SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Sarangdharsingh Shivdassingh Chavan

Crl.A.No. _____ of 2010

(G.S. Singhvi and Asok Kumar Ganguly JJ.)

14.12.2010

JUDGMENT

GANGULY, J.

1. Leave granted.

2. The facts of each case, which come up to this Court and especially those which are heard at length as appeals, have a message to convey. The message conveyed in this case is extremely shocking and it shocks the conscience of this Court about the manner in which the Constitutional functionaries behaved in the State of Maharashtra.

3. A writ petition was filed before Bombay High Court by Sarangdharsingh Shivdassingh Chavan - the first respondent in this appeal. He described himself as an agriculturist by profession. The allegation in the writ petition is of illegal money lending against the second respondent to the extent of charging 10% interest per month on the money lent.

4. In view of such exorbitant interest being charged and the illegalities which are alleged be committed in the recovery of such loan, certain complaints were filed against the second respondent and in the writ petition it is stated that as many as 34 complaints were registered against the second respondent till 28.6.2006.

5. It was also averred in the writ petition that nearly 300 farmers have committed suicide in Vidarbha region of Maharashtra as victims of such illegal money lending business and the torture perpetrated in the recovery of such money. A complaint has been made that the farmers do not get the benefit of various packages announced by the Government and the State machinery is ruthless against the farmers. The cause of action for filing the writ petition is the order of Collector in the District of Buldhana (hereinafter "Collector") directing not to register any crime against Mr. Gokulchand Sananda, the second respondent herein, without obtaining clearance from the District Anti Money Lending Committee and also without obtaining legal opinion of the District Government Pleader. It appears that the said order was passed by the Collector in view of the instructions given to him by the then Chief Minister of Maharashtra. It has been alleged in the petition that there are several complaints and the number of such complaints is about 50 against Sananda and his family members who are carrying on money lending business and the cases cannot be registered against them in view of the instructions given by the then Chief Minister.

6. In order to understand the seriousness of the situation, it will be appropriate in the fitness of things, to set out the order dated 5.6.2006 of the Collector, Buldhana to the District Superintendent of Police, Buldhana:

"To
District Superintendent of Police Buldhana
Sub: Regarding complaints against illegal money lending against MLA Dilipkumar Sananda and his family members.

Ref: instructions given by Hon'ble Chief Minister in meeting dated 1.6.2006.

On the above mentioned subject, detailed discussion took place at the residence of Hon'ble Chief Minister on 1.6.2006. In the said meeting, MLA Dilipkumar Sananda complained that deliberately by raising false allegations, against his family members, complaints regarding illegal money lending are being filed and without scrutinizing truthfulness of the said complaints, offences are being registered. In respect of said grievance, Hon'ble Chief Minister has taken serious note and given order that `if any such complaint is received then before registration of offence against MLA Dilipkumar Sananda and his family members, said matter/complaint be placed for decision before District Anti-Money Lending Committee and said Committee should obtain legal opinion of District Government Pleader and then only take decision on the same and take appropriate legal action accordingly'.

You are informed that as per the instructions of Hon'ble Chief Minister, matters against Sananda family be handled as per the provisions of Money Lending Prevention Act."

7. It may be noticed that prior to the aforesaid discussion which the Collector had at the residence of the Chief Minister on 1.6.2006 in which meeting Mr. Dilipkumar Sananda, local MLA was present, something happened in the Police Station, Khamgaon City, District Buldhana on 31.5.2006. The said station diary shows that Mr. Padwal, P.S. to the Chief Minister telephoned twice to enquire about "the information regarding the offence" registered against Sananda and the Section under which the case has been registered. The second phone call as recorded in Station Diary shows that Mr. Padwal directed that no action should be taken as instructed by the Chief Minster and no offence should be registered. The text of the station diary dated 31.5.2006 is set out:

"Station Diary

Police Station Khamgaon City, District Buldhana, dated 31.5.2006 Station Time Summary Particulars of Entry Diary of the Entry Entry No. 26 13.15 Phone At this time, Mr. Padwal, PS hrs. from PS to Hon'ble Chief Minister, to Hon. MS dialed and enquired about CM the information regarding offence registered against Sananda; we informed that offence is registered at 12.15 hrs. 27 13.25 Phone At this time, Mr. Padwal hrs. from PS enquired about facts of the to Hon. offence registered, sections CM applied; then we informed them about sections applied to the said registered offence, then he told that henceforth no action be taken as instructed by Hon'ble CM and further said that again no other offences be registered.

Sd/-
Police Inspector

Khamgaon City Police Station

8. On the writ petition being filed challenging the aforesaid two communications, namely, the communication made by the P.S. to the Chief Minister vide the Station diary entry which is set out above and the order of Collector on the direction of the Chief Minister, the High Court in the impugned judgment allowed the writ petition. The High Court, inter alia, held that the directions of the Chief Minister in the telephonic message was proved by the communication of the Collector dated 5.6.2006 and the High Court held that such telephonic communication was made at the behest of Gokulchand Sananda, the second respondent herein. The High Court after examining the provisions of the Bombay Money Lenders Act and also the materials on record held that the letter dated 5.6.2006 and the telephonic message recorded in the Station diary entry exhibit gross abuse of power by the concerned authority and struck down both the communications.

