

(1988) 01 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 12426 and 12805 of 1987

Dhronamrajti Satyanarayana

APPELLANT

Vs

N.T. Rama Rao and Others

RESPONDENT

Date of Decision : 02-01-1988

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3
Constitution of India, 1950 — Article 225, 226, 296

Citation : AIR 1988 AP 62

Hon'ble Judges : Bhaskaran, C.J.; Venkatrami Reddy, J.; K. Ramaswamy, J.; Bhaskara Rao, J.; A.N. Rao, J

Bench : Full Bench

Advocate : K. Parasaran, Attorney General and Gopala Subrahmanyarn, S. Ramachandra Rao, for the Appellant; K. Jagannadha Rao for Central Govt., M. Suryanarayana Murthy for Income Tax, K. Srinivasa Murthy, Standing Couns for Reserve Bank of India; M.P. Chandra Mouli, General and Govt. Pleader, for the Respondent

Judgement

K. Bhaskaran, C.J.—This is one of the extraordinary cases without any parallel., not a lis of the mundane orthodox pattern. but a unique public interest litigation which seeks to explore the realm of accountability of the executive to the people through the judiciary, hence it assumes great significance and has naturally attracted considerable attention of the public.

2. The petitioner, Sri Dronamrajii Satyanarayana, a public worker and the Organising Secretary of the Coastal Districts Congress-1 Committee of Andhra Pradesh filed four writ petitions :124ZS/87,124261/87. 12427/87 and 12805/87 in this Court on 24-8- 1987 alleging various violations of laws and constitutional provisions by Shri N. T. Rama Rao, the first respondent-Chief Minister, and the State Government, the second respondent. A common affidavit running into 193 pages was filed in support of the reliefs sought. He sought a writ of quo warranto in W.P. No. 12425/87 against the first respondent declaring that he was an usurper o f t he office of the Chief Minister of the State of Andhra Pradesh, and

for a consequential direction for his removal therefrom. In Writ Petition No. 12426/87 he sought a writ of mandamus directing the central Government to appoint a judicial Commission under the Commissions of Inquiry Act, 1952 for enquiring into the misdeeds of "Corruption and abuse of authority by the first respondent." In respect of the alleged fiscal crimes committed by the first respondent, the relief sought by the writ petitioner in W.P. No. 12805/87 is a direction to the Central Government by way of writ of mandamus to take appropriate penal action including prosecution" against the first respondent. In W.P. No. 12427/87, the petitioner sought a writ of mandamus directing the Central Government to exercise its Constitutional power discharge its Constitution; duty under Articles 355,, 356 and 357 of the Constitution of India decide whether the conditions contemplated in the aforesaid provisions are existing in the State of Andhra Pradesh: and if so to initiate constitutional action for imposing President's Rule in the State,

3. A Division Bench of this Court in view of the importance and the gamut of the questions of public law raised in the writ petitions, ordered notice on September 8 1987 to the respondents to show cause why the writ petitions should not be admitted notice was also issued to the Attorney-General of India requesting him to appear and assist the Court. A Full Bench of this Court after hearing Sri K. Parasaran, the learned Attorney-General, the learned counsel for the parties and interveners, including Sri N. A. Palkhivala, a noted Jurist, who appeared for the first respondent. dismissed the writ petitions W.P. No. 12425/87(Writ of Quo-Warranto); and W.P. No. 12427/87 (Writ of mandamus for imposition of President's Rule) by the judgment dated November 2. 1987. The other two writ petitions - W.P. No. 12426/87 (Writ of Mandamus for appointment of Commission of Inquiry) and W.P. No. 1280-5/87 (Writ of Mandamus for direction to the Central Government to prosecute the first respondent for fiscal offences) were admitted on the same day. In view of the importance of the complex questions of law raised this larger Bench of five Judges was constituted. This common judgment will dispose of both the writ petitions since the question for decision in both the writ petitions are interlinked.

4. The allegations and the averments contained in the bulky affidavit are divided into seven parts by the petitioners presumably for the sake of convenience and easy reference. Allegations concerning fiscal crimes and breaches of fiscal laws by the first respondent are covered by Part-A. Acts of Arsonal corruption and dishonesty attributed to the first respondents are adverted to in Part-B. Averments pertaining to alleged political patronage, favouritism, misappropriation of public funds are set out in Part-C. Alleged breakdown of constitutional machinery and the resulting state of anarchy are dealt with in Part-D. Alleged extermination of extremists in fake encounters. and deaths in police Lockups and related atrocities are averred to in Part-E. Decisions of Courts - the Supreme Court and the High Court -- alleged to contain severe strictures against the first respondent and the State Government in respect of violations of law committed by them are mentioned in Part-F. The extant situation obtaining in the

State of Andhra Pradesh. the various prayers, and the several reliefs sought from this court by the petitioner. are set out in Part-P. Although the averments and allegations are particularised into seven parts, the petitioner avers in Para- G. 12 of his affidavit : "They have to be read as a whole with specific reference to the particular type of allegations and reliefs sought for."

5. The first respondent in compliance with the notice issued on 8-9-1987 prior to the admission of the writ petitions had filed a brief counter-affidavit contesting mainly the locus standi of the petitioner to maintain the writ petitions and the jurisdiction of this Court to grant the reliefs prayed therein. In that counter-affidavit, the first respondent did not deny specifically the various accusations levelled against him by the petitioner. After the admission of the present two writ petitions, the first respondent, however, filed a comparatively lengthy counter running into fifty six pages on 4-12-1987. On the same day, on behalf of the second respondent, the State Government, a counter affidavit sworn to by, the Chief Secretary. running into 195 pages, was filed. As the State Government is not a party-respondent in W.P. No. 12805/87 we have to presume that the counter-affidavit filed by the Chief Secretary is confined to writ Petition No." 12426/87. The Chief Secretary's counter-affidavit was based on the assumption that the State Government is party-respondent in both the writ petitions. have also been filed on behalf of the Chairman, Central Board of Direct Taxes, the Reserve Bank of India, and the Commissioner of Income Tax, Hyderabad, who are respondents in the writ petition.

6. Apart from denying specific accusations levelled by the petitioner, the main thrust in the counters filed by the first respondent and the Chief Secretary, on behalf of the State Government is that the two writ petitions are solely adversarial in nature and the motive is to settle political scores after the petitioner was defeated in the elections to the Andhra Pradesh State Legislative Assembly and the Office of Mayor of Visakhapatnam; and on his own showing the petitioner being a politician and Congress-1 leader, this Court should not go into justiciability or otherwise of the issues raised by" converting the adversarial litigation into public interest litigation.

7. Sri Ram Jeth Malani, the learned counsel for the 1st respondent, very strenuously urged that by treating the present litigation as public interest litigation this Court should not disregard the rules relating to the pleadings, the 1st and 2nd respondents should be put on notice of what the actual case they had to meet if Court was to scrutinise any specific instances alleged by the petitioner in his voluminous affidavit., for this purpose unless the petitioner was directed to put his house in order by properly amending the affidavit and seeking appropriate relief, this Court should not proceed any further in the matter. If pleadings are properly amended, the learned counsel said, the 1st respondent would be in a position to meet them. He submitted that in the process of correcting executive errors the Court should not enter into political arena on policy decisions which are, by the Constitution, exclusively vested in the

executive. The Court must guard itself against interfering in respect of executive and statutory orders without affording opportunity to the parties likely to be affected, the prescribed principles of natural justice should not be allowed to be breached. In the written submissions filed on behalf of the first-respondent it was specifically stated . "The true public interest litigation is one in which a selfless citizen having no personal motive of any kind except either compassion for this and disabled or deep concern of stopping serious public injury approaches the Court for either of the following purposes :

(i) Enforcement of fundamental rights of those who genuinely do not have adequate means of access to the judicial system or statutory provisions incorporating the directive principles of State Policy for amelioration of their condition,

(ii) Preventing or annulling executive acts and omissions violative of Constitution or law resulting in substantial injury to public interest."

Personal rights could not be enforced in the garb of public interest litigation., a public spirited organisation or individual might espouse the specific causes of person, or groups, who were unable to approach this Court and such causes alone should be taken up by the Courts as public interest litigation. In support of these contentions, reliance was placed on the rulings of the Supreme Court reported in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, , *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, , *Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others*, , *Lakshmi Kant Pandey Vs. Union of India (UOI)*, , *Rural Litigation and Entitlement Kendra, Dehradun and Others Vs. State of U.P. and Others*, , *State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others*, , *Laxmi Kant Pandey Vs. Union of India (UOI) and Another*, , *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , *Chaitanya Kumar and Others Vs. State of Karnataka and Others*, , *Dr D.C. Wadhwa and Others Vs. State of Bihar and Others*, , *Sheonandan Paswan Vs. State of Bihar and Others*, , *Sachidanand Pandey v. State of W.B.*, AIR 1987 SC 1109 at p. 1134, *Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc.*, , *Joint Women's Programme Vs. State of Rajasthan and Others*, , *Fertilizer Corporation, Kamagar Union v. Union of India*, AIR 1981 SC 344, 5. *P. Gupta v. Union of India*, AIR 1982 S C 140, *Peoples' Union for Democratic Rights Vs. State of Bihar and Others*, and *Laxmi Kant Pandey Vs. Union of India (UOI)*, .

8. Towards the end of the arguments on December 29, 1987 Shri Jeth Malani submitted that the 1st respondent was opposed to any inquiry being conducted by a Commission appointed by or at the behest of the Central Government. He added that , on the other hand, the 1st respondent was prepared and willing to subject himself to an enquiry to be conducted by a Judge or a panel of Judges of this Court nominated by the Chief Justice into the specific charges chosen by the learned Attorney-General. At the conclusion of the arguments by Shri Jeth Malani, the next day (30-12-1987) the Court desired to know from him whether,

as stated by him the previous day, he would put in writing about the willingness on the part of the First respondent to have an enquiry conducted by a Judge or panel of Judges of this Court selected by the Chief Justice. In response to this he had put in a statement then and there and it forms part of the records of the case. To facilitate easy reference wt. would extract it below :

"It is the contention of R-1 that the present petition disposes no cause of action, its pleadings and averments are vague, prolix, rolled up. scandalous and false. The petition is a perplexing misjoinder of desperate complaints, grievances and alleged causes of action. The reliefs and allegations cannot be correlated. It raises disputed" questions of fact which cannot be disposed of on the affidavits filed except to dismiss the petition. On the other hand R-1 has nothing to hide or be ashamed of. He does not wish to avoid or shirk enquiry into any responsible allegations supported by prima facie evidence selected by the Attorney-General.

On proper petitions being filed making out a precise case and claimed precise relief, R-1 will waive issue of a formal notice or rule nisi and participate in judicial investigation by any Judge or Judges of this Honorable Court.

R-1 makes it clear that the petitioner"s allegations are false and he is not entitled to any relief whatsoever.-

9. Shri K. Parasaran, the learned Attorney-General, who appeared to assist the Court in deference to the notice issued, expressed his opinion on the constitutional aspects and the administrative law having a bearing on the issues involved in these writ petitions with his usual fairness, frankness and an absolute sense of detachment. The highlight of his address could be stated as follows : In a public interest litigation the jurisdiction of this Court is not adversorial, but inquisitorial. No particular form of pleading is required. What is required is the necessary factual material. Even if better material is not forthcoming in the first instance, the Court can issue commissions or call upon the Government to produce the records, and it is the duty of the Government or the Officers to produce all the relevant records, on production thereof, it was the duty of the court to carefully and with circumspection scrutinise the evidence, on consideration thereof if the Court comes to the conclusion that there is an infraction of the constitutional rights; or public injury is suffered by breach of any public duty, the Court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions, which have been so exposed. The present case is unique in the sense that it seeks to explore the realms of accountability of the executive to the judiciary through persons professedly acting pro bono publico; and the case involves an act of delicate balance. In this case the Court should adjudicate upon those issues which are clearly and specifically formulated in a pointed manner for consideration and in that sense the issues must be legal, not merely with legal flavour. He projected the case essentially from the point of view of administrative law stressing that " "a careful and critical examination of the legality and propriety of the issues was called for. That apart, according to him, the case involves an area of choice, namely one between traditional approach

which reiterates theoretical inquiries and another where moral deliberations inter- twined with the extension of locus standi in the context of the Court's duty to ensure the supremacy of the rule of law. Summing up his address the learned Attorney-General submitted that on a consideration of the evidence if the Court comes to the conclusion that there was violation of the constitutional rights; or public injury was suffered; or there was breach of public duty, then Court could give a declaration to that effect. In the course of his scholarly exposition of law he quoted profusely from the decisions of the Supreme Court as also from some decisions of the English Courts, which threw fight on the subject.

