

SUPREME COURT OF INDIA

Rajiv Ranjan Singh 'Lalan' and Another

Vs

Union of India and Others

Writ Petition (Crl.) 197-198 of 2004

(S.H. Kapadia and K. G. Balakrishnan, JJ)

21.08.2006

JUDGMENT

S.H. KAPADIA, J.

I have had the privilege of reading the opinions of Brother Justice Balakrishnan and Brother Justice Lakshmanan, I have to record my respectful dissent with the views expressed by my learned brothers.

In these writ petitions under Article 32 of the Constitution, filed to enforce Article 14 of the Constitution, following three issues arise for determination:

- (a) Whether the writ petitions were maintainable as Public Interest Litigation;
- (b) whether there was failure of statutory and public duty on the part of the Revenue in not preferring an appeal to the High Court under Section 260A of the Income Tax Act, 1961; and
- (c) whether the procedure adopted at the time of posting Mr. Munni Lal Paswan, ADJ as Special Judge, CBI, Patna (Fodder Scam Cases) on 22.06.2005, needs to be relooked by the Patna High Court.

(a) WHETHER THE WRIT PETITIONS WERE MAINTAINABLE AS PUBLIC INTEREST LITIGATION:

BACKGROUND FACTS:

Large-scale defalcation of public funds, fraudulent transactions and falsification of accounts, of around Rs.500 crores, came to light in the Animal Husbandry Department of the State of Bihar. This scam took place during the period 1977 to 1996. A similar situation existed in the Education, Corporation and Fisheries Departments. By judgment dated 11.03.1996 delivered by the Division Bench of the Patna High Court in Writ Petition No.459 of 1996 the High Court, in exercise of its powers under Article 226 of the Constitution, took away the investigation from the State police and entrusted it to CBI. The said decision of the Patna High Court was challenged by the State vide Civil Appeal Nos. 5177-81 of 1996. By judgment dated 19.03.96, this Court observed that the exercise of the power under Article 226 in a public interest litigation was not to give any advantage to a political party or group of people but it was done to investigate corruption in public administration, misconduct by the bureaucracy, fabrication of official records and misappropriation of public funds. Therefore, this Court refused to interfere with the impugned judgment of the Patna High Court [See: State of Bihar and Another v. Ranchi Zila Samta Party and Another.

In the case of Union of India and Others v. Sushil Kumar Modi and Others 8 certain allegations were made against the then Director, CBI, in the context of investigations into the above fodder scam. The relevant paragraphs 11 and 14 of the said judgment are quoted hereinbelow:

"11. We deem it proper to emphasise that every officer of the CBI associated with the investigation has to function as a member of a cohesive team which is engaged in the common pursuit of a fair, honest and complete investigation into the crimes alleged. It is needless to further emphasise that the exercise has to be performed objectively and fairly, mindful of the fact that the majesty of law has to be upheld and the 'rule of law' preserved, which does not discriminate between individuals on the basis of their status, position or power. The law treats everyone as equal before it and this has to be kept in view constantly in every State action to avoid violation of the 'right to equality' guaranteed in Article 14 of the Constitution.

14. It appears necessary to add that the Court, in this proceeding, is concerned with ensuring proper and honest performance of its duty by the CBI and not the merits of the accusations being investigated, which are to be determined at the trial on the filing of the chargesheet in the competent court, according to the ordinary procedure prescribed by law. Care must, therefore, be taken by the High Court to avoid making any observation which may be construed as the expression of its opinion on merits relating to the accusation against any individual. Any such observation made on the merits of the accusation so far by the High Court, including those in Para 8 of the impugned order are not to be treated as final, or having the approval of this Court. Such observations should not, in any manner influence the decision on merits at the trial on the filing of the chargesheet. The directions given by this Court in its aforesaid order dated March 19, 1996 have to be understood in this manner by all concerned, including the High Court."

PLEADINGS

On 31.08.2004 the present Writ Petition (Crl.) Nos.197-198 of 2004 were filed for enforcement of Article 14 of the Constitution. Briefly, it is alleged that the Union of India (respondent no.1) and other respondents (including respondent nos.4 and 5) are allegedly committing acts of misfeasance in relation to the corruption cases pending before the Special Judge, CBI, Patna as well as in the appeals preferred by the accused before the Income Tax Appellate Tribunal. Respondent no.4 is Smt. Rabri Devi, former Chief Minister of Bihar and respondent no.5 is Mr. Lalu Prasad, former Chief Minister of Bihar. In the writ petitions it is alleged that trial judge as well as the Member (Judicial) of the Income Tax Appellate Tribunal who are found to be inconvenient are being transferred and supplanted with the chosen ones. That, even the judgment of the Income Tax Appellate Tribunal (for short, 'the Tribunal') allowing the appeal in favour of the assessee for the assessment years 1986-87 to 1996-97, though involving substantial questions of law, has not been challenged by the Revenue by filing appeals under Section 260A of the Income Tax Act, 1961 (for short, 'the I.T. Act') in order to protect some of the respondents-accused.

