

(1998) 07 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 5717 and 6240 of 1997 and CC No. 779 of 1997

B. Kistaiah

APPELLANT

Vs

Government of India and others

RESPONDENT

Date of Decision : 06-07-1998

Acts Referred:

Central Excises and Salt Act, 1944 — Section 12(A), 12E, 13, 23
Constitution of India, 1950 — Article 14, 21, 226
Contempt of Courts Act, 1971 — Section 2
Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 109, 120

Citation : (1998) 5 ALD 135 : (1998) 2 ALD(Cri) 466 : (1998) 4 ALT 738

Hon'ble Judges : V. Bhaskara Rao, J; B. Sudershan Reddy, J

Bench : Division Bench

Advocate : Mr. S. Ramachandra Rao, Mr. E. Seshagiri Rao and A.G., A.P., Hyd, for the Appellant; Mr. B. Adinarayana Rao, SC for Central Government, Mr. M.R. Reddy, SC for CBI, Mr. C.V. Rajeev Reddy, Mr. P. Kamalakar, Mr. Satyanarayana Rao, Mr. S. Janardhan Reddy and Mr. S. Leaoraj, for the Respondent

Judgement

B. Sudershan Reddy, J

1. Both these writ petitions can be disposed of by a common order, as common questions arise for consideration. This is a tell tale story of unscrupulous litigants abusing the judicial process. They were aided and abetted by vested interests. It is a saga of naked abuse of this Court's Forum and the device of public interest litigation. We cannot help, except to feel distress as to how this Court was taken for a ride. More about it at a later stage. We would, briefly, indicate the facts in both these writ petitions.

2. Writ Petition - WPNo.5717 of 1997 is filed by ft former Member of the Legislative Assembly representing Shadnagar Constituency and a resident of Hyderabad. The said writ petition is filed on 18-3-1997. The petitioner in the writ petition, prays for issuance of an appropriate writ declaring the action of the respondents in abusing of power vested by law under Sections 12E and 13 and

other provisions of Chapter III of the Central Excise Act, 1944 and attracting the provisions of Section 23 of the Central Excise Act, resulting in loss of Central Excise Revenue to a tune of about Rs.490 Crores in Hyderabad Division and in dismantling the Special Investigation Team vide Establishment Order (GO) No.43/97, dated 10-3-1997 as arbitrary, illegal, unjust and violative of the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. The petitioner also prayed for a consequential direction to the respondents to initiate appropriate action against the fifth respondent to curb his corrupt activities.

3. The allegations are mainly levelled against the fifth respondent, who at the relevant time was working as Commissioner-I, Central Excise and Customs, Hyderabad Commissionerate. The petitioner in detail submits about the internal working of the Customs and Central Excise Department. It is specifically alleged that whenever and wherever the fifth respondent was posted in crucial job the same has resulted in poor collection of excise revenue. According to the petitioner, there was a short fall in the revenue collection to the tune of Rs.100.00 crores per annum at Bangalore and Rs.200.00 crores per annum at Hyderabad. It is also alleged that during the period when the fifth respondent was Commissioner of Appeals at Bangalore, he granted reliefs to the litigants to the tune of Rs. 10.00 crores. According to the petitioner, the short fall in collection of revenue is due to the outright clandestine evasion of duty by manufacturers of consumer goods, who are broadly classified under four main categories : (i) Biscuits; (ii) Cigarettes & Gutkha;

(iii) Textiles and (iv) Steel. We need not refer in detail to the statistics furnished by the petitioner. In, nut shell, the allegations relate to the short fall in collection of excise revenue. However, it is specifically alleged that due to the favouritism shown to M/s. Jindal Aluminium Ltd., a building at Anantapur, valued at Rs.50 lacs was constructed by M/s. Jindal Aluminium Ltd., for the benefit of the fifth respondent in return of a favourable order giving relief to an extent of Rs.2.7 crores.

4. The next allegation levelled relates to the posting of the officers belonging to his own caste and his aggressive behaviour towards the SC/ST and other weaker section officers. The petitioner enclosed a list of nineteen officers, who are alleged to have been posted in crucial posts. Another allegation relates to dismantling of the Special Investigation Team headed by One N.K. Prasada (who impleaded himself as 8th respondent in WP No.6240 of 1997). According to the petitioner, that team was dismantled only with a view to help the dishonest traders and to prevent the said N.K. Prasada not to investigate the cases relating to evasion of excise duty. It is under those circumstances the petitioner prayed for setting aside the Establishment Order No.43 of 1997, dated 10-3-1997.

5. It would be appropriate, at this stage, to have a look at the impugned order dated 10-3-1997. It is nothing but an order of administrative transfers and postings simpliciter. Along with N.K. Prasada, Assistant Commissioner, Special

Investigation, Headquarters, Hyderabad, two other officers were also transferred on administrative grounds. In the same proceedings, it was directed that N.K. Prasada, Assistant Commissioner will hand over all the pending cases/records, etc., under investigation to M. K Chowdary, another Assistant Commissioner within three days. Those officers who were hitherto assisting the Assistant Commissioner, N.K. Prasada stand relieved with immediate effect.

6. As the events would reveal it is this proceeding dated 10-3-1997 that had given rise for a cause for filing this writ petition.

7. When the writ petition (WP No. 5717 of 1997) came up for hearing, a Division Bench of this Court by order dated 21-3-1997 directed the said N.K. Prasada, Assistant Commissioner, Special Investigation Team, who is not even impleaded as one of the respondents to this writ petition, not to hand over any records in any pending case which was or is under his investigation to M.V.S. Chowdary, as per the order passed in Establishment Order (GO) No.43/97, dated 10-3-1997 till 26-3-1997. It may be noticed, at this stage, on 1-4-1997, on an additional affidavit filed by the petitioner herein, this Court further directed the respondents herein to file their respective counter-affidavits and to produce the records relating to setting up of the Special Investigation team and its disbanding and the orders passed by the fifth respondent.

8. In the meanwhile, the petitioner appears to have addressed a letter on 26-3-1997, requesting his Counsel to take necessary steps and seek permission of the Court for withdrawing the above writ petition, as not pressed. The letter inter alia reads "My conscience, however, does not permit me to proceed with the said writ petition. I am also uncertain of the effect of the matter will have and I am constrained, for my personal reasons, and for my personal safety to seek the permission of the Hon"ble Court to withdraw the writ petition."

9. At this stage, it may be noticed that WP No.6240 of 1997 has been filed into this Court on 26-3-1997 by one Digumarthi Premchand, occupation : Journalist r/o. Narayanaguda, Hyderabad, with the same prayer and with the same averments as in WPNo.5717 of 1997, except adding one paragraph that he had come to know about the filing of WP No.5717 of 1997 by the petitioner therein and his proposal to withdraw the writ petition. The said writ petition was listed before a Division Bench of this Court and the same was directed to be posted along with writ petition-WPNo.5717 of 1997. That is how these both writ petitions were heard together.

10. It is pertinent to notice the averments made in Writ Petition No.6240 of 1997 are nothing but a true copy of the averments made in Writ Petition No.5717 of 1997. We may also notice that both the writ petitions are filed from the same office of senior Counsel, Sri S. Ramachandra Rao. It is further required to notice that in both the writ petitions, N.K. Prasada, Assistant Commissioner, who was heading the Special Investigation Team is not impleaded as one of the respondents.

Events After 22-5-1997

The matter came up before us for the first time on 24-5-1997 and the events thereafter would disclose as to how and what attempts were made by the petitioner in WP No.6240 of 1997 and the 8th respondent therein to manipulate, manoeuvre and over-reaching the judicial process.

11. In this writ petition (WP No.6240 of 1997) also the main attack is directed against proceedings dated 10-3-1997 transferring N.K. Prasada, Assistant Commissioner subsequently impleaded as (8th respondent) from the existing position. However, at the time of filing of the writ petition, no interim order as such was asked to retain the 8th respondent herein in the same place. In the meanwhile, the Chief Commissioner is stated to have passed an order directing that the 8th respondent herein should be given back the cases for investigation, which were booked by him and he should be given all assistance to complete the investigation. The said proceeding is stated to have been issued pursuant to the telephonic directions from the Chairman, CBEC. It would be interesting tonotice that the writ petitioner herein filed WPMP (SR) No.55758 of 1997 seeking appropriate directions to the respondents herein to forthwith implement the order of the Chairman, CBEC, in proceedings FNo.PF/ GSM/DG/NACEN/97/1, dated 8-5-1997 and the proceeding reads as follows :

FAX

NATIONAL ACADEMY OF CUSTOMS,
EXCISE AND NARCOTICS,
FARIDABAD

F. No.PF/GSM/DG/NACEN/97/1

Dated 8-5-1997

Shri S.D. Mohile, Chairman, CBEC telephoned me today evening and stated that Shri N.K. Prasada should be taken back on the rolls of Hyderabad Commissionerate and should be given back the cases for investigation which were booked by him. He should be given all assistance to complete the investigations.

2. Chairman stated that Shri Prasada has some more information with him which he should be permitted to work out and all assistance should be rendered to him for mounting an operation and for finalisation of the investigations at an early date.

3. Since Shri Prasada was relieved sometime back, from Hyderabad Commissionerate on his transfer to Bolpur, it may also be examined how his period of absence can be regularised. A report in this regard may be kept ready and submitted to me during my next visit to Hyderabad.

Sd/-(W.W.Maingi)

Director General, NACEN and
Chief Commissioner, Hyderabad
Shri MVS Prasad
Commissioner-I,
Hyderabad.

A copy of the aforesaid proceedings is enclosed to the WPMP (SR) No.55758 of 1997. The said application has been received in the Registry on 22-5-1997. The WPMP (SR) No.5575S of 1997 would show an endorsement by the Registrar (J) :

"Per HCJ, permitted House Motion before the DB of HBRSR, J and HVBR, J.

Sd/-

22-5-1997."

The said miscellaneous application has been filed by Sri E. Seshagiri Rao, learned Counsel appearing on behalf of the petitioner. Obviously, the Registry could not have received the papers but for the directions of the Hon"ble the Chief Justice, as the Registry was closed during summer vacation. However, the said miscellaneous application was not numbered and returned with certain office objections.

12. It would be very interesting to notice that the 8th respondent, N.K. Prasada, also filed an application to implead himself as one of the respondents. This miscellaneous petition has been registered - WP MP No.13388 of 1997. Another miscellaneous application has also been filed on his behalf seeking a direction to the fifth respondent to forthwith give effect to the very same proceedings dated 8-5-1997 issued by the Chief Commissioner, Hyderabad. Both these applications - WPMP Nos.13388 and 13389 of 1997 were received in the Registry on the very same day i.e., 22-5-1997 and they have been numbered on the very same day. Sofar as these miscellaneous applications are concerned, they were filed by one Sri Satyanarayana Rao, Advocate, on behalf of the 8th respondent. These miscellaneous applications, incidentally, do not contain any endorsement whatsoever of any directions from the Hon"ble the Chief Justice permitting to move any such applications. Yet, the Registry received the same, though it was closed for summer vacation. It was not a filing day even for the purposes of moving an urgent matter before the Vacation Court;whereas the application - WPMP (SR) No.55758 of 1997 filed by the petitioner has been received by the Registry pursuant to the directions of the Hon"ble the Chief Justice. There is no such endorsement, as far as these applications filed by the 8th respondent are concerned.

13. What transpired on 22-5-1997 would make the things very interesting. The application filed by the petitioner in WP MP (SR) No.55758 of 1997 was returned by the office with some objections. At any rate, the Registrar (J) informed us and

the then the Hon"ble the Chief Justice to the effect :

"The petitioner telephoned to the Registrar (Judicial) and informed that he was not insisting for the house motion, as his Advocate, Sri K. Seshagiri Rao, was not available."

