment in *Union of India vs. Alapan Bandyopadhyay*, (2022) 3 SCC 133, in contending that the order passed by the Principal Bench, Central Administrative Tribunal, New Delhi cannot be assailed before this Court. The contention is that the impugned order could be subjected to scrutiny only before the Division Bench of the Delhi High Court, as the Tribunal, which has passed the order falls within its territorial jurisdiction.

9. Sri S.N. Babulkar, learned Advocate General for the State of Uttarakhand and Sri Sukumar Pattijohsi, Senior Advocate (through V.C.) countering the submissions relating to lack of jurisdiction on part of this Court to examine the validity of the order passed by the Principal Bench, Central Administrative Tribunal, New Delhi, submitted that the major part of cause of action had arisen within the territorial jurisdiction of this Court.

2026:UHC:4183-DB The original applicants are IPS officers of Uttarakhand cadre and their names for central deputation was nominated by the State of Uttarakhand and based on that only, the original applicants were given central deputation. It is submitted that the interim order passed by the Tribunal would also have the functional operation in the State of Uttarakhand, where, if the interim order is implemented, the original applicants would have to be posted. It is further submitted that the original applicants had approached the Principal Bench, Central Administrative Tribunal, New Delhi only because the said Bench also exercises the jurisdiction over the cases arising out of or from any place within the State of Uttarakhand by virtue of the Notification dated 18.07.2023 under Section 18 of the Administrative Tribunals Act, 1985. The observations made by the Constitution Bench in *L. Chandra Kumar* (supra), have to be construed accordingly, otherwise, it would lead to incongruous consequences. Learned counsel have also tried to distinguish the case of *Alapan Bandyopadhyay* (supra) by contending that it arose out of an order passed under Section 25 of the Administrative Tribunals Act (for short 'the Act')-the power of Chairman to transfer cases from one Bench to another, which was an issue distinct from the cause of action, or part thereof, for determining territorial jurisdiction. It is submitted that the Supreme Court, in SLP No. 530 of 2022 *Union of India vs. Sanjiv Chaturvedi and others* doubted the correctness of *Alapan Bandyopadhyay* (supra) and has referred the issue relating to 2026:UHC:4183-DB territorial jurisdiction for consideration by a Larger Bench. Although the reference is still pending, but judgment of the Court dated 23.10.2021 has not been stayed.

10. Before proceeding to examine the merits of the case, as the jurisdiction of this Court to entertain the writ petition has been questioned, it would be appropriate to first consider the said issue.

11. For the said purpose, it would be necessary to examine some of the provisions of the Administrative Tribunals Act, 1985. Section 4 of the Act empowers the Central Government to establish, by notification, an Administrative Tribunal to be known as the Central Administrative Tribunal to exercise the jurisdiction, powers and authority conferred on the Central Administrative Tribunal by or under this Act. Sub-section (2) empowers the Central Government, on receipt of a request from the State Government to establish, by notification, an Administrative Tribunal for that particular State. Under sub-section (3), two or more States may enter into an agreement that the same Administrative Tribunal shall be the Administrative Tribunal for each of the States participating in the agreement. Section 5 provides for composition of Tribunals and Benches thereof and it specifically provides that the Benches of the Tribunal shall have the same jurisdiction, powers and authority of the Tribunal. Section 18 of the Act provides for the manner in which the distribution of business is to be done amongst the various benches. It reads thus:-

2026:UHC:4183-DB "18. Distribution of business amongst the Benches.--(1) Where [any Benches of a Tribunal are constituted], the appropriate Government may, from time to time, by notification, make provisions as to the distribution of the business of the Tribunal amongst the [\*\*\*] Benches and specify the matters which may be dealt with by each Bench.

(2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench of a Tribunal, the decision of the Chairman thereon shall be final. Explanation.--For the removal of doubts, it is hereby declared that the expression "matters" includes applications under section 19."