Respondent nos.4 and 5 as well as Union of India have categorically denied the allegations made by the petitioners. It is the case of the respondents that irresponsible statements have been made in the petitions without having any basis; that, political battles were being fought in the name of public interest litigation (for short, 'PIL') by politicians and that respondent nos.4 and 5 had no role to play either in the transfer of lawyers in the criminal case, in the transfer of the trial judge or in the constitution of the Special Bench of the Tribunal. They have further submitted that they have no role to play in Revenue Department not going in appeal to the High Court under Section 260A of the I.T. Act. It is submitted that the Revenue Department took the opinion of Additional Solicitor General of India who has certified that no substantial questions of law arise for determination by the High Court under Section 260A of the I.T. Act. Accordingly, it is submitted by the respondents that the writ petitions deserve to be dismissed with heavy costs.

SUBMISSIONS

Mr. Ram Jethmalani, learned senior counsel appearing on behalf of respondent nos.4 and 5, raised the preliminary objection stating that PIL has no role to play in pending criminal proceedings. He submitted that if the petitioner is a politician and if it is found that the object is to win political battle then PIL should be dismissed with costs. He submitted that in the present case the PIL is politically motivated; that, in the present petitions there is no breach of Article 14 and, therefore, it deserves to be dismissed with strictures against the petitioners. Learned senior counsel submitted that PIL is meant for the benefit of the lost and lonely who have no access to courts or the legal system. Learned senior counsel submitted that when the provisions of the Constitution are violated and loss is caused to a group of persons who are handicapped then PIL is maintainable, if it is shown that they have no access to legal system. It is submitted that respondents 4 and 5 are the accused persons before the criminal court and the liberty cannot be taken away except by the procedure established by law; that, the criminal procedure code requires that the guilt of the accused must be determined by a special judge in the present case which is the court of exclusive jurisdiction and if anybody, aggrieved by the decision of the special judge, is free to hold appeal. Learned senior counsel submitted that the assessment orders passed by the Revenue Department under the I.T. Act cannot be used to prove holding of disproportionate assets by respondent nos.4 and 5. He submitted

that in the present case the CBI pressurized the assessing officer to pass assessment order against respondent nos.4 and 5. Learned senior counsel further alleged that in some cases even the Commissioner of Income Tax (Appeals) was persuaded to make order of assessment against respondent nos.4 and 5 and in such circumstances and even otherwise orders of assessment cannot form the basis of trials dealing with accusation of disproportionate assets by respondent nos.4 and 5. Learned senior counsel submitted that in fact a bare perusal of the decision of the Tribunal in the present case indicates although the appeal is allowed in favour of the assessee the Tribunal has decided every point against the assessee and in the circumstances the Department was right in not moving the High Court in appeal under Section 260A of the I.T. Act. Learned senior counsel further urged that respondent nos.4 and 5, who are the accused in the criminal trial, should be allowed to pursue their defence. Learned senior counsel stated that admittedly there was a scam and misappropriation of public property but that should not give right to the petitioners to obstruct the course of justice or obstruct the rights given to the accused under Criminal Procedure Code, Evidence Act and the Constitution.

Learned senior counsel submitted three propositions in the context of the parameters of the PIL. He submitted that firstly, every criminal trial has to proceed according to the procedure established by law and every deviation from that procedure, even if by a judicial order could violate Article 21 of the Constitution; secondly, in every PIL the locus standi of the petitioner should be examined at the threshold; and thirdly, the source of his information must be subjected to strict scrutiny. Learned senior counsel submitted that if any of the three conditions are not fulfilled then PIL should be dismissed. In this connection, learned senior counsel relied upon the judgments of this Court in support of his above submissions.

In the case of *Janata Dal v. H.S. Chowdhary and others* 7 this Court observed that violation of a fundamental right is the sine qua non of the exercise of the right conferred by Article 32; that, PIL is part of the process of participatory justice and in a competition between courts and streets the rule of law must win and, therefore, the rule of locus standi must be liberalized to meet the challenges of the times. This Court, further, noted the judgment in *A.R. Antulay v. Ramadas Srinivas Nayak and another* in which it has been observed that locus standi of the complainant is a concept foreign to criminal procedure jurisprudence except where the statute creates an offence which provides for the eligibility of the complainant to set the criminal case in motion.