9. The High Court, however, recorded that on the complaint filed by the writ petitioner - the first respondent herein, a chargesheet was filed for offences under Sections 341, 342, 363, 392, 504 read with Section 34 of Indian Penal Code and Section 32B of the Bombay Money Lenders Act, 1946. The criminal case is pending. The High Court also observed that they are not aware how many instances of illegal money lending do exist. The High Court expressed a hope that power of the Executive will not be abused in the manner in which it has been done in this case. The High Court, quashed the Collector's order and allowed the writ petition awarding costs of Rs.25,000/- to be paid by the State Government.

10. However, the State of Maharashtra did not accept the judgment of the High Court and challenged the same before this Court by filing a special leave petition out of which the present appeal arises.

11. From the affidavit which was filed by the Collector before the High Court, it appears that the Collector has admitted that in Vidarbha region in Buldhana District the farmers committed suicide for various reasons and especially for the loan burden coupled with the fact that there was irregular rain fall.

12. The Collector admitted in paragraph (3) of the affidavit that on the complaint of Sananda before the Chief Minister about cases being registered against him and his family members without investigation, the Chief Minister called the Collector at Mumbai and gave the instructions quoted above and thereupon the Collector conveyed the message of the Chief Minister to the Superintendent of Police, Buldhana. However, the Collector took a stand that by doing so he has not committed any illegality.

13. In the affidavit of the Superintendent of Police, Buldhana before the High Court, he admits that there are five cases already registered against the family members of Sananda under the Bombay Money Lenders Act and he has given details of those cases in his affidavit. He also submitted that on 31.5.2006 an offence came to be registered at police station, Khamgaon (T) on the complaint made by Shri Rajesh Shankar Kawadkar under Sections 341, 366, 392 read with Section 34 IPC and under Section 32(b) and 33 of the Bombay Money Lenders Act. He also admits to have received instructions from the Collector by the Collector's order dated 5.6.2006 about the Collector's meeting with the then Chief Minister of the Maharashtra and also about the manner in which the police has to deal with the complaints against Dilip Kumar Sananda and his family members. He further averred in his affidavit that by letter dated 9.6.2006 the Superintendent of Police conveyed that as

per Section 154 of Criminal Procedure Code cognizable complaints are to be registered without undue delay. However, on receipt of the said letter the Collector sent his letter dated 14.6.2006 stating therein that under Section 36 of the Cr.P.C. the State Government can direct a senior police officer to take cognizance of the offence also.

14. In the course of hearing of this case, this Court by an order dated 11th February 2010 directed the learned counsel for the appellant to file an affidavit on the following points:

"1. The number of cases involving complaints against respondent No.2 and/or his family members.

2. The number of cases in which FIR have been registered against respondent No.2 and/or his family members.

3. The number of cases in which instructions like the one contained in letter dated 05.06.2006 of District Collector, Buldhana were or have been given by Hon'ble the Chief Minister or any other functionary or authority of the State Government."

15. Pursuant thereto an additional affidavit was filed by one Ambadas, Assistant Police Inspector, posted to P.S. Khamgaon Gramin, District Buldhana, Maharashtra to the effect that 34 complaints were received in different police stations in Buldhana District against the members of Sananda family. In the affidavit it was also stated that in seven complaints chargesheets have been filed and the same are pending before different Courts below. In respect of other complaints the complainants have either settled their disputes or have withdrawn their complaints. It was also stated that not a single person including any member of the complainant's family has committed suicide in view of dispute over money lending by Sananda family. This averment was, however, not necessary in terms of the order dated 11.2.10.

16. The learned counsel appearing for the first respondent raised a contention that the so called District Anti-money Lending Committee is not statutory. This Court has looked into the resolution dated 19th October 2005 which purports to constitute the said committee and this Court finds that the said committee has not been constituted in exercise of any statutory power and the said committee consists of the following persons:

"1. District Collector of the concerned District - President

2. District Superintendent of Police - Member

3. District Registrar, Cooperative Society - Member Secretary."

17. This Court, therefore, finds that the contention of the learned counsel for the first respondent is correct and so far as the said committee is concerned it is not a statutory body.

18. Since, the learned counsel for the first respondent was arguing on the propriety of directions given by the then Chief Minister of Maharashtra and also on the propriety of Chief Minister's Personal Secretary making telephone calls to the police station and giving instructions as to how complaints should be registered against the family of the second respondent, this Court thought that the then Chief Minister of Maharashtra, who was initially not a party to this proceeding, should be impleaded and be given a chance to make his representation before the Court. Therefore, this Court

by an order dated 31st March 2010, gave notice to the then Chief Minister of State of Maharashtra, presently Union Minister, Department of Heavy Industries, Government of India and directed service of the entire paper book of Special Leave Petition on him in order to enable him to file an affidavit in the context of the letter dated 5th June 2006 sent by the Collector to the District Superintendent of the Police, Buldhana.