10. Sri S. Ramachandra Rao, the learned counsel for the petitioner. wanted us to look at the problem from a realistic point of view without being obsessed by procedural technicalities and wrangles. The substance of his argument is : The law relating to procedure is intended to advance substantive justice. In the name of adhering to the procedure, the Court should not allow justice to be stifled. Wages of procedural sin should not culminate in the mortality of justice. The common man's sense of justice, which sustains democracy, should not be allowed to be shattered by placing primacy on procedural aspects ignoring the substantive questions that cry for adjudication. About 200 allegations are levelled by the petitioner and in respect of most of them he was able to collect material facing very adverse circumstances and place them before this Court with the fervent plea that the constitutional values and supremacy of rule of law should be safeguarded by exercise of the power of judicial review. The petitioner is not seeking any personal gain for himself. His interest is confined to exposing the tyranny, despotism, and several acts of nepotism, favouritism and corruption on the part of the first respondent. In a case of this magnitude to expect the petitioner to strictly conform to the rules of procedure would amount to subverting the cause of justice, and abdication of the constitutional duties enjoined upon this Court. This Court is not merely a forum for adjudication of civil and criminal matters, but is a constitutional Court charged with higher responsibilities. The normal considerations in regard to procedural requirements that weigh with the court in deciding private litigation should not be extended to the present case in all their rigidity". Shri Ramachandra Rao also contended that it was not open to the 1st respondent to contend that there were no reasonable grounds for inquiry into the charges levelled against him in these two writ petitions after he had, out of pricks of conscience, subjected himself to the probe by the three-man Agarwal Commission ordered by his very Government as per G.O.Nos. 587 General Administration (Sc. E) Department dated November 28, 1987. According to him the only question now remains for the consideration of this Court is whether a mandamus would go from this Court to the Central Government for instituting a Commission u/s 3 of the Commissions of Enquiry Act, 1952 or, on the facts disclosed and established in the case, the relief to be granted is to be moulded in some other suitable form. With respect to the offer made by Shri Jeth Malani on 29-12-1987 and the statement given by him in Court on 30-12-1987, Shri Ramchandra Rao submitted that it was a clever move

and a "legal trap" conceived by the 1st respondent to delay and defeat the due process for law. He contended that the offer, as found its expression in the statement of Shri Jeth Malani on 30-12-1987, betrayed absolute lack of bona fides. According to him it was terribly belated and was nothing but a procrastinating tactics, and that the, Court had no power to accept any offer which had no legal basis whatsoever. He did not want the High Court Judge(s) to be reduced into a Commission whose finding was not binding on any one and which could be challenged in a Court of law. He pointed out that the 1st respondent himself had till the previous day resisted the appointment of any Commission on the plea that he had no faith in the efficacy of such Commission, and that it was a mystery that there was a sudden transformation of his attitude for obvious reasons that after all the arguments had been heard, documents perused, and pleadings considered by the five Judges of this Court during the course of the lengthy proceedings, "he did not want a decision from this Court.

11. What the specific allegations levelled by the petitioner are and how they are traversed by the respondents, and the relevancy and the extent of credibility to be accorded to the allegations, we shall deal with later.

12. The threshold issue concerns with the locus standi of the petitioner. Shri Ram Jeth Malani (who appeared for the 1st respondent) and Shri E. Manohar, the learned Advocate General (representing the State Government the second respondent) have strongly urged that the doors of this Court should not be kept ajar for adjudication of adversarial issues brought in the garb of public interest litigation by politically motivated persons : and what could not be achieved by the Congress (I) party to which the petitioner belonged. unseated the ruling Telugu Desam Party in the elections, should not be permitted to be achieved indirectly. through the instrumentality of this Court. While conceding fairly that the Chief Minister did. not claim to be .above the law and the Constitution; and he was not clothed with any immunity from the processor law. Shri Ram Jeth Malani contended that the petitioner not being a bona-fide was disentitled to raise the pleas before this Court for adjudication; the reliefs prayed for by the petitioner were beyond the competence of this Court. the affidavit sworn to by the petitioner did not disclose any valid cause of action for judicial review : and if there was reasonable suspicion about the bona fide of the petitioner (and according to the learned counsel. the petition was totaly bereft of good faith), this Court should throw out the petitions at the threshold stage without going into the justiciability or otherwise of the pleas raised therein. He added that there were no remedies for all evils and the Republic had to live with many evils which were not eradicable. Political questions according to him, are outside the purview of adjudicatory arena; any attempt by the judicial wing of the State to encroach upon the lawful sphere of activity of the executive and legislature, would disturb the delicate balance between the three wings of the State., and the affidavit sworn to by the petitioner was full of manifest lies, reckless, false, baseless and unverifiable assertions."

13. It is beyond controversy that the petitioner is an active political worker, a leader of Congress-1 party and a former member of Lok Sabha and the Andhra Pradesh State Legislative Assembly. He was also the Chairman of the Visakhapatnam Urban Development Authority for a term. He was defeated in the elections to the Legislative Assembly and for the Mayorship of Visakhapatnam Municipal Corporation.

14. Could it, however, be said that his background as a politician and Congress-1 leader carries with it any odium so as to disentitle him to espouse public causes, if otherwise, they are entertainable by this Court "?

15. The petitioner, as pointed out by this counsel Shri Ramachandra Rao is not seeking any personal gain for himself he is not an applicant or an aspirant for any of the industrial licences, the sanctioning of which he has impugned in this writ petition. The first respondent's patronage and nepotism, are the vitiating factors, according to the petitioner, in granting largess by the State. The scores of allegations against the first respondent involving acts of commission and omission, and the arbitrary functions of the second respondent, the State Government have been brought to the notice of this Court by the petitioner. He has not merely catalogued the instances, but also has stated the details supported by relevant documents.

16. The question of locus standi of the petitioner was debated at length before the Full Bench of this Court after notices were issued to the respondents pending admission of the writ petitions. At that stage also what was seriously contended related to the issue of locus standi. The Full Bench, (to which one of us, the Chief Justice, was a party) felt after considering the contentions advanced by Shri S. Ramachandra Rao, the learned counsel for the petitioner, Sri N. A. Paikhivala, the learned counsel for the first respondent, Shri K. Parasaran, the learned Attorney-General of India, who appeared as Amicus Curiae, and the learned Advocate General for the State Government, that these two writ petitions should not be thrown out at that stage merely on the ground that they were filed by a political worker belonging to a political party opposed to the ruling party. The writ petitions contain serious allegations touching matters of great public importance. Evidently, the Full Bench was prima facie satisfied that the writ petitions were not liable to be thrown out on the ground of locus standi.

17. Locus standi doctrine is called in the United States Public Law as standing of the petitioner to maintain an action in Court. Political questions, it is true, are not adjudicated by Court. What are political questions? The dominant consideration in determining whether a question falls within the category of political question as laid down by the United States Supreme Court in *Coleman v. Miller*. (1938) 307 US 433 are :

(1) "the appropriateness under our system of Government of attributing finality to the action of political department" and (2) "the lack of satisfactory criteria for a judicial determination". "this was followed in *Baker v. Carr*, (1962) 369 US 186

"The non- justiciability of a political question" observed Justice Brennan delivering the majority opinion in the Baker case as "primarily a function of the separation of powers Deciding whether a matter has in any measure been committed by the Constitution to another branch of Government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and as a responsibility of this Court as ultimate interpreter of the Constitution". The learned Judge held : "The political question doctrine, a tool for maintenance of governmental order, will not be so applied as to only disorder." The various formulations for ascertaining the political questions as enumerated by the learned judge are : "Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a co-ordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due to co- ordinate branches of Government or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question."

18. In the United Kingdom and the United States, the Attorney-General is the competent authority for preventing public wrong by moving the appropriate courts. In *Gouriet v. Union of Post Office Workers*, (1977) 3 AB ER 70 the House of Lords while reversing the decision of Lord Denning, M. R., ruled that a private person was not entitled to bring an action in his own name for the purpose of preventing public wrongs and, therefore, the court had no jurisdiction to grant relief; and if the plaintiff had no interest in the subject matter of his action other than as member of the public, and if the Attorney-General refused consent to initiate proceedings, the plaintiff could not seek relief from the Court. This legal position was reiterated in *Inland Revenue Commrs. v. National Federation of Self-Employed and Small Business Ltd*, (1981) 2 WLR 722 at p.730. Speaking for the majority, Lord Wilber-force, said "As a matter of general principle I would hold that one tax-payer had no sufficient interest in asking the Court to investigate the tax-affairs of another tax payer or to complain that the latter has been under-assessed or over- assessed . indeed, there is a strong public interest that he should not That a case can never arise in which the acts or abstentions of the revenue can be brought before the court I am certainly not prepared to assert, nor that, in a case of sufficient gravity, the court might not be able to hold that another tax-payer or other tax-payers could challenge them. Whether this situation has been reached or not must depend upon an examination, upon evidence, of what breach of duty or illegality is alleged." Dissenting from this view. Lord Diplock held : "It would in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited tax-payer, were prevented by outdated technical rules of locus standi

from bringing the matter to the attention of the court to indicate the rule of law and get the unlawful conduct stopped." Lord Scarman viewed the position : "the sufficiency of the interest is, .. a mixed question of law and fact. The legal element in the mixture is less than the matters of fact and degree ; but it is important as setting the limits within which, and the principles by which, the discretion is to be exercised The one legal principle, which is implicit in the case-law and accurately reflected in the rule of court, is that in determining the sufficiency of an applicant's interest, it is necessary to consider the matter to which the application Debates. It is wrong in law as I understand the cases, for the Court to attempt an assessment of the sufficiency of an applicant's interest without regard to the matter of his complaint. If he fails to show, when he applies for leave, a prima facie case, or reasonable grounds for believing that there has been a failure of public duty, the court would be in error if it granted leave. The curb represented by the need for an applicant to show, when he seeks leave to apply, that he has such a case is an essential protection against abuse of legal process. It enables the Court to prevent abuse by busy bodies, cranks, and other mischief- makers. I do not see any further purpose served by the requirement for leave."

19. Lord Denning in his "The Discipline of Law" recorded his unhappiness at the extant legal position on locus standi in English law in the following terms: "In administrative law, the question of locus standi is the most vexed question of all. I must confess that whenever an ordinary citizen comes to the Court of Appeal and complains that this or that Government department - or this or that local authority - or this or that trade union - is abusing or misusing its power - I always like to hear what he has to say. For I remember what Mr. T. P. Curran of the Middle Temple said in the year 1790 :

"It is ever the fate of the indolent to find their rights become a prey to the active. The condition upon which God faith given liberty to man is eternal vigilance."

The ordinary citizen who comes to the Court in this way is usually the vigilant one. Sometimes he is a mere busybody interfering with things which do not concern him. Then let him be turned down. But when he has a point which affects the rights and liberties of all the citizens, then I would hope that he would be heard., for there is no other person or body to whom he can appeal. But I am afraid that not every one agrees with me. In Judges' case in S.P. Gupta Vs. President of India and Others, the Supreme Court approvingly referred to the minority view of Lord Diplock in *Inland Revenue Commrs. v. National Federation of Self-employed and Small Business* 1Ad. (1981 (2) WLR 722).

20. The contours of public interest litigation are basically different from adversarial litigation. In the latter the holder of legal rights alone is entitled to bring forth the action in which event he must conform to the strict rules of pleadings, proof and prayed for relief. In adversarial litigation the person moving the Court for relief must establish at the threshold stage that he is a holder of right for the relevant laws.. Only then his standing to litigate and the sufficiency

of his interest for seeking adjudication will be accepted. If a legal injury is caused to a person or to a determinate class or group of persons, by reason of violation of any constitutional or legal rights, and if such person or determinate class of persons by reason of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of the public can move the Court on their behalf. The view of Pro. Thio in his book on "Locus Standi and Judicial Review" that the judicial function is primarily aimed to preserve the legal order by confining the legislative and executive organs of Government within their powers in the interest of the public was accepted by Bhagwata, J. (as he then was) in the S.P. Gupta Vs. President of India and Others, . If injury is caused to public interest but not to any specific individual, who can maintain an action for vindicating the rule of law, was the question posed and answered. "The Courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it without any redress if the law is contravened. The view has therefore been taken by the courts in many decisions that whenever there is a public wrong or public injury, caused by an act or omission of the State or a Public Authority, which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial review, is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busy body or a meddlesome interloper but who has sufficient interest in the proceeding"

"But we must be careful to see that the member of the public who approaches the Court in cases of this kind is acting bona fide and not for personal gain or private or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.....The court must take care to that it does not violate over-step the limits of its judicial function and trespass into areas which are reserved to the executive. and the legislature by the Constitution.-

21. Merely, because the petitioner is a politician ¹ we decline to go into the question raised by him. Both Sri Ram Jeth Malani and the learned Advocate General, argued Vehemently that the writ petitions were to be thrown out on the ground that they were politically motivated.

22. Scores of allegations pointing out statutory breaches and constitutional violations with considerable specificity have been placed before us by the petitioner. It is not as if the Petitioner has merely made some wild allegations and washed off his hands. He has taken care to see that what he had alleged was supported by documents to the extent he could collect. Some of the allegations are so grave and the nature of the breach of Rule of law and Constitutional Provisions is so serious that objective considerations incline us to

hold that the contention raised on behalf of the respondents 1 and 2 about the petitioner not having bona fides is without basis. We find it difficult to draw the inference that the petitioner "aiming to delay any legitimate administrative action" or seeking "to gain a political objective". The nature of the allegations and their broad sweep negate the inference that the petitioner is seeking a political objective. Being politician by itself is no sin. In our democratic setup Governments are run by political parties to power by the people. It is totally unrealistic to characterise any espousal of cause in a Court of law by politician on behalf of the general public complaining of constitutional and statutory violations by the political executive as a politically motivated adventure. There is no material to held that the petitioner is a busy body or interlopers; as already noticed apart from being a responsible citizen of India he was a member of Lok Sabha for one term and of the Andhra Pradesh State Legislative Assembly for two terms. In our opinion, in the setting of these cases. the petitioner's interest is "personal" in the sense that it is confined to ignite the jurisdiction of this court for exercising its power to uphold the Constitution and the rule of law without claiming any persons relief for himself.

23. For the purpose of locus standi what really is relevant is the substance of the breaches of the Constitution complained of, not the antecedents or the status of the person who conveys the information to the Court. While protecting its jurisdiction, authority and time from abuse of process, this court at the same time should not abdicate its role as the sentinal qui vive of the rights and life of the citizens, as rightly pointed out that the learned Attorney General. The account- ability of the executive to the people through the judiciary cannot be set at naught by any self-induced doubts regarding the jurisdiction of the Court or the propriety of the Court to entertain matters raising genuine question of annihilation of constitutional values by the executive. When large scale violations or abuse of power by the first respondent and inaction of the Governmental machinery are alleged by the petitioner with sufficient material particulars, we cannot throw out the writ petitions on the untenable ground of locus.