In para 92 of the said judgment the concept of PIL has been explained. Any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of duty or violation of the Constitution. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and achieving the constitutional goals, subject to a caveat which states that the member of the public who approaches by way of PIL should be acting bona fide and not for personal gain, private profit or political motivation.

In the case of *Union of India v. Sushil Kumar Modi and others* 1 this Court has held that once a chargesheet is filed in the competent court after completion of investigation the process of monitoring for the purposes of making the CBI and other investigating agencies to perform their function comes to an end and, thereafter, it is only the court in which the chargesheet is filed has to deal with all matters relating to the trial of the accused, including matters falling within Section

173(8) of Cr.P.C. Relying on this judgment, learned senior counsel for respondent nos.4 and 5 stated that in the present case the chargesheet has been filed and, therefore, the process of monitoring has ended. It is urged that since the chargesheet has been filed the criminal trial should be allowed to take its own course without any further interference from any court outside the trial court.

In the case of *Dattaraj Nathuji Thaware v. State of Maharashtra and Others* 5 the Division Bench of this Court on facts found that the petitioner was a lawyer who had filed PIL. He was a blackmailer. In the circumstances the PIL was dismissed with costs. It is in that light, that the Division Bench of the Court speaking through Pasayat, J. stated the parameters of PIL. Learned senior counsel for respondent nos.4 and 5 has referred to para 4 of the said judgment in support of his contention that PIL is maintainable to help poor and needy who have no access to the legal system. I quote hereinbelow para 4 of the said judgment. "4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". The High Court has found that the case at hand belongs to the last category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *The Janta Dal v. H.S. Chowdhary* 7 and *Kazi Lhendup Dorji v. Central Bureau of Investigation* . A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. (See *Ramjas Foundation v. Union of India* 7 and *K.R. Srinivas v. R.M. Premchand* 5."

To the same effect is the ratio of the decision of the Division Bench of this Court in the case of *Gurpal Singh v. State of Punjab and Others* . In the said judgment it has been held that PIL will not lie in cases of personal and political rivalry. While laying down the parameters the Division Bench speaking through Pasayat, J. observed that in the PIL nobody should be allowed to make wild and reckless allegations spoiling the characters of others; that, PIL is not maintainable in cases of personal vendetta. However, in the said judgment it has been held that the court can act if it is satisfied with the correctness or the nature of the information given by the petitioner.

Mr. Goolamhusein E. Vahanvati, Learned Solicitor General of India, appearing for Union of India, adopted the arguments advanced by Mr. Ram Jethmalani, learned senior counsel, on the preliminary issue. He, however, added that in the present case reckless allegations have been made without any basis against important functionaries, judges and authorities under the I.T. Act. He submitted that the petitioners cannot destroy the service careers of the government officers without any reason on

basis except for their own political rivalry with respondent no.5. He submitted that there is no violation of law or the Constitution, particularly, when Mr. Yogender Prasad, the earlier trial judge who had extensively heard the matter, was promoted as District Judge. Learned counsel further submitted that constitution of the Special Bench by the President of the Tribunal was done in the circumstances spelt out in the various affidavits; that the matter was required to be expeditiously heard which led to the constitution of the Special Bench; and that decision was not arbitrary, as alleged. There is nothing on record to indicate that favoured judges/members were appointed and that inconvenient judges/members were dispensed with to favour the accused in the present case.

Learned senior counsel relied upon the judgment of this Court in the case of T.N. Godavarman Thirumulpad (98) v. Union of India and Others 2006 (5) SCC 28 where this Court speaking through learned Chief Justice of India has held vide para 26 as follows:

"26. For the last few years, inflow of public interest litigation has increased manifold. Considerable judicial time is spent in dealing with such cases. A person acting bona fide alone can approach the court in public interest. Such a remedy is not open to an unscrupulous person who acts, in fact, for someone else. The liberal rule of locus standi exercised in favour of bona fide public interest litigants has immensely helped the cause of justice. Such litigants have been instrumental in drawing attention of this Court and High Courts in matters of utmost importance and in securing orders and directions for many under-privileged such as, pavement dwellers, bonded labour, prisoners' conditions, children, sexual harassment of girls and women, cases of communal riots, innocent killings, torture, long custody in prison without trial or in the matters of environment, illegal stone quarries, illegal mining, pollution of air and water, clean fuel, hazardous and polluting industries or preservation of forest as in the T.N. Godavarman Thirumulpad (I) v. Union of India 4. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow their process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique' consideration. (See Janata Dal v. H.S. Chowdhary and Ors. 7)."

