

(1998) 04 CAL CK 0010

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction, W.P.C.T. No. 132 of 1998

Dr. U.N. Biswas

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-04-1998

Acts Referred:

All India Services (Conduct) Rules, 1968 — Rule 3(1), 4, 5
Constitution of India, 1950 — Article 14, 226, 227
Income Tax Act, 1961 — Section 132

Citation : (1998) 2 CALLT 194

Hon'ble Judges : Ronojit Kumar Mitra, J; Bhagabati Prosad Banerjee, J

Bench : Division Bench

Advocate : Mr. Samir Ghosh and Mr. Dinabandhu Das, for the Appellant; Mr. K.N. Bhatt, A.S.G. of India, Mr. B.R. Ghosal, Ms. Uma Banerjee, Mr. Sovanlal Hazra, Mr. Rajan Roy and Mr. Tapas Hazra, for the Respondent

Judgement

B.P. Banerjee, J.—The questions of law involved in this writ application is of some public importance came up for consideration before this court under Article 226 of the Constitution arising out of the order dated 12th March, 1998, passed by the Central Administrative Tribunal, Calcutta Bench in O.A. No. 178 of 1998.

2. The petitioner, who was at the relevant time and still is the Joint Director (East) of the Central Bureau of Investigation, Calcutta, was served with an article of charge sometime in February, 1998 for the purpose of holding a departmental enquiry, was as follows :

"Dr. U.N. Biswas, IPS, (WB : 68), while posted as Joint Director (East), CBI, Calcutta and during the course of supervision of AHD Cases of Bihar failed to maintain absolute devotion to duty and committed gross misconduct in as much as he acted irresponsibly and in excess of his authority in a manner unbecoming of a member of the All India Service in that :

On 29/30.7.1997, he on his own and without prior approval and authorisation from the Director, CBI, and without justification and authority and in violation of

the law for calling army help in aid of civil authority had initiated and pursued steps for deployment of the army in the matter of execution of Non-Bailable Warrant issued by the Special Court against Shri Laloo Prasad Yadav. Ex-Chief Minister of Bihar, who figured as an accused in CBI Case No. RC-20(A)/96-PAT. In pursuance of his illegal orders. SP, CBI, AHD, Patna. Shri V.S.K. Kaumudi submitted a written requisition to the local army authorities on 30.7.97 morning for deployment of army personnel for execution of Non-Bailable Warrant of arrest against Shri Laloo Prasad Yadav at Patna. This direction given by Dr. U.N. Biswas to his subordinate authorities was Illegal and reflected lack of knowledge and was an exercise in excess of his authority and he thereby displayed lack of devotion to duty and contravened the provisions of Rule 3(1) of the All India Service (Conduct) Rules, 1968."

3. The Statement of Imputation in support of the said charge was as follows:--

"That Dr. U.N. Biswas, IPS (WB:68), Joint Director (East). Central Bureau of Investigation, Calcutta, since 25.7.94 and on 30.7.97 while posted and functioning as such. It was his duty to act as per laid down rules and procedures and do all Important official business by keeping his superior officers informed as per existing instructions in this regard, being a member of the disciplined force but he failed to do so in as much as:

"that Dr. U.N. Biswas. IPS, (WB:68). Joint Director (East). CBI. Calcutta, who was posted since 25.7.94 as JD (East) with HQ at Calcutta and on 30.7.1997 in order to execute Non-Bailable Warrant against Shri Laloo Prasad Yadav, Ex-Chief Minister against whom charge-sheet had been filed by the CBI Instructed S/Shri V.S. Kaumudi, S.P. AHD, Patna and Rakesh Kumar. Standing Counsel to seek help of the army which was not at all warranted and contrary to the law laid down for use of armed forces in aid to civil authorities, the execution of Non-Bailable Warrant is not a purpose for which army assistance can be called. Moreover, this was done despite DIG, AHD, Patna, Shri R.N. Kaul's verbal request to him asking not to call the army in such manner without consulting the Director, CBI to which Dr. U.N. Biswas did not pay heed and pursued for the steps for requisitioning the army unauthorisedly and thereby displayed lack of knowledge, insubordination and committed misconduct in violation of Rule 3(1) of the All India Services (Conduct) Rules. 1968."

