SUPREME COURT OF INDIA

STATE OF PUNJAB

Vs.

VK KHĐHANNA & ORS.

30/11/2000

(U.C.Banerjee, M.J.Rao)

Appeal (civil) 6963 2000

JUDGMENT

BANERJEE, J.

Leave granted. The concept of fairness in administrative action has been the subject matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependant upon the facts and circumstances of each matter pending scrutiny before the Court and no straight jacket formula can be evolved therefor. As a matter of fact, fairness is synonymous with reasonableness: And on the issue of ascertainment of meaning of reasonableness, common English parlance referred to as what is in contemplation of an ordinary man of prudence similarly placed - it is the appreciation of this common mans perception in its proper perspective which would prompt the Court to determine the situation as to whether the same is otherwise reasonable or not. It is worthwhile to recapitulate that in a democratic polity, the verdict of the people determines the continuance of an elected Government a negative trend in the elections brings forth a change in the Government it is on this formula that one dominant political party overturns another dominant political party and thereby places itself at the helm of the affairs in the matter of the formation of a new Government after the election. The dispute in the appeals pertain to the last phase of the earlier Government and the first phase of the present Government in the State of Punjab: Whereas the former Chief Secretary of the State of Punjab upon obtaining approval from the then Chief Minister of Punjab initiated proceedings against two senior colleagues of his in the Punjab State Administration but with the new induction of Shri Prakash Singh Badal as the Chief Minister of Punjab, not only the Chief Secretary had to walk out of the administrative building but a number seventeen officer in the hierarchy of officers of Indian Administrative Service and working in the State of Punjab as a bureaucrat, was placed as the Chief Secretary and within a period of 10 days of his entry at the Secretariat, a notification was issued, though with the authority and consent of the Chief Minister pertaining to cancellation of two earlier notifications initiating a Central Bureau of Investigation (CBI) enquiry - The charges being acquisition of assets much beyond the known source of income and grant of sanction of a Government plot to Punjab Cricket Control Board for the purposes of Stadium at Mohali. A worthwhile recapitulation thus depict that a Government servant in the Indian Administrative Service being charged with acquiring assets beyond the known source of income and while one particular Government initiates an enquiry against such an acquisition, the other Government within 10 days of its installation withdraws the

notification is this fair? The High Court decried it and attributed it to be a motive improper and malafide and hence the appeal before this Court. Whereas fairness is synonymous with reasonableness bias stands included within the attributes and broader purview of the word malice which in common acceptation means and implies spite or ill will. One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a malafide move which results in the miscarriage of justice (see in this context Kumaon Mandal Vikas Nigam v. Girija Shankar Pant & Ors: JT 2000 Suppl.II 206). In almost all legal enquiries, intention as distinguished from motive is the all important factor and in common parlance a malicious act stands equated with an intentional act without just cause or excuse. In the case of Jones Brothers (Hunstanton) Ld. v. Stevens (1955 1 Q.B. 275) the Court of Appeal has stated upon reliance on the decision of Lumley v. Gye (2 E & B. 216) as below: For this purpose maliciously means no more than knowingly. This was distinctly laid down in Lumley v. Gye, where Crompton, J. said that it was clear that a person who wrongfully and maliciously, or, which is the same thing, with notice, interrupts the relation of master and servant by harbouring and keeping the servant after he has quitted his master during his period of service commits a wrongful act for which is responsible in law. Malice in law means the doing of a wrongful act intentionally without just cause or excuse: Bromage v. Prosser (1825 1 C. & P.673) Intentionally refers to the doing of the act; it does not mean that the defendant meant to be spiteful, though sometimes, as, for instance to rebut a plea of privilege in defamation, malice in fact has to be proved.

In Girija Shankar Pants case (supra) this Court having regard to the changing structure of the society stated that the modernisation of the society with the passage of time, has its due impact on the concept of bias as well. Tracing the test of real likelihood and reasonable suspicion, reliance was placed in the decision in the case of Parthasarthy (S. Parthasarthy v. State of Andhra Pradesh: 1974 (3) SCC 459) wherein Mathew, J. observed: 16. The tests of real likelihood and reasonable suspicion are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (see per Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and Others, etc. : (1968) 3 WLR 694 at 707). We should not, however, be understood to deny that the Court might with greater propriety apply the reasonable suspicion test in criminal or in proceedings analogous to criminal proceedings.

Incidentally, Lord Thankerton in Franklin v. Minister of Town and Country Planning (1948 AC 87) opined that the word bias is to denote a departure from the standing of even-handed justice. Girja Shankars case (supra) further noted the different note sounded by the English Courts in the mann er following: 27. Recently however, the English Courts have sounded a different note, though may not be substantial but the automatic disqualification theory rule stands to some extent diluted. The affirmation of this dilution however is dependent upon the facts and circumstances of the matter in issue. The House of Lords in the case of Reg. v. Bow Street Metropolitan Stipendiary Magistrate,

Ex parte Pinochet Ugarte (No.2) [2000 (1) A.C. 119] observed:

..In civil litigation the matters in issue will normally have an economic impact; therefore a judge is automatically disqualified if he stands to make a financial gain as a consequence of his own decision of the case. But if, as in the present case, the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a judge applies just as much if the judges decision will lead to the promotion of a cause in which the judge is involved together with one of the parties.

