

(2016) 09 AHC CK 0043

In the Allahabad High Court

Case No : Public Interest Litigation (Pil) No. 29592 of 2016

Akhil Bhartiya Manav Kalyan Evam Samajothhan

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 10 ADJ 5 : (2016) 6 AILLJ 161 : (2016) 4 UPLBEC 2856

Hon'ble Judges : Dilip B. Bhosale, CJ. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Amar Nath Singh, Advocate, for the Petitioners; C.S.C, A.N. Singh, A.S.G.I, Amit Misra, Anjali Upadhya, B.B. Jauhari, Manoj Kumar Singh, Ramendra Pratap Singh, Ravindra Kumar and Shivam Yadav, Advocates, for the Respondents; S.K. Mishra, Advocate, for the

Final Decision : Disposed Off

Judgement

1. The Akhil Bhartiya Manav Kalyan Evam Samajotthan Karya Sansthan, Allahabad instituted these proceedings in public interest seeking the following reliefs:

I. Issue a writ, order or direction in the nature of mandamus commanding the State Government of Uttar Pradesh to transfer the officers/employees, who have completed services of more than 3 years in Noida, Greater Noida and Yamuna Expressway Authority, out of District forthwith.

II. Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to constitute a C.B.I. Enquiry in the matter, so that proper and fair investigation may be done with regard to assets of the private opposite parties as well as assets of their relatives and the work discharged by them in the authority.

III. Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to lodge the First Information Report against the erring persons.

IV. Issue any other order or direction which the Hon"ble Court may deem fit and proper in the circumstances of the case."

2. This petition came up for hearing before a Division Bench of the Court on 30 June 2016. On the said date the attention of the Court appears to have been drawn to the pendency of an earlier public interest litigation being Writ C No. 49534 of 2015, Jitendra Kumar Goel v. State of U.P. and 15 others in which similar issues were raised. Taking note of the same, the Division Bench directed the present Public Interest Litigation to be posted for orders along with Writ C No. 49534 of 2015 on 1 July 2016. These two petitions were thereafter heard together and the Division Bench as an interim measure proceeded to pass the following directions:-

"(a) Mr. Rama Raman shall not exercise any powers of the Chief Executive Officer of Noida Industrial Development Authority, Greater Noida Industrial Development Authority, Yamuna Expressway Industrial Development Authority hence forth. However, he shall continue to draw his salary and other allowances as earlier.

(b) Notice be issued to the respondent nos. 10 to 18 by speed post fixing 20th July, 2016 as the date. Steps be taken within a week. All the respondents may file counter affidavit by the next date.

List on the date fixed. "

3. The above order of restraint issued against the twelfth respondent came to be passed upon the Division Bench noticing that he had continued to be posted at the same place for the last six years during which time serious scams in respect of allotment of land and wrongful utilisation of properties had occurred. It also recorded that during this period various employees of Noida such as Yadav Singh, Ramendra Singh and V.K. Goel had been imprisoned on allegations of having accumulated wealth and properties running into hundreds of crores. The Division Bench further noted that at the relevant time, the twelfth respondent was simultaneously holding charge of the following posts:- (a) Chief Executive Officer [CEO] Greater Noida Industrial Development Authority (Gnida), (b) Chairman, New Okhla Industrial Development Authority (Noida) (c) CEO Noida (d) Chairman Yamuna Expressway Industrial Development Authority(YEA).

Noticing the above facts, the Division Bench proceeded to observe as follows:-

"We are of the prima facie opinion that one person cannot work as a whole-time officer for three different Industrial Development Authorities, as it belies the very concept of the incumbent being whole-time officer subject to the condition that for some short duration, till regular appointment is made, an officer already appointed as Chief Executive Officer for one Industrial Development Authority may hold the charge of other Industrial Development Authority. But the said arrangement has to be for a very limited duration. Giving of additional charge for years in respect of three Industrial Development Authorities to one person frustrates the very intent of the word "whole-time officer" as contemplated by

Section 4 of the U.P. Act No. 6 of 1976.

Another query, which has gone unanswered, despite specific order passed by the High Court as early as on 2nd September, 2015 in Writ C No. 49534 of 2015, Jitendra Kumar Goel v. State of U.P. & 15 Others, namely, if the statutory provisions do not contemplate appointment by deputation, how can an IAS officer be appointed on the post of Chief Executive Officer of Industrial Development Authority, the post whereof has been statutorily created. "

x x x x x x x x x

In the perception of a common man, continuance of such person as the top administrative officer of the Authority can never be in the interest of the Authority. Every day's continuance of such officer would be detrimental to the interest of the Statutory Authority itself.