Then on 22-5-1997, one of us (B. Sudershan Reddy. J.) directed the Registrar (J) to submit a note as to how such thing could happen and also about the house motion purported to have been granted by the Hon"ble the Chief Justice on 22-5-1997. The Registrar (J) submitted the following note :

Notesubmitted to the Hon"ble Sri Justice B. Sudershan Reddy Gam

May it please Your Lordship.

As directed by your Lordship, I am submitting this note with regard to the house motion moved by the petitioner on 22-5-1997 in WP No.6240 of 1997 on the file of this Court :

One Sri D. Prem Chand filed WP No.6240 of 1997 along with WP MP No.7473 of 1997 seeking certain directions with regard to the transfer of one Sri N.K. Prasada, Assistant Commissioner of Central Excise, Hyderabad and the said writ petition and miscellaneous petitions were posted before the Division Bench consisting of Hon"ble Sri Justice Lingaraja Rath Garu and Hon"ble Sri Justice v.Bhaskara Rao Gam on 1-5-1997. While so, the petitioner Sri D. Prem Chand filed WPMP (SR) No.55758 of 1997 on 22-5-1997 for certain directions and sought permission to move house motion and the same was permitted by Hon"ble the Chief Justice with instructions to post the matter before the Division Bench consisting of Hon"ble Sri Justice R. Sudershan Reddy Gam and Hon"ble Sri Justice V. Bhaskara Rao Garu and the matter was to be taken up at 2.15 p.m. on 22-5-1997 by the Division Bench and the same was informed to the petitioner. While checking the WP MP (SR) No.55758 of 1997 certain objections were taken by the office and the same was returned for complying with the objections. While so, the petitioner telephoned to the Registrar (Judicial) and informed that he was not insisting for the house motion as his advocate, Sri K. Seshagiri Rao was not available. The same thing was submitted to the Hon"ble the Chief Justice and to Hon"ble Sri Justice B. Sudershan Reddy garu.

On the same day (22-5-1997) at about 2.15 p.m., I received a telephonic message from Sri M.S.K. Jaiswal, PS to HCJ stating that one Sri S. Rama Chandra Rao, advocate came to him and informed him that he is filing two fresh WP MPs in the above said writ petition and that he was permitted to move house motion by Hon"ble the Chief Justice. When questioned by me, Sri Jaiswal informed that he did not receive any instructions directly from Hon"ble Chief Justice and that he was so informed only by Sri S. Rama Chandra Rao. Advocate. Thereupon, I asked Mr. Jaiswal to seek instructions from HCJ directly as to the permission for moving house motion and later I was informed that Sri Jaiswal submitted the file to Hon"ble the Chief Justice and that his Lordship after

perusing the papers informed Sri Jaiswal that no permission was granted for house motion in those fresh miscellaneous petitions and directed the Registry to check than and seek instructions later.

At about 3.00 p.m. on the same day, one Sri Satyanarayana Rao, Advocate filed WP MPs-, and they were checked and numbered as WP MP Nos.13388 and 13389 of 1997 and were submitted before the Hon"ble the Chief Justice and His Lordship informed me that instructions would be given later. I am herewith submitting the entire case record along with the note as directed.

Submitted. S/23-5-1997.

14. It would be further interesting to notice that WP MP No.13388 of 1997 filed by the 8th respondent was listed before us on 24-5-1997, as special motion, again purported to have been granted by the Hon"ble the Chief Justice, as house motion. The Bench was constituted, but only for the purpose of hearing the said miscellaneous application in SR No-55758 of 1997 filed by the writ petitioner. In discharge of our constitutional duty, we have to assemble especially for hearing the case, as it was brought to our notice that the Hon"ble the Chief Justice directed for constitution of a Special Bench, in view of the urgency involved. We were surprised to notice that what were placed before us, on 24-5-1997 arc the applications filed by the 8th respondent with regard to which there was no direction whatsoever either to number them or to post them for hearing before us.

15. We have specifically asked Sri Satyanarayana Rao, learned Advocate appearing on behalf of the petitioner/8th respondent as to how the miscellaneous applications (WP MP Nos.13388 and 13389 of 1997) could have been filed on 22-5-1997 and which authority granted such permission to file them, the learned Counsel fairly submitted that "he does not know much about the case, except that it is an implead petition filed on behalf of the petitioner(8th respondent)". The learned Counsel was not aware as to how these matters were listed. We have had the advantage of the report of the Registrar (J) dated 23-5-1997, which would clearly show that no such permission was granted for hearing WP MP Nos.13388 and 13389 of 1997. We have noticed the obvious collusion between the writ petitioner and the 8th respondent and accordingly directed the Registrar to submit a comprehensive report and passed an order inter alia, observing :

"In such view of the matter, it is mysterious as to how the petitioner could get these WP MPs before us by way of house motion. The collusion between the petitioner herein and the writ petition is obvious and clear.

We are left with an uncomfortable feeling that the petitioner herein in collusion with the writ petitioner has taken this Court for a ride and abused the judicial process. The Court is duty bound to protect itself from the unscrupulous litigants. This Court has many weapons in its armoury to unmask such unscrupulous litigants and bench fixers."

The petition referred to above, in respect of which such observations are made by us relates to the implead petition (WP MP No. 13388 of 1997) filed by N.K. Prasada,

The Registry accordingly submitted another report on 8-8-1997.

Before the Hon''ble Sri Justice B. Sudershan Reddy and the Hon''ble Sri Justice V. Bhaskara Rao

WP MP Nos.13388 and 13389 of 1997 in WP No.6240 of 1997

May it please your Lordships,

The Registrar (Judl.) has the honour to submit the following report in obedience to the direction given by the Hon''ble Court in the above matter on 24-5-1997.

The Hon''ble Court directed the Registrar (Judl.) to make an enquiry and submit a detailed report as to how the about two WP MPs were entertained as house motion though no permission as such has been granted.

WP No.6240 of 1997 was filed by one D. Prem Chand seeking a writ or direction declaring the action of the respondents in abusing of power vested by law under Sections 12(a) and 13 and other provisions of the Central Excise Act, 1944 resulting in loss of Central Excise Revenue to the tune of Rs.440 crores as illegal. He also filed WP MP No.7473 of 1997 seeking certain direction regarding the transfer of one N.K. Prasad, Assistant Commissioner, Central Excise, Hyderabad. The writ petition along with the WP MPs were posted before the Division Bench comprising of Hon''ble Sri Justice Linga Raja Rath and Hon''ble Sri Justice V. Bhaskar Rao on 1-5-1997.

While the matter stood thus, the petitioner Sri D. Prem Chand filed WP MP (SR) No.55758 on 22-5-1997 for a direction to the respondents to implement the order of the Chairman of the Central Board of Excise and Customs in Proceedings bearing F.No.PF/GSM/DG/NACEN/97/1, dated 8-5-1997. As seen from the record, the petitioner sought permission to move house motion and the same was permitted by the Hon''ble the Chief Justice with instructions to post the matter before the Division Bench of Hon''ble Sri Justice B. Sudershan Reddy and Hon''ble Sri Justice V. Bhaskar Rao, as per the endorsement made by Sri S. Chandra Rao, the then Registrar (Judl.). In his report submitted on 23-5-1997 Sri S. Chandra Rao further stated that the matter was to be taken up at 2.15 p.m. on 22-5-1997 by the Division Bench and the same is informed to the petitioner and that while checking the WPMP(SR) No.55758 of 1997 certain objections were taken by the office and the same was returned for complying with the objections. He further stated in the report that the petitioner telephoned to him informing that he was not insisting for the House Motion as his Advocate, E. Seshagiri Rao was not available and the same was submitted to the Hon''ble Chief Justice and to the Hon''ble Sri Justice B. Sudershan Reddy.

While so, on the same day, i.e., on 22-5-1997 at about 2.15 p.m., Sri S. Chandra

Rao, the then Registrar (Judl.) appears to have received telephonic message from Sri M.S.K. Jaiswal, Personal Secretary to the Hon''ble Chief Justice stating that Sri S. Ram Chandra Rao, Advocate came to Sri Jaiswal and informed that he was filing two fresh WP MPs. in the above said writ petition and that he was permitted to move house motion by the Hon''ble Chief Justice. It can be seen from the report of Sri S. Chandra Rao, that when questioned by him, Sri M.S.K. Jaiswal informed that the latter did not directly receive directions from the Hon''ble Chief Justice and that he was so informed by Sri S. Rain Chander Rao, Advocate and thereupon Sri S. Chandra Rao asked Mr. M.S.K. Jaiswal to seek instructions from the Hon''ble Chief Justice directly regarding the permission for moving the house motion and later Sri S. Chandra Rao was informed by Sri M.S.K. Jaiswal that His Lordship after perusing the papers informed Sri Jaiswal that no permission was granted for House Motion in those fresh WP MPs and directed the Registry to check them and seek instructions later.

When I made enquiries with Sri S. Chandra Rao, who is presently working as Registrar (Vigilance), in the course of the present enquiry, Sri S. Chandra Rao reiterated what all he stated in his report submitted on 23-5-1997. I also enquired with Sri M.S.K. Jaiswal and recorded his statement on 5-8-1997 which is enclosed herewith. Sri Jaiswal also stated on the afternoon on 22-5-1997 Sri S. Ram Chancier Rao, Advocate sought appointment to meet the Hon''ble Chief Justice for making the mention regarding the house motion and after the meeting the Hon''ble Chief Justice, the Advocate informed Sri Jaiswal that the Hon''ble Chief Justice was pleased to permit him to move the house motion in the matter of two WP MPs. and that he would be sending the petitions immediately. Sri Jaiswal further stated that after receiving the two petitions sent by Sri S. Ram Chander Rao he contacted Sri S. Chandra Rao as to whether he has any instructions from the Hon''ble Chief Justice regarding the permission to move the house motion and Sri S. Chandra Rao informed him that he had no such instructions and asked him to ascertain the same from the Hon''ble Chief Justice. Sri M.S.K. Jaiswal further stated in his statement that he placed the two WP MPs before the Hon''ble Chief Justice and also informed His Lordship about the representation made to him by Sri S. Ram Chander Rao and that after perusing the petitions His Lordship informed Sri Jaiswal that no permission for house motion was necessary in those miscellaneous petitions and directed Mr. Jaiswal to inform the Registrar (Judl.) to check those two petitions and seek instructions later.

The report submitted by Sri S. Chandra Rao, the then Registrar (Judl.) and the statement of Sri M.S.K. Jaiswal, Secretary to the Hon''ble Chief Justice clearly show that Sri S. Ram Chander Rao, Advocate informed Sri M.S.K. Jaiswal that he was permitted to move the house motion in the above two WP MPs. though in fact no such permission for house motion was granted on 22-5-1997.

On 23-5-1997, a Special Bench comprising of the Hon''ble Chief Justice and Hon''ble Sri Justice B. Sudershan Reddy was constituted and the said Bench held

sitting at the Bungalow of Hon''ble the Chief Justice at 5 p.m. to deal with WP No. 11083 of 1997, During the course of my enquiries with Sri S. Chandra Rao, the then Registrar (Judl.) for the purpose of present enquiry, he stated that Sri S. Ramchander Rao, Advocate was seen at the Bungalow of the Hon''ble the Chief Justice on 23-5-1997 at about the time of the sitting of the above Special Bench and that after the Special Bench work was over, when Sri S. Chandra Rao appraised the Hon''ble Chief Justice that the two WP MPs. 13388 and 13389 of 1997 were checked as directed earlier and were found to be in order and sought further instructions in the matter. The Hon''ble Chief Justice was pleased to direct that the said two WPMPs. 13388 and 13389 of 1997 be posted before the same Bench i.e., the Bench comprising of Hon''ble Sri Justice B. Sudershan Reddy and Hon''ble Sri Justice V. Bhaskar Rao.

