

(2010) 05 GAU CK 0008

In the Gauhati High Court

Case No : Public Interest Litigation No. 52 of 2007

Boranglama

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 12-05-2010

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 16, 19, 21
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 157, 227, 228
Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2010) 3 GLT 130

Hon'ble Judges : R.S. Garg, C.J.;C.R. Sharma, J

Bench : Division Bench

Advocate : Somik Deb, for the Appellant; N. Dutta, R. Sarma, P.K. Goswami, Public Prosecutor Rao and A.C. Buragohain, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, C.J.—The call of the Petitioners in this Petition is Pro Bono Publico with regard to certain directions against alleged mass scale embezzlement.

2. Before we enter into the scuffle regarding the merits of the matter, it would be desirable to note the evolution of Public Interest Litigation in India. The origin and evolution of Public Interest Litigation in India emanated from realization of constitutional obligation by the judiciary towards the vast Sections of the Society/ the poor and the marginalized Sections of the Society. This jurisdiction has been created and carved out by judicial creativity and craftsmanship.

3. The first of the notable cases relates back to 1976 where in the matter of The Mumbai Kamgar Sabha, Bombay Vs. Abdulbhai Faizullabhai and Others, it was observed as under in para 7 at page 837 of the report:

procedure prescriptions are handmaid not mistresses of justice and failure of fair play is the spirit and the Courts must view procedural deviances

4. The Development of Public Interest Litigation has been an extremely significant development in the history of Indian jurisprudence. The trend of decisions of the Supreme Court in the 1970s loosened the spirit of locus standi requirements to permit filing of petitions on behalf of the marginalized and deprived sections of society by public spirited individuals, institutions and other bodies. The higher Courts exercised wide powers given to them under Articles 32 and 226 of the Constitution of India. In this jurisdiction, the Courts have to monitor implementation of the legislation and even formulate guidelines in absence of legislation. If the cases of the decades of 1970s and 1980s are analysed, most of public interest litigation cases were entertained by the Courts pertaining to enforcement of the fundamental rights of marginalized and deprived sections of the society. This can be termed as the first phase of the Public Interest Litigations in India

5. The Supreme Court of India, broadened the traditional Rule of standing and definition of "person aggrieved."

6. In this judgment, we would be obliged to note the origin and development of Public Interest Litigation. We deem it apposite to broadly divide the Public Interest Litigation in three phases. First Phase: It deals with such cases where protection of fundamental rights in the light of the right to life of marginalized sections of the society who, because of extreme poverty, illiteracy and ignorance, cannot approach the High Courts. Second Phase: This phase relates to cases pertaining to protection, reservation of ecology, environment, forest, marine life, wild life, mountains, rivers, historical monuments etc., Third Phase: Importantly, this phase deals with the cases where directions are sought from the Court for maintaining probity, transparency and integrity in governance.

7. The precise definition of Public Interest Litigation was propounded by the Apex Court in the matter of People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, in the following words:

The Public Interest Litigation is a cooperative or collaborative effort by the Petitioner, the State or public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon the poor, downtrodden and vulnerable sections of the society.

Again, in the matter of Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, the concept of and the cause of "little Indians" was recognized by the Supreme Court and it was further observed that Public Interest Litigation is not in the nature of adversarial litigation, but is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our constitution. The Government and its officers must welcome the Public Interest Litigations because it would certainly provide them an occasion to examine whether the poor and downtrodden are getting their social and economic entitlements or whether they

are continuing to remain victims of the deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become the meaningful reality for them or it has become a teasing illusion and a promise of unreality and it has remained something unachievable for them.

8. In this litigation, we are concerned with Third Phase which deals with roles of superior Courts in maintaining probity, transparency and integrity in governance.

Regarding this phase, the Apex Court became proactive in the decade of 1990 and in the matter of Vineet Narain and Others Vs. Union of India (UOI) and Another, at the instance of a Journalist, allegations were leveled against prime investigation agency like Central Bureau of Investigation that they are unable to perform their legal obligations and they were failing to take appropriate action during investigation with a terrorist regarding detailed accounts of vast payments called "Jain Diaries".

Another significant case is Rajiv Ranjan Singh "Lalan" and Another Vs. Union of India (UOI) and Others, pertaining to large scale defalcation of public funds and falsification of accounts involving crores of rupees in the State of Bihar, in the Department of Animal Husbandry. Yet again in the matter of M.C. Mehta v. Union of India reported in (2007) 1 SCC 770 known as Taj Heritage Corridor case, the Supreme Court directed for a detailed enquiry which was carried out by the CBI and the FIR was registered to put the criminal law machinery in motion. Yet again in the matter of M.C. Mehta v. Union of India reported in (2001) 8 SCC 407, the Apex Court, considered the refusal by the Governor of Uttar Pradesh in granting sanction for prosecution of the Chief Minister and the Environment Minister, after they were found responsible in the Taj Heritage Corridor project case. Again in the matter of Centre for Public Interest Litigation Vs. Union of India (UOI) and Another, sale of majority of shares in HPCL and BPCL to private parties without parliamentary approval or sanction, being contrary to certain enactments, was examined.

9. We would be failing in our duty if we do not, after passing through the evolution of public interest litigation, lay our hands on the aspect as to how this jurisdiction has been abused.

10. The following are the observations and directions of the Apex Court in the matter of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, in paras 143, 144, 145 and 146 which need to be extracted as follows:

143. Unfortunately of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the Courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this

country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the Courts.

144. In *BALCO Employees Union (Regd.) Vs. Union of India and Others*, this Court recognized that there have been, in recent times, increasing instance of abuse of public interest litigation. Accordingly, the Court has devised a number of strategies to ensure that the attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. Firstly, the Supreme Court has limited standing in PIL to individuals "acting bonafide". Secondly, the Supreme Court has sanctioned the imposition of "exemplary costs" as a deterrent against frivolous and vexatious public interest litigations. Thirdly, the Supreme Court has instructed the High Courts to be more selective in entertaining the public interest litigations.

145. In *S.P. Gupta Vs. President of India and Others*, this Court found that this liberal standard makes it critical to limit standing to individuals "acting bona fide". To avoid entertaining frivolous and vexatious petitions under the guise of PIL, the Court has excluded two groups of persons from obtaining standing in PIL petitions. First, the Supreme Court has rejected awarding standing to "meddlesome interlopers". Second, the Court has denied standing to interveners bringing public interest litigation for personal gain.