In our opinion, in the aforesaid legal and factual background, the continuance of an I.A.S. officer against the post for such long period and his continuance to hold charge of three different Industrial Development Authorities at the same time cannot be said to be proper, fair and just. It adversely reflects upon the administration of the Development Authorities, which are facing huge scams as already noticed above."

4. Pursuant to the liberty granted by the Court on 1 July 2016, the State respondent, Noida as well as the twelfth respondent filed their affidavits. The twelfth respondent in addition to a counter affidavit also filed an application seeking vacation of the order of restraint issued by the Court. The State along with its counter affidavit brought on record of these proceedings an order dated 18 July 2016 in terms of which the twelfth respondent was restrained from functioning as CEO Noida, Gnida and YEA. On 3 August 2016, the counsel for the petitioner was granted time to respond to the counter affidavits filed in these proceedings and the matter was adjourned to 10 August 2016. The matter was thereafter called on 11 August 2016 and was thereafter adjourned to 16 August 2016 on the request of the learned Chief Standing Counsel.

5. On 16 August 2016, the leaned Chief Standing Counsel drew the attention of the Court to a communication of the same date which purported to convey the decision of the Civil Services Board taken in its meeting held on 18 July 2016. The communication recorded that Sri Praveer Kumar IAS had been posted as the Chairman Noida, Gnida and YEA. The communication further stated that the Civil Services Board had on the same date also taken a decision to the effect that the twelfth respondent would continue to be posted as the CEO Noida. This position and posting of the twelfth respondent continued till on 2 September 2016 a further communication of the State Government was placed on record whereby the Court was apprised of a decision of the State Government dated 25 August 2016 in terms of which the twelfth respondent was transferred from the post of CEO Noida, divested of charge and placed on waiting.

6. The petition itself laid various allegations against the twelfth to seventeenth respondents, who are stated to have been posted in some capacity or the other in Noida. For convenience, we note as under.

7. The petition alleged that large scale wrongdoings, illegal allotments and misappropriation of moneys had occurred at Noida during the period when the twelfth respondent held charge as the Chairman and CEO. It alleged that despite the aforesaid wrongdoings having come to light, the State for reasons unknown continued to post the twelfth respondent as CEO of Noida. It alleged that illegal allotments had been made with a view to pander to the whims and fancies of politicians and that Noida itself had become a hotbed of corruption. It further referred to the fact that a large scam had recently been unearthed in Noida as a consequence of which one Sri Yadav Singh was apprehended and in respect of whom a CBI inquiry had come to be instituted pursuant to the directions of this Court. It was alleged that despite such wrongdoings having come to light, the State had continued to post the twelfth respondent as CEO of Noida. The petition further alleged large scale corruption in the acceptance of tenders and allotment of land in the Sports City Project of Noida. It was based on the above allegations that the instant PIL was presented before this Court.

8. As noted above, Writ C No. 49534 of 2015 had also been instituted in this Court with similar allegations. In the said writ petition also various directions were issued by the Court from time to time calling upon the State respondents including the Chief Secretary to explain the reasons behind the continued retention of the twelfth respondent as the CEO of the three authorities aforementioned. In the said writ petition, it was alleged that the twelfth respondent had continued to hold charge as CEO of the three authorities for more than ten years. Pursuant to the directions of the Court issued in the said writ petition, the Chief Secretary filed an affidavit in which he asserted that the post of CEO in the authorities was a cadre post. The Chief Secretary further averred on affidavit that the twelfth respondent had been substantively appointed as CEO Noida since 4 July 2010 and had on different occasions accorded additional charge of Chairman and CEO of Noida, Gurgaon and YEA. In paragraph 12 it was averred that the twelfth respondent was substantively posted on a cadre post as CEO Noida and was only holding additional charge of Chairman of the three authorities namely Noida, Gurgaon and YEA. The Chief Secretary further averred in paragraph 14 that there is no maximum time limit fixed for any IAS officer being posted on any post. In these proceedings, the State respondents in their affidavits have brought on record the details of the posting of the twelfth respondent from 4 July 2010 and the same is evident from the chart which appears below:-