Accordingly, when the said Bench comprising of Hon''ble Sri Justice B. Sudershan Reddy and Hon''ble Sri Justice V. Bhaskar Rao sat on 24-5-1997 to deal with another WP No. 11099 of 1997 for admission, the above said WP MP Nos. 13388 of 1997 and 13389 of 1997 in WP No.6240 of 1997 were also posted before the same Bench as per the directions of the Hon''ble Chief Justice given to Sri S. Chandra Rao.

It is respectfully submitted that under the circumstances stated above, the two WPMP Nos.13388 of 1997 and 13389 of 1997 came up before the Hon''ble Court on 24-5-1997.

Hyderabad, Dt. 8-8-1997 Sd/- 8-8-1997 Registrar (Judl.) Encl :--Statement of Sri M.S.K. Jaiswal, Secretary to the Hon''ble Chief Justice recorded on 5-8-1997.

Statement of Sri M.S.K. Jaiswal. Secretary

to the Hon''ble the Chief Justice recorded

on 5-8-1997

.....

On 22-5-1997, I was on duty at the Residence of the Hon''ble Chief Justice from 8 a.m. In the afternoon Sri S. Ram Chancier Rao, Advocate sought an appointment to meet the Hon''ble Chief Justice for the purpose of making a mention with regard to a house motion. After meeting the Hon''ble the Chief Justice, the said Advocate came and informed me that the Hon''ble the Chief Justice is pleased to permit him to move house motion in the matter of two WP MPs. and that he will be sending petitions immediately. Shortwhile thereafter, two petitions were sent to me by Sri S. Ram Chander Rao, Advocate. Then I contacted Sri S. Chandra Rao, the then Registrar (Judl.) as to whether he has any instructions from the Hon''ble the Chief Justice with regard to the permission to move the two WP MPs. as house motion. The Registrar (Judl.) informed me that he had no such instructions and asked me to ascertain the same from the

Hon"ble Chief Justice. Thereafter, I placed the two WP MPs. before the Hon"ble Chief Justice and informed His Lordship that Sri S. Ram Chander Rao, Advocate represented before me that permission to move the two petitions as house motion has been granted. After perusing the petitions, His Lordship informed me that no permission for house motion is necessary in those miscellaneous petitions and directed me to inform the Registrar (Judl.) to check those two petitions and seek instructions later. I conveyed the same to the Registrar (Judl.) and handed over the two petitions to the person who brought to me with instructions to approach the Registrar (Judl.).

Sd/-5-8-1997,

M.S.K.. Jaiswal

Recorded by me

Sd/-

5-8-1997 (Registrar - J.).

16. It is also required to notice that in WP No.6240 of 1997, on the same day i.e., 24-5-1997, we have directed a show-cause notice to be served upon the writ petitioner, D. Premchand, for submitting his explanation as to why further appropriate proceedings should not be taken and as to why he should not be punished for his having committed Contempt of the Court, as we were of the prima facie view that the writ petitioner has abused the judicial process and obstructed the judicial proceedings by informing the Registrar (J) that he was not insisting for the house motion, though a Division Bench was constituted for the purposes of hearing the case on 22-5-1997 that too by way of a special motion. Notices were accordingly issued to the petitioner at the address shown by him in the cause title. The Contempt Case was accordingly registered and posted on 20-6-1997 for further hearing.

17. The notices issued to the petitioner (Digumarthi Premchand) were returned unserved. When the Contempt Case came up for hearing, the Registry was directed to post the same on 23-6-1997 for further orders and to be heard along with WP No.6240 of 1997.

18. Learned senior Counsel, Sri S. Rama Chander Rao appearing on behalf of the writ petitioner undertook to furnish the correct address of the petitioner to the office and we have accordingly directed to send the notices to the address to be furnished by the learned Counsel. The record would disclose that the learned senior Counsel was accordingly requested by the Registry on more than one occasion to furnish the correct address of the petitioner. As no such information was forth coming from the learned senior Counsel, the notices could not be served upon the petitioner.

19. We have directed the writ petition, miscellaneous petitions and the contempt caseto be posted on 14-7-1997 for further hearing. In the morning of 14-7-1997,

even before the Bench could assemble in the afternoon, one of us (B. Sudershan Reddy, J) received a telegram which is to the following effect :

"I have reliably learnt from the office of senior Advocate S. Ramachandra Rao that the contempt proceedings have been initialed on me for having caused inconvenience to the Court proceedings on 22nd May 1997 it is learnt that I had given a phone call to the Registrar informing him that my Advocate is not available and therefore cannot attend the Special Bench constituted on 22nd May, 1997 at 2.15 p.m. As a matter of fact I had not made any such phone calls to the Registrar or any other officer of the Court I only signed the affidavit and given to my Advocate and after that I am not aware of any proceedings. I also like to inform the Honourable Justice that my life is in grave danger as the evaders and corrupt officers of Central Excise are gunning for me I therefore request the Honourable Justice to exempt me from personal appearance and acknowledge my sincere apology for any inconvenience caused to the Honourable Court in any manner because of me I also request the Honourable Justice to pardon me and drop the contempt proceedings - D. Premchand Narayanaguda, Hyderabad.""

20. A similar telegram was also addressed to the Hon'ble Chief Justice with an additional request "Personally look into the petition and monitor the progress in similar lines of Patna High Court as in Fodders Scam". At that time, we felt that the petitioner was following the proceedings of the Court and had full knowledge about the same, and also for the reason that Sri S. Ramachandra Rao, learned senior Counsel appearing for the petitioner could not furnish the correct address, we have directed the Registry to issue non-bailable warrant against the petitioner returnable in three weeks and accordingly directed the Commissioner of Police, Hyderabad to execute the non-bailable warrant and report compliance by 8-8-1997. The non-bailable warrant could not be executed even by 8-8-1997. On 14-8-1997 a report dated 13-8-1997 was submitted by the Commissioner of Police stating that they could not execute the non-bailable warrant for want of correct address and also could not find out any such person as the petitioner in the vicinity of Narayanaguda Area of Hyderabad. In the above circumstances, by an order dated 27-8-1997 we have directed the CBI to cause detailed enquiry/ investigation into the whole issue as to (a) whether there is any person by name Digumarthi Premchand, Journalist, r/o. Narayanaguda and if such a person is available, cause his production before this Court on or before 19-9-1997, (b) if there is no such person by name Digumarthi Premchand, the sixth respondent shall investigate and find out as to under what circumstances this writ petition came into existence and the person or persons responsible for filing the same. The CBI accordingly filed its report dated 19-9-1997, inter alia stating that the petitioner-Digumarthi Premchand, S/o. Vishwanadham is working as Part-time Journalist in Vartha of Srikakulam and related to respondent No.8 (N.K. Prasada). Further, the CBI submitted that the writ petition - 8th respondent and his associates were absconding and enquiry could not be completed and the petitioner. could not be produced before the Court. It is also inter alia submitted

that the signatures appearing on the writ petition and the admitted signatures obtained from the residence of the petitioner and the questioned and admitted documents have been forwarded to the Government Examiner of Questioned Documents, Hyderabad, for comparison and expert opinion to examine whether both the documents have been signed by one and the same person.

21. The petitioner appeared before this Court and by an order dated 19-9-1997 itself the petitioner was directed to be released on bail on his executing a personal bond for a sum of Rs.20,000/- with one surety for the like sum to the satisfaction of the Superintendent of Police, CBI, Hyderabad and on further condition of reporting to Superintendent of Police, CBI, Hyderabad on every Monday in the morning between 10.30 a.m, and 12.00 noon. He was further directed to be present before the Court on 17-10-1997. Having regard to the preliminary report submitted by the CBI dated 19-9-1997 we have passed another order on 19-9-1997 itself directing to issue bailable warrants as against the 8th respondent for a sum of Rs.20,000/- and accordingly directed the CBI to execute the bailable warrant to cause production of the 8th respondent.

22. However, on 17-10-1997 the 8th respondent appeared before the Court and the CBI was directed to proceed with the investigation and submit its report. We need not advert to as to what transpired on subsequent dates of hearing as we granting adjournments to the CBI to complete the investigation. However, the CBI had submitted a final report stating that the CBI had already registered a case in Crime No. RC24(S)/97 and submitted the charge-sheet in the Court of XXIII Metropolitan Magistrate, Hyderabad against the petitioner and the 8th respondent and one M. Kali Prasada who is stated to be another close relative of the 8th respondent. The charge-sheet has been filed by the CBI against all of them for the offences punishable u/s 120B read with 199, 200, 201, 416, 465, and 471 IPC and Section 109 IPC. It would be appropriate though for a very limited purpose, to have a look at the allegations levelled against them in the charge-sheet.

"Sri D. Premchand (A1) is son of Sri D. Vishwanath working as part-time lecturer apart from running a school at Town Hall Road, Srikakulam in the name and style of Vishalandra School.

Sri N.K. Prasada (A2) is son of Sri P.J. Rao and is working as Assistant Commissioner, Customs and Central Excise, Government of India, Ministry of Finance at Hyderabad.

Sri M. Kali Prasad (A3) S/o. Sri M. Chandrasekhar is a Graduate Engineer, and he is an unemployed.

All the three accused are related to each other and were parties to Criminal Conspiracy by giving false affidavit knowing it to be false and made the Hon'ble Court to believe it to be true and played fraud with the Apex Court of State of Andhra Pradesh. In pursuance of the aforesaid conspiracy the accused had again filed affidavit to obtain some advantage regarding A2's retention in Hyderabad.

In the capacity of Assistant Commissioner, Customs and Central Excise.

On 17-3-1997, Sri B. Kistaiah Ex-MLA, Shadnagar, who is a close associate of Sri B.P. Agarwal a businessman running a textile mill at Shadnagar filed a WP No.5717 of 1997 praying for issuance of appropriate writ declaring the action of the respondent in abusing the power vested by law under Sections 12A, 13 under the provision of Chapter 3 of Central Excise and Customs Act, 1994 and attracting the provision of Section 23 of the Central Excise Act resulting in a loss of Central Excise revenue to the tune of Rs.440 crores in Hyderabad.

On 26-3-1997, Sri B. Kistaiah submitted a withdrawal petition through his Advocate Sri K.R. Prabhakar, Jr. Advocate of Sri S. Ramachander Rao on the grounds that his conscious however does not permit him to proceed with the said writ petition and also was uncertain of the effect of the matter will have and for personnel reasons for his safety. On the same day i.e., 26-3-1997 a similar writ petition was filed by D. Premchand s/o D. Vishwanath, Journalist, Narayanaguda, Hyderabad, which was numbered as WPNo.6240 of 1997 and was filed through Sri E. Seshagiri Rao, Jr. Advocate of Sri Ramachander Rao. Both these petitions came up for hearing before the Hon''ble Division Bench of High Court of A.P. comprising of Hon''ble Justice V. Bhaskar Rao and Hon''ble Justice B. Sudarshan Reddy. These two petitions were directed to be heard together as both -the petitions were having similar allegations and also claiming same relief. This WP No.6240 of 1997 was adjourned from time to time to be heard along with WP No.5717 of 1997.

On 22-5-1997, Sri D. Premchand filed WP MP (SR) No.55758 of 1997 seeking some further directions of the Hon''ble High Court to direct the Customs Excise Authorities to implement the order of Chairman, Central Board of Excise and Customs of the proceedings dated 8-5-1997 wherein it was ordered to retain Sri N.K. Prasada on the rolls of Hyderabad Commissionerate and should be given back the cases for investigation which was booked by him. This petition was moved by way of house motion and permission was granted by the Hon''ble Chief Justice permitting the petitioner to move the said application. The Hon''ble Chief Justice has constituted a Division Bench for the purpose. On the same day 22-5-1997, the Registry noticed certain objection while scrutinising the said miscellaneous application and the same has been returned for compliance for the said objections.