FINDINGS:

At the outset, it needs to be noted that in this case we are concerned not with the merits of the allegations but with the decision-making process, be it in the posting of Mr. Munni Lal Paswan, Special Judge, CBI, Patna or in the matter of the Revenue Department not moving in appeal to the High Court under Section 260A of the I.T. Act despite there being substantial questions of law arising from the impugned judgment of the Tribunal. It is submitted on behalf of the petitioners that the present writ petitions should be seen in the context of the earlier two decisions of the Supreme Court under which investigations were handed over to CBI as an amount of around Rs.500 crores stands misappropriated in the fodder scam. It is the case of the petitioners that the present case should be seen in the light of the directions given by the Supreme Court in the cases of Ranchi Zila Samta Party (supra) and Sushil Kumar Modi (supra).

The present petitions are filed on the alleged acts of misfeasance. The test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. Under this test

it is necessary to consider the subject matter to which the PIL relates. It is wrong in law for the court to judge the applicant's interest without looking at the subject matter of his complaint. If the petitioner shows failure of public duty, the court would be in error in dismissing his PIL.

In the case of *Inland Revenue Commissioners v. National Federation of Self-employed and Small Business Ltd.* reported in 1981 Indlaw HL 15, a declaration was sought that the Revenue had acted unlawfully in granting amnesty to the trade union of casual workers and accordingly a writ of mandamus was sought to assess and collect income tax from casual workers according to law. In the Divisional Court when the motion for judicial review came, the point of locus standi was treated as a preliminary point. The Divisional Court refused the leave saying that the petitioner had no power to bring such an action. The Court of Appeal by majority reversed the decision of the Divisional Court and made a declaration that the applicants have sufficient interest to apply for judicial review. Upholding the decision of the Division Court it was held by the House of Lords that the question of sufficient interest of the petitioner cannot be considered in the abstract. It must be taken together with the legal and factual context. It was held that the management of tax recovery falls within the domain of the Revenue but if that act of management is found to be based on exercise of its authority for extraneous reasons, then judicial review would certainly lie. It was held that the Revenue Department was incharge of assessment and collection of taxes for the welfare of the State; that, it was responsible for good management under the statute; that, if it was found that the Board was proposing to exercise its authority or if the Board was refraining itself from exercising its power not for good reasons of good management but for some extraneous or ulterior reasons then that action or inaction by the Board would be ultra vires and such a matter would be a proper matter for judicial review. In this respect the following observation made by the House of Lords at pages 636-637 is quoted herein below:

"It is, in my view, very much to be regretted that a case of such importance to the development of English public law under this new procedure should have come before this House in the form that it does as a result of what my noble and learned friend, Lord Wilberforce, has described as the unfortunate course that was taken in the courts below when, leave to apply for judicial review having been previously granted ex parte, the application itself came on for hearing. This has had the result of deflecting the Divisional Court and the Court of Appeal from giving consideration to the questions (1) what was the public duty of the Board of Inland Revenue of which it was alleged to be in breach, and (2) what was the nature of the breaches of that duty that were relied upon by the federation. Because of this, the judgment of the Court of Appeal, against which appeal to your Lordships' House is brought, takes the form of an interlocutory judgment declaring that the federation "have a sufficient interest to apply for judicial review herein."

As my noble and learned friend has pointed out, these two omitted questions need to be answered in the instant case before it is possible to say whether the federation have "a sufficient interest in the matter to which the application relates, " since, until they are answered, that matter cannot be identified. This is likely also to be the case in most applications for judicial review that are not on the face of them frivolous or vexatious. Your Lordships have accordingly heard full argument on both these questions.

As respects the statutory powers and duties of the Board of Inland Revenue, these are described and

dealt with in several of your Lordships' speeches. It would be wearisome if I were to repeat what already has been, and later will be, better said by others. All that I need say here is that the board are charged by statute with the care, management and collection on behalf of the Crown of Income tax, corporation tax and capital gains tax. In the exercise of these functions the board have a wide managerial discretion as to the best means of obtaining for the national exchequer from the taxes committed to their charge, the highest net return that is practicable having regard to the staff available to them and the cost of collection. The board and the inspectors and collectors who act under their directions are under a statutory duty of confidentiality with respect to information about individual taxpayers' affairs that has been obtained in the course of their duties in making assessments and collecting the taxes; and this imposes a limitation on their managerial discretion. I do not doubt, however, and I do not understand any of your Lordships to doubt, that if it were established that the board were proposing to exercise or to refrain from exercising its powers not for reasons of "good management" but for some extraneous or ulterior reason, that action or inaction of the board would be ultra vires and would be a proper matter for judicial review if it were brought to the attention of the court by an applicant with "a sufficient interest" in having the board compelled to observe the law."