146. In *Chhetriya Pardushan Mukti Sangharsh Samiti Vs. State of U.P. and others*, the Court withheld-standing from the applicant on grounds that the applicant brought the suit motivated by enmity between the parties.

11. The aforesaid enunciation would in unmistakable terms indicate that the Apex Court had made an attempt to create a body of jurisprudence that accords broad enough standing to admit genuine PIL, but nonetheless, limits standing to thwart frivolous and vexatious petitions. The Apex Court made attempts to curtail frivolous Public Interest Litigations by two methods namely; one monetary and second non-monetary.

12. It would be appropriate to take note of certain cases decided by the Apex Court in this category. In the matter of *Neetu Vs. State of Punjab and Others*, the Apex Court concluded that it is necessary to impose exemplary costs to ensure that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts. Again in *S.P. Anand Vs. H.D. Deve Gowda and others*, it was observed in para 18 that it is of utmost importance that those who invoke the jurisdiction of the Court by Public Interest Litigation, essentially seeking a waiver of plea of locus standi rule, must exercise restraint in moving the Court by not plunging in areas wherein they are not well versed". Yet again the Apex Court in the matter of *Sanjeev Bhatnagar Vs. Union of India (UOI) and Others*, went a step further by imposing a monetary penalty against an Advocate for filing a Public Interest Litigation.

13. We would be failing in our duty if we do not recollect the observations of the Apex Court in the matter of *Dattaraj Nathuji Thaware Vs. State of Maharashtra*

and Others, where monetary penalty against a Member of the Bar for filing frivolous and vexatious Public Interest Litigation, in form of costs of Rs. 25,000/- was imposed.

14. While exercising our jurisdiction under the Public Interest Litigation brand, we are reminded of the observations made by the Apex Court in the matter of Dattaraj Nathuji Thaware (supra) wherein in para 12 it was observed as under:

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens and the Court must not allow its process to be abused for oblique considerations.

15. Eventually, in para 181, the following directions and guiding principles were laid down by their Lordships of the Apex Court in the matter of Balwant Singh Chauhan (supra):

181. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other Courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the Petitioner before entertaining a PIL.

(4) The Courts should be fully satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

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

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure

that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

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

16. At this juncture, while we have just traced the broad guiding principles for entertaining a PubUc Interest Litigation, we feel it appropriate to note the following facts which emerge from records. From the records it appears that M.C. No. 307/10 was made for withdrawal of this Public Interest Litigation. On 23.02.2010, the Division Bench of this Court comprising Hon''ble Mr. Justice Ranjan Gogoi and Hon''ble Mr. Justice B.K. Sharma, rejected the prayer and while passing an order dated 9.2.2010 in M.C. No. 307/2010, notices were directed to be issued to one Shri Wangdi Phuntsu who has sent a letter to Hon''ble the Chief Justice opposing the prayer for withdrawal of the Public Interest Litigation. However, the notice issued to him by the Registry could not be served upon him and it was reported by D.C. Tawaig and S.P., Tawang vide their report dated 18.03.2010 that no person with the name "Wangdi Phuntsu" was available in the entire District of Tawang. The reliefs prayed for do refer to allegations in the Writ Petition and crave indulgence of this Court to issue appropriate directions by Writ of Mandamus to the Central Bureau of Investigation for holdmg an enquiry and/or investigation. Before we deal with the factual matrix as has been unfolded, it would be appropriate to consider the law and the principles which are no longer res-integra.

17. In the matter of Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, the Apex Court, after referring to the judgment in the matter of Common Cause, A Registered Common Cause, A Registered Society Vs. Union of India and Others, observed that in exercise of the powers under Article 226, the High Court, before directing an enquiry by CBI, has to consider the material on record and record a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other agency. Such a direction cannot be issued as a matter of routine or merely because some party has chosen to make such allegations. It was fiuther observed that it is not sufficient to have such material in the pleadings, on the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the matter before it is sufficient to direct such an enquuy by the CBI. It is also required to be recorded by the High Court, may be by way of a prima facie finding, that truth of the allegations with reference to reply depict and make out a prima facie case for commission of certain offences.

18. We would be failing in our duty, if we do not take into consideration the observations made by the Apex Court in the Divine Retreat Centre Vs. State of Kerala and Others, In paragraph Nos. 47, 49 and 50, it was observed as under:

47. In *Secretary Minor Irrigation and Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another*, this Court took the view that a decision to direct an enquiry against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by an investigating agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. This Court relying upon its earlier decision in *Common Cause, A Registered Common Cause, A Registered Society Vs. Union of India and Others*, held that a direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to investigate whether any person has committed an offence or not cannot be legally given.

49. It is evident from Sections 154, 156 and 157 of the Code that even a police officer can act on the basis of information received or otherwise and proceed to investigate provided he has reason to suspect the commission of a cognizable offence which he is empowered to investigate u/s 156 Code of Criminal Procedure. If the essential requirements of the penal provisions are not prima facie disclosed by a first information report and the police officer has no reason to suspect the commission of a cognizable offence, no investigation can be undertaken by him based on the information received or otherwise.

50. Can the High Court set the law in motion against the named and unnamed individuals based on the information received by it without recording the reasons that the information received by it prima facie disclosed the commission of a cognizable offence? Setting criminal law in motion is fraught with serious consequences, which cannot lightly be undertaken by the High Court even in exercise of its jurisdiction under Article 226 of the Constitution of India. In our view, the High Court in exercise of its whatsoever jurisdiction cannot direct investigation by constituting a special investigation team on the strength of anonymous petitions. The High Courts cannot be converted into station houses.

19. A perusal of the aforesaid observations would in unmistakable terms indicate that PIL jurisdiction cannot be used by the High Court as a matter of routine and cannot be utilized for issuance of casual directions presupposing that the person whose liberty is affected by such directions, shall get an opportunity of hearing, as envisaged by Sections 227, 228, 239 and 240 of the Code of Criminal Procedure. The true import of the said observations of the Apex Court in the matter of *Divine Retreat Centre (supra)* would indicate that before a direction is issued to set law in motion against a named or unnamed individual or individuals based upon information placed before it in the pleadings, it is *sin qua non* for us to hold and record a positive finding that the materials placed before us containing information about the alleged irregularities amounting to an offence. are established.

20. We would further be justified in borrowing the analogy flowing from Section

154, 156 and 157 of the Code of Criminal Procedure that even a Police Officer can act on the basis of information received or otherwise and proceed to investigate, provided he has reasons to suspect the commission of a cognizable offence which he is empowered to investigate u/s 156 of the Code. If the essential requirements of the penal provisions are not prima facie disclosed by the FIR, the Police Officer has no reasons to suspect the commission of the cognizable offence and no investigation can be undertaken by him based on the information so received.