24. The rulings to which our attention was drawn by the learned Advocate General do not lay down any principle to the contra. Fertilizer Corporation Kamgar Union (Regd.), Sindri v. Union of India, (AIR 1981 SC 344) inter alia lays down that a busy body should not be permitted to invoke the jurisdiction of the Court in the matter of public interest litigation. The right of the union of the workers of the Fertilizer Corporation and certain other workers to invoke the jurisdiction of the Court was upheld on the ground that they had sufficient interest. The Court may invoke its jurisdiction in the sphere of public interest litigation at the instance of voluntary non- political organisations as was the case in D.S. Nakara and Others Vs. Union of India (UOI), and Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, as the locus standi of the petitioners therein was found to be unquestionable.

25. The learned Advocate General and Shri Ram Jeth Malani sought to build up an argument on the basis the only in respect of weaker sections and other disabled persons the Court should lend his helping hand by way of public interest litigation and that persons who were otherwise capable of approaching the Courts for enforcing any of their rights should not be allowed to take advantage of the public interest litigation. It is true that in respect of weaker sections and disabled persons the jurisdiction of the Courts can be invoked by any member of the public since the victims themselves are not in a position to approach the Court. The situation cannot be viewed from narrow perspectives and straight jacket formulae. If this Court is satisfied about the bona fides of the petitioner there should not be any further enquiry as to whether some one else with much higher interest could have brought the matter before the Court. The petitioner does suffer from any social or economic disability. He is disabled in the sense he has no access to all the relevant records relating to the various accusations levelled by him. In the very nature of things such a thing is not possible for any member of the general public. That is the reason why the Supreme Court approved rule that any member of the public acting bona fide can move the Supreme Court or the High Court for keeping the authorities within the bounds in public interest litigation. In public interest litigation, it is the duty of all the parties to help the Court to the best of their ability in ascertaining the truth and for moulding the appropriate relief. The adversarial procedure does not come into play in matters of public interest litigation either under Article 32 or 226 of the Constitution of India, as held by the Supreme Court in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, . The role of the court in this regard is creative rather than passive., and it assumes a more positive attitude in determining the facts. At the instance of private parties and public spirited citizens the Karnataka High Court struck down the action of the Karnataka Government in the matter of awarding contracts for bottling arrack on the ground that it was unlawful, arbitrary, capricious, shocking to the judicial conscience, and in flag violation of the rule of law. The declaration was given by the Karnataka High Court even after recording a finding that the allegations of personal bias against the Chief Minister were false; and it did not record any finding on the question of mala fides on the ground that it was unnecessary. Some of the persons in whose favour contracts were awarded carried the matter in appeal to the Supreme Court although the State Government did not prefer appeal. While agreeing with the view, that in the guise of public interest litigation no scope should be given to any one to indulge in reckless allegations, the Supreme Court in *Chaitanya Kumar and Others Vs. State of Karnataka and Others*, observed :

"But, simultaneously, the Court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed. When arbitrariness and perversion are writ large and brought out clearly, the Court cannot shirk its duty and refuse its writ. Advancement of the public interest and avoidance of the public mischief are the paramount considerations. As always, the Court is concerned with the balancing of interests and we are

satisfied in the present case that the High Court had little option but to act as it did and it would have failed in its duty had it acted otherwise and refused to issue a writ on the ground that the allegation of personal bias against the Chief Minister was false. Had that been done the public mischief perpetrated "Would have been perpetuated. This is not what courts are for."

26,. Sri Ram Jeth Malani contended that as some of the allegations levelled by the petitioner were palpably false, the writ petitions must be thrown out on that ground without any further inquiry. We are not inclined to agree with him. In public interest litigation, as already observed by us, the rigour of the procedural law breaks down. If issues are clearly, specifically and pointedly formulated this Court would certainly enquire into them. We do not find any justification to dismiss the writ petitions on the mere ground that some of the several allegations are found unsubstantiated. The petitioner's allegation that the first respondent disclosed in the year 1985 an income of Rs.7.5 lakhs in his individual capacity and wealth aggregating to about Rs.51.50 lakhs in his capacity as individual and as Kartha of the Hindu Undivided Family to the Income Tax authorities under voluntary disclosure scheme is totally false, says, Sri Ram Jeth Malani. The falsity does not pertain to the declaration under the voluntary disclosure scheme; but it is in respect of the year when the declaration was made. The learned counsel for the petitioner, Sri S. Ramachandra Rao, fairly conceded that the declaration was made in the year 1975 by the first respondent, but due to a mistake the year 1985 was mentioned in the affidavit of the petitioner. The lapse is there. The first respondent, however, had an effective and sufficient opportunity to bring, it to the notice of this Court when notice was issued to him before the writ petitions were admitted. He did not choose to controvert this fact in the counter-affidavit filed by him then. The failure of the first respondent to draw the attention of the court to this factual error also contributed to its creeping into the judgment of this Court in WP No. 12425/87. As between the petitioner and the first respondent, who is more to be blamed? We do not want to apportion the blame. The question relating to the evasion of tax, manifest from the voluntary disclosure, would have had relevance if the writ of Quo Warranto had been admitted, because the contention was that a proclaimed tax evader loses his moral right to continue in office.

27. The questions raised in these writ petitions in our considered view are not political questions. If the acts alleged are in violation of the Rule of U. w or the provisions of the Constitution or any statutory law, it is no answer to say that because it is a political question it should not adjudicated. "Constitutional Mechanism" observed the .Supreme Court in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, "in a democratic polity does not contemplate existence of any function which qua the citizens be designated as politics and orders made in exercise whereof are not liable to be tested f or their validity before the lawfully constituted court." Negating the contention that the question whether in a, particular state the situation, existing warranted-action under Article 365(1) is a political question

entrusted by the Constitution to the Union Executive and, therefore, not justifiable before the Court Justice Bhagwati (as he then was) observed in *State of Rajasthan and Others Vs. Union of India and Others*, "We do not think we can accept this argument. Of course, it is true that if a question brought before the Court is purely a political question not involving determination of any legal or constitutional right or obligation, the Court would not entertain it, since the Court is concerned only with adjudication of legal rights and liabilities. But merely because a question has a political complexion, that by itself is no ground why the court should shrink from performing its duty under the Constitution if it raises an issue of constitutional determination. Every constitutional question concerns the allocation and exercise of governmental power and no constitutional question can, therefore, fail to be political. A Constitution is a matter of purest politics, a structure of power as pointed out by Charles Black in "Perspectives in Constitutional Law."

"Constitutional Law" symbolizes an intersection of law and politics, wherein issues of a political power are acted on by persons trained in the legal tradition, working in judicial institutions, following the procedures of law, thinking as lawyers think."

28. It will, therefore, be seen that merely because a question has a political colour, the Court cannot fold its hands in despair and declare "Judicial hands off". So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed it would be its constitutional obligation to do so. It is necessary to assert in the clearest terms, particularly in the context of recent history, that the Constitution is Supreme the paramount law of the land, and there is no department or branch of Government above or beyond it. Every organ of Government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority. No one howsoever highly placed and no authority howsoever lofty can claim that it be the sole judge of the extent of its power under the Constitution or whether its action is within the confines of such power laid down by the Constitution. This Court is the ultimate interpreter of the Constitution and to this court is assigned the delicate task of determining what is the power conferred on each branch of Government, whether it is limited, and if so, what the limits are and whether any action of that branch transgresses such limits. It is for this court to uphold the constitutional values and to enforce the constitutional limitations. The test regarding the determination of what constitutes political question as laid down in *Baker v. Carr* ((1962) 369 CS 186) was approvingly referred to by Bhagwati, J. (as he then was), in the aforesaid case. The American doctrine regarding the adjudication of political questions was accepted by Venkatramiah J., in his separate judgment. In *V.R. Sreerama Rao Vs. Telugudesam, a Political Party and Another*, the technicalities of locus did not stand in the way of this Court from inquiring into the plea raised by the President of a political party called "Sarvodaya Congress" opposing the grant of election symbol to Telugu Desam

party on the ground that it "preached chauvinism, propagates cessionist tendencies." Our learned brother, P.A. Choudary, J., very realistically observed: "Considering the fact that the issues raised by the writ petitioner are of paramount public importance to the democratic functioning of our society and taking into account the recent trends of law funnelled by several court decisions freely upholding the right to sue as inhering even in those whose proprietary rights or personal interests are not directly affected, I reject the preliminary objection of Sri N.T. Rama Rao to the maintainability of this writ petition. The writ petitioner claims to be the President of a political party called "Sarvodaya Congress" and it undoubtedly appears to me that he is interested in a clean public life. He is not a mere interloper." 29. In our constitutional setup there are no two classes of people - one privileged and the other not so privileged. The principle of non-discrimination adumbrated in Art. 14 of the Constitution should not be allowed to be breached. The political executive - either the head of the Government or any member of the cabinet does not enjoy any immunity in respect of breaches of law of the land committed : they have no claim to be treated on a separate footing higher than ordinary citizens State of Karnataka Vs. Union of India (UOI) and Another, .

30. No member of the political executive can take shelter under the pretext that the council of ministers being responsible to legislature, that alone is the forum for arraigning their actions but not the Court. This is the settled law in State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad, and State of Karnataka Vs. Union of India (UOI) and Another, .

31. The questions raised in the writ petition on careful scrutiny, in our view, do not answer the description of political questions in accordance with the test laid down by United States Supreme Court and adopted by our Supreme Court. We, therefore, hold that the petitioner has locus standi; and the issues raised by an urge are justiciable, ad consequently, the writ petitions cannot be rejected on the threshold issue of locus standi.

32. We have to dispose of a point concerning the issue of a writ of mandamus directing the Central Government to appoint a Commission under the provisions of Sec. 3 of the Commissions of Inquiry Act, 1955,, which, in essence and substance, is the prayer in W.P. No. 12426 of 1987. Sri Ram Jeth Malani for the 1st respondent and the learned Advocate General appearing for the second respondent, submitted that this Court would not be justified in issuing a writ of mandamus as prayed for in view of the clear provision of the Section which gives a discretion to the appropriate Government to appoint or not to appoint a Commission even when it is found that there "was a definite matter- public interest to be gone into by Commission. It is true, it is only where resolution is passed by the House of the People or the Legislative Assembly of a State, as the case may be, that the Government would be under a compulsion to appoint a Commission in terms of the provisions of Sec. 3 of the Commissions of Inquiry Act. The learned Advocate General has cited before us the decisions in Vijay

Mehta Vs. State of Rajasthan, , Jagram v. Gwahor Town and Country Development Authority, Gwahor, AIR 1987 Madh Pra 11, Peoples Union for Democraticrights and Another Vs. Ministry of Home Affairs, , Rajendran Vs. Home Secretary, and Bhagwat Dayal Sharma Vs. The Union of India and Others, . We have little difficulty in accepting their contention. Sri Ramachandra Rao, the learned counsel for the petitioner, though persistent in his argument that where this Court was convinced that there was infraction of constitutional or statutory rights or the rule of law, the procedural inhibitions should not stand in the way of issuing a writ of mandamus to the Central Government to appoint a Commission, if it on its own failed to do so, he hastened to add that in any event it was for this court to mould the relief suitably so as to further the ends of justice., With respect to this, he has submitted that the learned Attorney-General himself had, during the course of his submissions, expressed this view in our considered view, this Court would not be justified in issuing a writ of mandamus directing the Central Government to appoint a Commission to go into the charges levelled against the first and the second respondents.

We are, however, of the definite view that it is right and the duty of this Court to see that ends of justice should not be allowed to be frustrated, but this Court should exercise its discretion in moulding the relief in such manner as would meet the situation, Particularly in view of the fact that the comprehensive provisions of Art. 226 of the Constitution empower the High court to issue orders for any other purposes, apart from writs for the enforcement of any of the rights conferred by Part III.

33. Shri Ram Jeth Malani during the course of his arguments and also in his written ubmission filed on 31-12-87 after the conclusion of the arguments in the case, pointedly emphasised : "The petitions are supported by a common affidavit which violates every important rule of the Writ Rules of this Hon"ble Court. It is not properly verified as required by the Rules."

34. The procedure concerning writ petitions is governed by the Rules framed by .this Court in exercise of its power under Article 225. They are commonly called the Writ Rules. It is undoubtedly true that this Court has prescribed a form for pleadings in respect of the writ petitions by way of an affidavit followed by a petition seeking the appropriate relief. Rule 5 lays down the form in which the affidavit has to be drawn for and what it should contain. It says that the deponent should disclose the source of his information in respect of the facts pleaded in the affidavit whether he has personal knowledge or whether he received the information from any. source. The affidavit of the petitioner is voluminous and contains nearly 200 allegations and the verification part of the petitioner"s affidavit is as follows : "Solemnly affirmed at Hyderabad on this day of 1987 and signed in my presence."

It is evident from this verification that it does not strictly conform to the mode of verification prescribed by Rule 5 of the Writ Rules. In spite of the Writ Rules, prescribing, the procedure, a practice has grown in this Court to file a common

affidavit containing several allegations seeking different reliefs without verifying the source of information and making verification by mere affirmation without disclosing the source of information. The prescribed procedure in the Writ Rules, in fact, has seldom been followed. So far, to our knowledge, this Court has not thrown out any writ petition on the ground of non-compliance with the Writ Rules. That being the position, we find no valid reason to depart from it in the present case especially when it is public interest litigation. Any such departure, in our opinion, would be unjust and harsh. The apprehension of Shri Jeth Malani is that any latitude shown in this regard would result in misjoinder of causes of action and miscarriage of justice. The first and second respondents have understood the averments in the affidavit in the relevant paragraphs. They have also denied the allegations and put forth their version. The writ petitions were filed on 24th August. A Division Bench of this Court after hearing the matter for some days issued notice on 8-9-1987 before admission, to the learned Attorney-General requesting him to appear as amicus curiae and assist the Court on the questions involved in these writ petitions. Thereafter a Full Bench of three Judges, to which one of us ("the Chief Justice") is a party, heard the matter for nine days and passed orders admitting these two writ petitions and dismissing the other two. Sufficient time was given to the parties to file detailed couplers. The first and second respondents, in fact, filed detailed counter-affidavits traversing all the allegations levelled by the petitioner in his affidavit. In the circumstances, we find no justification to accept the contention advanced by Shri Jeth Malani that his client was not put on notice as to what was the actual case he should meet. It is true that the prayer in one writ petition is for a mandamus to the Central Government directing them to appoint a Commission of Inquiry and the prayer in the other one is to initiate action for prosecution against the first respondent. It is settled law that this Court in applications filed under Article 226 of the Constitution has power to mould the relief taking into account the totality of the circumstances and the exigencies of the situation. Respondents 1 and 2 have fully understood the nature of the allegations made and traversed the same in detail in their counter-affidavits. Therefore, it cannot be said that any prejudice was caused to respondents 1 and 2.