Period

Posting

04.07.2010 14.12.2010

CEO Gnida

14.12.2010 20.07.2011

CEO Gnida and Noida

20.07.2011 01.11.2011

CEO Gnida

01.11.2011 20.11.2011

Chairman and CEO Gnida

20.11.2011 15.12.2011

Chairman and CEO Gnida +CEO Noida

15.12.2011 20.12.2011

Chairman and CEO Gnida

20.12.2011 26.12.2011

Chairman and CEO Gnida + CEO YEA

26.12.2011 26.03.2012

Chairman and CEO Gnida

26.03.2012 02.05.2013

CEO Gnida + CEO Noida

03.05.2013 19.09.2015

CEO Gnida and Noida + Chairman Noida, Gnida and YEA

20.09.2015 18.07.2016

CEO Noida + Chairman Noida, Gnida and YEA

18.07.2016 25.08.2016

CEO Noida

9. The primary defense which has been set up by the State and which was reiterated in the oral submissions advanced by the learned Advocate General and the learned Chief Standing Counsel was to the following effect. It was contended that the post of CEO Noida and Greater Noida had been identified as a cadre post under the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1954. In view thereof it was submitted that an IAS officer such as the twelfth respondent was justifiably posted and that the Division Bench on 1 July 2016 had clearly proceeded on an incorrect premise that the post was being occupied by him on the basis of deputation. It was submitted that the notification dated 6 December 2010 in terms of which the post of Chief Executive Officer of Noida

and Gnida was included as a cadre post under the 1955 Regulations did not militate against the provisions of Section 3 of the U.P. Industrial Area Development Act, 1976 (for short "1976 Act"). The State further referred to the fact that the appointment and posting of the twelfth respondent was pursuant to the decisions taken by the Civil Services Board and had therefore, been effected in accordance with law. Referring to the details set forth in the order of 18 July 2016, it was sought to be contended that the allegation that the twelfth respondent had remained on the said post for the last more than ten years was factually incorrect and had been made only to lend color to the controversy. It was asserted that the twelfth respondent was appointed substantively on the post of CEO Noida only on or about 20 September 2015. It was additionally alleged that during the period 3 April 2003 to 30 June 2010, the twelfth respondent was posted with the Government of India and therefore, the very bedrock of the submissions of the petitioner and the premise of the order of the 4 1955 Regulations Division Bench dated 1 July 2016 was incorrect. The twelfth respondent, in their submission, held the post of CEO Noida on a substantive basis only from September 2015. It was asserted that during 2010-2015 various other officers had been posted on substantive basis as CEO Noida. The twelfth respondent in his affidavit averred that it was only for a short duration that he was granted additional charge of CEO Noida during this period. Referring to the allegations levelled against certain officers and employees of Noida including Yadav Singh and Ramendra Singh, it was contended that all the aforementioned officers had been directly appointed in Noida prior to the posting of the deponent and that he had therefore, nothing to do with their appointments. The twelfth respondent further averred categorically that during his tenure as CEO, Noida no scam had taken place. Insofar as the allegations of wanton and illegal acquisition of land is concerned, the twelfth respondent asserts that the acquisitions were undertaken pursuant to statutory powers conferred upon Noida and that there was no statutory prohibition against the allotment of land to builders. He further averred that there was no illegality in the allotment of land under the Sports City Project of the Noida.

10. We note here that although the allegations were primarily levelled by the petitioner against the respondents 12-17, notices were issued to all the respondents 10-18. However it is only the twelfth respondent who has appeared in these proceedings and has opposed the petition along with the authorities themselves namely, Noida, Gnida and YEA. We further note that the learned counsel for the petitioner has mainly centered his objections and submissions in support of the writ petition against the twelfth respondent.

11. Having noticed the factual basis for the preferment of the petition and the disclosures made by the respondents, we now proceed to note the primary legal submissions which have been advanced in these proceedings. Learned counsel for the petitioner while reiterating the averments made in the writ petition has contended that large scale scams occurred in the authorities and more particularly Noida clearly being indicative of the fact that all was not well. He

asserted that the State Government even in the matter of posting of officers must act in a manner which inspires confidence in the public at large and that its action must not reflect of favouritism in favour of a select few. It was contended that the continuance of the twelfth respondent was clearly detrimental to the public interest, without justification in law and that the State Government was continuing to accord him protection despite various scams and allegations having been levelled against the twelfth respondent and Noida. It was, therefore, submitted that larger public interest clearly warranted removal of the twelfth respondent from the post of CEO Noida.