21. In the matter of Divine Retreat Centre (supra), emphasis was laid down on the principles of natural justice in paras 51 and 53, as under:

51. The order directing the investigation on the basis of such vague and indefinite allegations undoubtedly is in the teeth of principles of natural justice. It was, however, submitted that the accused gets a right of hearing only after submission of the charge sheet, before a charge is framed or the accused is discharged vide Sections 227 and 228 and 239 and 240 Code of Criminal Procedure. The Appellant is not an accused and, therefore, it was not entitled for any notice from the High Court before passing of the impugned order. We are concerned with the question as to whether the High Court could have passed a judicial order directing investigation against the Appellant and its activities without providing an opportunity of being heard to it. The case on hand is a case where the criminal law is directed to be set in motion on the basis of the allegations made in an anonymous petition filed in the High Court. No judicial order can ever be passed by any Court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic consequences of affecting one's own reputation. In our view, the impugned order of the High Court directing enquiry and investigation into allegations in respect of which not even any complaint/information has been lodged with the police is violative of principles of natural justice.

53. The Appellant undoubtedly is aggrieved by the impugned order and, therefore, entitled to invoke the jurisdiction of this Court under Article 136 of the Constitution of India. The decisions in *Janata Dal Vs. H.S. Chowdhary and Others*, and *Union of India and another Vs. W.N. Chadha*, laying down the law that hearing to the accused is provided by the Code under specified circumstances are not relevant to decide the issue of locus in cases where challenge is to a judicial order under which institutions and/or persons connected therewith are subjected to inquiry and investigation.

After distinguishing the decisions in the matter of *Janata Dal* and *W.N. Chadha* (supra), their Lordships in the matter of *Divine Retreat Centre* (supra) have laid down that the High Court should not pass a judicial order directing an investigation against any person without providing an opportunity of hearing to such a person because in case if such direction is issued behind the back of such person and the criminal law is directed to be set in motion on the basis of

material produced on record, it would certainly affect such person who would face drastic consequences affecting his reputation. Thus, we have no hesitation to hold that before a PIL could be entertained, much less accepted, all persons against whom allegations have been made are required to be arrayed as parties and are further required to be afforded a reasonable opportunity of hearing in accord with the principles of natural justice before their liberty and right to freedom envisaged under Article 19 and 21 of the Constitution of India are put to jeopardy by directing an investigation into their past activities.

After highlighting this aspect of the matter for the reason that on 23.2.2010, a Division Bench of this Court, while hearing M.C. No. 355/10 in P.I.L. No. 52/07, observed as follows:

By this application, the Respondent No. 8, seeks dismissal of the Writ Petition Public Interest Litigation on the ground of non-joinder of necessary parties. The prayers made in this Misc. Application will be considered after disposal of M.C. No. 517/10 and, if required, while considering the merits of the PIL.

A copy of the said application made by Respondent No. 8 Dorji Khandu S/o Late Laki Dorji is available on record and a fair reading of the said application indicates that in this PIL directions have been sought for investigation into the nine illegalities with regard to malpractise in carriage distribution and raising false carriage bills for head load with regard to 24800 MTs of rice in subcomponents of SGPY which has allegedly resulted in fraudulent release of an amount of Rs. 68440791/-; and misuse and misappropriation of national calamity contingency fund and calamity relief fund; misappropriation of public money by Tawang Animal Husbandry and Dairy Development Co-operative Society Ltd.; misappropriation of funds under the NNCP; misappropriation of public money with respect to improvement and upgradation of road in Tawang; illegalities in implementation of water supply in Tawang; misuse of funds and irregularities in additional central assistance provided for creation of a corpus fund to "Bodhi Language and Literature Promotional Society". Be it noted that Respondent No. 8 Shri Dorji Khandu is the sitting Chief Minister of the State of Arunachal Pradesh. In M.C. No. 355/10 in para 4-(a) to 4-(i), the Respondent No. 8 has painstakingly pointed out the particular pleadings with reference to particular paragraphs of the Writ Petition and allegations made therein against a particular person and the fact of not joining the said particular person.

22. Be it further be noted that in spite of said M.C. 355/10 having been moved an order having been passed on 23.2.10, no conscious effort has been made by the Petitioners for impleadment of the parties who according to Respondent No. 8, are necessary parties and without whom no adjudication can be made as it would amount to violation of principles of natural justice, as emphasized by the Apex Court in para 51 in the matter of Divine Retreat Centre (supra).

23. Since the present petition has been styled as a Public Interest Litigation

seeking a direction to the CBI to investigate into the alleged financial irregularities, we feel disposed to quote the observations made by the Apex Court in the matter of Divine Retreat Centre (supra) in paragraph Nos. 59, 60, 61, 62 and 63 as under:

59. We do not propose to burden this judgment with various authoritative pronouncements of this Court laying down the parameters of public interest litigation. Suffice it to recapitulate that this Court uniformly and consistently held that the individual who moves the Court for judicial redress in cases of public interest litigation must be acting bona fide with a view to vindicating the cause of justice and not for any personal gain or private profit or of the political motivation or other oblique consideration. The Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular petition filed in Court. In *S.P. Gupta Vs. President of India and Others*, this Court in clear and unequivocal terms observed that it would be prudent for the constitutional Courts to "confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal aid organization which can take care of such cases.

60. The law in this regard is summarized in *Janata Dal Vs. H.S. Chowdhary and Others*, thus:

109. It is thus clear that only a person acting bonafide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the Court to wipe out the tears of the poor and needy suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold.

61. In *Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others*, this Court observed:

12. ... The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of the public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to

bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold and in appropriate cases with exemplary costs.

62. In *State of West Bengal and Others Vs. Sampat Lal and Others*, this Court administered a caution stating when communications complaining of violation of rights of the deprived and vulnerable sections of the community are sent to the Court, care and caution should be adopted to ensure that the process of the Court is not abused or misused:

26. ...The Court should be *prima facie* satisfied that the information laid before the Court is of such a nature that it calls for examination and this *prima facie* satisfaction may be derived from the credentials of the informant, namely, what is the character or standing of the informant or from the nature of the information given by him, namely, whether it is vague and indefinite or contains specific allegations as a result of survey or investigation or from the gravity or seriousness of the complaint set out in the information or from any other circumstance or circumstances appearing from the communication addressed to the Court or to a judge of the Court on behalf of the Court

63. How to verify the credentials, character or standing of the informant who does not disclose his identity? In the instant case, there is no whisper in the order passed by the High Court about any attempts made to verify the credentials, character or standing of the informant. Obviously, the High Court could not have verified the same since the petition received by it is an unsigned one.