Lord Brown Wilkinson at page 136 of the report stated:

It is important not to overstate what is being decided. It was suggested in argument that a decision setting aside the order of 25 November 1998 would lead to a position where judges would be unable to sit on cases involving charities in whose work they are involved. It is suggested that, because of such involvement, a judge would be disqualified. That is not correct, The facts of this present case are exceptional, The critical elements are (1) that A.I. was a party to the appeal; (2) that A.I. was joined in order to argue for a particular result; (3) the judge was a director of a charity closely allied to A.I. and sharing, in this respect, A.I.'sobjects. Only in cases where a judge is taking an active role as trustee or director of a charity which is closely allied to and acting with a party to the litigation should a judge normally be concerned either to recuse himself or disclose the position to the parties. However, there may well be other exceptional cases in which the judge would be well advised to disclose a possible interest.

Lord Hutton also in Pinochets case (supra) observed:

there could be cases where the interest of the judge in the subject matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as a shareholding (which might be small) in a public company involved in the litigation.

28. Incidentally in Locabail (Locabail (U.K.) Ltd. v. Bayfield Properties Ltd.: 2000 Q.B. 451), the Court of Appeal upon a detail analysis of the oft cited decision in Reg. v. Gough [(1993) A.C. 646] together with the Dimes case, (3 House of Lords Cases 759): Pinochet case (supra), Australian High Courts decision in the case of re J.R.L., Ex parte C.J.L.: (1986 (161) CLR 342) as also the Federal Court in re Ebner (1999 (161) A.L.R. 557) and on the decision of the Constitutional Court of Sourth Africa in President of the Republic of South Africa v. South African Rugby Football Union (1999 (4) S.A. 147) stated that it would be rather dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. The Court of Appeal continued to the effect that everything will depend upon facts which may include the nature of the issue to be decided. It further observed:

By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such persons evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the

hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see Vakuta v. Kelly (1989) 167 C.L.R. 568); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party witness , or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.

29. The Court of Appeal judgment in Locabail (supra) though apparently as noticed above sounded a different note but in fact, in more occasions than one in the judgment itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient.

The test. therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained: If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor would not arise. It is in the same vein this Court termed it as reasonable likelihood of bias in Rattan Lal Sharmas case (Rattan Lal Sharma v. Managing Committee Dr. Hari Ram (Co-education) Higher Secondary School & Ors. : 1993 (4) SCC 10) wherein this Court was pleased to observe that the test is real likelihood of bias even if such bias was, in fact, the direct cause. In Rattan Lal Sharmas case (supra) real likelihood of bias has been attributed a meaning to the effect that there must be at least a substantial possibility of bias in order to render an administrative action invalid. Rattan Lal Sharmas case (supra) thus, in fact, has not expressed any opinion which runs counter to that in Girja Shankars case (supra) and the decision in the last noted case thus follows the earlier judgment in Rattan Lals case even though not specifically noticed therein. Before adverting to the rival contentions as raised in the matter, it would also be convenient to note the other perspective of the issue of bias to wit: malafides. It is trite knowledge that bias is included within the attributes and broader purview of the word malice. It is at this juncture, therefore, the relevancy of the factual details is otherwise felt to assess the situation as to whether there is existing cogent evidence of improper conduct and motive resultantly a malafide move on the part of the appellants herein against respondent No.1 V.K. Khanna. The records depict that immediately before the departure of the earlier Ministry in the State of Punjab and Shri Khanna being the Chief Secretary of the State in terms of the specific orders of the then Chief Minister referred two cases to the Central Bureau of Investigation: The first being accumulation of assets in the hands of Shri Bikramjit Singh, IAS being disproportionate to the known source of income and secondly allotment of land and release of funds to the Punjab Cricket Association the Government, however, changed and soon thereafter the petitioner was chargesheeted inter alia for acting in a manner which cannot but be ascribed to be malafide and in gross violation of the established norms and procedure of the Government function contrary to the service rules and in any event, lack of fair play and lack of integrity with high moral as was expected of a senior civil servant. BACKGROUND FACTS The charge-sheet, however, stands

challenged before the Central Administrative Tribunal, Chandigarh Bench by Shri V.K. Khanna, the former Chief Secretary to the Punjab Government since 2nd July, 1996 and continued to be so under the Government headed by Mrs. Rajinder Kaur Bhattal as the Chief Minister. The Tribunal, however, answered the issue against Shri Khanna upon due reliance on the decision of this Court in the case of Union of India & Anr. vs. Ashok Kacker [1995 SCC (L&S) 375] wherein this court in paragraph 4 of the report was pleased to observe: 4. Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondents application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made an attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him.

It is on the basis of the aforesaid observations that the Tribunal came to a finding that since Shri Khanna will have full opportunity to reply to the charge-sheet and all points are available be agitated before the Inquiry Officer, it is not the stage at which the Tribunal would like to quash the charge-sheet as it stands against him and the appropriate course for him would be to file a reply to the charge-sheet and invite the decision of the disciplinary authority thereon. The Tribunal also recorded that during the course of hearing before the Tribunal, it has been made known by both the parties that the Inquiry Officer has already been appointed by the State of Punjab and he happened to be a retired Honble Judge of the High Court and it is on this perspective the apprehensions of the applicant Shri Khanna should be allayed and resultantly the Tribunal dismissed the OA No.651/CH of 1997. The matter was thereafter taken to the High Court and the High Court recorded the core controversy in the matter to be as below: Is the action of the respondents in issuing the impugned charge-sheet to the petitioner like using a hammer to swat a fly on his forehead? Are the respondents merely talking of principles, but actually acting on interest?