(Emphasis supplied)

Applying the above test we have to ascertain in the present case whether the decision of the Government in not preferring the appeal to the High Court under Section 260A of the I.T. Act constituted inaction on the part of the Department. This question needs to be answered not in an abstract but having regard to position in law and having regard to the facts of the present case.

(b) WHETHER THERE WAS FAILURE OF STATUTORY and PUBLIC DUTY ON THE PART OF THE REVENUE IN NOT PREFERRING AN APPEAL TO THE HIGH COURT UNDER SECTION 260A OF THE INCOME TAX ACT, 1961:

The facts of the case of the assessee, Smt. Rabri Devi, are as follows: On 14.10.1996 the assessee filed voluntary returns for assessment years 1995-96 and 1996-97. On 14.11.1996 she filed voluntary returns for assessment years 1986-87 to 1994-95 declaring various incomes which had escaped assessment as she had not filed her returns earlier. The assessee also applied for waiver of interest and penalty under Section 273A of the I.T. Act. In the voluntary returns, the assessee disclosed income derived from dairy farming, agriculture and rent from house property. Upon receipt of returns for the assessment years 1995-96 and 1996-97 the Assistant Commissioner of Income Tax issued notice of defecting returns under Section 139 of the I.T. Act in which it was alleged that regular books of accounts were not maintained; that, return was not accompanied by a statement indicating the amount of turn-over, gross receipts, gross profits and net profits from business/profession. The assessee also received notices under Section 148 of the I.T. Act for the period 1986-87 to 1994-95. The Assessing Officer recorded the reasons for reopening the assessment for each of the above years. For example, the reasons for reopening the assessment for the year 1986-87 are as follows:

"A notice u/s 131 A of the I.T. Act' 61 was issued to the husband of the assessee, asking him to

furnish, among other things, details of income of other family members and details of assets owned by such family members. In reply to the said notice the assessee's husband submitted that the assessee had been deriving rental income from house property at Sheikhoura since 1983-84 and from dairy farms since 1975. Subsequently, the assessee on 25.10.96 filed details of her immovable and movable properties before the ADIT (Inv.), Patna. From a perusal of this, it is noticed that the assessee has made substantial investments in residential house at Sheikhoura, in agricultural land at Saran and Patna and land at Danapur, Patna. It is also noticed that she has made substantial investments in FDs, Kisan Vikas Patras and National Savings Certificates, besides having a number of bank a/cs. The assessee has also contributed to the construction of her husband's house property at Phulwari.

Despite having made such large investments, the assessee has never filed Income-tax returns, nor has she been assessed to Income-tax in past. Recently, the assessee had filed a petition u/s 273 A of the I.T. Act'61 before the CIT, Patna. Pursuant to this petition, she had also filed a disclosure of income Rs.70, 000 for the A/Y in question in order to explain the capital required for the investment that she has made.

All this information in our possession gives us reason to believe that at the very least a sum of Rs.70, 000 has escaped assessment for the A/Y 1986-87. Owing to the failure of the assessee to file return within stipulated time limit and to disclose material facts relevant to have assessment at the appropriate time.

As more than four years from end of the assessment year have lapsed, approval is solicited from DCIT, Range-1, Patna to issue notice u/s 148 of the I.T. Act'61. It is clarified that notice u/s 148 of the I.T. Act is issuable as income escaping assessment exceeds the amount stipulated in section 149(1)(b).

Sd/- Nikhil Choudhary 20.11.96 Asst. Commissioner of Income-tax, Spl. Inv. Circle-1, Patna." I need not go into further details regarding the alleged undisclosed income for each assessment year. Suffice it to state that additions have been made by the Department to the income of the assessee under various orders passed by the Assessing Officer and the Commissioner of Income Tax (Appeals). These orders were challenged by the assessee before the Tribunal.

By the impugned judgment the appeals filed by the assessee were allowed by the Tribunal. While allowing the appeal of the assessee the Tribunal held that the case involved highly intricate issues; that, these issues were extremely difficult to understand; that, but for the assistance of the learned advocates on both sides it was difficult to adjudicate such disputes. At the same time the Tribunal without any basis castigated the officers of the Department including the Commissioner (Appeals) saying that rampant additions were made to destroy the case of the assessee and to destroy the political career of respondent no.5 (See: para 40 of the judgment of the Tribunal). Similarly, the Tribunal has castigated the higher officers of the Department saying that they were biased and that they had acted at the behest of the Centre in clubbing the income of respondent no.4 with that of respondent no.5 who was going through political crisis (See: para 54 of the said judgment).

There is no basis given in the impugned decision of the Tribunal for making such strong observations against the officers of the Revenue. Although the High Court under Section 260A of the I.T. Act would not have enquired into the sufficiency of materials or substituted its judgment for that of the Tribunal in regard to facts, nevertheless, if the conclusion drawn by the Tribunal is without any basis or based on irrelevant considerations then the High Court was required to interfere under Section 260A.