35. Though Shri Jeth Malani argued the matter at considerable length on two occasions, at no point of time did he make any attempt to meet the various specific allegations pointedly referred to and argued by the learned counsel for the petitioner with the sole exception of the allegation pertaining to the grant of license for manufacture of cordless telephones. According to Shri Ramachandra Rao, the learned counsel for the petitioner, Shri Jeth Malani chose not to argue on merits meeting his contentions obviously for the reason that he had no case to argue.

36. We will now proceed to consider the merits of the case. The allegations are numerous. The learned counsel for the petitioner, Sri Ramachandra Rao obviously realising the difficulty from the point of view of time factor in taking us through all the allegations confined his contentions to a few of them for the purpose of

highlighting the gravity of the breaches of law committed by the first respondent and the conspicuous acts of favouritism and nepotism and personal aggrandisement included in by him. We have permitted the learned counsel to do so for the obvious reason that in a public interest litigation the issues must be limited to specific facts and accurately. In this context we consider it appropriate to point out that Sri Palkhivala, who appeared for the first respondent at the admission stage also had contended that public interest litigation is entertainable concerning few specific instances.

37. Among the specific instances with reference to which the petitioner's counsel argued the matter before us, we have chosen for critical examination some of the allegations with respect to which we find there is sufficient material on record to enter prima facie findings.

38. Selection of Co-promoter in regard to the Electronic Telephonic Instruments Project: The Andhra Pradesh Electronic Development Corporation Limited, a State Government Undertaking (hereinafter referred to as "the APEL") decided to set up an Electronic Telephone Instruments Project in the joint sector and for that purpose wanted to select a co-promoter. A notification was issued by the APEL in November 1985 inviting applications from :

"Reputed companies with good track record having turnover of not less than Rs.20 crores per annum and interested in implementing the project as Assisted Joint Venture of APEL...."

for "the manufacture of Electronic Telephone Instruments in respect of which the APEL was granted a letter of intent No. L 16003(84) dated 31-7-1984. The capacity of the project as per the notification is 3 lakh numbers per annum. The project cost is Rs.8 crores approximately and the turnover, Rs.18 crores approximately. The APEL in regard to this venture had already entered into an agreement with M/s. Siemens AG, West Germany for technical collaboration. In response to the notification 21 applications were received. M/s. K.C.P. Limited, Madras, was one of the applicants. The submission of Shri Ramachandra Rao for the petitioner is that although Sri Naren Rajan, the third son-in-law of the first respondent, was not an applicant either in his individual capacity or as a director of any Corporate-body, was favoured with the intent by an indirect device at the behest of the first respondent. Sri Naren Rajan thus came to be, favoured with this project and this is a grave instance of abuse of power. The learned counsel says that there was absolutely no justification for this favour shown to Sri Naren Rajan, who was not eligible to apply for this project, and did not even apply for it. The prescribed picture was twisted and circumvented for conferring this favour on him, Sri Ramachandra Rao asserted.

39. The allegations relating to favouritism in granting letter of intent pertaining to Electronic Instrumentation Project in favour of the third son-in-law of the first respondent, according to the petitioner in paragraph B48- of his affidavit, was traceable to an item published in English daily NEWS TIME dated 27-7-1987

according to which the Union Minister for Industries alleged that the first respondent misled the State Assembly by suppression the fact relating to favouritism shown to his third son-in-law in the matter of setting of telephone instrumentation project.

40. We have carefully scrutinised the entire material placed before us-both the petitioner and also the second respondent, the State Government. Sufficient material required for forming an opinion in regard to by this allegation has-been produced before us. Sri Naren Rajan, admittedly, is not an applicant. M/s. K.C.P. Limited, Madras, was one of the applicants, and according to the counter filed by the State Government "M/s. K.C.P. " Limited represented by Sri Naren Rajan is one among them." The list of applicants placed before us by the State Government does not show that M/s. KCP Limited was represented by Sri Naren Rajan. At serial No. 19 of the list of applicants produced before us we find "KCP Limited, 123 Mount Road, Ramakrishna Buildings. Madras." That it was represented by either Sri Naren Rajan or any one else is not stated there. The State Government's counter which claims to contain "true and correct facts" adverts to this aspect at page 79. The Government's version is that a Committee consisting of five Directors including representatives of Central University, Government of India, President of Electronic Industries Association of Andhra Pradesh (E.L.I.A.P.), and Managing Director, A.P.I.D.C. Limited, etcetera, short listed ten applicants and called for further information on their technological, financial and other relevant information relevant to the project. The ten short listed applicants were asked to submit further information and called for interview on 4-3-1986. Only five applicants appeared for the interview. The Committee at its meeting held on 4-3-1986 recorded the following decision

"The Sub-Committee discussed on the presentation of the five applicants and after due consideration, decided to select M/S. KCP Ltd. Madras, to implement the project, for manufacture of Electronic Telephones Instruments in view of its past good track record, comprising of Technocrat NRI involvement of the Chief Promotor and good managerial, technical, marketing abilities with very sound financial backing and experience in handing large projects."

The decision of the Committee, thus, categorically shows that it was KCP Limited, Madras, which was chosen for the project. The counter-affidavit of the State Government merely mentions the names of three of the five Directors, who constituted the Committee to make the selection. Who the other two members of the Committee were, we have not been told. The counter⁴ [ambiguous whether from out of the Committee consisting of five Directors any subcommittee was constituted for the purpose of taking decision. From what was extracted above we are inclined to believe that in fact there was such a Sub-Committee. The Board of Directors, according to the Government's counter, held another meeting on 7-3-1986 and confirmed the minutes of the Committee meeting held on 4-3-1986 of "selecting KCP Limited, represented by Sri Naren Rajan to implement the Telephone Instruments Project under the Corporation's letter-of-

intent. "The important and essential link is as to how the "KCP Limited, Madras" which was selected as co-promoted by the Sub-Committee had metamorphoses into "KCP Limited, represented by Sri Naren Rajan. "Was Mr. Naren Rajan at the relevant time a Director of KCP Limited? No material has been placed before us. What is indisputable is that the application was made KCP Limited, Madras, a Corporate entity. An extract of the minutes of the Sub- Committee meeting held on 4-3-1986 placed before us shows that M/s. KCP Limited was represented by five persons, including Sri Naren Rajan, Project in charge. The other four persons were, (i) Mr. P. Parankusam, Director, Parankusam Management Consultants Pvt. Ltd., (51) Mr. G.M. Krishna, Hoyasala Group Consultant,(iii) Mr. D. Seetharamaiah, Auditor and (iv) Mr. Y.S. Durga Prasad, Manager, KCP Ltd. The factors that weighed with the Sub-Committee inter alia were that the KCP group was having Rs.18 crores reserves, it pioneered in sugar and cement. plants and adopted application of electronics in cement plants in association with Siernens, West Germany, that KCP had fulfilled electronics division to maintain process control and instrumentation for sugar and cement plants; and that it had set" up various projects in Andhra Pradesh. It is, therefore, apparent that the KCP Group had possessed the requisite technical know how, financial resources and the ability to become a co-promoter with APEL for the implementation of the project in question. That is the reason why the Sub-Committee decided to select M/s. RCP Ltd., Madras to implement the project. As a next alternative, the Sub-Committee selected M/s. Aravind Mills, Ahemdabad and kept it on the panel. The sub-committee, as a second alternative to the KC-P Limited, selected M/s. Sandur Managanese and Iron Ore Limited and kept them on the panel.

41. The facts noticed so far do not indicate even remotely that Mr. Naren Rajan was selected as a Co-promoter. How he came to be selected, according to the Government's counter, is that the Board of Directors on 30- 6-1986 reviewed the effective steps taken in implementation of the Telephone Instruments Project and "noted that KFW-West Germany line of Credit was cleared for the Telephone Instruments Project. Land was already acquired and construction of budding was under progress. The first instalment of lumpsum payment towards M/s. Siemens Collaboration fee was remitted and an overall expenditure of Rs.20 lakhs which was about 50% of their equity participation was already incurred by the private promoters. In view of the above progress in the implementation of the project for manufacture of Telephone Instruments and EPABX system, the representation made by M/s. L" Avenir Telecoms Limited through Mr. Naren Raj"an, Director, the Board decided .

(1)To waive execution of specific performance guarantee with APEDC and also the deposit of 2% of the project cost thereto.

To take effective steps to transfer letter of intent or industrial licence to M/s. L"Avenir Telecoms Ltd., in overall interests of the project for expeditious implementation."

(2) From KCP "Limited to M/s. L"Avenir Telecoms Ltd., the path of progress

appears to be shrouded in mystery. No attempt, whatsoever, has been made by the learned Advocate General, appearing for the State Government to explain this change: Obviously, he could not do so.

42. The factual situation of Sri Naren Rajan having been favoured with this project has been placed before us by the learned counsel for the petitioner. who filed a photostat copy of the news item appearing in "Andhra Jyothi a Telugu Daily published from Hyderabad dated November 20, 1987. It describes the press interview taken by Shri Naren Rajan in connection with the working of the Telephone Instruments Project. The news item also shows a photograph of Sri Naren Rajan explaining M/s. L' Avenir"s telephone models. The news item, which has not been doubted by the learned Advocate- General dispenses any lingering doubts about Sri Naren Rajan being the beneficiary of the project in question He is one of the Directors of M/s. L'Avenir Telecoms Ltd., in whose favour the letter of intent originally granted to M/s. KCP Ltd., was transferred. Beyond denying the allegation that he had indulged in acts of nepotism and favouritism, the first respondent has not stated anything relevant in the affidavit. Sri Ramachandra Rao has drawn our attention to a photostat copy Of the statement showing the waiver of performance guarantee deposit in issuing licences to Shri Naren Rajan for setting up telephone instruments project in the State, as, published in the Deccan Chronicle dated 26- 7-1987 found on page 82 of the petitioner"s material papers filed along with the writ petition The photostat copy clearly mentions the name of the allottee and the date of allotment in column 6 as "Shri Naren Rajan of K.C.P. Ltd. 2-2-1987." The correctness of this has not been disputed by the respondents 1 and 2 either in their counter- affidavits or during the course of the arguments of their counsel.

43. In the matter of granting of Co- promotership for the manufacture of Electronic Telephone Instruments Project, we are prima facie of the view that there has been an abuse of power. It is claimed in the additional counter-affidavit of the Chief Secretary that the APEL and KCP limited incorporated a new company L'Avenir Telecom Ltd. of which Naren Rajan is Director to implement the project. It was M/s. KC-P Ltd., which had the required eligibility for selection as a co-promoter. The financial capacity of-the KCP, its technical know how and its past track record, were the considerations that weighed with the sub-committee in selecting it as a co-promoter. If any subsequent material had come to the notice of the Sub-committee or the decision taking authority suggestive of the unsuitability of M/s. KCP Ltd., for the choice, the project ought to have been given to M/s. Arvind Mills, which was selected as the next alternative and if for any reason that also was found to be deficient for the choice, the decision ought to have been in favour of the second alternative M/s. Sandur Mangan" and Iron Ore Limited. Skipping over the two other alternatives and stripping M/s. KCP Ltd., of what has been conferred upon it, the order of Directors on a representation made M/s. L'Avenir Telecoms, Ltd. had decided transfer the letter of intent in favour of M/s. L'Avenir Telecoms Ltd in overall interests of the project for expeditious"

" What are the overall implementation interests for such a transfer have not been pleaded before us. How the memorandum of Understanding between APE-L and KCP Ltd. claimed in the additional counter-affidavit would effect such transfer remains vague . The whole exercise undertaken by the concerned Authorities prima facie, us to hold that the entire process of selection was manoeuvred ostensibly in violation of the Procedure. M/s. KCP Limited, which had the eligibility to apply was used as a facade for conferring the benefit on Sri Naren Rajan. What was the procedure followed for transfer of the letter of intent, what were the compelling circumstances to effect such a transfer and why the other two alternatives were ignored, the record was conspicuously silent. We are distressed to notice that no light has been thrown in this regard from the side of government or from the learned counsel appearing for the first respondent; Having laid down the procedure of or the grant of co-promotership, the authorities concerned were bound in law to adhere to the same rigorously. "An executive agency" as observed by Mr. Justice Frankfurter in *Vitarelli V. Seaton*. (1959)359 US 535 "must be rigorously held to the standards by which its professional actions are to be judged This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword" This legal position obtaining in the United States Public Law was held by the Supreme Court to be part of our Jurisprudence. Bhagwati, J., as he then was, in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, stated the law thus :

"It may be noted that this rule, though supportable also as emanating from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, reaffirms this prima facie.