The High Court came to a definite conclusion about high- handed, arbitrary and mala-fide approach towards Shri Khanna, being the respondent No.1 herein and answered both the issues as raised in the affirmative and thus resultantly the appeal before this Court by the grant of special leave. Rival Contentions: The appellant, State of Punjab & Ors in one singular voice deprecated the judgment under appeal as wholly unsustainable since the same violates even the basic tenets of law. Absence of malice has been the main thirst of submissions in support of the appeal and adaptation of a simple method of disciplinary inquiry is the key issue as urged by the appellants. Shri Khanna, respondent No.1, on the other hand contended that the entire set of facts if analysed in a proper perspective then and in that event gross violation of basic tenets by reason of malice ipso facto would be apparent enough to reach the same conclusion as has the High Court. Shri Khanna alleges that the issuance of the charge-sheet against him is the direct outcome of the reference of the two cases to the CBI and is overtly malafide. It would thus be convenient to assess the facts pertaining to above-noted two cases at this juncture. Reference of two cases to the CBI Brief facts relating to the issuance of the two notifications to the CBI are as below:- (a) Shri Khanna was appointed to the Indian Administrative Service in the year 1963 and thus in the IAS Cadre for the last 37 years during which however, Shri

Khanna was appointed as the Chief Secretary on July 2, 1996 by Shri Harcharan Singh Brar being the then Chief Minister of the State of Punjab. Subsequently, Mrs. Bhattal succeeded Shri Brar as the Chief Minister. It appears that in the usual course on 6.2.1997, the Chief Minister asked for two files pertaining to the Report sent to the Government on 29.3.1996 by the Director General of Vigilance Bureau concerning Shri Bikramjit Singh as also the file pertaining to the allotment of 15 acres of Government land by the Sports Department to the Punjab Cricket Association in Mohali. Shri Khanna being the Chief Secretary pointed out the factual position with his own observations and forwarded the files to the Chief Minister on the same day and thereupon the Chief Minister issued two several orders on the same date. Before however, adverting to the orders as passed by the Chief Minister, it is worthwhile noticing the allegations levelled against Bikramjit Singh and in the fitness of things, the report of the Vigilance Bureau of the State of Punjab may be referred at this juncture, which in fact probed the matter. The report records inter alia that the officer had purchased land measuring about 15 acres in village Wazidpur, District Ferozpur in 1987 and it has been proved that the officer bought this land and accordingly the land has been included in the assets of the officer. Further the report depicts that the allegation as regards the purchase of 10 acres land in Morinda, Bela and Jatana and the allegations that the officer having a share in Morinda Solvent Ltd. have been enquired into and found to be false. The other allegation against the officer of having one-fourth share in a house built on two-kanal plot bearing No.110 South Model Gram in Ludhiana and the finding of the Vigilance Bureau is that this property was acquired by the officer through inheritance. The report of the Vigilance Bureau further assessed the income of the officer to Rs.31,51,302/- for the period from 1.1.1984 to 31.12.1993 whereas the expenditure was to the tune of Rs.34,27,437/- thus showing an excess expenditure of Rs.3,42,765/-. The Vigilance Bureau however recommended that since the difference is around 10%, the same deserves to be ignored and there is existing on record a recommendation from the Vigilance Bureau that the complaint and the enquiry needed to be dropped altogether. The record depicts that after receipt of the report from the Vigilance Department, the matter was discussed at the level of the Chief Secretary and the Principal Secretary, Vigilance and certain clarifications were asked for and while the matter was still pending for consideration at the level as above, the Chief Minister wanted to have a look at the file and as such asked for the same on 6.2.1997. It is on this factual backdrop as above the Chief Minister notes in the file as below: I have gone through the Enquiry Report of Vigilance Bureau as well as other portions of the file. I am in agreement with Chief Secretary that this case has not been properly probed. Since officer is senior and influential, another enquiry by the State machinery may not be appropriate. This case may, therefore, be referred to the CBI for enquiry. Reference may be made immediately. Sd/-

C.M./6.2.97 C.S.

And on the next date i.e. on 7.2.1997 records depict a note of the Chief Secretary recording therein that upon consultation with the Advocate General that it would only be proper and appropriate to refer the matter to an independent agency like CBI for investigation. A notification was issued on 7.2.1997 under Section 6 of the Delhi Special Police Establishment Act 1946 entrusting the case to the CBI for investigation for an offence of having assets dis-proportionate to the known source of income in this case.. While the detail submission on this score would be dealt with later but it would be convenient to note that the learned Solicitor General with some amount of emphasis posed a question as a part of his submission to the effect as to why this hot haste? We however have not been able to appreciate the submission. Vigilance Bureau reported in March, 1996 about the factum of expenditure more than the income but by reason of the smallness of the amount (though over 3 lacs), the matter can be ignored and recommended, in fact, that the enquiry proceedings be dropped against the concerned officer: public official thus having admittedly, expenditure more than income