12. The learned counsels for the respondents have apart from addressing submissions on the merits of the allegations levelled in the petition, in unison, taken serious objection to the entertainment of the PIL itself and have submitted that the instant petition was neither bona fide nor did it espouse any issue of public interest. In this respect, we note that not only the learned Advocate General but also Sri Ravi Kant learned senior counsel and Sri Ravindra Singh learned counsel who appeared for the twelfth respondent have taken serious objection to this Court having entertained the instant PIL itself. It was submitted that the instant proceedings are a clear abuse of the process of Court and it is apparent that quite far from espousing any issue of public interest, the same has come to be instituted at the behest and instance of unknown and interested quarters. Learned counsel drew the attention of the Court to the fact that the petitioner was stated to be a society registered and resident at Allahabad and that in the entire petition, there was no material which may have even remotely indicated its activities or area of operations. It was alleged that there was a complete non disclosure in the writ petition of particulars required under Chapter XXII Rule 3A of the Allahabad High Court Rules, 1952 (1952 Rules). Learned counsel submitted that the writ petition carried not one averment of any public or social service which the petitioner society may be stated to have performed. Additionally, it was contended that the writ petition itself did not bring on record either the Memorandum or Articles of the society so as to indicate its aims and objectives. In fact learned counsel submitted that the petition had been instituted and entertained even in the absence of a resolution of the society deciding to institute the present proceedings and authorising the petitioner in that regard. The attention of the Court was further drawn to the fact that none of the office bearers of the society had come forward to even affirm the affidavit in support of the petition and that the writ petition itself had been preferred on the strength of an affidavit of a 24 year old resident of District Kaushambi, who was stated to be engaged in farming. Viewed in this light, learned counsels submitted that the petition clearly lacked bonafides and should have been dismissed at the threshold itself. It was contended that it is petitions like the present which have sullied the field of public interest litigation and have consequently invited adverse comment from the Supreme Court as well as this Court.

13. Sri Ravi Kant, learned Senior Counsel appearing for Noida has in addition to the above contended that the issue of posting of a particular officer by the State

Government is one which falls within its exclusive prerogative. He submits that this Court would clearly be transgressing the limits of its jurisdiction under Article 226 to the Constitution in interfering with such actions of the Government. It is his submission that issues of the nature which stand raised in this petition would clearly invite the Court to step into an arena which is within the exclusive domain and discretion of the State Government. He lastly submitted that the petitioner had woefully failed to establish even one charge of wrongdoing against the twelfth respondent personally and despite the same an order of restraint was passed by the Division Bench ex parte. It was his submission that the averments taken in the petition even prima facie did not warrant the issuance of such a restraint by the Division Bench and that too without notice to the twelfth respondent. It is these rival submissions which now fall for consideration.

14. We shall for the sake of convenience first take up the submission of exclusion of judicial review as urged by Sri Ravi Kant. As noted above, Sri Ravi Kant contended that this Court must draw a line in respect of matters which fell within the exclusive domain and discretion of the Government and consequently hold that the subject matter of the petition was beyond the pale of judicial review. According to him, the posting of officers was a subject which fell within the exclusive prerogative of the State Government and that therefore the Court would be clearly overstepping its jurisdiction in interfering with the same. While we note that a similar submission was not advanced by the learned Advocate General who appeared for the State, but since the issue has been raised we proceed to deal with the same.

Now in a democracy there is no such thing as an absolute discretion. In fact as has been repeatedly held, absolute or unfettered discretion is anathema to the rule of law. Judicial review is now recognised as a basic and inalienable feature of our Constitution. In a society which is governed by the rule of law, no person or institution can claim immunity from a review by a constitutional court in respect of its actions, of course on well established principles and standards. The jurisprudence which has developed over the years on this subject has over a period of time repelled submissions made on similar lines. No longer is the judicial review power of the court thwarted by arguments of a political thicket or a policy measure. The primary touchstone upon which all actions of the State must be tested is the Constitution. The jurisdiction of the Court, therefore, to enquire and test the action of the State is not and cannot be ousted. Of course the intensity of the review process is an issue altogether different. However the proposition advanced for our consideration is worded in absolutist terms and therefore cannot be accepted. We may in this connection note what stands recorded in the classic work of HWR Wade on Administrative Law and is relevant in this context:-

"The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely - that is to say, it can

validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered Government discretion is a contradiction in terms. The real question is whether the discretion is wide or narrow, and where the legal line is to be drawn. For this purpose everything depends upon the true intent and meaning of the empowering Act.