19. Pursuant to the said notice an affidavit was filed by Shri Vilasrao Deshmukh, the then Chief Minister of Maharashtra. In paragraph 5 of the said affidavit the content of the letter of the Collector dated 5.6.06 was not denied. Nor was it denied that on 31.5.06, his Private Secretary made two telephone calls to the concerned Police Station enquiring about cases registered against Sananda. However, in the said affidavit Mr. Deshmukh stated that he never interfered with any pending investigation against the family of Sananda and he further stated that investigation was conducted and the chargesheet was filed.

20. Considering the entire matter in its proper perspective, this Court is of the view that the way interference was caused first from the office of the Chief Minister by his Private Secretary by two telephone calls on 31.5.2006 and the manner in which District Collector was summoned by the Chief Minister on the very next day i.e. 1.6.2006 for giving instructions to specially treat any complaints filed against M.L.A. Mr. Dilip Kumar Sananda and his family has no precedent either in law or in public administration.

21. The legal position is well settled that on information being lodged with the police and if the said information discloses the commission of a cognizable offence, the police shall record the same in accordance with the provisions contained under Section 154 of the Criminal Procedure Code. Police Officer's power to investigate in case of a cognizable offence without order of the Magistrate is statutorily recognised under Section 156 of Code. Thus the police officer in charge of a police station, on the basis of information received or otherwise, can start investigation if he has reasons to suspect the commission of any cognizable offence.

22. This is subject to the provisos (a) and (b) to Section 157 of the Code which leaves discretion with the police officer-in-charge of police station to consider if the information is not of a serious nature, he may depute a subordinate officer to investigate and if it appears to the officer-in-charge that there does not exist sufficient ground, he shall not investigate.

23. This legal framework is a very vital component of the Rule of Law in order to ensure prompt investigation in cognizable cases and to maintain law and order.

24. Law does not accord any special treatment to any person in respect of any complaint having been filed against him when it discloses the commission of any cognizable offence. In the context of this clear legal position which, as noted above, is a vital component of a Rule of Law, the direction of the then Chief Minister to give a special treatment to Shri Dilip Kumar Sananda, M.L.A and his family about registering of complaint filed against them is totally unwarranted in law. Mr. Vilasrao Deshmukh as the Chief Minister of State of Maharashtra is expected to know that the farmers of the State specially those in the Vidarbha region are going through a great deal of suffering and hardship in the hands of money lenders.

25. It is not in dispute that members of the family of Shri Dilip Kumar Sananda, a Member of Legislative Assembly, are engaged in money lending business and various complaints have been

lodged against the members of such family.

26. From the affidavit filed by Shri Ambadas it is clear that 34 cases were filed against that family in respect of allegation of money lending.

27. From the communication of the Collector containing the instructions of the then Chief Minister, Mr. Vilasrao Deshmukh, it is clear that the Chief Minister was aware of various complaints being filed against the said family. Even then he passed an order for a special treatment in favour of the said family which is unknown to law. This was obviously done to protect the Sananda family from the normal legal process and a special procedure was directed to be adopted in respect of criminal complaint filed against them. In other words, the Chief Minister wanted to give the members of the said family a special protection which is not available to other similarly placed persons. It is clear from the Collector's order dated 5.6.2006 where the Chief Minister's instructions were quoted that the Chief Minister was acting solely on political consideration to screen the family of M.L.A from the normal process of law.

28. As Judges of this Court, it is our paramount duty to maintain the Rule of Law and the Constitutional norms of equal protection.

29. We cannot shut our eyes to the stark realities. From the National Crime Records Bureau (NCRB), it is clear that close to two lakh farmers committed suicide in India between 1997 and 2008. This is the largest sustained wave of suicides ever recorded in human history. Two thirds of the two lakh suicides took place in five states and those five states are Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh and Chhattisgarh. Even though Maharashtra is one of the richest state in the country and in its capital Mumbai twenty five thousand of India's one lakh dollar millionaires reside, the Vidarbha region of Maharashtra, in which is situated Buldhana, is today the worst place in the whole country for farmers. Professor K. Nagraj of the Madras Institute of Development Studies who carried on a research in this area has categorized that Maharashtra could be called the graveyard of farmers.

30. The position is so pathetic in Vidarbha region that families are holding funerals and weddings at the same time and some time on the same day. In a moving show of solidarity poor villagers are accumulating their money and labour to conduct marriages and funerals of their poor neighbours. (See the report in Hindu dated 22nd May 2006).