need not face any further enquiry in the matter be that as it may, clarifications were sought for as late as October, 1996 and in the context of having further investigation by an organisation which is known in the country to be fair and impartial but having regard to the factum of ensuing elections in the event the administrative expediency prompt the Chief Minister to take a step urgently so that the matter can be enquired into in detail, can any exception be taken by reason of the fact that the actions were in very hot haste? Incidentally, detailed submissions have been made as regards pre-dating the notes so as to reach 7th February, 1997 when in fact, the same was written on 8th February, 1997. We shall delve into the matter as regards the pre-dating of notes but the time lag between the two is just one day, the hastiness of the decision does not alter the situation significantly. If it is dated 8th even obviously it was done hastily but can any exception be taken on that ground as the same being a fraudulent move: the Vigilance Bureau of the State of Punjab finds some acquisition of property and the expenditure being more than income and in the event, the Chief Minister administratively is desirous of having a further probe in the matter, we suppose no inference can be drawn as a malafide move therefrom: Administrative decision is taken on the expediency of the situation urgently and not otherwise. The answers to these questions raised above will be made available in the later part of this judgment but for the present it is significant to note that if hot haste is to be attributed to Mr. V.K. Khanna, the same can also be ascribed to Shri Mann, who succeeded Mr. Khanna as Chief Secretary after the new Government took over. It has been stated that the file pertaining to the matter in issue was made available to Shri Mann only late in the evening on 23.2.1997 and a detailed note was prepared by the Chief Secretary Shri Mann on 25.2.1997: The same was placed before the learned Advocate General on the same date and the Advocate General also opined to rescind the notification date 7.2.1997 since the same is not sound in law and based on malafide considerations. Interestingly the note records that the Government should rectify the mistakes in the larger interest of justice and fair play. The records further depict that the file was sent back to the Chief Secretary on the same day and the latter sent the same to the Chief Minister with a note to the following effect: I endorse the view of the A.G. C.M. may kindly agree to the proposal to rescind the notification in question and to withdraw the case from the CBI.

Sd/-

(Mann)@@ IIIIII

C.S. 25/2 C.M.

The records further depict that the Chief Minister on 26th February, 1997 endorses the note of Chief Secretary Shri Mann but also made a note addressed to the Principal Secretary (Vigilance) to issue the order to rescind the notification and it is only on 26th February that the notification was issued upon preparation of a draft therefor by the Principal Secretary, Vigilance. The noting of the later on 26th February, 1997 is also rather significant, it notes this may please be vetted immediately because notification in extra-ordinary Gazette has to be issued today. Subsequent confirmation of the notification being issued and a note from the Chief Secretary records the same. It is in this perspective Mr. Subramaniam, learned senior counsel appearing for respondent No.1 with equal vehemence contended as to the haste in which the Department acted. Mr. Subramaniam, learned senior counsel, contended that on 25th of February, 1997 a rather longish and detailed note has been prepared for Mr. Advocate Generals opinion and it is on 25th of February that the opinion has been received recording infraction of law without however any specific mention and, thereafter, the file was placed before the Chief Minister and on 26th of February, 1997 Chief Minister signs the same and the notification is also issued on the same date. We do find some justification in the comment of Mr. Subramaniam, learned senior counsel for the respondent, If hasty decision is a question of

malafide motive on the part of Shri V.K. Khanna, we wonder as to whether the same can also be attributed to the appellants herein the answer to this question would also be available in the later part of this judgment. (b) The second notification pertains to the allotment of land to the Punjab Cricket Association and the note of the Chief Minister on 6th February, 1997 reads as below: The illegal occupation of the Cricket Association should be got vacated So far as the culpability of the officers involved is concerned, considering that they are senior officers and influential enough to interfere in the conduct of an enquiry by a State Government Agency, this case should be investigated by an independent agency like the CBI to detect financial irregularities, misappropriation, loss caused to the State Government and any other illegal acts in the name of sports promotion culpable under the existing laws. Sd/ C.M./6.2.97 C.S.