The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or where the law permits, to evict a tenant, regardless of his motive. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest..... The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good. There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed." Administrative Law (HWR Wade & CF Forsyth - 9th Ed. - Pages 354-355)

15. Dealing with the discretion of the Government to retain or appoint lawyers to represent it in a court of law, the Supreme Court in *State of Punjab v. Brijeshwar Chahal*, (2016) 6 SCC 1 observed as under:-

"19. It is by now, fairly well settled that not only the Government but all public bodies are trustees of the power vested in them and custodians of public interest. Discharge of that trust in the best possible manner is the primary duty of those in charge of the affairs of the State or public body. This necessarily implies that the nature of functions and duties including the power to engage, employ or recruit servants, agents, advisors and representatives must be exercised in a fair, reasonable, non-discriminatory and objective manner. It is also fairly well settled that duty to act fairly and reasonably is a facet of 'Rule of Law' in a constitutional democracy like ours. A long line of decisions of this Court over the past five decades or so have ruled that arbitrariness has no place in a polity governed by rule of law and that Article 14 of the Constitution of India strikes at arbitrariness in every State action. We may gainfully refer to some of these decisions, not so much to add to their content as to remind ourselves that we have come a long way in the matter of settling the contours of the doctrine of Rule of Law of which equality is one significant feature.

20. In *S.G. Jaisinghani v. Union of India*, AIR 1967 SC 1427, this Court held that absence of arbitrary power is the first essential of "Rule of Law" upon which rests our Constitutional system. This Court ruled that in a system governed by rule of

law, any discretion conferred upon the executive authorities must be confined within clearly defined limits. This Court quoted with approval, the following observations of Douglas J. in *United States v. Wunderlick*, 1951 342 US 98 : 96 Law Ed 113:

"Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler? Where discretion is absolute, man has always suffered."

"39. The development of law in this country has taken strides when it comes to interpreting Articles 14 and 16 and their sweep. Recognition of power exercisable by the functionaries of the State as a trust which will stand discharged only if the power is exercised in public interest is an important milestone just as recognition of the Court's power of judicial review to be wide enough to strike at and annul any State action that is arbitrary, unguided, whimsical, unfair or discriminatory. Seen as important dimensions of the rule of law by which we swear the law as it stands today has banished from our system unguided and uncanalised or arbitrary discretion even in matters that were till recently considered to be within the legitimate sphere of a public functionary as a repository of Executive Power. Those exercising power for public good are now accountable for their action, which must survive scrutiny or be annulled on the first principle that the exercise was not for public good in that the same was either malafide, unfair, unreasonable or discriminatory. Extension of the principle even to contractual matters or matters like engagement of law officers is symbolic of the lowering of the threshold of tolerance for what is unfair, unreasonable or arbitrary. The expanding horizons of the jurisprudence on the subject both in terms of interpretation of Article 14 of the Constitution as also the court's willingness to entertain pleas for judicial review is a heartening development on the judicial landscape that will disentitle exercise of power by those vested with it as also empower those affected by such power to have it reversed if such reversal is otherwise merited?..

41. To sum up, the following propositions are legally unexceptionable:

41.1 The Government and so also all public bodies are trustees of the power vested in them.

41.2 Discharge of the trust reposed in them in the best possible manner is their primary duty.

41.4 The duty to act in a fair, reasonable, non-discriminatory and objective manner is a facet of the Rule of Law in a constitutional democracy like ours."