On 22-5-1997, the Registrar Judicial received Telephone call intimating that the petitioner is not insisting for house motion as his Advocate Sri E. Seshagiri Rao was not available. Hence, the Division Bench could not proceed with the hearing of the petition. On the directions of the Hon''ble Division Bench the matter was enquired into by Registrar Judicial.

The Division Bench passed an order directing to serve cause notice to the petitioner calling for explanation as to why further appropriate proceedings should not be taken and why he should not be punished for having committed

the contempt of Court- In spite of best efforts of the Registry the notice could not be served upon the petitioner.

The Hon''ble Court by an order dated 14-7-1997 in Contempt Case No.779 of 1997 directed issuance of non-bailable warrant against Al herein and the Commissioner of Police, Hyderabad was directed to execute the same. The Commissioner of Police could not execute the warrant after making several efforts and returned the non-bailable warrant reporting that the address was insufficient.

On 10-7-1997 and 12-7-1997 two different phonograms were received by Hon''ble Justice Quadri and Hon''ble Chief Justice of High Court seeking pardon and conveyed sincere apologies for the inconvenience caused to the Hon''ble Court and requested for exemption from personal appearance in the contempt proceedings. And also requested the Hon''ble Court to pardon him and drop the contempt proceedings.

On 24-5-1997 the Hon''ble High Court suspecting foul play in the matter ordered for contempt proceedings against Sri D. Premchand and notice was issued for his appearance on 20-6-1997. The notice again was not served on him for want of proper address.

The Hon''ble High Court then directed DIG/CBI to trace out Sri D. Premchand and conduct thorough probe into the matter. The identity of Sri D. Premchand has been established during the course of investigation on 19-9-1997. Sri Premchand surrendered before the Hon''ble High Court and he was ordered to be released on bail by the Hon''ble High Court on the same day. On the same day the senior Advocate Sri Ramachander Rao and Seshagiri Rao who were present in the Court have specifically stated that the person who surrendered before the Court was not the one who signed the Writ Petition No.6240 of 1997 in the name of Sri D. Premchand.

CBI, Hyderabad has registered a case vide RC No.24(S)/97/Hyd. on the basis of orders of the Hon''ble High Court of A.P. in WP No.6240 of 1997 purported to have been filed by one Sri D. Premchand on 26-3-1997 through his Counsel Sri S. Ramachander Rao, senior Advocate and one Sri E. Seshagiri Rao, Advocate with the allegation that the officials of the Customs and Central Excise Department, Hyderabad have caused loss of revenue to the Government to the tune of Rs.440 crores.

During the course of investigation of the above said RC, the following facts have come to light :

(A2) Sri N.K. Prasada joined in Customs and Central Excise Department in the year 1989 and was working as the Assistant Commissioner (Special Investigation Team), Hyderabad, from 1991 to 1997 March and directly reporting to Chief Commissioner of Customs and Central Excise, Sri N.K. Prasada had certain differences with the senior officers like Sri M.V. Reddy, the then Commissioner,

Customs and Central Excise, Hyderabad and later he was transferred from the post and was posted to Coimbatore.

On 17-3-1997 Sri N.K. Prasada met one Sri B. Kistaiah an Ex.MLA who had got close association with Sri B.P. Agarwal Textile Mill owner of Shadnagar with whom the said Sri N.K. Prasada also had acquaintance. On the same day Sri Kistaiah filed a WP No.5717 of 1997 alleging irregularities in Customs and Central Excise, Hyderabad and also filed several documents along with writ petition which were supplied by N.K. Prasada.

Not contented with filing of the above writ petition Sri N.K. Prasada A2 also got filed another WP No.6240 of 1997 through Sri S. Ramachandra Rao, senior Advocate and Seshagiri Rao, Advocate. Since, the subject-matter of both the writ petitions are one and the same, the Hon''ble High Court posted the matter for hearing before Hon''ble Justice V. Bhaskar Rao and Hon''ble Justice Sri B. Sitdershan Reddy.

Sri Padmanabham, clerk of Sri Ramachander Rao informed mat on 22-5-1997 Sri N.K. Prasada came to the office of Sri Ramachander Rao and asked him for the house motion petition of D. Premchand and Sri Padmanabham showed him the bundle from which Sri N.K. Prasada took out the petition informing him mat he is taking the house motion petition of D. Premchand.

Sri N.K. Prasada, (A2) has obtained this writ petition back from the Registrar of the High Court since some objections were raised by the Registrar and Sri N.K. Prasada also signed in return register maintained by the Registrar office in token of receipt of the petition back.

The register as well as specimen signatures of Sri N.K. Prasada have been referred to GEQD who opined that the signatures on the register pertains to Sri N.K. Prasada.

The investigation disclosed that the origin of all Phonogram was from public telephone booth bearing No. 243 980, located at Basheerbagh and other PCO telephone No.332917 located at Erramanzil Colony.

Investigation disclosed that on the day of filing of WP No.6240 of 1997 i.e., 26-3-1997 Sri Kali Prasada was taken to the office of Sri S. Ramachander Rao by Sri N.K. Pramda and Sri B.P. Agarwal. Investigation also disclosed that on 26-3-1997, Sri D. Premchand was presentat Srikakulam and he has not come to Hyderabad nor he signed the affidavit enclose with the WP No.6240 of 1997.

The GEQD has opined that the signature on WP No.6240 of 1997 was not that of Sri D. Premchand. But Sri D. Premchand with a fraudulent and dishonest intention filed an affidavit before the Hon''ble High Court on 7-11-1997 stating that he himself has signed the affidavit enclosed with the WP No.6240 of 1997 and that he himself filed the petition.

Sri S. Ramachander Rao, Sr. Advocate and Sri Seshagiri Rao, Advocate who filed

the WP No.6240 of 1997 have also stated in their statements recorded u/s 164 Cr.PC before the U MM Hyderabad that the person Sri D. Premchand who had surrendered before Hon''ble High Court on 19-9-1997 was not the person who came along with Sri N.K. Prasada and who signed the WP No.6240 of 1997 on 26-3-1997.

The document filed along with WP No.5717 of 1997 of Sri B. Kistaiah, Ex.MLA, Shadnagar were supplied by Sri N.K. Prasada has stated by Sri K.R. Prabhakar Rao, Advocate for Sri B. Kistaiah, Sri B. Kistaiah also stated before the Hon''ble High Court that Sri N.K. Prasada requested him not to withdraw the petition.

By the aforesaid acts all the accused entered into criminal conspiracy and fraudulently filed WP No.6240 of 1997 and in which process A3 impersonated A1 under the active connivance of A2 and thereby played fraud on the higher judiciary. A1 has falsely stated through an affidavit before the Hon''ble High Court of A.P. on 7-11-1997 that he himself filed WP No.6240 of 1997.

Thus, all the three accused i.e., A1 to A3 committed offences punishable u/s 120B read with 199, 200, 201, 419, 465 and 471 IPC and Section 109 IPC.

It is therefore prayed that the Hon''ble Court may take cognizance of the case against the accused and they may be dealt with according to law.

Hence the charge-sheet.

Sd/-(T.N.Rao),

Dy. Superintendent of Police,

SPE/CBI, Hyderabad

23, Now a word about the writ petition filed by a former Legislator in WP No.5717 of 1997. We have already adverted to the letter addressed by the petitioner to his learned Counsel requesting him to withdraw the writ petition. On 19-9-1997 itself we have passed yet another order directing the CBI to make investigation into the question as to (1) whether the petitioner, himself, got the information required for the purpose of filing this writ petition and if so, who are the persons from whom the petitioner had gathered the information. It is also just and necessary to find out as to (2) how and on what basis the averments in the affidavit filed in support of the writ petition are made and the persons responsible for making or engineering the averments made in the affidavit. We have directed the CBI through its DIG, Hyderabad Zone to make enquiry into these two aspects and if necessary for the aforesaid purpose, register a case and investigate the same in accordance with law. We have further directed the CBI to find out as to under what circumstances the petitioner proposed to withdraw the writ petition, as the version stated by him in the deposition and the reasons stated in the letter addressed to his Counsel are at variance. The CBI was also directed to find out as to who are those persons, if any, responsible for getting the letter of withdrawal filed by the petitioner. The CBI had accordingly submitted

a report on 16-10-1997 which is to the following effect :

"In compliance of the order, it is respectfully submitted that the CBI, Hyderabad branch had registered a case vide PE 10(S)/97/Hyd., dated 25-9-1997 to enquire into the above matter. During the course of enquiry, Sri K.R. Prabhakar, Counsel for the petitioner was examined and he stated that he was the Counsel for Sri B. Kistaiah, who filed Writ Petition No.5717 of 1997. Sri K.R Prabhakar is working in the office of Sri Ramachandra Rao, senior Advocate who is practicing in the High Court. He filed a petition as per directions given by his senior Counsel Sri Ramachandra Rao and he stated that the petitioner Sri B. Kistaiah and Sri N.K. Prasada, Assistant Commissioner of Central Excise and Customs were introduced to him by Sri B.P. Agarwal. Sri B.P. Agarwal is the client of Sri Ramachandra Rao and his cases are being handled by Sri Ramachandra Rao since 1996.

Sri Ramachandra Rao stated that in the month of March, 1997 Sri B.P. Agarwal introduced Sri N.K. Prasada to him and said that Sri N.K. Prasada wanted to file a petition with regard to some serious irregularities in Customs and Central Excise Department and as such Sri Ramachandra Rao agreed to file the petition.

Sri B. Kistaiah, the petitioner was examined and he stated that Sri N.K. Prasada came to his residence at Gunfoundry in the month of March, 1997 along with two other persons and introduced himself as an officer of Central Excise and other two persons as his colleagues. He further informed Sri B. Kistaiah that he was working as Divisional Commissioner of Central Excise at Shadnagar area and hence he heard about him. Sri B. Kistaiah is an Ex-MLA of Shadnagar, affiliated to Congress party and is an office bearer of the party. Sri B. Kistaiah was induced by N.K. Prasada to file a Public Interest Litigation regarding the revenue loss in Central Excise and Customs. He was informed that the petition may expose a major scandal in the department and in turn this will earn him a good reputation. Sri B. Kistaiah is known to Sri B.P. Agarwal since 1978. Sri B.P. Agarwal is running a textile factory at Shadnagar. On that day as per the statement, Sri B. Kistaiah was not aware about the transfer of Sri N.K. Prasada. Sri N.K. Prasada also promised him that he would bear the expenses connected with the writ petition.

Sri B. Kistaiah further stated that subsequently, Sri N.K Prasada asked him to meet the Advocate at his Jubilee Hills office for further action in this matter. At the office, Sri B. Kistaiah met N.K. Prasada who was talking to Sri Ramachandra Rao. Sri B.P. Agarwal and Prabhakar were also present there at that time, as per the statement of Sri Kistaiah. There, Sri B. Kistaiah came to know that N.K. Prasada was the Assistant Commissioner of Central Excise and he also heard about certain corrupt activities of the then Commissioner of Central Excise from their conversation. Sri B. Kistaiah was introduced to Sri Ramachandra Rao by Sri N.K. Prasada. Sri B. Kistaiah did not discuss with Sri Ramachandra Rao about the advocate fees and other formalities. Later, on the date of filing the petition he had visited the office of Sri Ramachandra Rao and put his signatures as per the direction of Sri Prabhakar and Sri N.K. Prasada. He further stated that as he was

not fluent in English and he did not go through the contents of the affidavit. However when he questioned the voluminous nature of the affidavit, he was informed that the matter was serious and hence it requires lot of explanation.

Sri B.P. Agarwal stated that sometime in March, Sri N.K. Prasada had consulted him for engaging a lawyer for some litigation and he suggested the name of Sri Ramachandra Rao, who was his lawyer since 1996 and later one day Sri N.K. Prasada accompanied him to the advocate's office and there he was introduced to Sri Ramachandra Rao. Sri N.K. Prasada had discussed with Sri Ramachandra Rao about the petition which he wanted to file. He also stated that he had seen Sri Kistaiah and N.K. Prasada at the office of Sri Ramachandra Rao two or three times thereafter.