31. This being the ground reality, as the Chief Minister of the State and as holding a position of great responsibility as a high constitutional functionary, Mr. Vilasrao Deshmukh certainly acted beyond all legal norms by giving the impugned directions to the Collector to protect members of a particular family who are dealing in money lending business from the normal process of law. This amounts to bestowing special favour to some chosen few at the cost of the vast number of poor people who as farmers have taken loans and who have come to the authorities of law and order to register their complaints against torture and atrocities by the money lenders. The instructions of the Chief Minister will certainly impede their access to legal redress and bring about a failure of the due process.

32. The aforesaid action of the Chief Minister is completely contrary to and inconsistent with the constitutional promise of equality and also the preambular resolve of social and economic justice. As a Chief Minister of the State Mr. Deshmukh has taken a solemn of oath of allegiance to the

Constitution but the directions which he gave are wholly unconstitutional and seek to subvert the constitutional norms of equality and social justice.

33. The argument that some of the cases in which complaints were filed against the family of Sananda, were investigated and chargesheets were filed, is a poor consolation and does not justify the issuing of the wholly unauthorised and unconstitutional instructions to the Collector. It is not known to us in how many cases investigation has been totally scuttled in view of the impugned directions. Records disclosed in this case show that out of 74 cases only in seven cases chargesheets were filed and the rest of the cases were either compromised or withdrawn. How can poor farmers sustain their complaint in the face of such directions and how can the subordinate police officers carry on investigation ignoring such instructions of the Chief Minister? Therefore, the instructions of the Chief Minister have completely subverted the Rule of Law.

34. Dr. Singhvi, learned senior counsel appearing for Mr. Vilasrao Deshmukh relied on a decision of this Court in the case of Lalita Kumari v. Government of Uttar Pradesh & Ors. reported in 2008 (14) SCC 337.

35. In Lalita Kumari (supra), a Bench of this Court did not lay down any law. The Bench merely noted that there is a divergence of views between different Benches of this court on the issue whether upon receipt of information disclosing a cognizable offence, it is imperative for the police officer to register a case or discretion still lies with him to make some kind of a preliminary enquiry before registering the same. The Bench having noted the divergence of views on the aforesaid question referred the matter to a larger Bench.

36. We fail to appreciate the relevance of the aforesaid decision to the disputes involved in the present case.

37. In Lalita Kumari (supra), there was no instruction by any Chief Minister or any executive authority to give a special treatment to any group of persons in the matter of registration of criminal cases against them. Therefore, the opinion in Lalita Kumari (supra) does not in any way justify the instruction given by Mr. Vilasrao Deshmukh.

38. This Court is extremely anguished to see that such an instruction could come from the Chief Minister of a State which is governed under a Constitution which resolves to constitute India into a socialist, secular, democratic republic. Chief Minister's instructions are so incongruous and anachronistic, being in defiance of all logic and reason, that our conscience is deeply disturbed. We condemn the same in no uncertain terms.

39. We affirm the order of the High Court and direct that the instruction of the Chief Minister to the Collector dated 5.6.06 has no warrant in law and is unconstitutional and is quashed. We dismiss this appeal with costs of Rs.10,00,000/- (Rupees Ten Lakhs) to be paid by the appellant in favour of the Maharashtra State Legal Services Authority. This fund shall be earmarked by the Authority to help the cases of poor farmers. Such costs should be paid within a period of six weeks from date.

G.S. SINGHVI, J.

1. I have gone through the judgment prepared by my esteemed brother Justice Asok Kumar Ganguly. I agree with him that the appeal deserves to be dismissed with costs but would like to

separately record my views on the crucial issue of ministerial interference in the functioning of the authorities entrusted with the task of enforcing the laws enacted by the legislature.

2. The Constituent Assembly which comprised of eminent people drawn from different walks of life debated for more than two years, examined the constitutions of several countries and prepared the document, which was adopted as "the Constitution of India". The Preamble to the Constitution, as it stands after the Constitution (Forty-second Amendment) Act, 1976, reads thus:

"We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression belief, faith and worship; EQUALITY of status and of opportunity and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation."

3. Though each of XXII Parts of the Constitution has its own significance, the common man is by and large concerned with Parts III, IV and IV-A, the last having been added by the Forty-second Amendment Act, 1976. Part-III of the Constitution enumerates various fundamental rights guaranteed to the citizens and even non-citizens. The provisions of Part-IV contain directive principles of State policy which are fundamental for the governance of the country. The State has been obligated to enact laws for improving the lot of the weaker sections of the society and the rural population so that the goals of social justice and equality can be achieved.

4. By incorporating Part IVA in the Constitution, the Parliament has emphasized what is obvious, that is, every citizen must do his duty towards the nation as well as the fellow citizens because unless every one does his duty, it is not possible to achieve the goals of equality and justice enshrined in the Preamble. Article 51A enjoins upon every citizen to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem; to cherish and follow the noble ideals which inspired our national struggle for freedom; to uphold and protect the sovereignty, unity and integrity of India; to promote harmony and the spirit of common brotherhood amongst all the people irrespective of religion, language, region etc. and to renounce practices derogatory to the dignity of women; to value and preserve the rich heritage of our composite culture; to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; to develop the scientific temper, humanism and the spirit of inquiry and reform; to safeguard public property and to abjure violence; and 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. What has been incorporated in the form of Part IV-A was implicit in the Preamble, Part III and Part-IV of the Constitution because fundamental rights of the citizens can become meaningful only if the State and citizens do their duty to bring about real equality amongst the people belonging to different segments of the Society.