4. The background in which the chargesheet was Issued was of some significance. The officers of the Animal Husbandry Department in Bihar both at Secretariat level and allegedly with the blessings and support of the Government of that State that systematically drew huge sums of money in excess of the grant and as it transpired that bigs of the high-ups in the State of Bihar Including the then Chief Minister Shri Laloo Prasad Yadav was involved in the said scam which is popularly known as Fodder Scam in the State of Bihar. Because of public interest litigation and judicial activism of the Supreme Court and the High Court at Patna, the investigation into the said fodder scam was initiated and ultimately handed over to the Central Bureau of Investigation for a fair. Impartial and

effective investigation as it transpired that it would be difficult on the part of the Police machinery in the State to Investigate the matter independently, freely and fairly against the Chief Minister of the State who was then in power and after he vacated the post, now his wife Smt. Rabri Devi is the Chief Minister of that State.

5. It is not necessary to go into the details of the background and/or the case itself as the subject matter for consideration by this court is the initiation of a departmental proceeding against Dr. U.N. Biswas for writing a letter by one of his subordinates under his directions to the Army Authorities of the State of Bihar for the purpose of effecting the non-bailable warrant of arrest Issued by the court and that as a matter of fact the Army Authorities refused to deploy army for the aforesaid purpose and it appears that before any arrest could be made or was made, Shri Laloo Prasad Yadav surrendered before the court whereupon he was taken into the custody. In other words, the sum and substance of the charge is that Dr. U.N. Biswas, Joint Director (East), CBI, Calcutta was charged that for directing one of his subordinate to write a letter to the Army Authorities for deployment of the army for the purpose of effecting arrest of Shri Laloo Prasad Yadav pursuant to the oral order passed by the Hon'ble Judges of the Patna High Court, Bihar has been characterised in the chargesheet as "this direction given by Dr. U.N. Biswas to his subordinate authorities was illegal and reflected lack of knowledge and was an exercise in excess of his authority and he thereby displayed lack of devotion to duty and contravened the provisions of Rule 3(1) of the All India Services (Conduct) Rules, 1968" and further it was specifically alleged in the statement of imputation that "Dr. U.N. Biswas instructed S/Shri V.S.K. Kaumudi, S.P. AHD. Patna and Bakesh Kumar Standing Counsel to seek help of the army which was not at all warranted and contrary to the law laid down for the use of armed forces in aid to civil authorities and execution of a non-bailable warrant is not a purpose for which army assistance may be called." The allegation was made that this was done without consulting the Director, CBI, New Delhi and the requisitioning the army unauthorisedly "thereby displayed lack of knowledge, insubordination and committed misconduct in violation of Rule 3(1) of the All India Services (Conduct) Rules, 1968".

6. The petitioner, Dr. Biswas being aggrieved by the said chargesheet and the proceeding filed a petition before the Central Administrative Tribunal, Calcutta Bench which was heard on 15.2.98 and 26.2.98, rejected at the admission stage by delivering a 31 pages judgment by the order dated 12.3.98. The Tribunal at the admission stage went into details of the case and held that the charge memo was not vague and had disclosed misconduct.

7. Mr. Samir Ghosh, learned counsel appearing on behalf of the petitioner contended that the chargesheet does not disclose any misconduct and/or there is no law which has been violated by the petitioner Dr. Biswas and the charge of violation of Rule 3(1) of the All India Services (conduct) Rules, 1968 (hereinafter referred to as the said Rules) could not be invoked in the facts and circumstances of the case which was admitted the charge of subordination and lack of

knowledge, had no actual or factual basis.

8. It was further submitted by Mr. Ghosh that the Police Investigation in respect of the fodder scam is an unprecedented Incident in this country as hitherto before no Chief Minister of any State was involved in such a case which resulted a great commotion among the public at large. A sitting Chief Minister, has a power and position and has a large number of supporters at his command and that in order to keep the Investigation free from any wrongful interference by the persons Involved, the Supreme Court was pleased to pass the following direction in the matter on 19th March, 1996 :--

"We are also of the opinion that to alleviate the apprehensions of the State about the control of the Investigation by the CBI, it would be under the overall control and supervision of the Chief Justice of the Patna High Court. The CBI officers entrusted with the investigation shall, apart from the concerned criminal court. Inform the Chief Justice of the Patna High Court from time to time of the progress made in the Investigation and may, if they need any directions in the matter of conducting the investigation, obtain them from him. The learned Chief Justice may either post the matter for directions before a Bench presided over by him or constitute any other appropriate Bench. After the investigation is over and report are finalised, as Indicated by the Division Bench of the High Court in the Impugned judgment, expeditious follow-up action shall be taken. The High Court and the State Government shall cooperate in assigning adequate number of special judges to deal with the cases expeditiously so that no evidence may be lost.