PIL is not maintainable to probe or enquire into the returns of another taxpayer except in special circumstances. It is the ratio of the decision of House of Lords in the case of National Federation of Self-employed (supra). However, when scams take place, accusation of disproportionate assets are required to be looked into.

In the case of M.C. Mehta v. Union of India and others (Taj Trapezium Matter) 2003 (8) SCC 696 the Division Bench of this Court not only directed CBI to investigate the cases against the bureaucrats but also to enquire the outflow of Rs.17 crores released by the State of U.P. in respect of project undertaken by NPCC. In that matter the income tax returns of the former Chief Minister and other officials were ordered to be collected by this Court. They were directed to be collected from various income tax authorities. The point to be noted is that the source of the funds plays a crucial role in investigations by CBI in matters involving misappropriation of public funds. Departments have to work in tandem. The evidentiary value of the collected material in the criminal trial is a matter different from the collection of information by the officers of the Revenue Department. In the present case officers of the Revenue have been condemned by the aforesaid judgment of the Tribunal. Comments have been made without any basis and yet till today appeals have not been filed by the government under Section 260A of the I.T. Act. As stated above, even the Tribunal has observed in its judgment that complicated legal issues were involved in the matter; that, even the members of the Tribunal found it very difficult to understand those issues, particularly, matters involving interpretation of Sections 131, 131(1A), 273A and 147/148 of the I.T. Act. If the issues were so difficult for the members to understand, one fails to appreciate why high-ranking officers of the Department were castigated by the Tribunal. This Court has noticed in number of cases that even an innocuous statement of the tribunal against the Revenue Officers is challenged before the higher courts on the ground that such observations are aspersions against the officers who have performed their duty and that they need to be expunged. Surprisingly, in this particular case till today no such appeal has been filed under Section 260A of the I.T. Act. There is one more reason which is required to be mentioned. The judgment of the jurisdictional tribunal on the scope and interpretation of the above sections which the Tribunal itself says involve complex legal issues, is binding on assessing officers and the appellate authority within that jurisdiction. If so, one fails to understand why the Department has not moved in appeal under Section 260A of the I.T. Act. In the circumstances of this case, Union of India should apply its mind afresh and take its decision keeping in mind the factors referred to hereinabove.

Before concluding, it may be noted that arguments have been vehemently advanced on behalf of respondent no.1 saying that these petitions need to be dismissed as the petitioners have made irresponsible statements against judicial officers and members of the Tribunal whose service records are sought to be tarnished. Applying the same yardstick one fails to understand as to why the Revenue has not moved in appeal even when its own higher officers are branded as biased in

deciding matters against respondent nos.4 and 5. Their service records are as important as the service records of members of the trial court or the judicial officers.

(c) WHETHER THE PROCEDURE ADOPTED AT THE TIME OF POSTING MR. MUNNI LAL PASWAN, ADJ AS SPECIAL JUDGE, CBI, PATNA (FODDER SCAM CASES) ON 22.06.2005, NEEDS TO BE RELOOKED BY THE PATNA HIGH COURT:

Institutional autonomy of the High Court on its administrative side under Article 233 and Article 235 is a well-known concept. It is based on public trust and confidence. Existence of the power, as a concept, is different from exercise of power. Promotions and posting of judicial officers fall within its domain on its administrative side. At the same time it is important to note that choice of the candidate falls in the domain of public law and, therefore, that choice has to be exercised on some standard, failing which judicial review steps in. Standards of evaluation in matters of promotion and posting have to be uniformly applied otherwise arbitrariness comes in. Integration of the evaluation process has to be maintained. If different standards or no standards are applied it breaks the integrity of the process which brings in discrimination and arbitrariness which violates Article 14 and therefore judicial review.

In the present case we are required to see whether the standards applied to evaluate Mr. J.P. Ratnesh and Mr. Ram Niwas Prasad, trial judges, appointed as Special Judges vide Minutes of the meeting of the Standing Committee dated 22.06.2005 were equally applied while posting Mr. Munni Lal Paswan as Special Judge, CBI, Patna (fodder scam cases).

By order dated 26.10.2005 this Court directed the Registrar General, Patna High Court, to forward this Court A.C.Rs recorded by the Inspecting Judges of the High Court in the case of Mr. Munni Lal Paswan. In reply the Registrar General has stated as follows:

"The A.C.Rs, recorded by the Hon'ble Inspecting Judges in the years 1985, 1990 and by the Chairman of CAT in 1997, have been placed before the Supreme Court. Besides them no ACRs of Sri Munni Lal Paswan have ever been recorded by the Hon'ble Inspecting Judges. The A.C.Rs of Additional District and Sessions Judges are recorded by the Hon'ble Inspecting Judges." (Emphasis supplied)

Mr. Munni Lal Paswan was promoted to the post of ADJ on 17th June, 2003. Therefore, when Mr. Paswan was promoted as A.D.J. there was no categorization available.