5. Part IV-A of the Constitution was enacted with a fond hope that every citizen will honestly play his role in building of a homogeneous society in which every Indian will be able to live with dignity without having to bother about the basics like food, clothing, shelter, education, medical aid and the nation will constantly march forward and will take its place of pride in the comity of nations. However, what has happened in last few decades has given rise to serious apprehensions whether we

will be able to achieve the objectives which were in the mind of the makers of the Constitution. The gap between 'haves' and 'haves not' of the society which existed even in pre- independent India has widened to such an extent that it may take many decades before even a token equality is restored. A small fraction of the population has evolved a new value system which is totally incompatible with the values and ideals cherished by the Indian society for centuries together. They believe in achieving their goals without regard to purity of the means.

6. Under the Constitution, the executive power of the State vests in the Governor and is required to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution [Article 154(1)]. Article 163 mandates that there shall be Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion. Article 164 lays down that the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Minister shall hold office during the pleasure of the Governor. Article 164(3) lays down that the Governor shall before a Minister enters upon his office, administer to him the oath of office and secrecy according to the form set out in the Third Schedule, in terms of which, the Minister is required to take oath that he shall discharge his duties in accordance with the Constitution and the law without fear or favour, affection or ill will. However, the cases involving pervasive misuse of public office for private gains, which have come to light in last few decadestend to shake the peoples' confidence and one is constrained to think that India has freed itself from British colonialism only to come in the grip of a new class, which tries to rule on the same colonial principles. Some members of the political class who are entrusted with greater responsibilities and who take oath to do their duties in accordance with the Constitution and the law without fear or favour, affection or ill will, have by their acts and omissions demonstrated that they have no respect for system based on rule of law.

7. The judgment of the Constitution Bench in C.S. Rowjee v. State of Andhra Pradesh (1964) 6 SCR 330 is an illustration of the misuse of public office by the Chief Minister for political gain. The schemes framed by the Government of Andhra Pradesh under Chapter IVA of the Motor Vehicles Act, 1939 for nationalization of motor transport in certain areas of Kurnool District of Andhra Pradesh were challenged by filing writ petitions under Article 226 of the Constitution. The High Court repelled the challenge to the validity of the schemes and also negatived the argument that the same were vitiated due to mala fides of the then Chief Minister of the State. This Court allowed the appeals and quashed the scheme and declared that the schemes are invalid and cannot be enforced. While examining the issue of mala fide exercise of power, the Constitution Bench stuck a note of caution by observing that allegations of malafides and of improper motives on the part of those in power are frequently made and some times without any foundation and, therefore, it is the duty of the Court to scrutinize those allegations with care so as to avoid being in any manner influenced by them if they are not well founded. The Court then noted that the scheme was originally framed by the Corporation on the recommendations of Anantharamakrishnan Committee, but was modified at the asking of the Chief Minister so that his opponents may be prejudicially affected and proceeded to observe:

"The first matter which stands out prominently in this connection is the element of time and the sequence of dates. We have already pointed out that the Corporation had as late as March 1962 considered the entire subject and had accepted the recommendation of the Anantharamakrishnan Committee as to the order in which the transport in the several districts should be nationalised and

had set these out in their Administration Report for the three year period 1958 to 1961. It must, therefore, be taken that every factor which the Anantharamakrishnan Committee had considered relevant and material for determining the order of the districts had been independently investigated, examined and concurred in, before those recommendations were approved. It means that up to March-April 1962 a consideration of all the relevant factors had led the Corporation to a conclusion identical with that of the Anantharamakrishnan Committee. The next thing that happened was a conference of the Corporation and its officials with the Chief Minister on April 19, 1962. The proceedings of the conference are not on the record nor is there any evidence as to whether any record was made of what happened at the conference. But we have the statement of the Chief Minister made on the floor of the State Assembly in which he gave an account of what transpired between him and the Corporation and its officials. We have already extracted the relevant portions of that speech from which the following points emerge: (1) that the Chief Minister claimed a right to lay down rules of policy for the guidance of the Corporation and in fact, the learned Advocate-General submitted to us that under the Road Transport Corporation Act, 1950, the Government had a right to give directions as to policy to the Corporation; (2) that the policy direction that he gave related to and included the order in which the districts should be taken up for nationalisation; and (3) that applying the criteria that the districts to be nationalised should be contiguous to those in which nationalised services already existed, Kurnool answered this test better than Chittoor and he applying the tests he laid down therefore suggested that instead of Chittoor, Kurnool should be taken up next. One matter that emerges from this is that it was as a result of policy decision taken by the Chief Minister and the direction given to the Corporation that Kurnool was taken up for nationalisation next after Guntur. It is also to be noticed that if the direction by the Chief Minister, was a policy decision, the Corporation was under the law bound to give effect to (vide Section 34 of the Road Transport Corporation Act, 1950). We are not here concerned with the question whether a policy decision contemplated by Section 34 of the Road Transport Act could relate to a matter which under Section 68-C of the Act is left to the unfettered discretion and judgment of the Corporation, where that is the State undertaking, or again whether or not the policy decision has to be by a formal Government Order in writing for what is relevant is whether the materials placed before the Court establish that the Corporation gave effect to it as a direction which they were expected to and did obey. If the Chief Minister was impelled by motives of personal ill-will against the Road Transport Operators in the western part of Kurnool and he gave the direction to the Corporation to change the order of the districts as originally planned by them and instead take up Kurnool first in order to prejudicially affect his political opponents, and the Corporation carried out his directions it does not need much argument to show that the resultant scheme framed by the Corporation would also be vitiated by mala fides notwithstanding the interposition of the semi-autonomous Corporation.