16. Bearing the above principles in mind it is clear that the submission advanced by Sri Ravi Kant, learned senior counsel, is not worthy of acceptance. This Court cannot accept the submission that under no circumstances can the Court enquire into the action of the State Government in posting a particular officer for continually long periods even though administrative exigencies or public interest may warrant otherwise. There may be myriad situations warranting the shifting

of an officer. These may include contingencies such as pendency of enquiries, allegations of maladministration or even the extreme case where the transfer of the officer itself may be mandated in case of ongoing enquiries or probes. The continuance of an officer in the face of such contingencies may itself be detrimental to the interests of the administration. The other important aspect which may have to be borne in mind is the issue of public interest and the requirement of State action, albeit in the administrative realm, to be perceived as fair, just and unbiased. The continuance of an officer under cloud or whose handling of affairs may have resulted in the erosion of public confidence may itself warrant the transfer of an official. While the above is not meant to be an exhaustive criteria, we have dilated on this aspect in order to underline that in such situations, if the Government fail to act in larger public interest, the Court may in an appropriate case be constrained to invoke its jurisdiction in order to restore the faith of the people and to underscore the principles of good governance. We therefore reject the contention of complete immunity from scrutiny of action of the State in the posting or transfer of its officers.

17. In the early 1980's our Supreme Court evolved what would turn out to be a powerful tool in the hands of the constitutional courts of the country. The PIL was evolved to enable the legitimate constitutional claims of the voiceless, socially backward and the economically deprived to be addressed by Courts. The PIL was structured upon the need to address the deprivations faced by those who on account of backwardness, economic or otherwise, were unable to approach a court of law or whose voices were lost in the din of a billion people. Over a period of time, this tool was expanded to cover areas and issues of lack of governance, bureaucratic apathy and corruption. While the scope and expanse of the PIL jurisdiction grew, the Courts also found instances of the forum being abused by busybodies, interlopers who used the forum camouflaging their oblique motives and vested interests. It was noticing this aspect which had grown in proportion over a period of time that the Supreme Court was constrained to sound a note of caution. In *State of Uttaranchal v. Balwant Singh Chaufal*, (2010) 3 SCC 402 the Court noted the earlier precedents on the subject and observed as follows:-

"155. In *Dattaraj Nathuji Thaware*, this court expressed its anguish on misuse of the forum of the court under the garb of public interest litigation and observed (SCC p 595, para 12) that the public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The court must not allow its process to be abused for oblique considerations...."

158. In *Holicow Pictures Pvt. Ltd. v. Prem Chandra Mishra & Others* AIR 2008 SC 913, this Court observed as under:

10. It is depressing to note that on account of such trumpery proceedings

initiated before the Courts, innumerable days are wasted, the time which otherwise could have been spent for disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy, whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters -government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system."

181. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

- (1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.
- (2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.
- (3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.
- (4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.
- (5) The court should be fully satisfied that substantial public interest is involved

before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

18. It was with a view to address the above noted mischief that this Court introduced Rule 3A in Chapter XXII of the 1952 Rules requiring all PIL's to carry a declaration and disclosure with respect to the persons approaching the Court.

19. When one tests the present petition on the guidelines formulated by the Supreme Court and referred to above, it is apparent that the instant PIL clearly fails to meet the benchmark of a bona fide petition instituted in public interest. As we read the averments made in the writ petition, it is ex facie apparent that it carries no details of any public causes that this society based at Allahabad may have pursued in the past. There is no disclosure whatsoever of any public issue that it may have advocated or addressed in the past. The writ petition does not disclose any details of charitable or social activities that the society may have undertaken or pursued. Far from having raised or pursued any cause or interest of the people of Gautumbudh Nagar, there are no details of any activity undertaken by the petitioner society in Allahabad either. As rightly pointed out by learned counsels for the respondents, the writ petition was not instituted on the basis of any resolution or decision of the society. At least no such resolution was brought on record. It also did not carry any authorisation in favor of the Secretary or the deponent to the affidavit filed in support of the writ petition. In fact we find that even the Memorandum of Association of the society which may have disclosed its aims and objects was not brought on record. The deponent of the affidavit, as learned counsels have pointed out, is a twenty four year old farmer living in District Kaushambi. Most of the averments in the writ petition however have been sworn on the basis of personal knowledge of the deponent. We have been unable to comprehend how a young resident of Kaushambi engaged in farming derived or could have personal knowledge in respect of officers and employees or for that matter the affairs concerning Noida. All these aspects clearly cast a serious cloud on the bona fides and motives of the petitioner. We are conscious of the fact that the Division Bench on 1 July 2016 entertained this petition overruling the objections taken by the respondents on this score and exercised powers suo moto. We therefore, now proceed to deal with the contentions raised on merits.