44. The entire manoeuvring leading to Sri Naren Rajans L'Avenir Telecoms Ltd., becoming a co-promoter, prima facie negates good faith on the part of the concerned authorities. The prescribed product reappears to have been circumvented to confer undue and undeserving favour on Sri Naren Rajan, who is the son-in-law of the first respondent the Chief Minister of the State. When circumstances pointing out strong suspicion suggestive of abuse of power on the part of the first respondent are placed before us, it is for the latter to clear the suspicion by placing the relevant material. The State Government, on its part, produced documents which do not in any manner induce us to believe that the entire transaction was aboveboard. We, therefore, consider that the material available on record warrants a prima facie finding that in securing the advantages to his son-in-law Sri Naren Rajan., the first respondent abused his power as Chief Minister.

45. Allegations Concerning Ramakrishna Studios. The first respondent purchased land admeasuring 8.000 sq. yards in Mushirabad near Golconda cross-roads in the heart of the twin cities of Hyderabad and Secunderabad, to construct Ramakrishna Cine Studio. He applied on July 8.1 1975, to the Government to sell 1,2000 sq. yards of Govt. land situated adjacent to the said site. Admittedly, as per the master plan for the city of Hyderabad, Musheerabad was declared as a residential Zone. He applied for zonal relaxation. In G.O. Ms. No. 480. Municipal Administration. dated October 12, 1976. the Government permitted conversion of the first respondent's land as "special industrial use zone" for developing it into a cine-studio. The Govt. also ordered to allot 1,200 sq. yards of adjacent Govt. land at the rate of Rs.40/-per sq. yard. He was later asked to deposit Rs.10,000/- and take possession. He accepted the rate and deposited the amount. The Tahsildar, on deposit of Rs.10,000/- gave possession of the land on September 17. 1975 which later was found to be 1.762 sq. yards. The assignment and relaxation were subject to the condition of "using the land as cine studio.

It is already noted that the first respondent assumed office on January 9. 1983 as Chief Minister. In G. O. No. 401, M.A.. dated, has. 19,1983, the government permitted Shri Jaya Krishna (one of the sons of RI). the Managing . Director of Ramakrishna Cine Studio. to change the use of the land to be one for "local commercial use"- as cinema theatres. etc. This change of user was questioned in the Legislative Assembly. Thereon. it would appear, that a representation was made by Shri Jaya Krishna, on December 3. 198,3 to refer the user of the land to be one of "special industrial use". The law Department on February.16, 1994, opined that there may be objection to reconversion of the user of the land as "Special Industrial Use". On the basis thereof, in G.O.Ms. No. 1,30, M.A. dated February 7, 1987, orders were passed reverting the use to be one for Special Industrial Use Zone". This delay has been explained in the counter-affidavit. In the meanwhile, Shri Bala Krishna (another son of respondent No. 1) again made an application on December 12. 1.986, for the change of the user to he one f or .. general commercial use for establishing shopping complex and Kalyana Mantapam" and that was permitted. The date and details thereof are not furnished. The order became final. It is stated by the petitioner. and 11 is not denied by, the respondents, that the construction for commercial use was made contrary to the approved plan. converting the use. to one of shopping complex. etc., without permission; and that the Municipal Corporation had issued notice to demolish the construction. He was alloeed not to demolish the construction on his agreeing to pay a compounding fee of Rs.20,000/-. The agreed rate of value of the land from Rs.40/- per sq. yard was reduced to Rs.15/- per sq. yard as per G.O.Ms.No. 862/M.A.datedMay 19, 1983. These are facts borne out by the record.

46. The allegation in this regard by the petitioner is that the first respondent being the Chief Minister had abused his power in all by wing the conversion of the studio at several states to suit his convenience for commercial use contrary to the master plan. the original object of relaxation was to develop a cine studio

for encouraging the film industry; but after his assumption of the office as the Chief Minister, he wanted to make use of the valuable land for commercial purpose, defeating the very object of the assignment of the land. It is also further stated that when conversion was objected to by the legislators on the floor of the House, a farce of an attempt to convert it to the original use viz., cine-studio was made. The papers were alleged to be kept pending till 1987 when the permission was granted relaxing the Zonal Regulation to use it as a "commercial venture" - shopping complex and marriage halls. It is common knowledge that price of land in Hyderabad, for that matter in any urban area, shot up by leaps and bounds between 1975 and 1983; but surprisingly the first respondent, soon after assumption of office in 1983 got the accepted land value of Rs 40 per square yard prevailing in 1975, reduced to Rs.15/- per sq. yard in 1983, thereby causing a loss of about Rs.50,000/- to the State. The agreed compounding fee of Rs.20,000/- was reduced to Rs.1,000/-. The frequent change of the user of the land" contrary to the purpose of assignment is an abuse of power.

47. It is admitted in the counter-affidavit that the application was made on February 16, 1984 for reconverting the user to the original use and it was pending for a long time,- till issue of G.O.Ms. No. 130 dated February 7, 1987. What is more astonishing is that it brooked no delay for first respondent to have it changed into general use on an application dated December 12, 1986 filed by Mr. Balakrishna. Though an attempt has been made in the counter-affidavit by the Chief Secretary to make it appear that the papers relating to the application dated December 3, 1983 filed by Shri Jayakrishna had been mixed up with some other papers, and therefore, it was kept pending for long, it would be very hard to accept. One stark question is, when the file related to the family members of the Chief Minister, would any officer dare enough to allow the papers mixed up, or to keep it pending for such "a long time unless there was some hidden reason or oblique motive - this is the argument of the learned counsel for the petitioner.

48. We find the force of this argument. One would expect diligent effort to trace out the files immediately on the part of the Officers concerned if there is any truth in the allegation that files got mixed up. Perhaps for the reasons best known to them, it was kept pending; and ultimately orders were passed converting the user of "Special Industrial Zone" to be that of "General Commercial Use Zone" in succession. The contention of the learned Advocate-General is that the first Despondent did not deal with the file; the application for reduction of price was made at a time when Congress Government was in power, the District Collector recommended on February 10, 1983, to reduce the price of land to Rs.15/- per square yard; the reduction of the compounding fee from Rs.20,000/- to Rs.1,000/- also was recommended; and Government merely accepted the recommendations.

49. We find it difficult to agree with this Contention. When there was an upward trend in the value of land everywhere, is it Conceivable that without any pressure

from any interested person, the officer could have recommended a reduction of the value from the rate of Rs.40/- per square yard agreed to 1975 to a ridiculously low price of Rs.15/- per square yard as though the price of land in fast developing city like Hyderabad, Secunderabad showed a downward trend. The recommendations of the District therefore, create suspicion in the mind of any right thinking person.. The compounding fee of Rs.20,000/- was voluntarily offered by Mr. Jayakrishna to have benefit of retaining the construction made without obtaining the necessary permission violation of the statutory provisions. He was otherwise required to demolish the entire construction, which would have meant considerable loss to him. After having taken in advantage arising out of the compounding .c, where is the need, and what is the satisfaction for reducing it from Rs.20,000/- to Rs.1,000/- ? There is absolutely no convincing reason coming forth The land user as been frequently changed. This extraordinary action is sought to be justified the counter-affidavit stating that mere use Sri Balakrishna happened to be the son of the Chief Minister his request could not be turned down. Has this been done in the normal course the beneficiary being Sri Balakrishna would not have been a matter for comment. The frequent changes in the land user and the reduction in the price of land and the compounding have been made after the first respondent came to power as Chief Minister; and the beneficiaries are none other than his family members. We are, therefore, prima facie of the view that the actions of the State Government in this regard are the result of abuse of power by the first respondent.

50. Exemption of land at Nacharani from the Urban Land (Ceding and Regulation) Act : Shri A. Narayana, Reddy, owner of land admeasuring Ac.5-00 found in excess of the ceiling and covered by & Nos. 19711-B, 198B, 199B, 206-1-B situated in Nacharam within the Hyderabad Urban agglomeration filed an application before the Government for exemption so as to enable him to sell Ae. 4- 21/2 guntas in favour of Messrs. Ramakrishna Cine Studios, Musheerabad. It was claimed that R. K. Cine Studios were having agricultural lands adjacent to his land, they intended to" develop horticultural garden for outdoor shooting of films. The State Government in exercise of its power u/s 20(1) of the Act granted exemption of Ac.4-2V2 guntas (16440 Sq. metres) in favour of Shri Narayana Reddy through G.O.Ms. No. 501 (Revenue) dated 9-3-1983 so as to enable him to sell the land to M/s. R. K. Studios to develop a horticultural garden for outdoor shooting of films.

51. On 23-3-1984 Shri Jayakrishna, one of the sons of the 1st respondent as a partner of R. K. Studios made an application to the State Government to exempt Ac. 1 1-31 guntas (47,70) Sq. metres) by G.O.Ms. No. 450 dated 3-5-1985 subject to use of the land only for horticultural garden for outdoor shooting of films, obviously by M/s. R. K. Studios. It is now an admitted fact that the State Government granted permission to Sri Balakrishna (another son of the first respondent) to convert M/s. R. K. Studios for local commercial use as far back as 19-5- 1983 by G.O.Ms. No. 401, Municipal Administration, the land use was changed from "Special Industrial Zone to Local Commercial Use Zone". It is

admitted in the counter affidavit of the State Government at page 193 in paragraph 21 that Shri N. Balakrishna made an application for conversion of the land for general commercial use as it was "not desirable to have the Cine Studios in the midst of heavy congested area with heavy automobile traffic. The request of Mr. N. Balakrishna could not be negated on the mere fact that he happens to be one of the sons of Sri N. T. Rama Rao and accordingly agreed for "conversion of the land use from special industrial use zone to general commercial use zone. Sri N. Balakrishna, the owner of this property also submitted the proposals to demolish all the existing structures and replace them by well planned shopping complex cum kalyana mantapam and this was agreed

52. It is therefore clear that after the R. K. Studios ceased to be a film producing centre, the need of Nacharam lands (47702 square metres) as horticultural garden for the purpose of outdoor shooting of films automatically came to an end. In such a situation action ought to have been taken by the State Government to withdraw the exemption and resume the land on the ground that it was not being used for the purpose for which the exemption was granted. There is no mention in the counters of R-1 and R-2 that any action was initiated to withdraw the exemption and to resume the land. The beneficiaries in this regard being the members of the first respondent's family we find it hard to resist the prima facie conclusion that the omission in this regard is due to abuse of power by the first respondent. We find no force in the contention of the learned Advocate-General that as this issue also would come within the purview of Challa Kondaiah Commission of Inquiry, this Court had no jurisdiction to go into the question. The pendency of such an inquiry does not debar the exercise of jurisdiction of this Court under Article 226 of the Constitution.

Exemption Of Entertainment Tax In Respect Of The Two Theatres - Ramakrishna 70 MM And Rarnakrishna 35 MM - Belonging To The Members Of The First Respondent's Family :

53. The Andhra Pradesh Entertainment Tax Act, 1939 by 5. 19-A confers power on the - State Government to grant exemption from payment of entertainment tax" by the film exhibitors. On a representation made by the Film Exhibitors Association (hereinafter referred to as "the Association on 8-3-1985, the State Government issued G.O.Ms. No. 752 Revenue (5) Department dated 4-7-1985 laying down the guidelines for granting exemption from payment of entertainment tax. Natural calamities, national calamities, break-down in law and order, social customs and cancellation of licence are circumstances to be taken into consideration as per the G.O. for granting the exemption. It also lays down the procedure to be followed : an exhibitor, who seeks the benefit of exemption under the Act is required to submit application in the prescribed form to the Entertainment Tax Officer explaining the circumstances under which the exemption is claimed. On receipt of the application the Entertainment Tax Officer shall record his recommendations and forward it to the Commercial Tax Officer within a week from the date of receipt of the application. The Commercial Tax

Officer is required to forward, application along with his recommendations to the Deputy Commissioner, who in turn shall examine and forward it to the Commissioner of Commercial Taxes. The procedure further contemplates that the Commissioner shall forward the application with his specific recommendations to the Government, who is the competent authority to grant the exemption Paragraph 6 of the G.O. lays down that the application for exemption shall be made within 30 days from the date of the close of the week in respect of which the Application for relief u/s 19A" is requested. In respect of pending claims from 1-1-1984 to 4-7-1985. the date of issue of G.O.Ms. No. 752, paragraph 7 of that G.O. lays down that the exhibitors shall submit applications seeking exemption in the prescribed manner "within 30 days from the date of this order.-

54. In respect of Ramakrishna 70 MM theatre by G.O.Rt. No. 21-5 Revenue (5) Department dated 12-2-1987 the Government granted exemption of tax aggregating to an another order. G.O. Rt. No. 216. Revenue (5) Department dated 12- 2-1987 a tax of Rs.61,400/- was exempted in respect of Ramakrishna 35 MM theatre. In both the cases exemption was granted due to curfew on the demise to Smt. Indira Gandhi,"etc.

55. The aforesaid point of exemption in respect of the two theatres was seriously challenged by the petitioner contending that this was an act of rank nepotism and dishonest abuse of power by the first respondent. The objection was sought to be met by the first respondent in his -counter by denying the Allegation; the applications of all the persons who applied for exemption it was well were considered by the proper authorities and orders were passed giving similar benefit. The counter-affidavit of the State Government was to the effect t hat in the twin cities "not only these two theatres belonging to family members of the Chief Minister but also 17 other theatres were given exemption"; the Sub-Inspector, Abids Police Station, issued a certificate regarding the closure of the theatres - Ramakrishna 70 MM and 35 MM - on the dates mentioned in their representations dated 6-3-1986 addressed the Commissioner of Police; and the concerned authorities, therefore, granted the exemption and so no illegality could be attributed.