It is in terms with the orders of the Chief Minister dated 6th February, 1997 that two notifications were issued as above. Before adverting to the contentions certain other factual details are required to be noticed at this juncture: Elections to the State Legislative Assembly were held on 7th February, 1997 and votes were counted on 9th February, 1997. The party in power at the Punjab Assembly however, having lost the election, the Chief Minister Mrs. Bhattal resigned from the office and Shri Prakash Singh Badal was sworn in as the Chief Minister on 12th February, 1997. Immediately on assumption of office, however, both S/Shri Mann and Bikramjit Singh were appointed as the Chief Secretary and the Principal Secretary to the Chief Minister respectively in place of Shri V.K. Khanna and Shri S.S.Dawra with immediate effect. Admittedly, Shri R.S. Mann belongs to the 1965 batch in the service and by reason of the appointment he has, as a matter of fact, superseded ten of the officers in the State including Mr. V.K. Khanna this was the noting of Ms. K. Sidhu in the file apropos Shri Mann but so far as Bikramjit Singh is concerned, it has been noted that one vigilance enquiry was pending against Shri Bikramjit Singh this did not, however, impress the authority and resultantly in spite of the noting as above, both these two officers were appointed in the posts noted above. Though Mr. Subramaniam has been very critical about these appointment specially when an allegation of corruption involving an officer of the Administrative Service, pending further enquiry, we, however, do not wish to make any comment thereon since the peoples representatives would be the best person to judge the efficiency or otherwise of the officers, in the event of their appointments in the high posts in spite of their drawbacks being pointed out, it is for the concerned authority to decide as to with whom the State Administration ought to be better run and not for the law courts to suggest, as such we are not making any comments thereon save however that probably it would be better if the notings would have been given its proper weightage. Another significant feature on the factual score is that the Central Bureau of Investigation registered two cases on 25th February, 1997 being FIR Nos.7 and 8 against Shri Bikramjit Singh and the second one pertaining to the allotment of land to the Punjab Cricket Association and as noticed above on 26th February itself notification was issued rescinding the earlier notification thereby the request to investigate on to the twin issues as noticed above stood withdrawn. CHARGESHEET IMPUGNED The factual score details out that on 24th April, 1997, impugned chargesheet was issued and the petitioner was asked to submit his reply within 21 days. Statement of imputation will be appended though rather longish but shall have to be appended in order to appreciate the issue of malafides as raised by the respondent No.1 in his Writ Petition. The same however, reads as below: Shri V.K. Khanna, IAS, while posted as Chief Secretary to Government, Punjab, issued two notifications in the Delhi Special Police Establishment Act empowering the CBI to enquire into the two matters viz.:- (i) Amassing assets disproportionate to the known means of income by Shri Bikramjit Singh, IAS; and

(ii) Allotment of land and funds to the Punjab Cricket Association.

The CBI registered FIRs in these two cases. In processing these cases, Shri V.K. Khanna, IAS, acted

in a malafide manner and in gross violation of established norms and procedures of Government functioning and in utter disregard of All India Service Rules, principles of objectivity, fair play, integrity and the high morals expected of a senior civil servant. 2. Shri VK Khanna, IAS, processed the cases with undue hurry and undue interest, not actuated by the nature of cases. This is demonstrated by the following:- (i) Even though elections were on and polling took place on 7th February and the then C.M. was in her constituency, away from Chandigarh, most of the action was completed on 6th February and on 7th February which was a holiday. The papers traveled thrice between Chandigarh and Lehragaga on Feburary 6. (ii) Neither in her first note of 6th February nor in her second note of the same day did the C..M. direct that the cases were to be handled at breakneck speed. (iii) The statutory notifications issued on 7th February were neither sent to the L.R. as required by Rules of Business of Punjab Government nor were they sent for gazetting as required by law.

3. Shri V.K. Khanna, IAS, antedated and fabricated the record. Some of the actions/noting, which is shown to have been done on 6th and 7th February 1997, was actually done on 8th February 1997. This is established by a fact finding enquiry conducted by Shri Surjit Singh, IAS, principal Secretary, Vigilance. The Notifications and the letters addressed to the Director, CBI were issued and forwarded to the Director, CBI any time after 8.2.1997 A.N. and were predated as on 7.2.1997. 4. Shri V.K. Khanna, IAS, with malicious intent kept the entire operation a closely guarded secret until the CBI had completed all formalities and had registered the FIRs. This is demonstrated by the following facts/events:- (i) All papers pertaining to these cases were taken away from the personal staff of C.S. and were handled and retained entirely by Shri Khanna himself including delivery of the Notification and letters to CBI. (ii) He took away the files and retained them till the night of 24th February, 1997 in one case and 26th February, 1997 in the other case, whereas the CBI registered cases on 25th February, 1997. (iii) He did not mention anything about these two sensitive cases to the new Chief Minister and Chief Secretary after formation of the new Government, though he met them formally and informally several times before handing over charge as the Chief Secretary. (iv) When the file for appointment of Shri Bikramjit Singh, IAS, as principal Secretary to Chief Minister was put up to C.M. on 14.2.1997, while pendency of Vigilance enquiries against him was referred to, no reference whatsoever, was made to the most relevant fact that less than a week earlier, a case of corruption against him had been sent to CBI a fact which was known only to Shri Khanna and which must have been very fresh in his mind in view of the unusual interest taken in it by him. 5. Shri V.K. Khanna, IAS, failed in the proper discharge of his duties as Chief Secretary, when while putting up to C.M. the file pertaining to the appointment of Shri Bikramjit Singh as Principal Secretary to Chief Minister on 14.2.1997, he did not record the important and most material fact that a case of corruption against Shri Bikramjit Singh has been referred to the CBI only a week earlier. 6. Shri V.K. Khanna, IAS, falsely recorded in the files that the Advocate-General had been consulted in these cases. In fact, no such consultation took place. 7. Shri V.K. Khanna, IAS, after handing over the charge as Chief Secretary ton 14.2.1997 A.N. returned the two files on the above two cases on 15.2.1997 to an officer of the Vigilance Department. The same day he summoned the two files without authority and detained them for a long time with ulterior motives. He recalled both the files on the plea that the files being top secret in nature would be handed over to the Additional Secretary Vigilance. However, the two files were returned on 24th and 26th February 1997. He, therefore, remained in unauthorised possession of these two files after handing over charge as Chief Secretary. 8. Shri V.K. Khanna, IAS, did not make any proper attempt to verify the assertions and allegations in his note dated 6.2.1997 and in the note of the then C.M. of the same date in the P.C.A. case. No proper preliminary enquiry was conducted in the matter nor was any opportunity to explain given to those who might have been adversely affected by the decision.