..... If in these circumstances the appellants allege that whatever views the Corporation entertained they were compelled to or gave effect to the wishes of the Chief Minister, it could not be said that the same is an unreasonable inference from facts. It is also somewhat remarkable that within a little over two weeks from this conference by its resolution of May 4, 1962, the Corporation dropped Nellore altogether, a district which was contiguous to Guntur and proceeded to take up the nationalisation of the routes of the western part of the Kurnool district and were able to find reasons for taking the step. It is also worthy of note that in the resolution of 4th May, 1962, of the Corporation only one reason was given for preferring Kurnool to Nellore, namely, the existence of a depot at Kurnool because the other reason given, namely, that Kurnool was contiguous to an area of nationalised transport equally applied to Nellore and, in fact, this was one of the criteria on the basis of which the Anantharamakrishnan Committee itself decided the order of priority among the

districts. .... What the Court is concerned with and what is relevant to the enquiry in the appeals is not whether theoretically or on a consideration of the arguments for and against, now advanced the choice of Kurnool as the next district selected for nationalisation of transport was wise or improper, but a totally different question whether this choice of Kurnool was made by the Corporation as required by Section 68-C or, whether this choice vas in fact and in substance, made by the Chief Minister, and implemented by him by utilising the machinery of the Corporation as alleged by the appellants. On the evidence placed in the case we are satisfied that it was as a result of the conference of April 19, 1962, and in order to give effect to the wishes of the Chief Minister expressed there, that the schemes now impugned were formulated by the Corporation." (emphasis supplied)

In Chandrika Jha v. State of Bihar (1984) 2 SCC 41, this Court examined the question whether the Chief Minister of the State could direct extension of the term of the committee of management of Vaishali District Central Cooperative Bank, Hazipur (for short, `the Bank'). The Bank was created for the new district, which came into existence with the bifurcation of the existing district. In exercise of the power conferred upon him by Bye-law 29, the Registrar, Cooperative Societies, Bihar nominated a committee of management of 17 members including the appellant to be the first Board of Directors for a period of six months i.e., up to December 31, 1981 or till further orders, whichever was earlier. The committee of management was specifically directed to get the elections of the Board of Directors held in accordance with the law within six months. The appellant, who was a political person directly approached the then Chief Minister of the State and got the term of the first Board of Directors extended from time to time resulting in postponement of the election of the new board. On 29.10.1981, the then Chief Minister made an endorsement to the Minister (Cooperation) with a direction that the Registrar should extend the period of the committee of management for the time being. The Registrar complied with the directive of the Chief Minister, but ordained the committee of management to call the general meeting and get the Board of Directors elected within the extended term. In April 1982, the appellant again got the term extended through the intervention of the Chief Minister. On 13.4.1983, the appellant addressed another communication to the Chief Minister for extension of the term of the nominated Board of Directors for one year. The Chief Minister obliged him by extending the term for six months and endorsed the same to the Minister (Cooperation). The then Chief Minister resigned on 13.8.1983. Thereafter, the Registrar reconstituted the first Board of Directors in terms of the direction given by the Minister for Industries. This Court prefaced consideration of the question of interference by the Chief Minister with the statutory functions of the Registrar under Bye-law 29 by making the following observations: "The case illustrates an unfortunate trend which has become too common these days in the governance of the country." The Court then referred to the relevant statutory provisions and observed: "We fail to appreciate the propriety of the Chief Minister passing orders for extending the term of the first board of directors. Under the Cabinet system of Government the Chief Minister occupies a position of pre-eminence and he virtually carries on the governance of the State. The Chief Minister may call for any information which is available to the Minister-in- charge of any department and may issue necessary directions for carrying on the general administration of the State Government. Presumably, the Chief Minister dealt with the question as if it were an executive function of the State Government and thereby clearly exceeded his powers in usurping the statutory functions of the Registrar under Bye-Law 29 in extending the term of the first board of directors from time to time. The executive power of the State vested in the Governor under Article 154(1) connotes the residual or governmental functions that remain after the legislative and judicial functions are taken away. The executive power includes acts necessary for the carrying on or supervision of the general administration of the State including both a decision as to action and the

carrying out of the decision. Some of the functions exercised under "executive powers" may include powers such as the supervisory jurisdiction of the State Government under Section 65-A of the Act. The Executive cannot, however, go against the provisions of the Constitution or of any law.