56. We have examined the matter very carefully with reference to the documents filed by the Government itself. The owners of the two theatres in question made two representations in respect of the two theatres on the same day, viz., 6-3-1985 (vide pages 429 to 431 and 439 to 443 of Government's material papers) to the Commissioner of Police requesting for issuance of a certificate for claiming exemption from the entertainment. tax. In the representation relating to 70 MM theatre it was mentioned that on certain elates in the years 1984, 1985 and 1986 the theatre was closed and consequently "84" shows were not exhibited. So far as 35 MM theatre was concerned the closure of the periods was confined to the Years 1984 and 1985 and the number of shows that could not be exhibited was "\$U. On the same day. i.e., 6-3-1986. on both the representations, theSub-Inspectoro(Police, Abids Station made an identical

endorsement in the following terms : "Certified that on the above dates shows were not screened at the theatre." According to the counter of the State Government (on page 96) "After obtaining the necessary certificates from the Sub-Inspector, Abids Police Station, the Commissioner of Police" by two memos forwarded "the representations to the concerned Entertainments Tax Officer. What strikes us very prominently is that the representations seeking exemptions were filed long after the stipulated period of 30 days limitation, in respect of the alleged closures of the two theatres for certain periods in the years 1984 and 1985 the representations were made "Only on 6-3-1986. No authority concerned ever bothered to check up the crucial fact whether the representations were preferred within the period of limitation. What was the reason for overlooking such an apparent and important matter "? Was it allowed to be overlooked? What is more startling is that on the same day when the representations were made, i.e., 6-3-1986, the Sub-Inspector of Police, Abids Station, made an endorsement certifying that on the dates mentioned in the representations shows were not screened. How could the Sub-Inspector of Police on 6-3-1986 verify the alleged factum of the closure of the theatres for certain days in the years 1984 and 1985 ? What was the material and the source with reference to which the Sub-Inspector could make such an endorsement ? In the representation relating to 70 MM theatre it was stated that only in respect of 3 dates during three weeks in 1984 shows were not exhibited because of curfew. During the period 2-10-1984 to 4-10-1984 "4" shows were not exhibited because of the demise of Smt. Basavarama Tarakam. During the period 31-10-1984 to 1-11-1984 "3" shows were not exhibited due to the demise of Smt. Indira Gandhi. On 31-7-1985 "4" shows were not exhibited because of Andhra Pradesh "Bhandh" and on 26-2-1986 "4" shows were not exhibited due to Bharat Bandh. Thus, only in respect of "26" shows alone reasons were mentioned in the representation in the remarks column. For the remaining "58" shows (84-26) the representation did not contain any reasons. Likewise in the representation relating to 35 MM theatre it was mentioned, that on 9-9-1984 "3" shows were not exhibited due to disturbances and curfew, "4" shows were not held on 2-10-1984 due to the demise of Smt. Basavarama Tarakan, shows were not held on 31-10-1984 because of Smt. Indira Gandhi's demise and "4" shows were not held on 31-7-1985 because of Andhra Pradesh Bandh. Thus in respect of "14" shows alone out of "&)" shows reasons were mentioned in the representation in the remarks column. As regards the remaining "66" shows (80714) no reasons whatsoever were mentioned. It is evident that the Sub-Inspector of Police was acting at the behest of comence in making blind endorsements certifying non-exhibition of "84" and "&)" shows respectively in the two theatres and they were in turn certified by the Commissioner of Police. As the two theatre belong to the family members of the first respondent, the patent infirmities relating to the period of limitation, the non-disclosure of the full particulars relating to the days when the shows were claimed to have been not exhibited and the failure to mention the reasons it would appear, were deliberately overlooked and the State Government headed by the first respondent granted exemption. The learned

Advocate-General endeavoured to support the two exemptions by contending that "17" (seventeen) theatres in the two cities also were granted exemption from entertainment tax, the list of all the "19 theatres was also filed as a material paper. Under what circumstances exemptions were granted to those 17 (seventeen) of her theatres whether those theatres complied with all the procedural formalities we cannot enquire for the read on that no material in that regard has been placed before us. We are, therefore, prima facie of the view that the granting of the exemptions to the two theatres in question was due to abuse of power by the first respondent.

57. License for N4ini Steel Plant : the Industrial Development Bank of India (IDBI) listed mini Steel plants as banned units for financial assistance and communicated the same to the A.P. State Financial Corporation (APSFC). The petitioner contends in paragraphs C.62 to C.78 of his affidavit that with a view to granting license and financial assistance to persons like Shri Naren Raian (third son-in-law of the 1st respondent) and Shri Murali Krishna (son of Shri P. Upendra," leader of Telugu Desam Parliamentary Party) suspended without any authority the directions given by the IDBI, invited applications and granted financial assistance to the tune of Rs.75 lakhs each : in the case of Sri Naren Rajan it was done in one day without complying with the formalities. In the counter affidavit of the Chief Secretary it was admitted that the IDBI issued instructions declaring mini-steel plants has banned units and directed APSFC not to grant financial "benefits to the mini-steel plants. It was also further admitted that the APSPC- suspended the operation of the directions, invited proposals to set up mini-steel plants, 39 proposals were received, the Screening Committee approved 12 proposals and granted financial benefits. They (APSFC) also admitted that the ban was restored subsequently but meanwhile financial benefits were granted to the nine mini-steel plants, including L'Avenir Steel (Pvt.) Limited. A list of the particulars of the mini-steel plants was furnished during the course of the bearing. It was admitted at the Bar by the learned Advocate General that P. V. Krishna Mohan and Parvataneni Sarat, the promoter-directors of Jagnar Steels are the sons of Shri P. Upendra,. but it was denied that L'Avenir (Pvt.) Ltd., belongs to Shri Naren Rajan. The list of the mini-steel plants furnished to us shows that one Shri C. H. Raghurami Reddy .Is the Managing Director and Shri T. Ajya Kumar Reddy, a Director of L'Avenir Steels. In the counter affidavit of the Chief Secretary at page 105 it was mentioned : "if they happened to be related or connected to persons in power it is only accidental."

58. Shri Ramachandra Rao, the learned counsel for the petitioner, contended that Shri Naren Rajan after obtaining financial ,assistance from APSFC, and the Andhra Bank, sold away his interest in L'Avenir (Pvt.) Limited to third parties during the pendency of these two writ petitions, and therefore he sought a direction from this Court to the APSFC to produce the relevant records.

59. The whole transaction" excited suspicion. Suspicion of the ban imposed by the IDBI, has grant of loans to people closely related to men in power and the

reimposition of the ban almost immediately thereafter are reasons strong enough to conclude prima facie that power has been abused by the first respondent. The two constraints on the power of the State to grant large . namely (i) choice of persons and (ii) terms and conditions as laid down in the ruling of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, do not appear to have been complied with. Although the Lok ALyuktha went into this question, his report, in our view does not deal with the question from the view point of the two relevant to laid down by the Supreme Court in the above case.

60. Grant of exemption u/s 20(1)(a) of the Urban Land (Ceiling and Regulation) Act, 1976 in favour of Vijayawada Iron and Hardware Merchants Association: By G.O.Ms. No. 321 Revenue (U.C.) Department dated 8-4-87 an extent of land 2,29,964 Muare metres admeasuring (approximately Ae. 54-00) situated in Bbavanipuram within " the urban agglomeration -of Vijayawada was exempted from the operation of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Urban land Act") in favour of the - Vijayawada Iron and Hardware Merchants" Association (hereinafter referred to as "the Association) in the public interest subject to certain conditions specified therein. Sri Ramachandra Rao for the petitioner contends that contrary to the purpose of the Urban Land Act the exemption was granted and thereby the 1st respondent committed flagrant abuse of power for collateral and corrupt considerations. The impugned action has supported by the 1st respondent who leaded in his counter that exemption was granted keeping in view the urgency to remove iron and hardware business from the present congested streets to the outskirts d he city and in order to relieve traffic congestion". He also pleaded that the petitioner has no interest in the subject matter and the G.O., was not challenged by any person. The State Government's counter pages 21 to 24) seeks to justify the exemption to on the ground that it was felt necessary relieve the traffic congestion by shifting the iron and hardware business from the congested streets to the outskirts of Vijayawada. The Association submitted a representation on 8-3-82 stating that the entire extent "was needed by the Association for the construction of business complex for allotment to its members and after a detailed examination of the case the Government considered it expedient in the public interest to exempt the land...."

61. The order of exemption, G.O.Ms. No. 321 dated 8-4-1987 does not recite that the exemption was granted for purposes of relieving traffic congestion; the only ground it mentions is "public interest". How public interest is suberved by granting exemption of a huge extent of nearly Ac. 54-00of land in favour of the Association for construction of business complex we fall to understand in the particular circumstances of the case. How many members are there in the Association and what was the requirement of each of the members has not been stated either in the order of exemption or in the counter filed on behalf of the 1st and 2nd respondents. We looked in vain for relevant material in this regard. In a huge extent of about Ac.54-00 of land one could build almost a township. Some

of the objects of the Urban Land Act as set out in its preamble are : to provide for imposition of ceiling on vacant land in urban agglomerations, for acquisition of such land in, excess of the ceiling limits with a view to preventing concentration of urban land in the hands of a few persons and to bringing about an equitable distribution of land in urban agglomeration to serve the common good. Section 11 of the Act concerns with payment of compensation for the vacant land acquired under the Act : the compensation payable is minimal - either the amount equal to 8-1/3rd times of net average income or if there is no such annual income at the rate of Rs.10 per square metre for lands falling within the urban agglomeration specified in Categories A and B of Schedule 1 and at Rs.15/- per square metre in respect of lands falling in urban agglomeration specified in categories C and D of the same schedule. Section 23(4) enjoins a duty on the State Government to dispose of the acquired land so as to subserve the common good on such terms and conditions as the State Government may deem fit to impose. Our Constitution by its preamble enjoins economic justice as one of the goals to be achieved. Article 39(b) rates a directive to the State that the ownership and control of material resources of the community should be distributed in the best possible manner to subserve the common good. Operation of the economic system, according to the directive contained in Article 39(c) should not result in the concentration of wealth and means of production to the common detriment. Urban Land Act was enacted for the purpose of giving effect to the directive principles and the Constitutional objectives contained in the preamble. How was the State Government justified in granting exemption in respect of such a huge extent of valuable land about Ac.54-00 in extent from the operation of the Urban Land Act ? Had the Urban Land Act been made applicable to the land, the entire excess could well have been distributed in a more realistic manner taking into consideration the exigencies of the situation, the requirement of public interest and other related matters. Even assuming that the Association members were in need of a separate business complex, that could have been satisfied by granting separate clients of land in favour of genuine members on lease for long periods and the remaining extent could have been saved for other more useful purposes, instead of allowing retention of the land by granting exemption. The State Government while granting exemption did not appear to have taken into account the relevant factors. What is the common good in the act of the State Government in granting exemption of the entire extent of about Ac.-54- 00 of land straightway in favour of the Association ? Dealing with the purpose of Urban Land Act, its preamble and its relevance in the context of Article 39 (b) and (c) Krishna Iyer, J., in *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, held "The purpose of the enactment. garnered from the preamble, is to set a ceiling on vacant urban land, to take over the excess and to distribute it on a certain basis of priority. The whole story of the legislation, the long gestation of pre-legislative consideration, the brooding presence of Article 39(b) and (c) and the emphasis in Section 23(4) on common good as the guiding factor for distribution point to public purpose, national development and social justice as the cornerstone of the policy of

distribution The touchstone is public purpose, community good and like criteria. If the power is used for favouring a private industrialist or for nepotistic reasons the oblique act will meet with its judicial Waterloo. To presume probable graft, nepotism, patronage, political clout, friendly pressure or corrupt purpose is impermissible. The law will be good, the power will be impeccable but if the particular act of allotment is mala fide or beyond the statutory and constitutional parameters such exercise will be a casualty in court and will be struck down. We must interpret wide words used in a statute by reading them down to fit into the constitutional mould."

We are not impressed by the argument of the learned Advocate General that hundreds of exemptions had been granted by the State Government ever since the Urban Land Act came into force and that a Commission of Inquiry headed by Sri Chalia Kondaiah, former Chief Justice of this Court, had been appointed to examine the exemptions so far granted from the inception of the Act. We are not concerned with the other exemptions nor have the circumstances relating to those exemptions been placed before us.

62. We are, therefore prima facie of the view that G.O.Ms. No. 321 Revenue (U.C.) Department dated 8-4-1987 is a result of arbitrary exercise of power in disregard of the objectives of the statute, the constitutional goals set out in the preamble and the directive contained in Art. 39(b) and (c).

Purchase of Ac.22-00 of land at Gaddiannaram from HUDA by the Agricultural Market Committee, Hyderabad

63. An extent of land admeasuring Ac.22-00 covered by S. Nos. 124 to 128 at Gaddiannaram village in Hyderabad Urban Agglomeration along with some other extent of land was acquired by the Government for the benefit of the Hyderabad Urban Development Authority to as "HUDA"). The Government grant(permission by memo dated 24-1-1986 to the Agricultural Market Committee to take the said Ac.22-W of land at the cost of Rs.3.50 crores from HUDA for establishment of fruit market by shifting the present fruit market at Jam Bagh. The Agricultural Market Committee has permitted to pay an initial amount of Rs.2 crores and for the balance the committee was advised to apply to the Government for issue of necessary sanction orders.

64. It was the contention of Sri Ramachandra Rao, the learned counsel for the petitioner, that the Agricultural Market Committee was forced to purchase this land at the rate of Rs.15 lakhs per acre while its actual market value was less than Rs.4 lakhs per acre. For arranging this land deal, one A.S. Krishna of Guntur had given Ac.300 -00 of land, which includes mango garden in an extent of Ac.-150-00 and 300 buffaloes as a Consideration to the first respondent's relatives. According to the petitioner, this Allegation "was contained in the statement made by one Shri B. Mohan Reddy, a former member of the ruling Telugu Desam Party, and a former, Convenor of the city Unit of the Party. The further allegations levelled by the Petitioner in this regard are that the market

value of the land in 1985-86 in Gaddiannaram was about Rs.80/- per sq. yard, but the first respondent pressurised the Market to purchase the same for Rs.3.50 crores for HUDA and in this transaction the Market Committee lost Rs.3 crores. The adjoining land in S. Nos. 911 and 9/6 was being sold at Rs.4 lakhs per acre and there was an extent of Ac.60-00 of land available in Victoria Memorial House in the neighbourhood. The Officers concerned are Thomas, Vice-Chairman, HUDA and Sri . P. Singh - were transferred because they did not oblige the Chief Minister."