These are the most elementary prerequisite to any such decision by a civil servant. No serious effect was made to ascertain the full facts. Whereas the record shows that the decision to give land at nominal cost and the release of funds had the clear and repeated approval of the Housing Board/PUDA, Finance Department and the then C.M. and whereas the Council of Ministers and even Vidhan Sabha had categorically endorsed these decisions, none of these facts was brought on the file. His entire conduct was malicious and premeditated and amounted to total abuse of the authority vested in him. 9. Shri V.K. Khanna, IAS, in referring these cases to CBI violated Election Code issued by Election Commission of India. He also violated Government instructions issued by himself as Chief Secretary on 10.2.1997 under which it was stipulated that in view of impending change of Govt., no important cases were to be disposed of by Secretaries to the Government without shown them to the new Ministers who were to take office shortly. That these two cases were important is proved by the attention paid by Shri V.K. Khanna. In fact, there was a clear intention on the part of Shri V.K. Khanna to complete all action in these cases before the new Ministry took office. Shri V.K. Khanna, further failed to put up these cases for the information/approval of the new Chief Minister till he handed over the charge as Chief Secretary late on 14.2.1997. EVENTS THEREAFTER: Soon after the issuance of the charge-sheet however, the Press reported a statement of the Chief Minister on 27th April, 1997 that a Judge of the High Court would look into the charges against Shri V.K. Khanna this statement has been ascribed to be malafide by Mr. Subramaniam by reason of the fact that even prior to the expiry of the period pertaining to the submission of reply to the chargesheet, this announcement was effected that a Judge of the High Court would look into the charges against the respondent No.1 Mr. Subramaniam contended that the statement depicts malice and vendetta and the frame of mind so as to humiliate the former Chief Secretary. The time has not expired for assessment of the situation as to whether there is any misconduct involved if any credence is to be attached to the Press report, we are afraid Mr. Subramaniams comment might find some justification. The records further disclose that copies of certain documntary evidence were sought for pertaining to charge No.8 as regards the release of fund and approval of the Housing Board and Punjab Urban Development Authority but the same was not acceded to on the plea that the same is not relevant to the chargesheet and it is only thereafter that the Petitioner approached the Central Administrative Tribunal for quashing of the chargesheet and as detailed above having however, failed to obtain any relief, the petitioner moved the High Court wherein the High Court set aside the chargesheet and quashed the proceedings against the petitioner. CONTENTIONS; Re Chargesheet In support of the Appeal both Mr. Rajinder Sachhar, Sr. Advocate and Mr. Harish N. Salve, Solicitor General of India strongly contended that propriety of the situation demanded confirmation of the disciplinary proceedings rather than its quashing by the High Court since, the issuance of notification has been contrary to the rules of business. Before delving into the contentions, we feel it proper to note the general principles of law as recorded by the High Court pertaining to discharge of duty of a civil servant. The High Court observed: Indisputably, duty is like debt. It must be discharged without delay or demur. A civil servant must perform his duties honestly and to the best of his ability. He must abide by the Rules. He should live by the discipline of the service. He must act without fear or favour. He must serve to promote public interest. He must carry out the lawful directions given by a superior. In fact, the Constitution of India has a chapter that enumerates the Duties of the Citizens of this country. Art.51-A contains a positive mandate. It requires every citizen to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement. This provision can be the beacon light for every citizen and the mantra for every civil servant. So long as he performs this duty as imposed by the Constitution and strives towards excellence, he has none and nothing to fear. Even God would be by his side.

At the same time it is undeniably true that whenever there is a dereliction in the performance of duties by the civil servant, the State Government has the right to intervene and punish the guilty. This is the undoubted prerogative of the State. But, to borrow the words of Professor Wade, this power has to be used for the public good. The action of the authority must be fair and reasonable. It should be bonafide. It should not be arbitrary. It should not be based on extraneous considerations. It should be for public good. Bias or personal malice should not taint it. Bias is like a drop of poison in a cup of pure milk. It is enough to ruin it. The slightest bias would vitiate the whole action.