24. Since the petition craves our indulgence for issuing a direction to the CBI to hold an enquiry and undertake an investigation, we would note the observations of a Constitution Bench of the Apex Court in the matter of *State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others*, Essentially the said case involved an issue as to-whether the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can direct the CBI, established under Delhi State Police Establishment Act, 1946, to investigate a cognizable offence, which is alleged to have taken place within the territorial jurisdiction of a State without the consent of the State Government?

25. While dealing with the said issue, the following observations of the Apex Court in para 70 and 71 are required to be extracted asunder:

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is

concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has leveled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

71. In *Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another*, this Court has said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations.

26. Regarding the conclusions recorded in para 68 (iii) and (vii), we feel disposed to observe that the observations made by the Apex Court have to take colour from the note of caution engrafted by their lordships in para 70 and 71. By the said observations in para 70 and 71 (supra) we are again reminded of the self-imposed limitations which we must adhere to before the plenitude of the power conferred upon us is exercised with caution. From narration of the aforesaid facts and the position of law, we have no hesitation to hold that we cannot issue directions in a casual manner unless we are satisfied that the facts unfolded before us prima facie make out a case and show that a cognizable offence has been committed. We further hold that unless the allegations made prima facie establish commission of a cognizable offence, we would not be in a position to issue such directions as are sought for in this petition.

27. With the aforesaid backdrop of facts and in the wake of the legal position being not in tenebrosity, we shall now proceed to consider the writ petition on its merits.

28. We have heard Mr. Somik Deb, Advocate for the Petitioners. We have also heard Mr. N. Dutta, Advocate General for State of Arunachal Pradesh and Mr. R. Sarma, Assistant Solicitor General of India, Mr. P.K. Goswami, Sr. Advocate. Mr. P.P. Rao, Sr. Advocate, Mr. A.C. Buragohain, Standing Counsel for CBI along with the Advocates on record. With the able assistance of the Learned Counsel for the rival parties we had critically examined the entire records of this writ petition. Before we take up the rival submissions made by the Learned Counsel for the parties it would be appropriate to take note of the pleadings raised in support of the writ petition.

It has been submitted by the Leamed Counsel appearing for the parties regarding alleged illegality No. 1 as highlighted in para 4(I) that on 08.01.2004, 24,800 MTs of rice was released by the Central Government under the SRCJY scheme with a further stipulation that the said rice lying in the godowns of FCI shall be transported to the destination and the freight charges shall be reimbursed by the Central Government to the State Government. It has further been alleged that on 09.01.2004 by Annexure P/2 the said quota of rice was allotted by the Central Government to the State Government. At page 10 of the writ petition a chart has been made showing the District Wise distribution of 24,800 MTs of rice in 15 districts.

It is further alleged that for transportation of rice appointment of carriage contractor was required to be made. It is further alleged that in the year 2003-2004 Respondent No. 8 was holding the portfolio of the Ministry of Relief, Rehabilitation and Disaster Management (hereinafter referred to as "the RRDM Ministry" for the sake of brevity). It has further been alleged that M/s. R.D. Carriage, Itanagar was appointed as the carriage contractor without floating any NIT and the said concern was proprietorship concern of one Mr. Jambey Tashi S/o. Shri Goleng, the elder brother of Respondent No. 8. In pith and substance the allegation is that the contract was awarded to the nephew of the Respondent No. 8 holding the portfolio of Ministry of RRDM. It has further been highlighted that in the name of the proprietorship concern M/s. R.D. Carriage, the words "R.D." literally mean Rinchin Drema, who is the second wife of the Respondent No. 8.

It has further been stated that on 19.01.2004 an agreement Annexure P/3 was entered into between the Ministry of RRDM and M/s. R.D. Carriage. According to the Petitioners Clause 10 of the said contract contemplated that the carriage contractor shall raise the bill against the RRDM Ministry who in turn shall get the bills verified, certified and then was required to forward it to the Central Government for release of the payment. It has further been submitted that in the entire State of A.P., depending on different areas and terrain the road charges were fixed at Rs. 2.25 per KM per Quintal to Rs. 3.30 per KM per Qtl. As against it the head load charges were uniformly fixed at Rs. 125/- per KM per Qtl. and as such the head load charges were 40 times more than the road charges.

29. It has further been suggested that the main object of the SRGY scheme was to generate additional wage employment but the same was ignored. It has been submitted that payments to the tune of Rs. 68,44,07,911/- were raised and certified by the Deputy Commissioners of the concerned area and the Ministry of RRDM requested the Central Government vide its communication dated 11.02.2005 Annexure P/4 that the said amount be released. It has further been averred in paragraph No. 15 of the writ petition that the Union Finance Ministry required the opinion of the State Finance Department and accordingly on 25.04.2005 the State Finance Department asked the Ministry of RRDM to submit a report. A report dated 26.04.2005 (Annexure P/5) on the issue, as desired by the State Finance Department was submitted by the Ministry of RRDM.

It has further been alleged that one Mukut Mithi addressed a DO letter on 18.03.2004 vide Annexure P/6 to the Home Ministry of Government of India alleging rampant and mass corruption. It has further been submitted that the Petitioner No. 1 submitted a representation to the Union Home Ministry vide Annexure P/8.

30. It has further been submitted in para 20 and 21 that the entire issue was examined by the Deputy Commissioner, Tawang and in his report no illegality, much less actionable, was found. It has further been admitted that the Government of India appointed Shri D.C. Bakshi a retired Group captain, to hold an inquiry and he also submitted second inquiry report and reported that no illegality as alleged, was found. It has also not been disputed that the three member committee was appointed and the said three member committee submitted a report expressing that no illegality much less corruption, has been committed.

31. It has further been maintained that release of Rs. 68,44,07,911/- was made on 12.05.2005 by the Central Government for transportation of 19529.72 MTs out of 24800 MTs of rice. It has further been maintained that on 30.08.2005 Shri Mukut Mithi withdrew of his allegations vide Annexure P/9. It has also been shown in paragraph No. 26 of the writ petition that a similar PIL being P.I.L. No. 50/04 is pending before this Court, however, since no material, much less adequate, was produced, no further progress has been made. It has further been stated in paragraph No. 27 of the writ petition that one C.B. Chettari from SIC vigilance inquired into the matter and submitted a report dated 22.06.2006 Annexure P/10 again reporting that no illegality whatsoever was committed. While raising a challenge to this report omnibus statements have been made in the writ petition that this report did not consider the material available on record.