12. In exercise of the aforesaid power, the Ministry of Personnel, Public Grievances and Pensions, by Notification dated 18.07.2023, extended the territorial jurisdiction of the Principal Bench, Central Administrative Tribunal, New Delhi to the State of Uttarakhand. It is pertinent to note that before the said arrangement was made, the matter arising out of the State of Uttarakhand were being entertained by the Circuit Bench of the Allahabad Bench of the Central Administrative Tribunal. Thus, it is by virtue of the Notification dated 18.07.2023, the Principal Bench, Central Administrative Tribunal, New Delhi came to be vested with the jurisdiction over matters arising from the State of Uttarakhand. Consequently, the original applications came to be filed before the Principal Bench, Central Administrative Tribunal, New Delhi.

13. In *Alchemist Ltd. and another vs. State Bank of Sikkim and others*, (2007) 11 SCC 335, the territorial jurisdiction of the High Court in respect of powers conferred upon them under Article 226 of the Constitution fell for consideration.

2026:UHC:4183-DB The Supreme Court, after tracing out the legislative history of the constitutional provisions and the amendments made in Article 226, observed as follows:-

"16. It may be stated that by the Constitution (Forty- second Amendment) Act, 1976, Clause (1-A) was renumbered as Clause (2). The underlying object of amendment was expressed in the following words:

"Under the existing Article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend Article 226 so that when any relief is sought against any Government, authority or person for any action taken, the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue appropriate directions, orders or writs".

(emphasis supplied) The effect of the amendment was that the accrual of cause of action was made an additional ground to confer jurisdiction on a High Court under Article 226 of the Constitution.

17. As Joint Committee observed:

"This clause would enable the High Court within whose jurisdiction the cause of action arises to issue directions, orders or writs to any Government, authority or person, notwithstanding that the seat of such Government or authority or the residence of such person is outside the territorial jurisdiction of the High Court. The Committee feels that the High Court within whose jurisdiction the cause of action arises in part only should also be vested with such jurisdiction".

18. The legislative history of the constitutional provisions, therefore, makes it clear that after 1963, cause of action is relevant and germane and a writ petition can be instituted in a High Court within the territorial jurisdiction of which cause of action in whole or in part arises."

14. It is well settled that after the 1963 amendment introducing Article 226(2), a High Court can exercise writ jurisdiction if the cause of action arises wholly or partly within its territorial limits. However, the question, which confronts the 2026:UHC:4183-DB Court, is whether the observations of the Supreme Court in L. Chandra Kumar (supra) that "All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls" would oust the jurisdiction of this Court, though undisputedly, if not whole, major part of the cause of action had arisen within the territorial limits of this High Court.

15. The Constitution Bench in L. Chandra Kumar (supra) was dealing with the power of judicial review of the High Courts under Articles 226 and 227 of the Constitution and of the Supreme Court under Article 32 of the Constitution and whether these powers could be excluded by any other constitutional or statutory provisions. It held that the power of judicial review of the High Courts and the Supreme Court is part of basic structure of the Constitution and cannot be whittled down. Accordingly, clause 2(d) of Article 323-A and clause 3(d) of Article 323-B of the Constitution to the extent they exclude the jurisdiction of the High Courts and the Supreme Court have been held to be unconstitutional being against the basic structure of the Constitution. While so holding, the

Constitution Bench stated that all decisions of the Tribunal would be subject to scrutiny before the Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. There was no issue relating to territorial jurisdiction of the High Court and, therefore, the aforesaid observations have to be understood 2026:UHC:4183-DB accordingly. Paragraph-99 of the said judgment, where the aforestated proposition of law has been stated, is as follows:-

"99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

(emphasis supplied)

16. In *Union of India vs. Alapan Bandyopadhyay* (supra), the Supreme Court re-affirmed the aforesaid proposition of law enunciated by the Constitution Bench. The said case related to the order passed by the Principal Bench, Central Administrative Tribunal, New Delhi under Section 25 of the Administrative Tribunals Act, 1985, which confers power in favour of Chairman to transfer cases from one Bench to another. Section 25 of the Administrative Tribunals Act, 1985 is as follows:-

2026:UHC:4183-DB "[25. Power of Chairman to transfer cases from one Bench to another- On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.]"