Sri Ramachandra Rao stated that after the first meeting with N.K. Prasada, he brought Sri Kistaiah, Ex.MLA as petitioner who wanted to file the writ petition. He further stated the facts and circumstances of the case were briefed to him by Sri N.K. Prasada and Sri B. Kistaiah did not explain anything about the case. He instructed his Jr. Advocate, Sri Prabhakar to prepare a petition and he filed it. He also stated that N.K. Prasada had furnished all the papers pertaining to the case and enclosure cited in the case, fees and other terms and conditions were discussed with Sri N.K. Prasada only. Later one person who had accompanied N.K. Prasada paid the advocate fees in cash.

Sri Prabhakar stated that Sri N.K. Prasada explained to him the matter which caused the filing of writ petition which indicates about some revenue loss and corrupt activities of Commissioner. He further stated that he had given dictation to his steno Sri Madhu and prepared the petition and affidavit as per the information given by Sri N.K. Prasada. Sri B. Kistaiah did not clarify any of the points pertaining to the petition and affidavit. He further stated that the material papers which were furnished along with petition were given to him by Sri N.K. Prasada.

Sri Madhu stated that after typing the dictated matter, he had handed over the petition and affidavit papers to Sri Prabhakar in order to get the signatures of the petitioner. He further stated that he did not remember who all attended the office of Ramachandra Rao, senior Advocate on the day of the preparation of the petition.

Enquiries were conducted in the office of Central Excise and Customs Department with regard to origin of the information required for filing the writ petition. It was revealed that Sri N.K. Prasada was the person who was interested in filing the petition and he is also aware of the functioning of Customs and Central Excise. Two documents which were marked "Top Secret" and one document marked "Confidential" were enclosed along with the petition. The above-mentioned documents were pertaining to the office of Chief Commissioner of Central Excise and Customs by name Sri G.S. Maingi is presently working in Delhi. The PA of the Chief Commissioner was examined with reference to the office copy of the

above documents. It is revealed that all the above documents were issued to Sri N.K. Prasada. The document which was marked "confidential" was marked to Commissioner and Addl. Commissioner. The office copy of the above documents were perused and statement of Sri Suresh Kumar, PA to the present Chief Commissioner was recorded. It was noted from the office records that the document number as C.No.IV/16/267/95 (PA), dated 10th October, 1995 bears two other acknowledgment signatures. The office copy of the document dated 9-8-1995 and 14-9-1995 marked as "Top Secret" do not bear the caption "Top Secret". The document which is numbered C.No.IV/167195/95(PA), dated 24th August, 1995 bears initials of Sri N.K. Prasada and writing named "Steno". The steno was examined and he stated that the said document was issued by the Chief Commissioner at that time and he identified the initials and writing of Sri N.K. Prasada and stated that since it bears the writing of Sri N.K. Prasada, the said document is the copy of Sri N.K. Prasada. The same documents apparently tallies with the enclosed material of the petition.

The Dy. Commissioner (Vig.), Director of Vigilance, Central Excise and Customs, Chennai had conducted some enquiry about the availability of certain secret and confidential documents in the Hon"ble A.P. High Court premises based on an anonymous complaint. The Deputy Commissioner (Vigilance) was contacted and it was informed that the enquiry revealed that the documents which were mentioned in the writ petition do not appear to have been given from the office file of Chief Commissioner of Central Excise and Customs.

Thus from the statements of witnesses and other documentary evidence it can be pointed out that Sri N.K. Prasada had furnished the necessary information for filing the writ petition in the name of Sri B. Kistaiah. The affidavit was prepared by Sri Prabhakar, Advocate as per the instruction of Ramachandra Rao, senior Advocate.

Sri B. Kistaiah stated that he wanted to withdraw the petition as he had made some local enquiries and found that Sri N.K. Prasada was not enjoying a good reputation. Subsequently he met Sri N.K. Prasada and informed that he wanted to withdraw the petition as he came to know about the poor reputation of Sri N.K. Prasada and the quarrel between the officers of Central Excise. Sri Prabhakar subsequently had given dictation to Steno for the preparation of the withdrawal petition and Sri B. Kistaiah had objected the contents of the said petition as it had mentioned about safety and security reasons for withdrawing the petition. Sri Kistaiah categorically stated that he was not having any sort of security problems and as a social worker he need not fear such things which are connected with the petition. Further Sri Prabhakar convinced him that in the absence of words "safety, security and threat", it is difficult to withdraw the petition from the High Court. Sri Ramachandra Rao, senior Counsel was also present there at that time. Since he wanted to withdraw the writ petition he agreed for the typed withdrawal letter, signed and thereafter he had given a letter addressed to Advocates for not pursuing the petition No.5717 of 1997.

Since N.K. Prasada could not be traced out it is not possible to submit conclusive report regarding the information about the actual transactions which had taken place between S/Sr-i B. Kistaiah, B.P. Agarwal, Ramachandra Rao and Prabhakar.

It is therefore, prayed that the Hon"ble Court may consider the investigation report and may take it in the file and may kindly pass suitable orders which will be dutifully and promptly carried out."

At this stage, it would be appropriate to what the petitioner himself had stated before us in his sworn statement.

"I am ex-MLA of Shadnagar Constituency. I filed a WP in this Court against the Commissioner of Central Excise and none else. I do not know any person by name M. V. Reddy (the affidavit in WP No.5717 of 1997 shown to the witness). The affidavit bears my signature. I know the contents of the affidavit.

Q. Please narrate the contents of your affidavit?

Ans. I reside at Shadnagar. Some persons informed me that the revenue loss is being caused to the Central Government. I engaged an Advocate, Sri Prabhakar Rao. Then I got this petition filed. I am not aware of the contents of the affidavit shown to me and signed by me. I do not know any person by name N.K. Prasada. I do not know who gave instructions to draft the above affidavit. I signed the above affidavit in the office of my Advocate.

Subsequently, I heard that the contents of my affidavit are false, through some persons. Thereupon I went to my Advocate, Sri Prabhakar and instructed him to withdraw my above writ petition.

Q. Did you seek to withdraw the writ petition on the sole ground that your affidavit contained false allegations, or are there any other reasons like apprehension to personal safety or reputation or such other reason ?

Ans. The only reason for seeking the withdrawal is that the affidavit contained false allegations. I never apprehended any danger to my life, person or reputation. There are no other reasons for seeking withdrawal of the writ petition. (Letter dated 26-3-1997 addressed to Sri K.R. Prabhakar Advocate is shown to the witness), it is the same letter given to my Advocate requesting him to seek permission to withdraw the writ petition. It bears my signature. I want to withdraw my writ petition. When I asked my Advocate to seek withdrawal of the writ petition there was an altercation between us. Thereafter, he got the withdrawal letter typed and took my signature.

I have not filed any documents along with my writ petition. The documents now shown to me as having been filed along with the affidavit were not filed by me. I do not know what those documents are. I learnt about Sri N.K. Prasada also subsequent to the filing of the writ petition. I never met him.

Re-administered oath again at 4.15 p.m. on 19-9-1997.

Chief Examination Continued

When I filed the writ petition, it appears that N.K- Prasada was present. At that time, I do not know him but that person present is N.K. Prasada.

The same N.K. Prasada requested me not to withdraw the writ petition. When I went to the house of Sri S. Ramachandra Rao, learned senior Counsel, Sri N.K.Prasada was present and it was at that time that withdrawal letter was prepared and signed by me. He told me that he would suffer loss if I withdraw the writ petition.

I heard about Sri M. V. Reddy subsequently to the filing of the writ petition, but I have not seen him so far.

Sd/-B. Kistaiah.

On analysis of the pleadings before us and various reports filed by the CBI and the sworn statement of the petitioner in WP No.5717 of 1997 would lead to an irresistible conclusion that both these writ petitions are engineered and brought into existence by the 8th respondent herein with an oblique motive of avoiding an order of simple transfer dated 8-5-1997. It is the 8th respondent who has acting from behind the scene and had set up the petitioner to file the writ petition making reckless and unfounded allegations against the respondents. All this has been done only to avoid an order of simple transfer. To what extent the 8th respondent can stoop down is amply demonstrated from the contents of his own affidavit filed into this Court. In one of his counter-affidavits to the report of the CBI dated 17-10-1997 the 8th respondent inter alia states that "on the day Sri B.P. Agarwal introduced me to the advocate but I had met Sri S. Ramachandra Rao later on my own to seek advice whether I should file in CAT or in High Court. As per his directions, I had given him relevant papers which he said he would examine and advise me accordingly. However, without my knowledge or authorisation he used the documents to file a Public Interest Litigation. I came to know much later that the Hon"ble High Court has issued certain directions on the PIL filed by B. Kistaiah, At no point of time did I influence or induce any one to file a petition on my behalf." It is further stated that "the role of Sri S. Ramachander Rao as a senior Advocate looks very dubious in this context. This is apart from misusing the documents given by me to him in good faith for filing my own petition. This is a clear case of breach of clients' confidentiality and interest." It is now clear that it is the 8th respondent who made available the entire material filed into Court as material papers in these writ petitions. Obviously, the writ petition is drafted on the basis of the material supplied by the 8th respondent. It would be totally altogether a different matter as to whether the affidavit is signed by the petitioner or by somebody else at the instance of Respondent No.8. But the fact remains that material has been admittedly made available by the 8th respondent, undoubtedly he is the king pin in the whole drama and operating from behind the scene.

24. At this stage, it would be appropriate to have a look at the affidavit filed by

the learned Counsel appearing on behalf of the petitioner, Sri E. Seshagiri Rao, which is to the following effect:

"I submit that in the 3rd week of March, 1997 a writ petition, i.e., WP No.6240 of 1997 was filed on my name and I was advocate on record for the matter. The matter is similar to that of WP No.5717 of 1997 which was filed earlier.

I submit that in the 3rd week of March, 1997 Sri B.P. Agarwal, N.K. Prasada and some other persons came to our office and consulted my senior in my presence and asked me to file the writ in the nature of Public Interest Litigation, (PIL). Along with these persons there was a person who was introduced himself as Digamurthi Premchand, Journalist, Resident of Narayanaguda, Hyderabad. Accordingly I prepared the writ petition which is similar to WP No.5717 of 1997 and filed before this Hon''ble High Court. The matter came before their Lordships the Hon''ble Mr. Justice Lingaraja Rath and the Hon''ble Mr. Justice T.N.C. Rangarajan, on 1-4-1997 and heard both the writ petitions and ordered to implead the CBI. The matter were posted before their Lordships the Hon''ble Mr. Justice Lingaraja Rath and the Hon''ble Mr. Justice V. Bhasker Rao on 1-5-1997. I further submit that the Writ Petition No.6240 of 1997 was filed, because the previous writ petitioner wanted to withdraw and the same and which is of similar contents of this writ petition was prepared and filed.

I submit that on 20-4-1997 I received a telephone call from Mr. Premchand that I have to move a house motion in the WP No.6240 of 1997 for a fresh WP MP and send the documents by Fax to our office. As per the instructions of the petitioners, I prepared WP MP and concerned papers kept in my office to hand over to the petitioner. On 21-4-1997 I and my colleagues went to Shiridi to visit Lord Saibaba and came back on 24th April, 1997 morning. On 24-4-1997 I received a telephone call from the Registry of High Court and informed that a House Motion matter was posted before their Lordships Hon''ble Mr. Justice B. Sudershan Reddy and the Hon''ble Mr. Justice V. Bhaskar Rao at 2.15p.m. I along with my senior, Sri S. Ramachandra Rao attended the Court on 24-4-1997 at 2.15 p.m. when the matter called the Hon''ble Bench took serious views against the petitioner for abuse of Court process and issued contempt against the petitioner in WP No.6240 of 1997.