32. It has further been argued that before award of the contract to M/s. R.D. Carriage no NIT was issued and in spite of the fact that one Shri T.T. Gamdik was officiating as Director in the Ministry of RRDM, no action was taken against him. From paragraph No. 31 to 45 of the writ petition certain examples have been quoted regarding particular bills raised by the carriage contractor alleging that in spite of the two places being connected by motorable roads, the carriage of rice has been shown by head load and excessive payments have been obtained. In the same breath it has further been stated that excessive load charges have been claimed for transportation between two places by involving a lengthier route etc. At page 27 in paragraph 35 of the writ petition a chart has been appended regarding carriage bills raised for Tawang District. In one of the column the distance claimed to have been covered by head load as against actual distance (shown in brackets) is also pointed out. At page 29 in paragraph 37 of the writ petition such details have been furnished regarding the carriage bills raised for West Kameng District. In pith and substance it had been submitted that the carriage contract was given to a firm owned by the nephew of the then Minister who presently holds the portfolio of the Chief Minister. The rice allotted

under SRGY was not utilized in terms of the scheme for employment generation and the allocation of rice having been made for flood victims, was not so utilized.

33. Regarding allegations in paragraph 4(II) of the writ petition averments has been raised in para 46 to 54 of the writ petition and at page 41 in paragraph 52 and page 42 paragraph 53 charges/charts have been appended showing the payments made to the firm M/s. R.D. Construction belong to Shri Pem Khandu son of Respondent No. 8. Thus the allegation is that from 30.04.2003 to 23.03.2004 a sum of Rs. 3,54,70,348/- was paid to a firm owned by the son of Respondent No. 8.

34. Regarding the allegations contained in paragraph 4 (III) averments have been made in paragraph 56 to 58 of the writ petition and at page 44, 45, 46 and 47 naqies of 14 persons has been shown in the list of illegal appointees in the Ministry of RRDM. Similarly, the list of illegal appointees of Grade in and Grade IV staff in the Department of RRDM furnishes the name of 37 appointees.

Regard being had to the controversy, we think it proper to record that all the aforesaid persons who are claimed to be illegal appointees have not been joined as parties in the writ petition.

35. Regarding illegalities highlighted in paragraph 4(IV) of the petition averments have been made in paragraph 59 to 65 and it has been alleged that there has been corruption in Tawang Animal Husbandry and Dairy Development Co-operative Society.

36. Regarding paragraph 4(V) non completion of projects and mis-appropriation of funds released under NLCPR have been made in paragraph 66 and 67 of the petition raising omnibus plea.

37. Regarding illegalities referable to paragraph 4(VI) pleadings have been raised in paragraph 68 to 70 of the petition again levelling omnibus allegations.

38. Regarding alleged illegalities referable to paragraph 4(VII) pertaining to implementation of water supply scheme in Tawang Township, omnibus statements have been made in paragraph 71 of the petition.

39. Regarding paragraph 4(VIII) under the head Misuse of fund made for Bodhi in Literature Promotional Society, Tawang omnibus statements have been made in paragraph 72 of the petition.

40. Regarding the last illegality referable to paragraph 4(IX) Corruption in PMGSY affairs have been made in paragraph 74 of the writ petition.

41. We feel it proper to record that in paragraph 75 again omnibus statements have been made that there seems to be direct evidence linking the nephew, wife and son (Respondent No. 9 to 11) of Respondent No. 8 the present C.M. of Arunachal Pradesh regarding fraud, rampant corruption, siphoning of public money. This is how the writ petition had been styled as a PIL.

42. We deem it appropriate to record that the Respondent No. 1 State of Arunachal Pradesh has, apart from denying all the pleas raised in the writ petition, rebutted before us through its Chief Secretary that all the allegations are baseless and the present petition is a politically motivated litigation started with a view to malign the political reputation and career of the present C.M. Respondent No. 8. Plea of delay has also been raised. We further deem it appropriate to record that Respondents No. 8 to 11 have filed their separate counters denying each and every allegation.

43. Before we reproduce the submissions put forth by the Learned Sr. Counsel appearing for rival parties we wish to record that the original petition was filed by two persons viz. Borang Lama and Bote Yuto. The Petitioner No. 2 Bote Yuto had described himself as the General Secretary of A.P. Congress Committee during the year 2003-04. During the pendency of this petition Shri Bote Yuto sought leave of this Court to withdraw from the proceedings and was allowed to do so on payment of cost of Rs. 50,000/-. The Petitioner No. 1 Botang Lama proceeded to pursue the litigation, however, be it noted that even the Petitioner No. 1 made an application M.C. 307/2010 before this Court seeking leave to withdraw the PIL. However, by order dated 09.02.2010 a division bench of this Court took into consideration a letter dated 08.02.10 addressed to the Chief Justice by one Shri Wangdi Phuntsu opposing the prayer for withdrawal. A division bench of this Court passed an order on 09.02.2010 requiring a notice to be sent to Shri Wangdi Phuntsu and directed him to remain present on 23.02.2010. However, the Deputy Commissioner and S.P. of Tawang District have submitted a report dated 18th March, 2010 stating that no such person with the name "Wangdi Phuntsu" was found available in the jurisdiction of Tawang District. The said report is available in the record and leaves no iota of doubt in our mind that a game of hide and seek is being played by someone who is behind this proxy litigation. In the first place the writ came to be filed in the year 2007 and there is no explanation furnished by the Petitioners as to why this issue pertaining to the year 2003-04 was not raised by these Petitioners at an earlier point of time though in paragraph 26 of the writ petition a pleading has been raised that a similar PIL No. 50 of 2004 is pending before this Court. The Petitioners have made an attempt to explain that in the said PIL no positive action could ensue because inadequate material was produced by the Petitioners of PIL 50 of 2004. The entire gamut of facts as surfacing on the face of record persuades us to disbelieve the stand taken by the Petitioners as also their credentials makes it clear that the Petitioners being closely associated with the AP Congress Party, have been set up to file this PIL and do not satisfy the tests laid down by the Apex Court in the matter of Balwant Singh Chaufal (supra). The eight point guidelines issued by the Apex Court in the matter of Balwant Singh Chaufal (supra) mandates that the genuineness of the cause and public interest should be established before the PIL jurisdiction could be used for directing an inquiry into a particular issue. The change of stands by the Petitioners evincible by the prayer of withdrawals made in this petition indicates that they lack bonafides.