In the report submitted by the Registrar General to this Court on 18.12.2005 pursuant to our order dated 26.10.2005, the Registrar General has forwarded the consolidated statement showing the Outturn of the work done by Mr. Paswan during the period 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 (partly). This statement refers to various parameters like disposal, remarks of P.O., remark of D.J. etc. as approved by the court. At this stage, I do not wish to comment about the remarks mentioned therein. These remarks have been approved by the District Judge and by the Courts. These remarks are heavily weighted against Mr. Paswan. It is not clear whether these

remarks were ever noticed by the Committee and if not they need to be relooked by the High Court.

One more aspect needs to be stressed. There is a prescribed form in which the C.Rs are recorded. That form indicates various parameters, namely, knowledge of law, whether the officer is hardworking, the rating to be given in respect of the judgments, namely, A+(outstanding), A(very good), B+(good), B(satisfactory). The point to be noted is that apart from honesty and integrity there are other parameters to be fulfilled by the judicial officers and that is where the disposals, ability and all other relevant factors come.

On 26th July, 2006 this Court put up the following three questions in the form of order to the Registrar General of the Patna High Court:

"1. Is it the practice in the High Court of Patna to prepare gradation/ remarks of the Judicial Officers by the Inspecting Judges?

2. As regards the three officers, including Shri M.L. Paswan, who were appointed as Special Judges on 22.6.2005 by the Standing Committee of the High Court, whether any remarks/gradation expressed by the Inspecting Judges were available to the Standing Committee?

3. Whether the gradation/remarks of the Inspecting Judges were made as regards these three officers?"

In reply, the Registrar General of the Patna High Court stated as follows in paras 2 to 4: "2. That in regard to Query No.1 of this Hon'ble Court as mentioned in the Order dated 26.7.2006, I respectfully say and submit that there is a practice in the High Court of Patna to record remarks of Judicial Officers by the Hon'ble Inspecting Judges of the concerned Judgeships which is known as Annual Confidential Remarks. The Annual Confidential remarks recorded by the Hon'ble Inspecting Judges which includes knowledge of law, integrity, behaviour with Bar, general reputation, industriousness, efficiency, behaviour towards superiors and subordinate colleagues and categorization made by the Hon'ble Inspecting Judges and net result categorization is to be placed before the Standing Committee where the gradation is given to the Officer by the Hon'ble Standing Committee.

3. That in regard to Query No.2 of this Hon'ble Court as mentioned in the Order dated 26.7.2006, I respectfully say and submit that the 3 Officers, namely, Shri Jawahar Prasad Ratnesh, Shri Ram Niwas Prasad and Shri Munni Lal Paswan who were appointed as Special Judge on 22.6.2005 by the Standing Committee, the remarks of the Hon'ble Inspecting Judges as maintained in the Guard Files which are maintained separately of each officers, were available to the Hon'ble Standing Committee. The said fact also finds mention in the decision dated 22.6.2005 of the Hon'ble Standing Committee.

4. That in regard to Query No.3 of this Hon'ble Court as mentioned in the Order dated 26.7.2006, I respectfully say and submit that the remarks of the Hon'ble Inspecting Judge in case of Mr. Jawahar Prasad Ratnesh was of the year 1985, 1986-87, 1988, 2001, 2003 and 2005 (and remarks recorded by P.O., Industrial Tribunal, Patna in 1998). In respect of Shri Ram Niwas Prasad, the remarks recorded by the Hon'ble Inspecting Judge was of 1985, 1986, 1997 and 2002. As regards Shri Munni Lal Paswan, the remarks recorded by the Hon'ble Inspecting Judge was of 1985 and 1990 and by Vice-Chairman, Industrial Tribunal, Patna Bench in 1997. (emphasis supplied)

Reading para 4 it is clear that the remarks of Inspecting Judge, in the case of Mr. J.P. Ratnesh, were duly updated when they were placed before the Standing Committee of the High Court. In respect of Mr. Ram Niwas Prasad the remarks recorded by the Inspecting Judge for the years 1985, 1986, 1997 and 2002 were updated and placed before the Standing Committee of the High Court. However, in case of Mr. Munni Lal Paswan the remarks of the Inspecting Judge duly recorded are only of 1985 and 1990. Mr. Munni Lal Paswan was promoted as A.D.J. on 17.06.2003. He was posted as Special Judge on 22.06.2005. Therefore, it is clear that there is no gradation/categorisation of the confidential reports of Mr. Munni Lal Paswan by the Inspecting Judge of the High Court particularly after becoming A.D.J.