20. We have already extracted the reliefs sought in the writ petition at the beginning of our judgment. Relief ?i? as framed seeks a direction commanding the State Government to transfer officers/employees who have completed more than three years in Noida, GINIDA and YEA out of the district forthwith. The relief so sought is liable to be tested against the provisions of the 1976 Act. Now it is not disputed that Noida is an authority which stands constituted in terms of Section 3 of the 1976 Act. By virtue of Section 4, the Chief Executive Officer is liable to be appointed by the State Government and is to be a whole time officer of the authority. Section 4 reads as follows:

"4. Chief Executive Officer. - (1) The Chief Executive Officer of the Authority shall be appointed by the State Executive Government and shall be a whole-time officer of the Authority.

(2) The Chief Executive Officer shall be entitled to receive from the funds of the Authority such salaries and allowances and be governed by such conditions of service as may be determined by general or special order of the State Government in this behalf.

(3) The Chief Executive Officer shall exercise such power and perform such duties as may be specified in the regulations or delegated to him by the Authority."

21. By virtue of the provisions of Section 5, the authority constituted under the 1976 Act is entitled to appoint officers and employees and determine their grades and designations. Section 5 reads as follows:

"5. Staff of the Authority. - (1) Subject to such control and restrictions as may be determined by general special orders of the State Government, the Authority may appoint such number of officers and employees as may be necessary for the performance of its functions and may determine their grades and designations.

(2) Subject as aforesaid the officers and other employees of the Authority shall be entitled to receive from the funds of the Authority such salaries and allowances and shall be governed by such other conditions of service as may be agreed upon with the Authority."

22. Salaries and allowances payable to such officers and employees is to be drawn from the funds of the authority concerned. In terms of Section 3(2), the authority is declared to be a body corporate.

23. From the provisions referred to above, it is apparent that the officers and employees are engaged by and appointed in an authority constituted under Section 3. The authority is constituted to exercise its powers and carry out its functions in a notified industrial development area. The officers and employees of the authority, as is evident from the provisions of Section 5, are not employees of the State Government so to speak but employees of the authority. No provision of the 1976 Act or any regulation or rule framed thereunder renders their services transferable either between the authorities constituted under

Section 3 inter se or to any other department or wing of the State Government. At least no such provision was brought to our attention by the learned counsel for the petitioner. It was in the above backdrop that we called upon the learned counsel to explain relief ?i? as claimed in the petition. Learned counsel for the petitioner candidly admitted that the relief as framed in light of the provisions of the 1976 Act was not liable to be granted. He however, submitted and prayed that since the instant writ petition was in the nature of a public interest litigation, the reliefs sought therein may not be viewed in a strict or pedantic sense. In essence learned counsel for the petitioner submitted that the relief be moulded to read as a prayer seeking issuance of a direction for the transfer or removal of the twelfth respondent. We accordingly and in this light proceed further in the matter.

24. Having gone through the writ petition, the averments made therein and the material brought on record, we find that while various allegations of a general character have been made in respect of wrongdoings committed in the allotment of land, misappropriation of funds, acquisition of property and wealth by employees, no specific allegation or charge stands levelled or established against the twelfth respondent. The writ petition carries no material which may prove the commission of any act of malfeasance or corruption against the twelfth respondent personally. We have carefully gleaned through the various averments taken in the writ petition as well as the supplementary affidavit filed on behalf of the writ petitioners but have failed to find any material which may justify the return or recordal of an adverse finding or comment against the twelfth respondent personally. No corrupt motive or act attributable to the said respondent stands established conclusively from the record. The challenge in the writ petition which was primarily centered around the continuance of the twelfth respondent in any view of the matter has paled into insignificance consequent to the own steps taken by the Government which has decided to transfer him from the said post. Insofar as the remaining private respondents are concerned, the learned counsel for the petitioner has not raised any serious challenge and had confined their challenge to the continuance of the twelfth respondent alone. In view of the above, and noticing the fact that the Government has itself transferred the twelfth respondent during the pendency of the writ petition, we find that no further directions for the transfer of the twelfth respondent are warranted.

25. We have noted that no specific allegation stood proved and established conclusively against the twelfth respondent personally. It is perhaps in this light that the State Government had (and perhaps justifiably) vehemently argued initially that no circumstances warranted the transfer or removal of the twelfth respondent from Noida. The learned Advocate General not just stoutly defended the twelfth respondent but also urged for our consideration that the officer in question was of exemplary character and it was because of his administrative skills and prowess that the State Government had continued him on the post. While we do not have any reason to doubt the submission of the learned

Advocate General or for that matter the ability of the twelfth respondent, we feel that certain other relevant and larger issues merited consideration by the Government in such matters.