Bias admittedly negates fairness and reasonableness by reason of which arbitrariness and malafide move creep in @@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ issuance of the two notifications assuming in hot haste but no particulars of any malafides move or action has been brought out on record on the part of Shri V.K. Khanna while it is true that the notings prepared for Advocate Generals opinion contain a definite remark about the malafide move on the part of Shri V.K. Khanna yet there is singular absence of any particulars without which the case of malafides cannot be sustained. The expression malafide has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise bonafide actions not otherwise bonafide, however, by themselves would not amount to be malafide unless the same is inaccompanymen with some other factors which would depict a bad motive or intent on the part of the doer of the act. It is in this sphere let us now analyse the factual elements in slightly more detail the Chief Minister is desirous of having the files pertaining to two of the senior officers of the administration and concerning two specific instances in normal course of events, we suppose the Chief Secretary has otherwise a responsibility to put a note to the Chief Minister pertaining to the issue and in the event the Chief Secretary informs the Chief Minister through the note that there should be a further probe in the matters for which the files have been asked for, can it by itself smack of malafides? Personality clash or personal enmity have not been disclosed neither even there is existing any evidence therefor: so in the usual course of events the Chief Secretary in the discharge of his duty sent a note to the Chief Minister recording therein that a further probe may be effected if so thought fit by the Chief Minister and in the event the Chief Minister agrees therewith and a probe is directed through an independent and impartial agency can any exception be taken therefor? Mr. Solicitor General answers the same generally that it is the personal vendetta which has prompted the Chief Secretary to initiate this move but general allegation of personal vendetta without any definite evidence therefor, cannot be said to be a sufficient assertion worth acceptance in a court of law. There must be a positive evidence available on record in order to decry an administrative action on the ground of malafides and arbitrariness. The ill will or spite must be well pronounced and without which it would be not only unfair but patently not in confirmity with the known principles of law. On a scrutiny of the files as presented to court and the evidence thereon, unfortunately, however, there is no evidence apart from bare allegation of any spite or ill will, more so by reason of the fact that the same involves factual element, in the absence of which no credence can be attributed thereto. Incidentally, be it noted that submissions in support of the appeal have been rather elaborate and in detail but a significant part of which pertain to the issuance of the two notifications spoken hereinabove: the High Court decried the action as being tainted with malice and quashed the chargesheet as being malafide. If initiation of a proceeding through CBI can be termed to be a malafide act then what would it be otherwise when Government acts rather promptly to rescind the notifications can it be an action for administrative expediency or is it an action to lay a cover for certain acts and omissions?: We are not expressing any opinion but in the normal circumstances what would be the reaction pertaining to the issuance of withdrawal notoifications, the answer need not be detailed out expressly but can be inferred therefrom. The

charge-sheet records that Shri Khanna has acted in a malafide manner and in gross violation of established norms and procedure of Government functioning and in utter disregard of All India Service Rules, principles of objectivity, fair play, integrity and the high morals expected of a senior civil servant (emphasis supplied). The notification pertains to acquisition of assets disproportionate to the known source of income by a civil servant and it is in processing these cases that the aforesaid charge as emphasized has been leveled against Shri V.K. Khanna, we, however, have not been able to appreciate whether initiation of an enquiry against the civil servant, would be in gross violation of established norms and procedure of Government functioning. The processing was further stated to be in utter disregard of All India Service Rules, we are not aware neither any rules have been placed before this Court wherein initiation of an enquiry for assets disproportionate to the known source of income can be termed to be in disregard of the service rules or fair play, integrity and morals: Do the service rules or concept of fair play, integrity or morals expected of a senior civil servant provide a prohibition for such an initiation or such processing, if that is so, then, of course one set of consequence would follow but if it is other way round then and in that event, question of any violation or a malafide move would not arise. The second charge is in regard to undue hurry and undue interest not being actuated by the nature of cases and as an illustration therefor, note of the Chief Minister was taken recourse to the effect that there was no direction in either of the notes that the cases were to be handled at brake-neck speed. The note noted above, however, records that the CBI enquiry be initiated and the reference may be made immediately, the direction of the Chief Minister that the recording of action immediately if understood to mean undue haste and if acted accordingly then again one set of consequence follow but in the normal course of events, such a direction from the Chief Minister ought to be adhered to with promptitude and no exception can thus be taken in that regard. Shri V.K. Khanna was also said to have faulted Government instructions under which it is stipulated that in the event of any impending change, no important decisions would be taken by the Secretaries without having its seen by the new Ministers who were to take office shortly. Shri Khanna has been charged of failure to put up the cases for information to the Chief Minister and allegations have been levelled that statutory notification issued on 7.2.1997 were neither sent to the LR as required by the rules of business of Punjab Government nor were they sent for gazetting as required by law. Both charges together however cannot be sustained at the same time. If the Chief Secretary is not supposed to act by reason of the impending change then he cannot possibly be accused of not acting, as required by the rules of business or as required by law. One of the basic charge of malafides as ascribed by Mr. Solicitor General, is that the papers pertaining to one of the cases was retained till the night of 24th February, 1997 and till 26th February, 1997 in another, and the same is unbecoming of the Chief Secretary of the State, more so by reason of the fact that when a new Secretary has already taken over charge. The issue undoubtedly attracted some serious attention but the factum of the respondent No.1 Shri Khanna not being in the city and away in Delhi for placement in the Central Government by reason of the attainment of necessary seniority would cast a definite shadow on the seriousness of the situation. The new Government was declared elected on 9th February, 1997, obviously on a hint that the Chief Secretary may be removed and be transferred, if there is any enquiry as regards the placement and by reason wherefor a delay occurs for about two weeks, in our view, no exception can be taken therefor neither it calls for any further explanation. During the course of submission, strong emphasis has been laid on a linkage between the CBIs endeavour to initiate proceedings and the retention of the file, however, does not stand any factual justification since one of the files were returned to the Chief Secretary on 24th February itself whereas CBI lodged the FIR on 25th February, 1997. Mr. Subramaniam however, contended that the contemporaneous noting which has been produced in Court do not indicate any perturbation on the part of the senior officers seeking to recover these papers. Mr. Subramaniam contended that the anxiety of the first respondent only was