In the case of High Court of Punjab and Haryana, through Registrar General v. Ishwar Chand Jain and Another this Court has held as follows:

"32. Since late this Court is watching the spectre of either judicial officers or the High Courts coming to this Court when there is an order prematurely retiring a judicial officer. Under Article 235 of the Constitution the High Court exercises complete control over subordinate courts which include District Courts. Inspection of the subordinate courts is one of the most important functions which the High Court performs for control over the subordinate courts. The object of such inspection is for the purpose of assessment of the work performed by the Subordinate Judge, his capability, integrity and competency. Since Judges are human beings and also prone to all the human failings inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court, remedied. Inspection should act as a catalyst in inspiring Subordinate Judges to give the best results. They should feel a sense of achievement. They need encouragement. They work under great stress and man the courts while working under great discomfort and hardship. A satisfactory judicial system depends largely on the satisfactory functioning of courts at the grass-roots level. Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court and become part of the annual confidential reports and are foundations on which the career of a judicial officer is made or marred. Inspection of a subordinate court is thus of vital importance. It has to be both effective and productive. It can be so only if it is well regulated and is workman-like. Inspection of subordinate courts is not a one-day or an hour or a few minutes' affair. It has to go on all the year round by monitoring the work of the court by the Inspecting Judge. A casual inspection can hardly be beneficial to a judicial system. It does more harm than good. As noticed in the case of Registrar, High Court of Madras v. R. Rajiah there could be ill-conceived or motivated complaints. Rumour- mongering is to be avoided at all costs as it seriously jeopardizes the efficient working of the subordinate courts.

33. Time has come that a proper and uniform system of inspection of subordinate courts should be

devised by the High Courts. In fact the whole system of inspection needs rationalization. There should be some scope of self-assessment by the officer concerned. We are informed that the First National Judicial Pay Commission is also looking into the matter. This subject, however, can be well considered in a Chief Justices' Conference as the High Court itself can devise an effective system of inspection of the subordinate courts. The Registrar General shall place a copy of this judgment before the Hon'ble Chief Justice of India for him to consider if the method of inspection of subordinate courts could be a matter of the agenda for the Chief Justices' Conference."

(emphasis supplied)

The above judgment emphasizes the importance of the remarks given by the Inspecting Judge. The object of Inspection is to assess the work performed, capability, competency besides integrity of the candidate. Those gradations/categorisations given by Inspecting Judges are required to be placed before the Full Court. In the present case, that exercise is done for two out of three judicial officers when they were posted. However, it appears from the affidavit of the Registrar General that no gradation/categorisation has been done after 1990 by the Inspecting Judge vis-a-vis the judgments of Mr. Munni Lal Paswan.

It is important to bear in mind that in the matter of economic scams be it security transactions or fodder scams or Taj corridor it is the economic interest of the country which is at stake. These cases are highly complicated in which complicated questions are involved and, therefore, posting plays a vital role.

In the circumstances, it seems that the procedure followed by the High Court in the meeting on 22.06.05 has lost sight of the above criteria. In the circumstances, a request is being made to the Chief Justice of the Patna High Court to convene an urgent meeting of Administrative Judges and complete the exercise of giving appropriate gradation/categorisation after looking at the judgments and orders delivered by the concerned judge, Mr. Paswan. I may make it clear that this is just a request to the High Court and not a direction so that the evaluation standards are commonly applied to all the three candidates.

Before concluding it may be pointed out that this decision is confined strictly to the decision-making process and it is not concerned with the merits of the allegations made in the petitions. The allegations made in the petitions are not only against the accused, they are also directed against number of functionaries. It is, therefore, made clear that this decision is only to rectify the procedure of decision-making at the High Court level and at the Revenue level so that in future such anomalies do not arise.

To sum up, the Chief Justice of the Patna High Court is requested to convene a meeting of Administrative Judges and have a fresh look at the evaluation in the case of posting of Sri Paswan as Special Judge for C.B.I. (Fodder Scam Cases) at Patna, vide Minutes of Meeting dated 22.06.2005. At the same time, Union of India is directed to reconsider approaching the High Court against the decision of the Tribunal dated 2.7.2004 under Section 260A of the Income Tax Act, 1961 in the

light of what is stated above.

In the end it may be stated that true value of a decision lies in its propriety and not in the decision being right or wrong.

Writ Petition (Crl.) Nos.197-198 of 2004 are accordingly allowed to the extent indicated above.