Apart from it a letter dated 08.02.2010 being addressed to the CJ persuading a DB to pass an order on 09.02.2010 refrising to terminate the proceedings of this PIL and consequent directions to the author of the letter to remain present on 23.02.2010 and the report of the Dy. Commissioner and SP Tawang that the Author of the letter, viz. Wangdi Phuntsu is not found and is not available in the entire District of Tawang creates a suspicion about clandestine manner in which an unknown person is trying to pursue this litigation for unknown motives. This state of affairs evincible from the material on record may not be conclusive regarding the identity and the motive of the unknown forces interested in the fate of this PIL yet is sufficient to raise a doubt regarding the bonafides and credentials of persons who are behind this PIL. In our considered opinion the manner in which the proceedings of this PIL have been pursued are sufficiently shrouded in mystery to persuade us to hold that the issue sought to be raised is neither bonafide nor raised for serving the interest of public at large. In this view of the matter we are unable to hold that this is a genuine public interest litigation rather are constrained to hold that the issues raised are not to be dealt with in this public interest litigation.

44. In view of our findings that this PIL is not a genuine PIL, we would have withheld ourselves from dealing with the other submissions yet we feel disposed to even consider the merits of this PIL.

45. The Leamed Sr. Counsel appearing for the Petitioners broadly contended regarding issue highlighted in paragraph 4(I) that there was a direct nexus between the Respondent No. 8 on one side and Respondent No. 9 to 11 on the other side for committing illegalities, fraud and siphoning of public funds. It has also been submitted that these illegalities could not have been possible without the knowledge and active connivance of Respondent No. 8 which resulted in abuse of position by Respondent No. 8 and to bestow state largesse on his family members by adopting the modus operandi of awarding carriage contract without following the procedure of NIT.

While buttressing his submission the Leamed Sr. Counsel for the Petitioners submits that as no tenders were called for, an inference should be drawn that such an act would indicate commission of fraud, corruption etc. *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, : *Ram and Shyam Company Vs. State of Haryana and Others*, *Shivsagar Tiwari Vs. Union of India (UOI) and Others*, : *Shiv Sagar Tiwari Vs. Union of India and others*, : *Netai Bag and Others Vs. The State of West Bengal and Others*, *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, *Chaitanya Kumar and Others Vs. State of Karnataka and Others*, and (1994) Supplementary 2 SCC 116: *Kaji Lehandup Dorji v. CBI*. On the basis of the aforesaid pronouncements it has been contended that award of contract for carriage of rice being in the realm of distribution of state largesse the non issuance of NIT must be presumed to be arbitrary and consequences should follow.

In oppugnation the Leamed Advocate General contended placing reliance upon

Netai Bag (supra) that where the procedure of tender or open action, though, desirable, but when such procedure is not followed, arbitrariness cannot be presumed in every case. It was also submitted by the Learned Advocate General that a detailed affidavit through the Chief Secretary has been filed stating that the Petitioner himself is a big time contractor in Tawang area and also is a business rival of the private Respondents. It was also submitted that the allegations pertained to the year 2003-04 and prior to it why no such action was taken is clearly missing. It was also suggested that the PIL was filed immediately after change in the leadership in the State Government which by itself is sufficient to show that the present PIL is a politically motivated petition filed with a view to adversely affect political situation for the CM. The said affidavit gives point wise detail and rebuts all the allegations made with regard to paragraph 4(I).

Before we deal with the controversy highlighted in paragraph 4(I) of the petition, regard being had to the controversy as to why no tenders were invited which we shall proceed to deal with upfront.

46. In the matter of Netai Bag and Ors. (supra) the Apex Court in paragraph 13, 16, 17, 19, 20, 25 has broadly laid down that unless there is a statutory provision mandating the Government to adhere to a specified procedure in the matter of distribution of state largesse it is to be seen whether the impugned action is against public interest, opposed to fair play and guided by extraneous consideration resulting in undue benefits be falling upon undeserving kith and kins, it has been consistently held by the Supreme Court that in a democratic governance by rule of law, the Executive Government or any of its officers cannot be allowed to possess arbitral powers yet the Petitioners have failed to place on record or point out any constitutional vice or illegality. Non following the procedure of tenders or not holding of public auctions would not in all cases be deemed to be the result of exercise of arbitrary executive power and making an exception to the general rule could be justified in appropriate cases. It has further been observed by the Apex Court in paragraph 19 that the Courts cannot substitute their opinion for bonafide opinion of the State Executive and the Government is entitled to make pragmatic adjustments and policy decisions necessary for the prevalent peculiar situations. We have to remind ourselves that we cannot strike down a policy decision taken by the Government merely because the Petitioner feels that another decision would have been "fairer" or "wiser" or "more scientific" or "more logical". We are fortified in our opinion by the following decisions of the Apex Court:

State of M.P. and Others Vs. Nandlal Jaiswal and Others, ; Sachhidanand Pandey v. State of West Bengal (1983) 2 SCC 295 ; G.D. Zalani and another etc. Vs. Union of India and others, and M.P. Oil Extraction and Another Vs. State of M.P. and Others,

47. In the wake of our observations which are supported by the dictum of the Apex Court decisions, we shall now consider the counter affidavits of the State of

A.P. In para 5 of the counter affidavit it has been stated that Arunachal Pradesh is a state where the overwhelming majority of population is tribal and until the time the state remained an union territory the general concept was to allow the state to retain its tribal way of life preserving its tribal culture and traditions. After attaining the state hood from 1987 onwards attempts have been made to usher development and introduce modern way of life amongst the tribals. Until the time the tribals of the State should get admitted and opt for jobs with an endeavour to replace the outsiders by local people the state was in its transitory period of developmental phase. In paragraph 19 of the affidavit it had been stated that in 2003-04 AP was severely affected by the flood, land slides and other calamities. Considering the gravity of the disaster the Government of India constituted a high level committee under the Chairmanship of the then Deputy PM and the Committee recommended grant of 24800 MTs of rice under the subject component of SGRY for augmenting food security through Additional Wage employment in calamity affected areas. The situation under which the contract was awarded are highlighted in paragraph 21 page 11 in the following words.