The order of the Division Bench of the High Court in paragraph 54, to the effect that investigation by the State Police in cases already instituted shall remain suspended, is modified. The entire Investigation was stands entrusted to the CBI as aforesaid. The CBI is directed to take over the Investigation already made by the State Police, inclusive of the FIRs, arrests and attachments, aforementioned and deal appropriately therewith."

9. That apart the matter went up to the Supreme Court in a number of occasions and the Hon"ble Judges of the Patna High Court as the monitoring court, had to Issue various orders at different stages of the investigation and/or trial and one such order on which reliance was placed is the order dated 7.10.1996. The Division Bench of the High Court of Patna observed that the Director of the CBI should not interfered with the Investigation by the following order :--

"We would accordingly, direct that all reports by the concerned officers entrusted with the investigation/supervision of the AHD Cases be submitted directly to this court without being sent to the Director, CBI or any other authority. We would also restrain the Director, CBI from meddling in any manner in investigation of AHD Cases. The investigation appears to have reached a crucial stage, we would, accordingly further direct the Director CBI or any other competent authority not to shift the officers entrusted with the investigation/supervision of the cases

except with prior permission of the Chief Justice."

10. It is not in dispute that the petitioner Dr. Blswas, during the course of investigation sought to be removed from the post of Joint Director (East) CBI. Calcutta and posted at Patna as joint Director CBI and reference was made to newspaper report which was noted by the Tribunal that "the Government has decided to punish two high ranking officers of CBI for requisitioning Army to effect the arrest of Laloo Prasad, former Chief Minister, Bihar. Consequently, these two officers will be repatriate to their parent cadre. The Government has since decided to repatriate Dr. Upen Blswas, Joint Director (East) CBI and Shri V.S.K. Kaumudi, SP. At present the aforesaid two officers are on deputation to CBL This decision of the Government has been okayed by Personnel Department and Ministry of Home Affairs. Now the only thing awaited is the approval of the Prime Minister, Indra Kumar Gujral.

11. The aforesaid action against these officers has been taken on the basis of report of A.P. Dural. On 18.8.97, A.P. Durai submitted his report to the Government. The report indicates that "Shri Blswas and Shri Kaumudi were irresponsible. A.P. Dural has mentioned in his report that these two officers requisitioned the army at the time of the arrest of Laloo Prasad, Chief Minister, Blhar without properly assessing the situation and they, thereby, failed to discharge their duties in the proper manner. It has also been mentioned in the report that Government may initiate action as deem fit against these officers."

12. With regard to the allegation mentioned in the chargesheet it is stated that the petitioner did not move or obtain the order from the learned judges of the Patna High Court. Admittedly, the Standing Counsel of the CBI at Patna stated to have moved the Hon"ble Judges of the Patna High Court and obtained oral Instructions which is reflected in the fax message dated 30th July, 1997 sent by SP, CBI, AHD. Patna, the petitioner wherein it appears that, "As desired the Special Judge and the Hon"ble High Court Judge have been kept Informed of the development through the Sr.PP. and Standing Counsel respectively. As per direction of the Hon"ble Patna High Court a letter was also addressed to the Blhar Regimental Centre, Danapur Cantt. and sent through the I.O. and the Standing Counsel. Enclosed herewith are copies of letters addressed to the D.G.P. and the B.R.G, Danapur Cantt. for favour of perusal."

13. The circumstances under which such a decision to move the Patna High Court for deployment of Army was that as no force from RAF or from CRPF arrived at CBI Office to provide security to the CBI team concerned. Only the force detailed was 1+3 namely, one officer and three constables and that Shrl S.K. Mitra. Magistrate I/C of the RAF intimated that they could not move outside CBI Office without the direction of the DM and no such direction had been received by him and no additional deployment was made by the State Administration.

14. We do not want to dilate on this point as admittedly a situation was created under which we do not find any wrong in having apprehension that the State

Police Officials and other Police Officials will not come forward to help the CBI people at Patna to execute the warrant of arrest of Laloo Prasad Yadav for some reasons or other and also it appears that the threat was given to the petitioner and his life was endangered for which he had also to stay and move in Bihar with tight security.