Neither the Chief Minister nor the Minister for Co-operation or Industries had the power to arrogate to himself the statutory functions of the Registrar under Bye-Law 29. The act of the then Chief Minister in extending the term of the committee of management from time to time was not within his power. Such action was violative of the provisions of the Rules and the bye- laws framed thereunder. The Act as amended from time to time was enacted for the purpose of making the co-operative societies broad-based and democratizing the institution rather than to allow them to be monopolized by a few persons. The action of the Chief Minister meant the very negation of the beneficial measures contemplated by the Act. In Surendra Kumar v. State of Bihar (1984) 4 SCC 609, this Court referred to an earlier decision in Suman Gupta v. State of J. & K. AIR 1983 SC 1235, wherein the Court had observed that there is nothing like unfettered discretion of the executive authority to nominate the candidate for admission to medical course under the reciprocal arrangement and observed that recommendations made at the instance of the Chief Minister de hors the merit of the candidates who had applied for admission was blatant abuse of power by the Chief Minister. In Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi (1987) 1 SCC 227, the question considered by this Court was whether the marks awarded to the daughter of the appellant, who was at the relevant time the Chief Minister of the State of Maharashtra had been changed at his instance or to please him. The respondent had challenged the result of the appellant's daughter of MD examination by alleging that his daughter was shown favour by increasing her marks. The learned Single Judge, after examining the record produced before him, came to the conclusion that tampering of the grade-sheets was done by Dr. Rawal at the behest of respondent Nos.3 and 4. The Division Bench of the High Court rejected the prayer for permission to adduce additional evidence and dismissed the appeal with an observation that the conclusion arrived at against the appellant should be treated as merely in the nature of an adverse comment and not a finding of fact. This Court extensively considered the matter, referred to some of the precedents and observed:

"There is no question in this case of giving any clean chit to the appellant in the first appeal before us. It leaves a great deal of suspicion that tampering was done to please Shri Patil or at his behest. It is true that there is no direct evidence. It is also true that there is no evidence to link him up with tampering. Tampering is established. The relationship is established. The reluctance to face a public enquiry is also apparent. Apparently Shri Patil, though holding a public office does not believe that "Caesar's wife must be above suspicion". The erstwhile Chief Minister in respect of his conduct did not wish or invite an enquiry to be conducted by a body nominated by the Chief Justice of the High Court. The facts disclose a sorry state of affairs. Attempt was made to pass the daughter of the erstwhile Chief Minister, who had failed thrice before, by tampering the record. The person who did it was an employee of the Corporation. It speaks of a sorry state of affairs and though there is no distinction between comment and a finding and there is no legal basis for such a comment, we substitute the observations made by the aforesaid observations as herein. This Court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country along with or even before cleaning the physical atmosphere. The pollution in our values and standards in (sic is) an equally grave menace as the pollution of the environment. Where such situations cry out the courts should not and cannot remain mute and dumb." (emphasis supplied) In Secretary, J.D.A. v. Daulat Mal Jain (1997) 1 SCC 35, this Court had the occasion to examine allotment of lands to the respondents by the Minister and the committee headed by the Minister. Some of the observations made in that decision are quite

relevant in the context of the present case. Therefore, they are quoted below:

"... The Minister holds public office though he gets constitutional status and performs functions under constitution, law executive policy. The acts done and duties performed are public acts or duties as holding of the public office. Therefore, he owes certain accountability for the acts done or duties performed. In a democratic society governed by rule of law, power is conferred on the holder of the public office or the concerned authority by the Constitution by virtue of appointment. The holder of the office, therefore, gets opportunity to abuse or misuse of the office. The politician who holds public office must perform public duties with the sense of purpose, and a sense of direction, under rules or sense of priorities. The purpose must be genuine in a free democratic society governed by the rule of law to further socio-economic democracy. ..... If the Minister, in fact, is responsible for all the detailed working of his Department, then clearly ministerial responsibility must cover a wider spectrum than mere moral responsibility; for no minister can possibly get acquainted with; all the detailed decisions involved in the working of his Department.... The so-called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. Misuse implies doing of something improper. The essence of impropriety is replacement of a public motive for a private one. When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as corruption. The holder of a public office is said to have misused his position when in pursuit of a private satisfaction, as distinguished from public interest, he has done something which he ought not to have done. The most elementary qualification demanded of a Minister is honesty and incorruptibility. He should not only possess these qualifications but should also appear to possess the same." (emphasis supplied)