26. While it is no doubt true that the posting of Government officials is primarily an administrative function of the Government, as noted above, there is no such thing as an unfettered or absolute discretion in such matters. We have already repelled the submission advanced by Sri Ravi Kant of a judicial "hands off" in respect of these issues. As noted above, the Government is the repository of public trust and all its actions must therefore necessarily be imbued with the element of public interest. All its actions must answer the test of fairness and rationality. In fact good governance mandates that its actions must, as the Division Bench observed in its order of 1 July 2016, inspire confidence in the people and subserve above all public interest.

27. It is in light of the above principles that we note with some consternation that certain serious allegations were levelled in the writ petition including against the thirteenth and fourteenth respondents. While the State failed to effectively respond to the said allegations in its counter affidavit and left it to Noida to reply, Noida in its initial reply did not effectively traverse these allegations. All that it averred initially was that certain complaints of fraud and cheating were received against the thirteenth respondent, a class IV employee, as a consequence of which criminal action was initiated. Similarly in respect of the fourteenth respondent it averred that the said employee had retired in 2008. In its subsequent affidavit it disclosed that a FIR was lodged against the thirteenth respondent on 10 January 2015 and which has subsequently culminated in the submission of a charge sheet under sections 420, 467, 468 and 471 IPC. The holding of a property in a posh sector of Noida by the said respondent was not traversed in either of the said affidavits. Similarly in respect of the fourteenth respondent, neither of the affidavits traversed his alleged interests in MMR Builders. More striking are the facts surrounding the case of Yadav Singh. A Division Bench of the Court while directing the CBI to take over investigation into the said scam, noted in its judgment that the income tax raids conducted during November 2014 revealed his connections with as many as twenty five private companies and Yadav Singh and his syndicate having acquired 320 plots valued at Rs. 750 crores. The raids further found large scale allotments having been effected by Yadav Singh in favor of his wife and family members. All this is stated to have been achieved while Yadav Singh was posted in different departments during the period 2002 to 2014. Further information was sought from the CEO Noida on 6 January 2015 by the Income Tax Department with respect to award of contracts to 75 companies connected to Yadav Singh. Since the investigation is ongoing we have refrained from commenting further on this aspect. However if there be even a figment of truth in the various allegations noticed above, it is apparent that all was not well at Noida. We have borne in mind the fact that the twelfth respondent was at the helm of affairs right from March 2012 as CEO Noida as well as Chairman Noida, Gnida and YEA. Some of these incidents

pertain to a period when he was posted at Noida. The fact whether he was holding charge of the post of CEO in a substantive or other capacity would really be of no significance. This much however is clear that there were serious allegations of wrongdoing and corruption at Noida. It was perhaps in this light that the Government should have considered a revamp of the administration of the authority if nothing else. If the allegations against Yadav Singh and others be true, it is apparent that they unfolded and occurred under the watch of the twelfth respondent. In such a situation it was perhaps appropriate that the Government rethink and revisit the issue of deployment and postings in the Authority. The faith and trust of the common man in the system and in the person/officer at the helm of affairs is equally important, which the Government should bear in mind, while continuing the same officer at one place for years together, and giving scope to generate doubt about the system. No person is indispensable. The Government should have not come before the Court with the stand that the services of the twelfth respondent are indispensable and that there is no other IAS officer who can work for the authorities. The very concept of transfer, would thereby stand defeated.

28. The second aspect which must merit mention is this. The mere fact that the 1955 Regulations do not envisage a maximum tenure does not necessarily mean that a person may be permitted to continue on a particular post for years together. It would in fact be in the fitness of things and perhaps to overcome the levelling of allegations such as the present against the twelfth respondent that the Government consider the shifting of officers periodically. We note that the Government Order dated 24 December 2001 itself envisages the Civil Service Board fixing both the minimum as well as the maximum tenure of posting of IAS officers. While a minimum tenure has been fixed, we were told that the Civil Services Board has till date not fixed the maximum tenure period. It would therefore, be appropriate for the Board as well as the Government to revisit this issue so that in future such challenges and allegations of nepotism are avoided.

29. Since the twelfth respondent has already been transferred from Noida, no further operative directions need be issued. The PIL?s shall stand disposed of subject to the observations made herein above.