to see that the files be lodged in the custody of the responsible person in the administration and the delay caused in that regard can hardly be said to be self-serving or that he played any role in the CBI for pursuing the investigation. We have dealt with the issue to the effect that no exception can be taken as regard the action of the Respondent No.1 As regards the allotment of land to Punjab Cricket Association Mr. Solicitor General contended that as a matter of fact, there was a total disregard to ascertain the full facts and emphatic statement has also been made during the course of hearing and which finds support from the chargesheet that even the Assembly had categorically endorsed the decision of grant of land at nominal cost together with the release of funds. It is in this context the reply affidavit filed by the first respondent to the counter affidavit of the State Government in the High Court is of some consequence and the relevant extracts whereof are set out hereinbelow for appreciation of the submissions made by the parties on that score, the same reads as below: 7. The averments in Para No.7 of the W.S. are denied as incorrect and those of petition are reiterated. The petitioner submits that he thoroughly examined the relevant record, cross- checked the facts and exercised due care and caution while submitting the factual report to the Chief Minister on 6.2.1997. Before submission of the factual report to the Chief Minister, the petitioner inter-alia found the following material on record: (i) There was no Cabinet approval, mandatory under the Rules of Business, for either construction of the Cricket Stadium or the transfer of about 15 acres of land to the Punjab Cricket Association, a private entity. Apparently Cabinet had been deliberately and dishonestly bypassed by the Sports Secretary, Sh. Bindra. (ii) Shri Bindras A.C.R. file showed that he lacked integrity and he had abused his official position to extort huge amounts of money from Government companies under his charge as Secretary, Industries. (iii) PSSIEC (Punjab Small Scale Industries and Export Corporation) reported in writing that they paid Rs.2 lacs for laying the Cricket Pitch at Mohali. (iv) The note dated 21.1.1997 of Chief Administrator PUDA brought out many serious irregularities in regard to grant of funds for the Cricket Stadium and the PCA Club. (v) It had also come to the Petitioners notice that Sh. Bindra directed other companies like Punjab Tractors Ltd., Punwire, PACL etc. not to furnish any information to the Chief Secretary about payments made by them to the Punjab Cricket Association. (vi) The glaring fact that Sh. Bindra had transferred the land to the Punjab Cricket Association at his own level, without the approval of the Finance Department or any higher authority like Minister or Chief Minister, even though the approval of Council of Ministers was mandatory under the rules. The Sports Department itself did not have any title to the property. It still does not have it. (vii) The land use was changed by the Housing Development Board from Sports Complex/Cycle Velodrome to Cricket Stadium at Sh. Bindras behest, following collusive and malafide inter- departmental meetings with Sh. Mann. (viii) Housing Board connived at serious encroachments made by the PCA which is actually in occupation of about 20 acres, as against 10.5 acres, as against 10.5 acres mentioned in the decision of the Governor-in-Council (order dated 29.4.91) which in any case was not for a Cricket Stadium, but for a Sports Complex/Velodrome. It is on this score Mr. Subramaniam for respondent No.1 contended that the factual context as noted hereinbefore prompted the Chief Secretary to submit the note to the Chief Minister and the allegation of not assessing the factual situation in its entirety cannot be said to be correct. While it is true that justifiability of the charges at this stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malce or malafide, motive involved in the matter of issue of a charge-sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court in the contextual

facts has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings. The High Court while delving into the issue went into the factum of announcement@@ JJJJJJJJJJJJJJJJJJJJ of the Chief Minister in regard to appointment of an Inquiry@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ Officer to substantiate the frame of mind of the authorities and thus depicting bias What bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz.: the inquiry shall proceed irrespective of the reply Is it an indication of a free and fair attitude towards the concerned officer? The answer cannot possibly be in the affirmative. It is well settled in Service Jurisprudence that the concerned authority has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative the inquiry follows but not otherwise and it is this part of Service Jurisprudence on which reliance was placed by Mr. Subramaniam and on that score, strongly criticised the conduct of the respondents here and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record. Admittedly, two enquiries were floated through CBI but purity and probity being the key words in public service and in the event a civil servant is alleged to have assets dis-proportionate to his income or in the event, there was parting of a huge property in support of which adequate data was not available can the action be said to be the resultant effect of the personal vendetta or can any chargesheet be issued on the basis thereof, the answer cannot possibly be but in the negative. The contextual facts depict that there is a noting by an official in the administration that certain vigilance matters are pending as against one of Secretaries but that stands ignored. We have dealt with this aspect of the matter in detail herein before in this judgment thus suffice it to note that further effort on the part of Shri Khanna in bringing to notice to the Chief Minister would not have resulted any further development and in that perspective the conduct of Shri Khanna can not be faulted in any way. These are the instances which the High Court ascribed to be not in accordance with the known principles of law and attributed motive as regards initiation of the chargesheet. OPINION OF THE COURT As noticed above malafide intent or biased attitude cannot be put on a straight jacket formula but depend upon facts and circumstances of each case and in that perspective judicial precedents would not be of any assistance and as such we refrain from further dealing with various decisions cited from the Bar since facts are otherwise different in each of the decisions. On a perusal of the matter and the records in its entirety, we cannot but lend concurrence to the findings and observations of the High Court. The judgment under appeals cannot be faulted in any way whatsoever and in that view of the matter these appeals fail and are dismissed without howowever any order as