I submit that I prepared the writ petition and WP MP and believed the man who came and disclosed himself as Digumarthi Premchand, Journalist, Narayanaguda, Hyderabad. I believed him and filed the writ petition. But I don''t know who has taken WP MP which was prepared by me for the purpose of moving House Motion from our office. I don''t know who moved the House Motion and how that matter posted before this Hon''ble Bench.

I submit that I can recognise the person who signed the writ affidavit. I saw him twice in our office along with Sri B.P. Agarwal, N.K. Prasada and some others. I have not seen him after 1-4-1997. I have no knowledge about the House Motion which was said to have been moved on 22-4-1997. I have no instructions even

now to pursue the writ petition as that I am not pressing the writ petition.

It is respectfully submitted that in the above circumstances stated supra, the Writ Petition No-6240 of 1997 and WP MP came up before this Hon"ble Court on 24-5-1997. Hence this affidavit."

25. The affidavit also in categorical terms would disclose that the 8th respondent and one B.P. Aganval came to the office of Sri S. Ramchander Rao. senior Advocate and asked them to file a writ petition in the nature of Public Interest Litigation. At that time there was another person who was introduced himself as Digumarthi Premchand, Journalist, r/o Narayanaguda, Hyderabad. The connection and collusion between the petitioners in both the writ petitions and 8th respondent is crystal clear. The material on record would make it clear that at some or the other point of time all of them appear to have assembled in the office of Sri S. Ramachander Rao, learned senior Advocate and the same has resulted in filing of these two writ petitions purported to be in Public Interest.

26. It is so clear and specifically admitted by the petitioner in WP No.5717 of 1997 that he has no knowledge about the contents of the affidavit and was not aware of the documents filed into Court and the order obtained in his name from this Court. Obviously on reconsideration the petitioner thought it fit to withdraw the writ petition and accordingly requested his learned Counsel to withdraw the same but even before filing the letter of withdrawal and promptly Writ Petition No.6240 of 1997 has been filed from the office of the same learned senior Counsel, though a different advocate is on record.

PUBLIC INTEREST LITIGATION

Can these writ petitions be treated as Public Interest Litigation Cases, we have observed earlier, the main purpose of filing of the writ petitions is for setting aside the Impugned Order dated 8-5-1997 transferring the 8th respondent from his place as the Head of the Special Investigation Team. The 8th respondent was obviously well aware or was well advised that an order of transfer in normal circumstances, would not be interfered with by this Court in exercise of its extraordinary jurisdiction. But he wanted somehow to achieve the very purpose of getting the Impugned Order set aside and accordingly setup the petitioners to file these writ petitions in the name of Public Interest Litigation. We have no doubt in our mind that the petitioners are mere namelenders. They have misused the devise of Public Interest Litigation. The concept of Public Interest Litigation is invented by the Apex Court with noble cause and to serve and protect the human rights of the weaker sections, liberation of bonded labour, protection of women rights and environment. It would be appropriate to recall as to what the Apex Court said in Janata Dal Vs. H.S. Chowdhary and Others, , about the purpose and scope of PIL.

"From the above pronouncements, it emerges that this Court has widely enlarged the scope of PIL by relaxing and liberalising the rule of standing by treating letters or petitions sent by any person or association complaining violation of any

fundamental rights and also entertaining writ petitions filed under Article 32 of the Constitution by public-spirited and policy-oriented activist persons or journalists or of any organisation rejecting serious challenges made with regard to the maintainability of such petitions and rendered many virtuosic pronouncements and issued manifold directions to the Central and the State Governments, all local and other authorities within the territory of India or under the control of the Government of India for the betterment of the public at large in many fields in conformity with constitutional prescriptions of what constitutes the good life in a socially just democracy. The newly invented proposition of law laid down by many learned Judges of this Court in the arena of PIL irrefutably and manifestly establish that our dynamic activism in the field of PIL is by no means less than those of other activist judicial systems in other parts of the world."

However, the Apex Court administered caution by observing that :

"While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly-developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

"It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented 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, unrepresented 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 the undue delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenus expecting their release from the detention orders, etc., 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 intervenes having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling 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 Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

In the words of Bhagwati, J (as he then was) "the Courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J. "the applications of the busybodies should be rejected at the threshold itself and as Krishna Iyer, J. has pointed out, "the doors of the Courts should not be ajar for such vexatious litigants".

27. In *Sampat Singh and Others Vs. State of Haryana and Others*, , the Apex Court held :

"Further we do not like to express any opinion on his conduct except observing that the Court should not be indirectly used as an instrumentality by anyone to attain or obtain any beneficial achievement which one could not get through normal legal process and that if anyone approaches the Court with ulterior motive, designed to wrench some personal benefit by putting another within the clutches of law and using the Court as a device only for that end but not to get any legal remedy, then in such a situation the Court should heavily come upon such a person and see that the authority of the Court is not misused."

That is exactly what had taken place in the case on hand. These writ petitions are designed to wrench personal benefits by putting the petitioners in the forefront and using the Court as a device only for the purpose of getting the order of transfer set aside. Undoubtedly, the judicial process and extraordinary jurisdiction of this Court has been put to misuse by the 8th respondent.

28. One of us (B. Sudershan Reddy, J.) had an occasion to consider the scope of Public Interest Litigation in *K. Hanumantha Rao and Others Vs. Prl. Sub-Judge and Others*, , and observed :

"It is thus absolutely clear that whole purpose and object of public interest litigation and liberalisation of the traditional rule relating to standing is to render socio-economic justice to the poor and weaker sections. The Courts have permitted public spirited citizens and organisations with known credentials to invoke the extraordinary jurisdiction on behalf of the deprived sections of the Society for the enforcement of their legal and fundamental rights. The liberalisation of rule regarding standing can never be construed as a licence granted to litigants to invoke the extraordinary jurisdiction of the Court to raise any dispute of their choice. In our considered view, no such right is granted to any litigant. It is not as if every member of the public can complain of any and every breach of statutory duty. We are of the considered opinion that public interest litigants must in clear terms state the details about their concern and commitment in the subject-matter of the debate proposed to be espoused and should clearly indicate their interest. They must declare and satisfy the Court in unmistakable terms that they have nothing to gain personally out of the subject-

matter. The public interest litigants must satisfy the Court about their bona fides even at the threshold, so as to enable the Court to decide as to whether to proceed further in the matter at the instance of the public interest litigants. More often than not the Courts are confronted with frivolous petitions by the litigants wearing the mantle of public interest litigation. It is only a garb for them. Many rumour-mongers and mis-chief-makers are making their way into the portals of justice in the name of public interest litigation. Publicity craze cranks too have their own axe to grind. There is need to take effective measures to prevent the abuse of judicial process in the name of public interest litigation. The prophecy that PIL is Publicity Interest Litigation has to be proved wrong."

29. This Court speaking through the Hon'ble the Chief Justice in K. Prabhakar Reddy Vs. State of Andhra Pradesh and Others, observed :

"Individual disputes ought not to gain momentum in a Court of law under the coverage of public interest litigation and attempts to that effect ought always to be decided by the law Courts and as a matter of fact there should be a positive discouragement to such an individualistic litigation in the garb of a public interest litigation and it is only in the clearest of cases of general affectation of right of the community at large or a wide variety of cross-section of people, the law court would extend its assistance, so as to avoid any social or general mischief having due regard to the concept of justice."

30. The petitioner in WP No.5717 of 1997 merely described himself as a former member of Legislative Assembly from Shadnagar Constituency. He does not reveal anything about his specialised knowledge or concern in the subject-matter in the writ petition. Nothing is stated in the affidavit filed in support of the writ petition about the source of his information leading to the narration of a very comprehensive statement detailing the internal system of working of the Customs Department. In the affidavit, details of internal working of the Customs and Central Excise Department is meticulously narrated. It would be very difficult for this Court to presume that the petitioner has got the knowledge of the same or could gather these facts by himself. At any rate, he does not say so. As observed by the Apex Court in S.P. Anand Vs. H.D. Deve Gowda and others, , the petitioner while initiating public interest litigation as the one on hand, should disclose not only his interest in the subject-matter and concern but also should disclose his expertise and knowledge. It is not as if any person can walk into the portals of the Court and lodge a complaint making irresponsible allegations against any Officers or the authority concerned. We would like to observe that in public interest litigation, cases of this nature the Court would have to make a very strict scrutiny of the pleadings at the threshold itself. The Court has to satisfy to itself about the bona fides of the petitioner in filing the public interest litigation. The petitioners in public interest litigation are bound to disclose their full particulars, details about their avocation and the effort made and methods adopted by them in obtaining and collecting the data and information for filing the public interest litigation. Credibility of the person initiating public interest

litigation is an important aspect which requires the attention of the Court at the threshold, otherwise the unscrupulous litigants would Hijack the system and use it as an instrument of Blackmail, liberalising the rule relating to standing is no licence granted to one and all for filing cases of their choice in the name of public interest litigation. Relaxation is meant to seek judicial redress by public spirited citizens on behalf of unorganised, poor, weaker sections of the society. Public interest litigation cases initiated by social and democratic organisations, academicians, social and scientists, human rights activist gained a growing acceptance and judiciary recognised them as representatives espousing the cause of community's interest.

31. This strategic arm of legal and movement was never intended to resolve and settle personal scores. It was never intended to confer any respectability upon busybodies, and meddlesome interlopers.

32. We have experienced difficulty in finding the whereabouts of the petitioner in WP No.6240 of 1997. He had merely described himself as a journalist and resident of Narayanaguda, Hyderabad. We have had to require the services of an organisation of no less than the CBI to find out the whereabouts of the petitioner, subsequent events speak for themselves. It would be entirely a different matter, if public interest litigation is initiated by a social activist, organisations with known credentials, academicians, social scientists and environmentalists. In other cases, the Court is bound to exercise due care and caution even at the threshold in entertaining the writ petition. Strict scrutiny not only about the pleadings but about the persons approaching the Court, in our opinion, is the need of the hour. Any laxity on our part is fraught with serious consequences and in ultimate analysis may endanger the very system.

33. We have no doubt whatsoever to hold that there is no public interest involved in both these writ petitions. They are engineered and manipulated by the 8th respondent in the name of the petitioners and they are intended for his personal benefit and settling scores with his senior officers. The petitioners and 8th respondent made an attempt in an unabashed manner to manipulate even judicial process.

Merits of the Case :

However, we wanted to satisfy ourselves as to whether there is any truth in the allegations levelled by the petitioners herein in the affidavit filed in support of the writ petition and as to whether there is any case, prima facie, made out by the petitioners warranting interference of this Court necessitating any direction to the CBI for making investigation as prayed for. We have accordingly permitted party-in-person to make his submissions.

34. The allegations, made in the affidavit are vague and indefinite in their nature. The petitioners have chosen to indulge in character assassination of the respondents including an officer of the CBI.

35. The first and foremost allegation relates to the alleged loss of revenue of Central Excise on account of the corrupt and dishonest actions of the fifth respondent and blatant misuse of power to help the assesseees to escape from the payment of duty. In the affidavit the petitioner had furnished some details of the expected revenue from the Commissionerate and actual revenue collected from the Commissionerate for the years 1992-93 to 1996-97. According to the petitioner, the expected revenue from the Hyderabad Commissionerate, for the year 1994-95 is Rs.1944 crores; whereas the actual revenue collected was only Rs. 1759 crores. Similarly for the year 1996-97, while the expected revenue is Rs.2045 crores, the amount collected was Rs.1738 crores. Certain details of the alleged revenue collection from the Commissionerate of Bangalore is also furnished. According to the petitioner, it is on account of the alleged corrupt activity attributable to the fifth respondent the target of collection could not be achieved. According to the petitioner, immediately after the fifth respondent transferred from Bangalore to Hyderabad, the collection of revenue in Bangalore witnessed an upward trend of Rs.200 crores. It is also alleged that the fifth respondent was doing undue favours in disposing of the appeals to the tune of Rs.10 crores and he had been charging 10% as his commission. On such assessee was M/s. Jindal Aluminium Ltd., who is alleged to have built a building at Anantapur, valued at Rs.50 Lacs for the benefit of the fifth respondent, in return for a favourable order of Rs.2.7 crores in some case. The fifth respondent, of course, specifically denied all the allegations made against him, but we would like to rely more upon as to what is stated in the counter affidavit filed by respondent Nos.1 to 4.