The Government of India, Ministry of Home Affairs, (NDM Division) allocated rice and other food grains to the State of Arunachal Pradesh, Madhya Pradesh and Andhra Pradesh vide its letter No. 32-10/2003-NDM-I dated 8th January, 2004. In context of Arunachal Pradesh, the allocation of 24800 MTs rice was supplemented with reimbursement of freight charges for transportation from FCI Depots to the districts as per the rates prescribed by the State Government on actual basis. The Government of Arunachal Pradesh had already prescribed rates of carriage in the Department of Civil Supplies, which was arrived at after due process of tendering on annual basis in respective districts by the Deputy Commissioners. As such issuance of another notice inviting tenders for carriage of SGRY (SC) rice by "the Department of R.R. and D.M. was unnecessary and in any case would have been time consuming. The State of Arunachal Pradesh, experienced unprecedented floods and landslides during 2003,2004 and 2005. Surface communication was disrupted in almost all the districts of the State and normal life was thrown out of gear. The situation prevailing at that period of time warranted providing of relief assistance including the SGRY (SC) rice instantly to the poor victims living in harsh conditions in remote and inaccessible corners of the State and distressed by the enduring vagaries of nature. Inviting of tender for carriage of SGRY (SC) rice, would have consumed a considerable period of time and delayed the very process of providing timely relief to the victims in form of food grains.

22. That it was necessary for the Government to appoint a carriage contractor within a very short time. The requirement of contract was that the chosen contractor should have the necessary infrastructure and competence to mobilise numbers of trucks and manpower to transport 24800 MTs of food grains to various part of Arunachal Pradesh, including the remote and inaccessible areas, within a very short period of time. It may be pertinent to state that for moving a

full loaded truck in the hilly and difficult terrains of Arunachal Pradesh drivers with special skills and vehicles in a condition to move up in the steep hills is a basic necessity. A contractor with the experience of transporting food grains in the plain arrears do not necessarily satisfy the requirement of transporting food grains in Arunachal Pradesh.

In the above context it was found that four transporters having the necessary experience, expertise, infrastructure and the manpower to transport the foodgrains to the various parts of Arunachal Pradesh, had submitted applications expressing their willingness to transport the 24800 MTs food grains. The four transporters who expressed their willingness to perform the work and found capable of doing the same were:

- 1) M/s Sela Transport, Tawang,
- 2) M/s R.D. Carriage, C Sector, Itanagar,
- 3) M/s Arunachal Transport, Tawang and
- 4) M/s Phassang Transport and Carriage Co. Ltd., Nahariagun.

Accordingly the department accepted quotation of rate from the firms namely M/s Sela Transport, Tawang, M/s R.D. Carriage, C Sector, Itanagar, M/s Arunachal Transport, Tawang and M/s Phassang Transport and Carriage Co. Ltd., Nahariagun. A comparative statement of rates quoted by the above four individual firms was drawn up. Except for M/s R.D. Carriage, the other three firms quoted a higher rate than the approved rates of the Deputy Commissioner. Such higher rate was probably quoted due to deteriorated surface condition at the relevant time.

From the above procedure adopted by the department it is not a case where the carriage contract work has been allotted without any tender process. In fact the procedure adopted is akin to the limited tender system which is an acceptable form of allotment of work. Two factors which justified such limited tender process is the paucity of time to undertake an elaborate tender process and, secondly, the futility of the same as four recognized transporters who have the means and competence to transport such a huge quantity of food grains in the hilly terrains of Arunachal Pradesh have submitted their quotations expressing their willingness to transport the food grains.

M/s. R.D. Carriage, C. Sector was willing to carry the job at rates notified by the DCs of the districts and therefore was awarded the carriage contract on approval of the Government by entering into an agreement. The award of contract to M/s. R.D. Carriage, C Sector, Itanagar was at carriage respective Deputy Commissioners and the same is in accordance with Government of India's decision to reimburse freight charges for lifting of food grains from PCI Depots to the districts as per the rates prescribed by the State Government on actual basis.

The allegation of Petitioners that "...such a huge contract for the carriage of food

grains to the State of Arunachal Pradesh given to only one carriage contractor i.e. M/s. R.D. Carriage without issuing any notice inviting tenders" is nothing more than a futile attempt to mislead the Hon"ble High Court by suppressing the above vital material facts and presenting fractured information.

The reasons furnished by the State Government in the aforequoted paragraphs would in unmistakable terms indicate that the Government of A.P. had already prescribed rates for carriage in the department of Civil Supplies after due process of tender on actual basis in respective districts through the Dy. Commissioners, therefore, issuance of another NIT for carriage of SGRY rice by the Department of RRDM was unnecessary and in any case would have been time consuming. The second reason assigned by the Respondent No. 1 is that the State experienced unprecedented flood and landslides during 2003 to 2005 resulting in disturbance of surface communication in most of districts of the State and the normal life was thrown out of gear. The situation prevailing at the period of time wanted providing of relief assistance including SGRY rice instantly to the poor victims living in harsh conditions in remote and inaccessible corners of the state. We have no reason to disbelieve and discard the aforesaid reasons assigned by the Respondent No. 1 state inasmuch as the long drawn procedure for inviting tenders for carriage of rice would have caused distress occasioned by endeavoring vagaries of the nature. In this view of the matter looking to the experience of the contractor and willingness also, the award of contract cannot be said to be vitiated by arbitrariness simply because the contractor was a close relative of the concerned Minister holding the portfolio. We express our anguish to the submissions as put forth because it is not the case of the Petitioner that the carriage business was started by M/s. R.D. Constructions after the Respondent No. 8 assumed the portfolio of the Ministry of RRDM. In fact it is not in dispute that the said propriety concern was in business prior to the Respondent No. 8 assuming the charge of the concern Ministry. In addition paragraph 22 of the affidavit of Respondent No. 1 further shows that 4 transporters, viz., M/s. Sela Transport-Tawang, M/s. R.D. Carriage-Itanagar, M/s. Arunachal Transporter-Tawang and M/s. Phassang Transporters Carriage Co. Ltd. expressed their willingness to do the work. The department accepted the quote of rates from the aforesaid transporters and on a comparative analysis of the rates quoted by all the 4 transporters it was found that the rates quoted by M/s. R.D. Carriage were lower than the rates quoted by other transporters. Thus, even viewed from this angle it cannot be held that no process akin to the known process of NIT was followed. From the material on record we are satisfied with the non issuance of the formal NIT in this case involving peculiar circumstances and it does not render it arbitrary. We are inclined to uphold the action of the state on this question.