In R v. Metropolitan Police Commissioner (1968) 1 All. E.R. 763, the Court of Appeal considered the question whether the Commissioner of Police could give instruction to the cadre not to take action against clubs for violating gaming laws and held that he was not entitled to do so. The facts of the case show that Albert Raymond Blackburn applied for a mandamus to the Commissioner of Police of Metropolis requiring him to assist him in the prosecution of gaming clubs, which contravened the provisions of Betting, Gaming and Lotteries Act, 1963 and in particular to assist him in respect of the complaint lodged on March 21, 1967 in relation to Golden Nugget Club, Piccadilly and to reverse or procure the reversal of a policy decision taken by him or his superiors that the time of the police officers would not be spent on enforcing the provisions of the Betting, Gaming and Lotteries Act, 1963. The Divisional Court of Queen's Bench dismissed the application. The Court of Appeal noted that the policy decision contained in communication dated April 22, 1966 was a confidential instruction issued to the senior officers of the metropolitan police whereby they were directed not to proceed against the clubs for breach of gaming laws unless there was complaint of cheating or they become haunts of criminals. As a result of the said instruction, the big gaming clubs in the metropolis were allowed to carry on their activities without any police interference. In his opinion, Lord Denning M.R. made the following observations: "I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone." (emphasis supplied) In Magill v.

Porter (2002) 2 AC 357, the House of Lords upheld the decision of the District Auditor who had opined that certain Ministers of Westministers City Council had used their powers to increase the number of owners/occupiers in marginal wards for the purpose of encouraging them to vote for the Conservative Party in future elections. The House of Lords held that although the powers under which the Council could dispose of the land was very broad, and although, elected politicians were entitled to act in a manner which would earn the gratitude and support of their electorate, they could act only to pursue a "public purpose for which the power was conferred", but the purpose of securing electoral advantage for the Conservative Party was no such "public purpose".

8. At this stage, I may also refer to the following portion of the preface to 1964 paper back edition of the book titled "The Modern State" by Maciver:

"The state has no finality, but human nature is as stable as human needs, and what human beings need from government - if we think not of the few, but of men generally, men as social beings - is the same under all conditions. These are liberties secured by restraints, justice under law, order that provides opportunity, the economy of the good life. The modes of satisfying these needs change with the changing conditions. To satisfy any need whatever, even the most spiritual, a modicum of power is necessary, for power is simply the effective control of means. From the beginning of human history government has been recognized as the overall holder and regulator of power, maintaining order by limiting all other expressions of power and thereby turning permitted powers into rights. In that concept lay the rudiments of the principles of government. In every age men have sought to clarify the application of these principles to the changing times. In every age the abuse of power by governments has led to disasters and uprisings, oppressions and vainglorious wars, and sometimes to experiments in the control of power, seeking to make it responsible, or more responsible, subject in some manner to the will of the people, of the majority or those who represented them."

9. The facts of this case, as noticed in the judgment prepared by brother Justice Ganguly, show that with a view to frustrate the complaint made by respondent No.1 who alleged that respondent No.2 - Gokulchand Sananda, his family members and some other money lenders were harassing him and other farmers and also to stall the action likely to be initiated by the concerned police authorities under the Bombay Money Lenders Act, 1946. Shri Dilip Kumar Sananda, a member of the Legislative Assembly approached the Chief Minister for a special treatment. In the first place, the Principal Secretary of the Chief Minister made enquiries from the police station about the cases registered against Sananda. Thereafter, the Chief Minister, without verifying the truthfulness or otherwise of the assertion of Shri Dilip Kumar Sananda that false complaints were being lodged against his family members, issued instructions that complaint against the concerned M.L.A. and his family members should be first placed before the District Anti-Money Lending Committee, which should obtain legal opinion of the District Government Pleader and then only take decision on the same and take appropriate legal action. The camouflage of sophistry used by Shri Vilas Rao Deshmukh in the instructions given by him and the affidavit filed before this Court is clearly misleading. The message to the authorities was loud and clear i.e. they were not to take the complaints against Sananda family seriously and not to proceed against them. The District Magistrate, the District Superintendent of Police and officers subordinate to them were bound to comply with the same in their letter and spirit. They could disregard those instructions at their own peril and none of them was expected to do so. The District Anti-Money Lending Committee was constituted by the Government of Maharashtra vide resolution No. MLA.1204/CR/280/C/7/S dated 19th October, 2009 for protecting the farmers against unscrupulous money lenders and not for

protecting the wrong doers, but in total disregard of the scheme of the Act, the Chief Minister gave instructions which had the effect of frustrating the object of the legislation enacted for protection of the farmers. The instructions given by the Chief Minister to District Collector, Buldhana were ex facie ultra vires the provisions of the Act which do not envisage any role of the Chief Minister in cases involving violation of the provisions of the Act and amounted to an unwanted interference with the functioning of the authorities entrusted with the task of enforcing the Act enacted for regulating, controlling transactions of money lending and protecting unsuspecting borrowers against oppression and harassment at the hands of unscrupulous money lenders.