17. The High Court of Calcutta had exercised power of judicial review in respect of the order passed by the Chairman sitting on the Principal Bench, Central Administrative Tribunal, New Delhi transferring the case from the Central Administrative Tribunal, Calcutta to Principal Bench, Central Administrative Tribunal, New Delhi. Before the Supreme Court, the question arose whether the High Court of Calcutta would have jurisdiction to examine the validity of the order passed by the Chairman sitting at Principal Bench, New Delhi transferring the case to another Bench in exercise of power under Section 25 of the Act. The Supreme Court noted that in respect of the order passed by the Chairman sitting at the Principal Bench, New Delhi under Section 25 of the Act, the jurisdictional High Court would be the High Court of Delhi and, therefore, the Calcutta High Court had wrongly entertained the writ petition.

18. The power conferred on the Chairman to transfer cases from one Bench to another under Section 25 of the Act is more in the nature of administrative power. In case of exercise of such power altogether different considerations weigh in transferring the cases and not merits of the case.

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19. The Supreme Court was conscious of the fact that in a case arising out of the order passed under Section 25 of the Act, there could be instances where the parties may be residing within the territorial jurisdiction of different High Courts and thus, in case any other High Court is held to be the jurisdictional High Court, it would lead to uncertainty and confusion. The observations made in this regard in Paragraph-40 are as follows:

"40. The law thus declared by the Constitution Bench cannot be revisited by a Bench of lesser quorum or for that matter by the High Courts by looking into the bundle of facts to ascertain whether they would confer territorial jurisdiction to the High Court within the ambit of Article 226(2) of the Constitution. We are of the considered view that taking another view would undoubtedly result in indefiniteness and multiplicity in the matter of jurisdiction in situations when a decision passed under Section 25 of the Act is to be called in question especially in cases involving multiple parties residing within the jurisdiction of different High Courts albeit aggrieved by one common order passed by the Chairman at the Principal Bench at New Delhi."

20. The final lines in Paragraph 39- "This unambiguous exposition of law has to be followed scrupulously while deciding the jurisdictional High Court for the purpose of bringing in challenge against an order of transfer of an original application from one Bench of Tribunal to another Bench in the invocation of Section 25 of the Act" are crucial. The invocation of power under Section 25 of the Act and its actual exercise, is based on entirely different considerations, independent of the cause of action which led to the filing of the original applications before any particular Bench of the Tribunal. Therefore, in our opinion, the judgment of the Supreme Court in Alapan Bandyopadhyay (supra) should be read in the 2026:UHC:4183-DB factual matrix of that case and in relation to cases arising out of exercise of powers under Section 25 of the Act. It is noteworthy that in SLP No. 530/2022 arising out of the proceedings under Section 25 of the Act, where the High Court other than Delhi High Court had exercised the power of review, the Supreme Court has referred to

question relating to the issue of territorial jurisdiction of the concerned High Court to decide a challenge to an order passed by the Chairman, Central Administrative Tribunal, Principal Bench, New Delhi to a Larger Bench.

21. In the present case, it is not disputed that initially, the original applicants have themselves approached this Court by means of separate writ petitions as the cause of action had arisen within the territorial jurisdiction of this Court. Subsequently, when they were permitted to approach the Tribunal, they had to file the original applications before the Principal Bench, Central Administrative Tribunal, New Delhi as the Principal Bench, Central Administrative Tribunal, New Delhi also exercises the jurisdiction in respect of cases arising out of the territories of Uttarakhand by virtue of Notification dated 18.07.2023.

22. In view of the above discussion, we overrule the objection relating to jurisdiction.

23. We now proceed to examine the submissions made on merits.

24. In State of J And K vs. Mohd. Yaqoob Khan and others, (1992) 4 SCC 167, the Supreme Court held that where 2026:UHC:4183-DB the stay vacation application remains undisposed of, the Court ought not to compel a party to ensure compliance of its interim order. The relevant observations are as follows:-

"6. We do not agree. The scope of a contempt proceeding is very different from that of the pending main case yet to be heard and disposed of (in future). Besides, the respondents in a pending case are at a disadvantage if they are called upon to meet the merits of the claim in a contempt proceeding at the risk of being punished. It is, therefore, not right to suggest that it should be assumed that the initial order of stay got confirmed by the subsequent orders passed in the contempt matter.

7. We, therefore, hold that the High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being punished for contempt. Only after disposing it of, the other case should have been taken up."