36. It is clearly explained in the counter affidavit filed by and on behalf of respondent Nos.1, 2 and 4 that the short-fall in revenue collection with reference to the target prescribed during 1995-96 is Rs.106.27 crores and similar short-fall during 1996-97 is Rs. 124.60 crores and the total short-fall is only Rs.230.87 crores and the same cannot be attributed to evasion alone. It is submitted that it is common knowledge and always there would be difference between the targets fixed and the actual realisation and the same thing happened during 1992-93 to 1996-97. The details furnished in the counter affidavit, on the other hand, would show that there is steady increase in revenue collection, though the target set could not be achieved. It is stated that targets are always fixed at the beginning of the financial year by the Ministry based on the budget estimates; whereas the actual realisations depend upon several factors which are beyond the control of the department. Some of the factors which affect the realisations are (1) higher avilment of legally available Modvat Credit; (ii) closure of some of the working factories; (iii) natural calamities like rains, floods and cyclones; (iv) reduction in rates of duty; (v) increased export (duty free); (vi) power cut; and (vii) evasion. In Annexure I filed along with the counter affidavit the reasons affecting the actual realisation are shown and the trend for the year 1996-97 in respect of the Hyderabad Commissionerate.

37. It is specifically stated that the fifth respondent was the Commissioner-I at

Bangalore incharge of revenue collection during the period from 11-4-1990 to 12-5-1993. The target fixed and the revenue realised during the said period is furnished and the same discloses that there was only variation of (-3.3%) for the year 1992-93; whereas for the years 1990-91 and 1991-92 the actual revenue realisation was more than the target fixed. It is, however, stated that increase or decrease of revenue during an year would depend on several factors prevailing, including the industrial atmosphere and various factors which are beyond the control of the Commissioner. No adverse inference can be drawn against the fifth respondent only basing upon the statistics furnished by the petitioner showing the difference between the targets fixed for the year and realisation of the revenue and the actual realisation of the excise duty.

38. The next allegation relates to posting and promotion of the interest of the officers belonging to the caste of the fifth respondent. It is specifically stated in the counter affidavit filed by the respondent Nos.1, 2 and 4 that they have never received any complaint against the fifth respondent herein from any of the members of the Dalit Community as alleged in the affidavit filed in support of the writ petition. It is stated that there are twenty five Assistant Commissioner; (178) Superintendents and (707) Inspectors in the , Hyderabad Commissionerate, totalling to (910). It is explained that out of eighteen officers enumerated by the petitioner, the officer at Sl.No.18 does not belong to that particular community as alleged by the petitioner and the officers at Sl.Nos.16 and 17 have been posted by the predecessor of the fifth respondent. As against the sanctioned strength of (910) fifteen persons are of one particular community belonging to that of the fifth respondent in the organisation. It is further stated that none (one) of them are posted in any important position, as alleged by the petitioner in any motivated manner. If there is any truth in this allegation the fifth respondent would not have appointed respondent No.8 as the Head of Investigation team who admittedly does not belong to his Class.

39. The third allegation relates to the decision to disband the Special Investigation Team constituted for the purpose of checking evasion of the excise duty. It is this issue that had actually given rise cause for filing the WP. It is clear from the record that it is the fifth respondent himself posted the 8th respondent as Assistant Commissioner, Special Investigation Team, Head-Quarter Office, Hyderabad under the control of the Deputy Commissioner (Anti-Evasion) vide Establishment Order (GO) No.141/96, dated 24-10-1996 with directions to complete the investigations initiated by him within three weeks. The whole purpose of constituting the Special Investigation Team is to complete the pending investigations as is evident from the letter of the fifth respondent dated 24-10-1996 addressed to the 8th respondent. The record would reveal that while the 8th respondent was working as Assistant Commissioner, Special Investigation Team a written complaint from the Secretary of A.P. Biscuits Manufacturer's Association was received against the 8th respondent alleging that he is indulging in the acts of threats, demanding and accepting illegal gratification. To the same effect, it is stated that another complaint has been received from M/s. Agarwal

Rubber Industries alleging that the 8th respondent had conducted raids and harassed the complainant therein in the process of investigation. It was under those circumstances, an order was issued on 10-3-1997 posting the 8th respondent as incharge of Service Tax, Head-quarters office, Hyderabad, disbanding the Special Investigation Team and ordered handing over the files to the regular Assistant Commissioner (Anti-Evasion). It is clearly explained that the said decision was taken only on administrative grounds. Preliminary enquiry made by the Deputy Commissioner and his report dated 17-3-1997 found the allegations levelled against the 8th respondent herein to be prima facie correct. The preliminary enquiry report is stated to have been forwarded by the fifth respondent on 17-3-1997 to the Central Board of Excise and Customs, New Delhi.

40. It thus explained that the Special Investigation Team was not created or constituted by the Chief Commissioner as such, but was formed by the fifth respondent himself only as an administrative measure for completing the pending investigations. The decision to disband the team was taken on administrative grounds and also in view of the repeated complaints received against the 8th respondent from various industrialists. It is also clear from what is stated in the counter-affidavit and borne out by the record that there is no sanctioned strength as such for the Special Investigation Team and the Special Investigation was created only for completing the pending investigations and as an administrative Devise.

41. It is required to notice that more or less to the same effect, the fifth respondent has also filed a detailed counter-affidavit denying the personal allegations levelled against him. In categorical terms, he explained as to under what circumstances, the Special Investigation was required to be disbanded. It is also explained that he is not personally responsible for short-fall in the collection of revenue. It is clearly and specifically stated in the counter-affidavit that he does not own any house whatsoever at Anantapur and, therefore, the question of construction of a house worth Rs.50 Lakhs by the Jindal Aluminium Ltd., does not arise. Respondent No.5 also denied that he has not done anything whatsoever to promote any individual or group of individuals much less the people belonging to his caste. It is stated that he has nothing personal against the eighth respondent.

42. Having perused the material made available by the petitioner, as well as the respondents, we have no hesitation whatsoever to hold that the petitioner herein has not made out any prima facie case whatsoever warranting interference of this Court for issuing necessary directions to the Central Bureau of Investigation (CBI) to make further probe into the matter. The allegations made and the averments made in the affidavit filed in support of the writ petition do not inspite any confidence whatsoever. They are made in most callous and reckless manner and without having any regard to the truth.

43. We have earlier noticed that the writ petitions, themselves, are engineered and got filed by the 8th respondent and the petitioners have no knowledge whatsoever either about the functioning of the system of collection of excise

revenue or the reasons for the short-fall in the process of collection of revenue. The information and the material is evidently made available by the 8th respondent herein only to suit his convenience. There is no public interest at all for ordering an inquiry by the CBI or any Special investigation Team. It is not a matter of course. There must be some prima facie case and the material on record, for issuing such direction by this Court. The entire manipulation and manoeuvring has been done by the 8th respondent only with the sole aim to avoid the order of transfer. He had set up the petitioner (WP No.6240 of 1997) to achieve his purpose.

44. At this stage, it would be appropriate to notice that as to what extent the petitioner in WP No.6240 of 1997 would go and make allegations even against the responsible officers of the CBI. The petitioner filed an additional affidavit sworn on 28-3-1998 stating that he had received certain further information through reliable sources which may have bearing on the merits of the writ petition. It is alleged that the 7th respondent, the Superintendent of Police, CBI, at the instance of the 5th respondent, instigated one Mr. Deen Dayal Agarwal, Managing Director, Agarwal Rubber Industries, and received a complaint dating it back as on 10-3-1997 and another complaint at the instance of Mr. Narendra Kumar Gael, Managing Director of Venkateswara Silk Mills, on 27-3-1997 at 8.30 a.m., accordingly the residence of the 8th respondent (N.K. Prasadd) was raided and nothing was found there as per the search list and the inventory memo and the search list would show that there was not even assets worth Rs.25,000/-. On the same day, the office of Mr. Prasada was raided by a team of officers at the instance of Ms. Mamata Reddy (Mamatha Anurag Sharma), Superintendent of Police, CBI and the search went till 9.30 p.m. without giving any opportunity to Mr. Prasada and took away all the files relating to searches and seizures of Agarwal Rubber Industries, which were in the custody of Mr. Prasada, as per the Court orders. According to the petitioner the 7th respondent, the Superintendent of Police, CBI, had violated the interim order passed by this Court in WP No.5717 of 1997. It is further alleged that the fifth and seventh respondent belong to one and the same community and the seventh respondent was instigated by the fifth respondent to take revenge against the 8th respondent.

45. Respondent No.7 filed a detailed counter-affidavit, inter alia, stating that on 25-3-1997, on receipt of a complaint from one Deen Dayal Agarwal that the 8th respondent herein had demanded a bribe of Rs.25 lakhs from him and that he threatened him to arrest the Directors of M/s. Agarwal Rubber (P) Ltd., in case he fails to pay the amount as bribe, a case under Prevention of Corruption Act, 1988 was registered vide Re. 5(A)/97 on 25-3-1997 and the FIR was despatched to the Spl. Judge Court for CBI cases. Case diary and relevant materials were presented before the Special Judge for CBI cases on 26-3-1997, itself, with a request to issue two search warrants, to search the residential and office premises of the 8th respondent. The search was conducted on 27-3-1997 by observing all legal formalities in the presence of the independent mediators. The searches were conducted for collecting documents/evidence to establish the

allegations made in RC 5(A)/ 97. It is further stated that the office search was conducted on 27-3-1997 in the presence of other officers and search intimation was given to the Deputy Commissioner (Vigilance and Administration) and the search was confined to the table and almirah of the 8th respondent and the documents listed out as 1 to 5 were seized during the search, which were forwarded in a sealed cover. It is revealed that during search, the CBI had seized signed and unused search warrants of Central Excise and Customs in the name of various persons, acknowledgments were obtained on blank summons and other incriminating documents.

46. It is clear from the record that the case was registered against the 8th respondent on 25-3-1997 on the complaint of one DeenDayal Agarwal and not on the basis of any reference/information or complaint from any department or source. The seventh respondent accordingly denied the malicious allegations levelled against her, by the petitioner.

47. This instance also would show that it is the 8th respondent, who is closely monitoring not only the Court proceedings, but making use of the same through the petitioner. It is required to notice that he did not even come on record in any of the writ petitions, but filed an application only on 22-5-1997 to implead himself as a party respondent. It is difficult to believe that the petitioner had immediately come to know about the search and seizure of the documents from the 8th respondent, unless the 8th respondent, himself, reveal the same to the petitioner and getting filed an application into the Court making wild allegations against an officer of the rank of the Superintendent of Police, CBI. The petitioner and the 8th respondent in our considered opinion have no respect for truth and the legal process. Evidently they are capable of making and attributing any kind of allegations against any responsible officers. Neither the affidavit filed in support of the writ petition, nor the subsequent averments made by the petitioners would inspire any confidence. We do not find any bona fides whatsoever on the part of the petitioner in making such allegations. The allegations are solely levelled with a view to besmirch the character of the responsible officers. Respondent No.8 appears to be so desperate to get his transfer avoided and had left no stone unturned to achieve such object.

But caught up in the vortex. Here is a case where "the spider got caught in its own web". The facts narrated by us hereinabove would in clear terms establish that it is the 8th respondent, who is the king-pin behind this litigation.