65. The 1st respondent in his counter denied this allegation. He pleaded that the Government had appointed a Commission under the Commissions of enquiry Act to go to the Gaddiannaram land affair and the enquiry was in progress. The alleged transfer officials on the ground that they did not oblige him was also denied. The State Government in its counter while denying the allegations as baseless and false stated that the inquiry before Justice Koka Ramachander Rao Commission appointed for this purpose was in progress. The notification for acquisition of the land was issued in January, '78 at the request of H UDA. As per the record the land originally belonged to J. Narasimha Reddy and J. Sudarshan Reddy. Subsequently it was brought to the notice of the Land Acquisition Officer that there was an agreement in favour of Messrs. A. S. Krishna & Company and after litigation between the Parties a decree was passed in favour of the later, and the sale deed was executed in their favour in 1981, the award was passed in June.'82 by the Land Acquisition Officer and possession was taken on 22-6-1982. The compensation awarded by the Land Acquisition Officer was Rs.42,000/- per acre. The Second Additional Judge, City Civil Court, Hyderabad, on a reference made u/s 18 of the Land Acquisition Act at the instance of the landholder enhanced the compensation at the rate of Rs.7,74,400/- per acre. The HUDA filed a review petition seeking review of the decree on the ground that the landholder A. S. Krishna had entered into agreement of sale with third parties agreeing to convey the land at the rate of Rs.90,000/- per. acre and this material was now within the knowledge of HUDA when the reference u/s 18 was under inquiry. The review petition was dismissed by the Additional Judge. The HUDA preferred two appeals - C.C.C.A. Nos. 54 and 55 of 1987 - which are now pending in the 1A High Court. After several meetings were held to consider the proposal to shift the fruit market to the outskirts of the City, the decision for construction of market complex in the Ac.22- (X) of land in Gaddiannaram was taken. The price of Rs.3.50 crores was negotiated and agreed to by the HUDA and the Market Committee and accordingly the amount was paid. The land covered by S. Nos. 6/1 to 6/8 is in the occupation of Victoria Memorial House, which was endowed by the then Nizam of Hyderabad. And as the same was governed by, the A.P. Charitable and Hindu Religious Endowments Act it could not be acquired. The allegation regarding the transfer of the two officials was denied as false and baseless.

66. The entire affair relating to Gaddiannaram land is the subject matter of inquiry before Justice Koka Ramachandra Rao Commission appointed by G.O.Ms.

No. 568, Municipal Administration Department dated 22-5-'87 under the Commissions of Inquiry Act, 1952. Sri Justice Ramachandra Rao is one of our greatest Judges. whose eminence, integrity and objectivity cannot be questioned by anyone. The Commission of Inquiry not being a Court and a sits report is recommendatory in nature, this Court is not disabled from scrutinising the allegation in question. The sale was by, the HUDA, a public body, in favour of Agricultural Market Committee, another public body. Although at first blush it may appear that in a transaction involving two public bodies no private individual could raise any doubts regarding its legality or propriety, on a closer examination we find that such a view is incorrect. The HUDA was not constituted for the purpose of making profit like any other ordinary real estate dealer.

67. The A.P. (Agricultural Produce and Livestock) Markets Act, 1966 regulates the purchase and sale of agricultural produce and products of livestock and the establishment of markets in connection therewith. The Government is empowered by Section 4 to constitute a Market Committee. for every notified area. The composition of Market Committee is dealt in Section 5. The Government has a very decisive role to play in the appointment of members. Every contract entered into by a Market Committee, Section 1"1 enjoins, shall be in writing and shall be signed on its behalf by the Chairman and two other members. All the monies received by a Market Committee shall be paid into a fund called the Market Committee Fund. Section 15 mentions the purposes for which the Market Committee Fund may be expended; one of the purposes is acquisition of site for the market. Section 27 confers revisional power on the Government in respect of any orders passed by the Director of Marketing. By Section 33 rule-making power is conferred on the government. Rule

143 specifically deals with acquisition of lands and execution of works thereon. It says that the land required for the purpose of Market Committee shall not be acquired otherwise than under the Land Acquisition Act. It provides for exception only in cases where the land to be purchased is at a rate negotiated by a Committee consisting of the Revenue Divisional Officer, the Assistant Director of Market in and the Chairman of the Agricultural Market Committee concerned, and the said rate must be finalised with the prior approval of the Director of Marketing. Sub-rule (2) of Rule 143 further lays down that the acquisition, purchase and disposal of movable or immovable property shall be in a manner specified from time to time by the Government.

68. The counter-affidavits filed by respondents 1 and 2 did not state that Rule 143 was complied with. The Government material papers also do not show that Rule 143 has been complied with No Committee as contemplated by Rule 143 appears to have been constituted for arriving at a negotiated price. When law prescribes a particular mode for exercise of power, all other modes of the exercise of power are forbidden. This is the settled position. (Vide, Gujarat Electricity Board Vs. Girdharlal Motilal and Another, , Narbada Prasad v. Chhaganlal, AIR 196@ SC 395 and State of Gujarat Vs. Shantilal Mangaldas and

Others, .

69. The Government accorded permission to the Agricultural Market Committee to purchase the land at a cost of Rs.3.50 crores on 24-1-1986 by Memo. No. 16854/Mkts. 11 (i)/S4-4. This was preceded by several meetings and discussion by the concerned officials. The Collector, Ranga Reddy District, was asked to inquire into the market value of the land in question and ha accordingly by his letter No. DS/14757184 dated 29-9-1985 (Government material papers 109) informed the Secretary to the Government, Food and Agriculture Department :

"As regards the market value the sale transactions during the year 1985,were took place between Rs.65/- to Rs.135/- per sq. yard. The local inquiry reveals that the prevailing" market rate is retailing from Rs.250/- to Rs.300/- per square, yard "

The amount ultimately paid by the Agricultural Market Committee to the HUDA was at Rs.400/- per square yard, far higher than the prevailing market price. As the alienation of land was by one public body to another public body, there appears to be no rational reason for charging such a high rate. The Agricultural Market Committee was made to pay Rs.3.50 crores for no ostensible reason. One of the relevant guidelines for determining the value by the HUDA was the price which it was required to pay to the landholder as a result of acquisition of the land under the Land Acquisition Act. By that time the award of the Land Acquisition Officer was already passed determining the land value at Rs.42,000/- per acre. The decree of the Civil Court u/s 18 of the Act was not yet passed as the matter was pending then. At best HUDA could have made sufficient provision for any foreseeable increase in the compensation amount. Even the Civil Court's decree dated 30-t-"87 enhancing the compensation to Rs.200/- per square yard was felt to be high and the matter was carried in appeal by the HUDA to the High Court in C.C.C.A. Nos. 54 and 55 of 19871 which are pending. In such circumstances, we do not find, prima facie, any rational basis from" either legal or factual points of view justifying charging Rs.400/- per square yard by the HUDA from the Agricultural Market. Committee. The statutory procedure as adverted to supra appears to have not been complied with. The owner of the land, M/s. A. S. Krishna & Co. as disclosed by the two agreements dated 8-6-1981 and 5-1-1982 had agreed to sell the land to two Co-operative Housing Societies at the rate of Rs.90,000/-per acre and at Rs.65,000/- per acre respectively. The proposed vendee being Co-operative Societies, it could not be said that the agreed price was understated in the agreements. What disturbs us, is the resulting situation from the Government Order dated 24-1-1986 (Ex. B-13) which led to the Marketing Committee being forced or induced to buy the land at a rate exceeding. Rs.15 lakhs per acre within such a short interregnum and when the price awarded by the Land Acquisition Officer was only Rs.42,000/- per acre. The relevant circumstances that ought to have been taken into consideration appeared to have been overlooked. We, therefore, prima facie, are of the view that the second respondent in an arbitrary manner compelled the Agricultural

Market Committee to part with a huge amount of Rs.3.50 crores for purchasing Ac. 22-00 of land in Gaddiannaram. In transactions between one public body and another Public body for a public purpose, there should not be any room for profit motive.

Burning of Houses of Samantha Tribals :

70. With a feeling of anguish, Sri Ramachandra Rao, the learned counsel for the petitioner, has invited our attention to the averments in paragraphs E-62 to E-66 in the affidavit of the petitioner which relate to the inhuman act of burning by the police of 600 houses belonging to Samantha Tribals in Chintapaili Forest area on the alleged ground that the Tribals sheltered extremists. A photostat copy of an alleged tapped wireless message sent by the Station House Officer of Chintapaili was extracted in the affidavit which was to the effect that "only the houses of Samantha Tribals alone should be burnt but not the houses of other tribals." It was alleged in paragraph E-65 of the petitioner's affidavit when the Director-General of Police, Sri Ram Mohan Rao was confronted by the press-correspondents about this matter, he was of the view, "It may have been done because they, i.e., tribals were sheltering Naxalites."

71. There was no specific denial in the counter of the State Government about the allegations regarding the burning of the house of Samantha Tribals or the genuineness of the wireless message, asking the police to commit this atrocity. The explanation sought to be given in the Government's counter is that the houses of some of the Samantha Tribals are located away from the main village and it was suspected that those houses are providing shelter to the extremists and "unless the dwellers of these hutments are persuaded to join the main village, it would be utterly difficult to contain the extremists" menace. In that Direction, steps were taken by the police to make them join the main villages."

72. The allegation about the burning of the houses of Samantha Tribals appears to be true. The action of the police in indulging in acts of arson in order to deprive the poor and illiterate tribals of their shelter in the guise of containing the menace of extremists, is by any standards a brutal and barbarous act shocking the conscience of any civilized man. The depths of depravity to which the law enforcing agencies should descend this incident illustrates. However, we are not linking the first respondent either directly or indirectly with this carnage perpetrated by the police.

73. During the course of the argument Sri S. Ramachandra Rao produced before us the statement of the 1st respondent stated to have been laid before the Legislative Assembly December, 14, 1987, the day previous to the commencement of the argument in this case. The learned counsel submitted that the object of the statement was to answer the various allegations made in the writ petition. We refrain from making any comments with respect to that inasmuch as it is stated to be a white paper placed before the Legislative Assembly and must have been with the consent of the Speaker. The learned

counsel also took serious objection to practically the whole of the white paper having been published in the Government owned "Telugu Samacharam", a fortnightly, reproducing the whole of the statement contained in the said white paper which was produced in the Court on 18-12-1987. He took strong objection particularly to the editorial written under the signature of Sri V. Saidulu, Commissioner, Information and Public Relations Department and Special Officer, who is the Editor, Printer and Publisher, under the caption on the first page "(*)" (everything crystal clear), "(*)" (with the coloured Photo of the 1st respondent and putting thilakam on his forehead) conveying double meaning culture is being preserved or culture become sacrilege, and "()" (end to gossip). Our attention has been drawn in particular to the following passages in the editorial :

"Dishonest persons are like Kouravasena. As in the case of "Abhimanya" who was finished in "an unjust war they can construct or trying their army in contemptible positions to disarm the honest citizens.-

Our Chief Minister Sri Navidamuri Taraka Rama Rao Garu was determined to cleanse the rotten dishonesty in the administration and ill the political field and to control those Royal birds (Rabandulu) who are accustomed to eat money."

"it is but natural that the crows of dishonest make conspiracies to wound, the leader who was ready to eliminate dishonesty with the weapon of power given by the people, with their contemptuous weapons of allegations."

"It is very painful that by false propoganda the innocent people were submerged in confusion and in them false doubts were created against their patronaged leader."

Sri Ramachandra Rao, the learned counsel for the petitioner, with certain amount of emotion submitted that this editorial was written manifestly at the behest of the 1st respondent and that it undoubtedly amounted to an attempt to interfere with the due course of justice. Inasmuch as Sri Saidulu the editor, who is stated to be the author of the editorial. is not before us and we are also told that certain contempt proceedings are already pending against him in this Court, at this stage we refrain from expressing any opinion in the matter or taking any action pursuant to the plea put forward by the Petitioner's Counsel.

74. Sri Ram Jeth malani, towards the end of his arguments raised the question about the propriety of the learned Attorney General assisting this Court as amicus curiae. According to him, the participation of the learned Attorney-General as amicus curiae vitiates the proceedings. While conceding that valuable assistance was rendered by the learned Attorney-General. it was urged by Sri Jethmalani that paradoxically its effect was vitiation of the proceedings. He ,contended that amicus curiae has extremely limited role., he is not expected to assist the Court or make comments about the factual aspects of the case. As friend of the Court, the duty of the amicus is to place, em invitation of the Court, the questions of law involved in a particular case for the Court"! consideration.

The Attorney-General in India being a Constitutional functionary under Article 76, has no power to appear as a amicus in any High Court is the larger question posed by the learned counsel. The limited question on which he laid considerable stress was that the Central Government being a party to this litigation and as the petitioner has claimed relief against the Government of India. The learned Attorney-General whose duty is to aid and advise the Government of India should not have been requested to be as amicus. No partisan should be an amicus the learned Attorney-General by virtue of his office and having regard to the fact that the Central Government is a party to this litigation, cannot act in a "non-partisan" manner. Whatever be the truth of character of the incumbent of the office of Attorney-General to tell him to pursue any course of action in regard to legal matter be that by itself cannot be a consideration in judging the legal competence of the Attorney-General to appear as amicus in this Court in the present case. In support of his contention, the learned Counsel has drawn our attention to Ramnath Iyer's Law Lexicon, page 62, Jowitt's Law Dictionary and Corpus Juris Secundum. Vol. 3. page 1046.