(emphasis supplied)

25. Similarly, in Modern Food Industries (India) Ltd. and another vs. Sachidanand Dass and another, 1995 Supp (4) SCC 465, where an appeal was preferred before the Division Bench against the order of the Single Judge and the High Court sought to proceed with the contempt first, without disposing of the appeal and the stay application filed in appeal, the Supreme Court has observed as follows:-

"4. Before the High Court, appellants urged that before any contempt proceedings could be initiated, it was necessary and appropriate for the Division Bench to examine the prayer for stay, or else, the appeal itself might become infructuous. This did not commend itself to the High Court which sought to proceed with the contempt

first. We are afraid, the course adopted by the High Court does not commend itself as proper. If, without considering the prayer for stay, obedience to the Single Judge's order was insisted upon at the pain of committal for contempt, the appellants may find, as has now happened, the very purpose of appeal and the prayer for interlocutory stay infructuous. It is true that a mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying the order under appeal and that any compliance with the learned Single Judge's 2026:UHC:4183-DB order would be subject to the final result of the appeal. But then the changes brought about in the interregnum in obedience of the order under appeal might themselves be a cause and source of prejudice. Wherever the order whose disobedience is complained about is appealed against and stay of its operation is pending before the Court, it will be appropriate to take up for consideration the prayer for stay either earlier or at least simultaneously with the complaint for contempt. To keep the prayer for stay stand-by and to insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice. This is the view taken in State of J & K v. Mohd. Yaqoob Khan."

(emphasis supplied)

26. The same proposition of law has been reiterated in Vinay Kumar Pandey (supra) by the Supreme Court in its order dated 08.12.2020, which is as follows:-

"Without going into the issue of maintainability of the appeal before the Division Bench of the High Court, the basic facts which emerge from the record are that the contempt alleged is of non-compliance of the order dated 15.07.2019 which itself was an ad-interim order and appropriate application seeking vacation of that order is still pending consideration before the High Court.

In the circumstances, unless and until the submission raised in that application seeking vacation is adequately addressed and rejected, no case for initiation of contempt proceedings was made out."

(emphasis supplied)

27. In the present case also, the petitioners had already filed their counter-affidavit. On 07.05.2026, the Tribunal granted time to the applicants to file rejoinder-affidavit and extended the interim order. Since interim order was being extended, the State and the Union sought further time to report compliance. The said fact, in itself, cannot be held to debar the petitioners to seek adjudication of their Stay Vacation Applications before being compelled to comply with the interim order.

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28. As already noticed, while passing the interim order, the Tribunal considered it necessary to call for a detailed counter- affidavit along with relevant records from the State to enable it to examine various contentions raised on its behalf. By the next date, i.e. 07.05.2026, the State had already filed its counter- affidavit and its version was on record. However, on the said date, i.e. 07.05.2026, the Tribunal granted time to the original applicants to file rejoinder-affidavit. On the next date, i.e. 22.05.2026, although stay vacation application was also on record, time was granted to the original applicants to file reply to the stay vacation application and complete the pleadings. At the same time, direction was issued to the State to report compliance of the interim order within two days. Once the State's version was on record and request was pending for vacation of the interim order, in our opinion, there was no justification on the part of the Tribunal to adjourn the matter to a future date while simultaneously directing compliance of its interim order within two days, thereby, virtually rendering the Stay Vacation Application infructuous.

29. In view of the aforesaid, we are of the considered opinion that the course adopted by the Tribunal is legally unsustainable. The Tribunal ought to have decided the stay vacation application first before directing the petitioners to comply with the interim order. Accordingly, the order of the Tribunal dated 22.05.2026, to the extent it directs the petitioners to report compliance within two days failing which contempt proceedings 2026:UHC:4183-DB would be initiated, is hereby quashed. The proceedings of the contempt petitions shall remain adjourned until the Stay Vacation Applications filed by the petitioners are considered and decided.

30. Accordingly, the writ petitions stand disposed of.

31. Pending application, if any, also stands disposed of accordingly.

\_\_\_\_\_ MANOJ KUMAR GUPTA, C.J.

\_\_\_\_\_ SUBHASH UPADHYAY, J.

Dt: 26th May, 2026  
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