48. Having resorted to the unruly act of abusing the judicial process, the 8th respondent even filed an application requesting this Court to issue necessary directions to the respondents to regularise his leave period.

49. Learned senior Standing Counsel for the Central Government, Sri B. Adinamyana Rao, placed before us the leave particulars of the 8th respondent, N.K. Prasada, which is to the following effect :

1. 83 days EL from 3-4-1997 to 24-6-1997.

2. 138 days EL from 26-6-1997 to 10-11-1997.
3. 15 days EL from 11-11-1997 to 25-11-1997.
4. 115 days Half-pay leave from 26-11-1997 to 29-4-1998.
5. 32 days extraordinary leave from 30-4-1998 to 31-5-1998.

SO. It is clear that the 8th respondent had not submitted any application for extension of leave after 31-5-1998. However, as stated above the 8th respondent had filed an application before this Court seeking appropriate directions permitting him to head the investigation team in terms of the orders passed by the Chairman, National Academy of Customs, Excise and Narcotics, Faridabad, dated 8-5-1997, and requested to regularise his leave on the ground that he was under investigation by the CBI pursuant to the directions of this Court. In our considered opinion, no such relief could be granted to the petitioner (8th respondent). If the petitioner was under the investigation of the CBI pursuant to the directions of this Court, it is his own creation. He cannot take advantage of the same and asked for any relief

A word about Role of Lawyers

Lawyer plays a very crucial and important role in public interest litigation. His duty and responsibility to the Court in a public interest litigation case is even greater in comparison to usual cases. The lawyers repertoire and forensic skills and craftsmanship are central to a purposeful use of judicial processes as instruments of institutional reforms. An Advocate is an integral part of administration of Justice. The legal fraternity and judiciary are the two sides of the same coin. The Court would not be wrong in expecting that every Advocate would conduct himself in responsible manner and assist the Court properly in discharge of its legal and constitutional obligations. They do act, plead and advocate the cause of the clients but their duty to Court is much higher than that of serving their clients. The telltale facts in the instant case gave us moments of unhappiness. We are constrained to observe that they too have played role in causing obstruction to the judicial process. We wish to say no more on this subject. But we expect that in future, there won't be any occasion for this Court even to express its unhappiness.

51. The petitioner in WP No.5717 of 1997 having realised his mistake in filing the writ petition came forward with a genuine request proposing to withdraw the writ petition and accordingly addressed a letter dated 26-3-1997 to the learned Counsel appearing on his behalf. Since the said letter had not yielded any result, he appeared in person and requested for withdrawal of the writ petition. We, however, do not completely absolve him of his responsibility in the matter in filing the writ petition, at the instance of the 8th respondent. But, we would like to take a lenient view so far as the petitioner in WP No.5717 of 1997 is concerned, as he had expressed his regret and openly admitted that he does not know anything about the litigation.

52. We accordingly dismiss the Writ Petition No.5717 of 1997 without awarding any costs. But we think it would be appropriate to administer severe warning to the petitioner to be careful in future, and not to play any games with the judicial process. We expect that he would not indulge in any activities similar in nature and abuse the legal process and conduct himself in a responsible manner, as he claims to be a former member of the Legislative Assembly. We leave the matter there.

53. So far as WP No.6240 of 1997 is concerned, we have already observed that the petitioner, as well as the 8th respondent are guilty of abuse of the judicial process in the name of public interest litigation. They have put the device of public interest litigation to naked abuse. The weapon invented by the Apex Court with a noble cause intended to serve the deprived sections of the Society pressed into operation for destructive purpose. The streams of justice are polluted by their conduct.

54. We, under those circumstances, consider it appropriate to dismiss the writ petition - Writ Petition No.6240 of 1997 with exemplary costs quantified at Rs.25,000/-(Rupees twenty five thousand only); out of which a sum of Rs.5,000.00 (Rupees five thousand only) shall be paid by the petitioner, Digumarthi Premchand and the remaining sum of Rs.20,000/- (Rupees twenty thousand only) shall be paid by the respondent No.8, N.K. Prasada. The amount shall be deposited by the petitioner and the 8th respondent with A.P. State Legal Services Authority. In case of failure to deposit the costs within two months from today, the first and second respondents shall take necessary steps for realisation of the costs from the 8th respondent (N.K. Prasada) and get the same deposited to the credit of the A.P. State Legal Services Authority.

Contempt Case No. 779 of 1997 arising out of WP Nos.6240 on 997

In reply to the show-cause notice as to why the writ petitioner should not be punished for having committed the contempt of Courts, the petitioner inter alia, states that having signed the affidavit in support of the WP MP (SR) No.55758 of 1997 seeking further direction on 20-5-1997 and left immediately to Srikakulam and he is not aware in what manner the application was moved before this Court during the vacation and what transpired on the said application. It is also stated that he had not made any telephone to the Registrar (Judicial) regarding the application. It is further submitted that he had not adopted any attitude causing any hindrance to the proceedings of this Court. In the light of the reports submitted by the Registrar (Judicial) and the subsequent conduct of the petitioner in issuing telegrams, we are of the opinion that the petitioner had not conducted himself in any responsible manner. Undoubtedly, he was responsible for obstructing the proceedings on 22-5-1997 and 24-5-1997. The conduct of the petitioner would suggest that he has no respect whatsoever to the judicial process. Having moved a House Motion and got prepared an application on 20-5-1997, nothing prevented the petitioner to be present in the Court on 22-5-1997. It would be appropriate to remind ourselves as to what we have

observed on 24-5-1997.

"WP MP (SR) No.55758 of 1997 is filed by the writ petitioner seeking urgent directions. It is stated that permission for filing the said application by way of House Motion has been granted by My Lord the Honourable the Chief Justice and Division Bench for the purpose of hearing the said petition consisting of myself and my learned brother Sri V. Bhaskara Rao, J., has been constituted and the said application was to be heard on 22-5-1997, While scrutinising WP MP SR No.55758 of 1997, certain objections, were noticed by the office and the same has been returned for compliance of the said objections. It has come to our notice through the report submitted by the Registrar (Judicial) that " "the petitioner telephoned to the Registrar (Judicial) and informed that he was not insisting for the House Motion as his advocate Mr, E. Seshagiri Rao was not available". It is further stated in the report that it is brought to the notice of the Honourable the Chief Justice and one of us (B. Sudershan Reddy, J). Thus, though the Bench was constituted for the specific purpose of hearing the miscellaneous petition moved by the writ petitioner, the case could not be taken up for hearing and the Bench could not proceed with the hearing of the case in view of the attitude adopted by the petitioner. When the matter was brought to our notice, one of us (B. Sudershan Reddy, J.) has directed the Registrar (Judicial) to submit a written report in the matter. The Registrar (Judicial) accordingly submitted a detailed report which reads as follows :

"As directed by your Lordship, I am submitting this note with regard to the House Motion moved by the petitioner on 22-5-1997 in WP No.6240 of 1997 on the file of this Court.

One Sri D. Prem Chand filed WP No.6240 of 1997 along with WP MP No.7473 of 1997 seeking certain directions with regard to the transfer of one Sri N.K. Prasada, Assistant Commissioner of Central Excise, Hyderabad and the said writ petition and miscellaneous petitions were posted before the Division Bench consisting of Hon"ble Sri Justice Lingaraja Rath garu and Hon"ble Sri Justice V. Bhaskara Rao garu on 1-5-1997. While so, the petitioners Sri D. Prem Chand filed WP MP SR No.55758 of 1997 on 22-5-1997 for certain directions and sought permission to move House Motion and same was permitted by the Hon"ble the Chief Justice with instructions to post the matter before the Division Bench consisting of Hon"ble Sri Justice B. Sudershan Reddy garu and Hon"ble Justice V. Bhaskara Rao garu and the matter was to be taken up at 2.15 p.m. on 22-5-1997 by the Division Bench and the same was informed to the petitioner. While checking the said WP MP SR No.55758 of 1997, certain objections were taken by the office and the same was returned for complying with the objections. While so, the petitioner telephoned to the Registrar (Judl.) and informed that he was not insisting for the House Motion as his advocate Sri E. Seshagiri Rao was not available. The same thing was submitted to the Hon"ble the Chief Justice and to Hon"ble Sri Justice B. Sudershan Reddy garu.

On the same day (22-5-1997) at about 2.15 p.m., I received a telephone

message from Sri M.S. K. Jaiswal, PS to HCJ stating that one Sri S. Rama Chandra Rao, Advocate came to him and informed him mat he is filing two fresh WP MPs. in the above said writ petition and that he was permitted to move House Motion by Hon"ble the Chief Justice. When questioned by me, Sri Jaiswal informed me that he did not receive any instructions directly from Hon"ble the Chief Justice and that he was so informed only by Sri S. Rama Chandra Rao, Advocate. Thereupon, I asked Mr. Jaiswal to seek instructions from HCJ directly as to the permission for moving House Motion and later I was informed that Sri Jaiswal submitted the file to Hon"ble the Chief Justice and that His Lordship after pemsing the papers informed Sri Jaiswal that no permission was granted for House Motion in those fresh miscellaneous petitions and directed the Registry to check them and seek instructions later.

At about 3.00 p.m., on the same day, one Sri Satyanarayana Rao, Advocate filed two WP MPs. and they were checked and numbered as WP MR Nos. 13388 and 13389 of 1997 and were submitted before the Hon"ble the Chief Justice and His Lordship informed me that instructions would be given later. I am herewith submitting the entire case record along with the note as directed.

Submitted."

A perusal of the report and the subsequent events would prima facie show that the petitioner had abused the judicial process and obstructed the judicial proceedings by informing the Registrar (Judicial) that he was not insisting for the House Motion though the Division Bench was constituted for the purpose of hearing the case and that too by way of a special motion.

We are, prima facie, of the opinion that the petitioner had committed an act of contempt of Court and we accordingly direct tliat a show-cause be served upon the petitioner for submitting his explanation as to why further appropriate proceedings in this regard shall not be taken and as to why he should not be punished for his having committed the contempt of Court. Four weeks time is granted for filing reply to the show-cause. Post the Contempt Case after four weeks i.e., on 20th June, 1997."

55. Under those circumstances, it is not possible to agree that the averments made by the petitioner that he was not aware of the filing and return of the SR and anything about the House Motion. The petitioner was aware of filing of the petition as he had admittedly sworn to the affidavit on 20-5-1997 during the vacation. May be it is N.K. Prasada, 8th respondent in Writ Petition No.6240 of 1997 who is behind that application. But that would not absolve the petitioner of his responsibility. We have no doubt whatsoever that the petitioner clearly made an attempt to overreach the judicial process and obstructed the judicial process wilfully and deliberately.

56. However, the petitioner today filed an affidavit stating that he may be pardoned for what he did and if he had obstructed the judicial process in any manner. It is stated that the petitioner now seeks admonition from the Court and

candidly implore the Court to pardon him. We hold the petitioner guilty of committing the contempt of Court for having obstructed the judicial process on 22-5-1997 and 24-5-1997. However, we take lenient view in the matter and impose sentence of punishment as against the petitioner till the raising of the court.

57. However, we would like to make very clear that we have not expressed any opinion whatsoever with regard to the merits of the prosecution and the charge-sheet filed by the CBI against the petitioner as well as 8th respondent and one Kali Prasada. The trial Court shall proceed with the trial uninfluenced by any of the observations made by us in this order. We have not expressed any opinion about any of the aspects and merits of the allegations levelled against the petitioner and the 8th respondent. The observations, if any, made by this Court while referring to the reports of the CBI and the charge-sheet are confined for the purpose of disposal of this writ petitions and the contempt case. The trial Court shall dispose of the criminal case uninfluenced by any observation whatsoever made in this case.

58. We place on record the valuable assistance rendered by the learned Additional Advocate-General and also by the learned Standing Counsel for the CBI.

59. The contempt case is accordingly disposed of.