75. We have considered the contention very carefully and we are of the opinion that the contention is wholly untenable. It must be placed on record that when this matter was argued prior to admission, before a Full Bench of this Court "to which one of us the Chief Justice) was a party, Shri Palkhiwala, who appeared for the first respondent, welcomed the presence of the Attorney- General as amicus curiae and referred to his arguments as "able". It is the privilege of this Court to request any eminent counsel to enlighten it on matters of complex and legal issues, especially those which have no parallels. In a case of this magnitude,, this Court could not have thought of a more eminent counsel than the learned Attorney- General of India. In the United Kingdom, although the Attorney-General is a Member of the council Of Ministers, his sense of detachment and objectivity in discharging his duties was never doubted. In India, the Attorney-General enjoys a unique an independent position. Distinguished men of outstanding eminence in the legal field are requested by the Union to occupy the high office of Attorney-General. Apart from discharging duties of a total character assigned to him by the Union of India under Article 116(2) of the Constitution, his services are requested by the Supreme Court of India under Article 143 of the Constitution when the President of India seeks the opinion of the Supreme Court on any question of law or fact arising in a matter of public importance. Under Article 226, there is no letter on the power of this Court to request the Attorney General for any eminent counsel to appear as amicus curiae. The entire matter was argued by the learned Attorney-General before us only from the point of view of administrative law the question of mala fides by the alleged lapses on the part of the first respondent have not been touched by the learned Attorney-General in his erstitute submissions. Even in matters where there is a conflict of interest between the Union of India and private citizens, the7 Attorney-General appeared as amicus at the request of the Supreme Court - Gramophone Company of India Ltd. Vs. Birendra Bahadur Pandey and Others, . The fact that

the Attorney- General was appointed by the Union never weighed as a constraint in requesting for his assistance as friend of the Court. The Attorney-General represents the "interests of the public -- Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, . Facts throw open questions of law and the latter are not decided or debated vacue. There can never be an academic debate or argument on questions of law unrelated to any set of facts. When the learned Attorney-General argued before us, he invited our attention to the factual situation obtaining in certain of the allegations as could be culled out from the documents filed by the State Government for the proper understanding of the legal position. We felt distressed at this unwarranted comment, that too, at the belated stage after the learned Attorney-General had concluded his submissions in the background that it was at our invitation he assisted the Court.

76. As regards the offer made by Shri Jethmalani, on behalf of the first respondent in the course of his arguments on 29-12-1987, that the first respondent Was prepared to submit himself to a Commission of Inquiry either by the Judge or a panel of sitting Judges of this Court nominated by the Chief Justice, we have already adverted to the objections raised on behalf of the petitioner in this regard. The written memo filed by Shri Jeth malani on the succeeding day, i.e., 10-12-1987, in our view, does not accord with the offer he made on the previous day. The acceptance of the memo inevitably implies the acceptance of the contentions advanced on behalf of the, first respondent, namely, that the writ petition was not maintainable on the ground of its not disclosing valid cause of action, not complying with strict rules of pleadings and absence of material averments, etc. When the very presence of the learned Attorney-General was objected to by Sri Ram Jethmalani, we find it difficult to comprehend how any "responsible allegations supported by prima facie evidence, selected by the Attorney- General could become the subject matter of "judicial investigation by any Judge or Judges of this. Court. That apart, ibis Court has no power to order any such judicial investigation by a sitting Judge or Judges. Even if such an investigation is instituted, it is liable to attack as being without jurisdiction " and unconstitutional. Further, some of the allegations relate to the actions by the State,. The learned Advocate-General appearing for the State Government did not subscribe his concurrence to the appointment of such a Commission. In the "absence of the memo being signed by the Advocate-General on behalf of the second respondent, such an investigation even if ordered, it is obvious, would be a futile exercise apart from being unconstitutional and not binding on anyone.

77. After the bearing was over and the judgment reserved, the learned Advocate- General late in the evening on 31-12-1987 circulated a written memo, wishing "to place on record what has been narrated therein. It is stated in this memo that Sri Ram Jethmalani appearing for the first respondent completed his arguments at about 3-15 O.M. on 30-12- t987 and dealt mainly with the legal position and on factual aspect of only one allegation regarding allotment of cordless telephone to the Chief Minister's son-in-law and waiver of security

deposit, etc., were dealt; and submitted to the Court that the "remaining allegations referred to and canvassed by the learned Attorney-General who appeared as amicus curiae will be dealt with by "the Advocate-General as they are all executive .actions of the State Government or the instrumentalities of the State Government". The Advocate-General complains that after Shri Jethmalani's arguments were completed, he got up to address the Court to meet the contentions of the learned Attorney-General but he discovered to his acute embarrassment that his presence and attempt to draw the attention of the Court were being ignored"., and in spite of this he requested the Court to "hear him but the Honourable Court stated that it will see after the arguments of the learned counsel for the petitioner are over and so saying the learned counsel for the petitioner was permitted to commence his arguments." The learned counsel for the petitioner completed his arguments around 1 P.M. and thereafter "without affording opportunity to the Advocate-General, the Honourable Court reserved judgment and rose for the day., in the result, the second respondent had no opportunity to make submissions to meet the arguments of the learned Attorney-General. There was no reason why the Honourable Court could not have heard the Advocate-General after 1 P.M. on 31-12-1987 or on the next working day."

78. We take serious exception to this memo, filed by the Advocate-General. When the petitioner's counsel Sri Ramachandra Rao, started arguing the matter after preliminary narration of the facts, Shri Ram Jethmalani sought permission to raise certain preliminary objections regarding maintain- ability of the writ petitions and locus standi of the petitioner. Since Shri Ram Jethmalani sought to raise jurisdictional questions, we permitted to argue. Thereafter, he sought permission to argue on legal questions and after completing the same, he sought leave of the Court to permit him to go away as he had to fulfill a social engagement. Accordingly, he took leave of the Court. Thereafter, the petitioner's counsel argued his case and replied to the questions of locus standi argued by Sri Ram Jethmalani. Then the learned Advocate-General argued the case on merits, both on questions of law and fact on 21-12- 1987,22-12-1987 and23-12-1987. He readout Extensively the pleading and documents. Thus, a full and fair opportunity was given to the learned Advocate-General to meet the points raised by Shri S. Ramachandra Rao without any restriction of time. Despite the fact that he was heard at is regrettable that he chose to file this memo after the hearing was concluded. We, find it difficult to, discern the reasons. After the learned Attorney-General completed his submission Sri Jethmalani argued at length on 29-12- 1987 and 30-12-1987. The Advocate-General never sought our permission to make any submissions in reply to the arguments advanced by the learned Attorney-General

The practice of this Court is that the counsel for the petitioner is permitted to state his case first and thereafter the counsel for the respondent advances arguments and subsequently the counsel for the petitioners permitted to address arguments in reply. "It is not the practice of this Court to permit further arguments by the counsel for the respondent after the petitioner's counsel

concluded his arguments in reply.

79. Sri Ramachandra Rao, learned counsel for the petitioner, while summing up his arguments, fervently urged that this Court consistent with its constitutional obligation should direct the first respondent to resign from the office of the Chief Minister in view of the State Government, of which he is the head, having appointed a Commission of Enquiry to enquire into, inter alia, all allegations against public men, including himself (Vide the terms of reference in G.O. Ms. No. 578, General. Administration (SCE) Department dated November 28, 1987. According to the learned counsel, constitutional conventions in public law have taken firm roots in India and this found judied expression in State of Karnataka Vs. Union of India (UOI) and Another, . It is true that the Supreme Court observed:

"it is inconceivable that a Commission d Inquiry will be appointed by a State Government without the concurrence of the Chief Minister and if the political climate is so hostile that he is obliged to submit to an inquiry into his own conduct, he will quit rather than concur. Indeed, a Council of Ministers which considers that the conduct of its Chief Minister and some of the Ministers requires examination in a public inquiry shall have forfeited the confidence of the legislature and would ordinarily have to tender its resignation."

Constitutional conventions are not, however, enforceable rights. The-observations of the highest Court of this country are self-evident self-explanatory needing no further elucidation.

80. Sri K. Jagannatha Rao, the learned Standing Counsel for the Central Government, wanted to argue with particular reference to Section 3 of the Commission of Inquiry Act, 1952. However, we did not call upon him to argue, inasmuch as the submissions made by the other learned counsel had fully covered the ground.

81. The relief sought in W.P. No. 1280-5 of 1987 is the issue of a writ of mandamus directing the Central Government to take steps for penal action in proceedings in respect of the alleged violations of the provisions of the Income Tax Act, the Wealth-tax Act and the Foreign Exchange Regulation Act on the part of the 1st respondent. So far as the allegations based on the disclosure of income and wealth in respect of the 1st respondent and his family is concerned, we find no reason for giving any direction as prayed for in view of the fact that on the petitioner's own showing no penal action is warranted against the 1st respondent in terms of the provisions of Section 11 of the Voluntary Disclosure of Income and Wealth Act, 1975. The relevance, if any, of that fact has faded into insignificance after the dismissal of W.P. No. 12425 of 1987 for the issue of writ of quo warranto. inasmuch as the contention with respect to that was that the 1st respondent had forfeited his moral right to continue in office as he could not have enforced the tax laws and taken action against those who defaulted or delayed payment of tax. If there are any actions to be taken under the Wealth-

tax Act or the Income Tax Act with reference to the proceedings which are new pending; it is a matter for the appropriate authorities to take action in accordance with law. We are also of the opinion that there is no justification for our issuing any direction to the Central Government for action under the F.E.R.A. From the counter-affidavit filed by the Reserve Bank of India, it is noticed that the matter is being investigated and we have no reason to believe that at the appropriate time action, if any, warranted under the provisions of the Act would not be taken by the concerned authority. In this view, we dismiss the writ petition, however, without any order as to costs.

82. What survives is W.P.No. 12426 of 1987. In the light of the foregoing discussion, we hold that the writ petitioner has locus standi to maintain the writ petition.

83. Although the prayer in the writ petition is for the issue of a writ of mandamus directing the Central Government to appoint a Commission u/s 3 of the Commission of Inquiry Act, 1952, to enquire into the misdeeds, corruption and abuse of authority by the 1st respondent, we are of the opinion that we would not be justified in granting the relief in the form in which the prayer is couched. At the same time, having given our careful and anxious thoughts to every aspect of the matter in order to enable the Court to mould the relief appropriately to meet the ends of justice as requested by the learned counsel for the petitioner and in the light of the submission made by the learned Attorney General we record our prima facie findings with respect to the allegations discussed herein before and issue orders as hereunder. We have chosen to adopt this course in view of the fact that the persons who are likely to be affected by final orders, if any passed by us, are not before us and the principle of Natural Justice - audi alteram partem - obligates that they should be put on notice.

(a) In the matter of establishment of Telephone Instruments Project by Sri Naren Rajan (the 3rd son-in-law of the 1st respondent), the 1st respondent has abused his official position.

(b) The 1st respondent has abused his official position with respect to the Kamakrishna Cine Studios in -the matter of change of use of the studio's lands, reduction of the value of the land from Rs.40/- to Rs.15/- per square yard and reduction of compounding fee from Rs.20,000/- to Rs. 1,000/-;

(c) Failure on the part of the 1st respondent to take action to withdraw the exemption and resume the Nacharam lands after the Ramkrishna Cine Studios ceased to be a cine studio amounts to abuse of his official position in order to favour the members of his family;

(d) The 1st respondent has abused his Official position in granting exemption from payment of entertainment tax in respect of the Ramakrishna 70 mm and 35 mm theatres, which are owned by the members of his family-.

(e) In regard to the setting up of M/s. L Avenir Steels Private Limited, Medak

district the 1st respondent has abused his official position,

(f)The action of the -State Government in regard to the grant of whole" . le exemption of 2,29,944 square metres (roughly equivalent to 54 acres) in]3havanipuram, Vijayawada Urban Agglomeration u/s 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 in favour of the Vijayawada Hardware & Iron Merchants Association is arbitrary, illegal and opposed to the Directive Principles contained in Article 39(b) and (c) of the Constitution and the Provisions of Section 23(4) of the Urban Land (Ceiling and Regulation) Act;

(g)The permission granted by the Government in Govt. Memo. No. 16854/Mktg.11/1/83-4dated 4-1-1986 permitting the Agricultural Market Committee, Hyderabad to Purchase from H.U.D.A. an extent of 22 acres of land at a cost of Rs.3.5 crores is arbitrary, illegal and contrary to the relevant provisions of the A.P. (Agricultural Produce and Livestock) Markets Act 16 of 1966.

84. We direct the Petitioner to implead within four weeks from today all the persons who are likely to be affected by the final orders to be passed in these proceedings. The Registrar (Judicial) will obtain the orders Of the Chief Justice, for posting of the impleading petition soon after they are filed.

85. The task before us was both difficult and delicate in view of the sensitive issues involved. We place on record our warm appreciation for the benefit we derived from the able arguments advanced by Sri S. Ramachandra Rao, the learned counsel for the petitioner, Sri Ram Jeth Malani, the learned counsel for the 1st respondent, and the learned Advocate-General who appeared on behalf of the 2nd respondent, the State Government. Unmindful of personal inconveniences and-denying to himself a good part of his vacation, Sri K. Parasaran, Attorney-General of India, rendered as amicus curiae invaluable service to us by his masterly and erudite exposition of law on the expanding contours of public interest litigation. To him we pay our tribute and express our profound sense of gratitude. Sri Gopala Subrahmanyam, the able associate of the learned Attorney-General, deserves our special encomiums.

86. The learned Advocate-General immediately after the judgment and orders were pronounced made an oral request for leave to appeal to the Supreme Court. So far s W.P.No. 12805 of 1981 is concerned, we have dismissed it. So far as the orders in W.P. No. 12426 of 1987 are concerned, we have not passed any final orders. Accordingly, the question of granting leave does not arise.

87. Order accordingly.