48. Once we hold that the contract was awarded in a manner known to law all other questions become academic yet to wit we further clarify that on 3 occasions the entire process of clearance of bills of Rs. 68,44,07,911/- was scrutinized by different fact finding teams including the report dated 22.06.2006

under Crime Branch P.S. Case No. 8 of 2005. In the said report a clean chit was given to the state and its authorities. In this view of the matter we further hold that from the material placed on record it does not get established that any offence much less one under the IPC or PC Act, 1988 has been committed by any of the Respondents and accordingly we are unable to accede to the prayer of the Petitioners for issuance of a direction to the CBI to hold an investigation into the alleged illegalities as highlighted in paragraph 4(1) of the petition.

49. The Learned Senior Counsel for the Petitioner submitted with regard to allegations contained in paragraph 4(III) of the petition alleging that 14 District Relief and Rehabilitation Officers, 6 Assistance Mineral Development Officers and 37 Class ID and Class IV employees were appointed in the Department of RRDM and Department of Mines and Minerals. The Learned Counsel for the Petitioner placed reliance upon a decision of the Apex Court in the matter of M.P. State Coop. Bank Ltd., Bhopal Vs. Nanuram Yadav and Others, laying emphasis on paragraph 24. In pith and substance the submission is that any appointment made without following the due procedure prescribed under the Rules without advertisement or inviting applications from the open market would be violative of Article 14 and 16 of the Constitution of India.

In rebuttal the Respondent No. 1 has averred in paragraph 66 that 14 DRROs were not appointed on the basis of pick and choose method. It has also been stated that the Respondent No. 8 was not Minister for the Mines and Minerals during the period 2004-2005 but he was holding the portfolio of Ministry of Power, Relief and Rehabilitation. It has also been stated that due to grim situation of flood and other natural calamities in the State during 2004 the Department of RRDM felt an urgent need to establish the department to have its nodal officers in the district. In these facts and situation the posts of DRRO were created in the department by order 20.02.2004 and since no recruitment rules were framed, the department resorted to the mode of officiating appointment as these posts were group B non gazetted posts and the appointment thereto were not required to be made through PSC. It has further been stated that 14 DRROs were appointed on officiating basis for the period of one year upto 31 St March, 2005 after consideration of their qualifications age etc. The DRROs so appointed were sent to the districts for undertaking relief operations. Challenging these appointments W.P. No. 4489 of 2004 and 5868 of 2004 were filed in this Court. The said two writ petitions were withdrawn on 19.08.2004 and 18.03.2005. In the meantime to increase the efficiency of DRR Os they were imparted training. It has further been stated that by the time the one year appointment expired, the recruitment rules were finalized and notified. The appointees made representations for regularization of their services and the then CM Shri Gegong Apang endorsed their representation with strong recommendation to regularize and consider their request. The case was then put up before the cabinet and on 29.03.2005 the cabinet decided to regularize the services. Accordingly a DPC met on 11.04.2005 and after careful consideration the DPC recommended for regularization of their services subject to regularization under Rule 6 of the

Recruitment Rules for DRRO, 2004. Accordingly their services were regularized. We are satisfied that this explanation furnished by the State Government is sufficient to uphold the appointment made by the Respondent No. 1.

50. So far as the appointment of Grade III and Grade IV appointees are concerned it has been explained in paragraph 68 of the counter affidavit of Respondent No. 1 and we do not find any illegality rather we endorse the action of the State Government in the making the appointments in extremely remote and inaccessible places where suitable and willing persons were not available. Accordingly we hold that the illegalities as alleged in paragraph 4(iii) are not established and the petition deserves to be dismissed on this count also.

51. Regarding paragraph 4(IV) it has been stated in paragraph 59 to 65 of the petition that there was a mass scale corruption in Tawang Animal Husbandry and Dairy Development Co-operative Societies Ltd. At the outset it would be relevant to observe that in paragraph 27 of the counter affidavit of Respondent No. 1 state it has been stated that the Respondent No. 8 the C.M. of A.P. does not have any connection whatsoever with the said society. Apart from it the petitioners have claimed that the land in question was purchased by the Society for a sum of Rs. 25,20,000/- whereas the sale deed on record shows that the property was purchased for Rs. 10 lacs. It has further been stated that the grant in aid and its bonafide utilization was tested in investigation in case No. RC-9(A)/203 GWH u/s 120B, 420 IPC, read with Section 13(1)(d) and 13(2) of the PC Act. It has further been stated that the case has been disposed of by the CBI by its correspondence No. RC/8/03 CBI/SHG/2430 dated 31.05.2005 Annexure S-R/11. In this view of the matter we find no ground to accept the allegations made in paragraph 4(IV) of the writ petition.

52. Regarding the pleas raised in paragraph 5(V) to 5(XI) no submissions were advanced when the matter was heard and reserved for orders on 29.04.2010 and 30.04.2010. In this view of the matter we do not wish to burden our judgment with further discussion on these aspects, suffice it to say that all these aspects have been explained in paragraph 76 to paragraph 82 of the counter affidavit of Respondent No. 1. We have carefully examined the aforesaid averments made by the Respondent No. 1 State and are of the opinion that all these issues were essentially issues touching the policy decision and the action taken under such decisions by the Government, which we are afraid we cannot re-appreciate as the Appellate Forum. We have no hesitation to hold that even on merits on the basis of material available on record the pleas raised in paragraph 4(V) 4(IX) are sufficiently explained by the Respondent state.

53. Before we say omega, we feel duty bound to refer to the fact that all the pleas raised in paragraph 4(1) 4(IX) tend to allege various activities undertaken by the Government at different times for different purposes. The allegations so made in the aforesaid paragraphs cannot be examined in absence of the persons who are likely to be affected as the Apex Court in the matter of Divine Retreat Center (supra) has held in accordance with the principles of natural justice that

no such casual directions should be given by the High Court which are likely to affect the personal liberty and reputation of an individual without affording an opportunity of hearing. We are at a loss to record that even though it was pointed out by the Respondent No. 8 in M.C. No. 355/2010 that proper parties have not been joined yet the curative measures were not taken by the Petitioners. Even in the teeth of the order dated 23.02.2010 directing that the said question of non-joinder of necessary parties shall be considered at the time of hearing on merits. In this view of the matter are also of the considered opinion that this petition should fail on all counts and even on the ground of non-joinder of necessary parties since a direction is sought from us for investigation by the CBI.

54. Resultantly, this writ petition P.I.L. 52 of 2007 fails and is hereby dismissed.