15. Under such circumstances, we do not find anything wrong on the basis of the materials disclosed and on the basis of the normal human conduct that they had a bona fide apprehension that they would not be given the help or assistance from any other authorities, RAF or otherwise. The question is that, request to render assistance by the Army in the matter the petitioner had contravened the law of the land and is guilty of Insubordination in requesting the army to help in this matter is a question also to be decided by us in the subsequent paragraphs in this Judgment and if Dr. Biswas, the writ petitioner is found guilty for violating of the law and acted in the manner and is found guilty of a misconduct, is liable to be proceeded with in accordance with the law. The ordinary course of action as followed in each and every case regarding investigation on the basis of an EIR lodged in accordance with code of criminal procedure could not be followed for which the Hon'ble Supreme Court of India issued directions that even in the matter of investigation the Chief Justice of the Patna High Court, or the nominated Judges of the High Court of Patna will monitor the Investigation as the case has a special feature and Importance the Supreme Court of India had passed the aforesaid order for monitoring the Investigation so that investigation could be carried out freely, fairly and without any prejudice and without any hindrance or otherwise, it was done for the purpose of bringing the offenders to justice, for the purpose of creating confidence of the people in the administration of Justice.

16. On 30th July, 1997. the SP. CBI, AMD. Patna Informed DCBI. CBI, New Delhi, in writing that the DIG, CBI. Patna personally requested DGP, Bihar around 11.45 P.M. on 29.7.97 for arranging adequate security for CBI party ready to execute the Non-bailable Warrant against Shri Laloo Prasad Yadav, former Chief Minister of Bihar. The Chief Secretary, Bihar could not be available on phone. It was further stated in the said Fax Message that as no force turned up at the CBI office except 1+3 police personnel from the local police lines which had been available for the day, a letter was sent specifying the requisition of CRF, RAF and request to direct the force to report at the CBI office by 2.30 A.M. on that date. On refusal by his office to receive the letter it was delivered by the I.O., Dy. Superintendent of Police D.N. Biswas at the Director General of Police's residence. All efforts to speak to the Director General of Police (DGP), DIG (HQRS), Senior S.P., District Magistrate, Commissioner Patna, on phone failed, as they were reportedly not available. On return to DGP to his residence the telephone orderly requested to wake him up even when it was explained that the matter related to court orders and was very urgent. It was further Informed that at about 4.45 on 30.7.97, the I.O. was sent to the residence of the Director General of Police and then the letter was opened. At 6.15 A.M. during the visit,

the SP, CBI, the Director General of Police was again requested to provide the CBI with force. Copy of the said letter to the Senior S.P. Patna forwarding the letter to the senior S.P. for necessary action reached out office at 7.55 A.M. The I.O. alongwith the Standing Counsel visited the Bihar Regimental Centre, Danapur Cantt. with requisition for force as directed by the Hon"ble Patna High Court. No force other than local police was available with the CBI. The duty Magistrate at the CBI Office Shri S.K. Mishra confirmed that force at the CBI including the RAF could not be taken out on any other duty. Around midnight, the District Magistrate while passing in front of the office had reportedly told that the RAF fn charge not to leave the CBI premises. It was further informed by V.S.K. Kaumudi SP, CBI, AHD, Patna that "reliable source have been reporting gathering of people shouting anti CBI slogans at the residence of Shri Laloo "Prasad Yadav. CBI team in full preparedness had to keep waiting throughout the night as no force has been made available so far despite our request."

17. It is submitted that there was no occasion on the part of the CBI to arrest Shri Laloo Prasad Yadav in terms of the said non-bailable warrant issued by the court as Laloo Prasad Yadav had surrendered before the court and the court directed that Shri Laloo Prasad Yadav be kept in custody.

18. Mr. Ghosh submitted that because of the apprehended situation arose out of the large gathering in front of the house of Laloo Prasad Yadav, the CBI had reasonably anticipated that warrant of arrest could not be executed unless adequate number of forces are made available by the Bihar Police Authorities but the Director General of Police, Bihar and all other senior police officers including the District Magistrate who were under the direct and indirect control of Laloo Prasad Yadav bent upon not to render any assistance to CBI for the purpose of executing the non-bailable warrant of arrest against Laloo Prasad Yadav, they had out of necessity faced with a peculiar and unprecedented situation of non-cooperation of the local police authorities, a letter was written to the Army Authority for deployment of army for the purpose of execution of the non-bailable warrant on the basis of an oral order passed by the Patna High Court. The Army Authority refused to deploy army for the purpose and hereinbefore stated that Laloo Prasad Yadav had surrendered. This writing of the letter is now being characterised as unwarranted and contrary to the law laid down for use of armed forces in aid of civil authorities and further letter for requisition of the army was unauthorised and the same displayed lack of knowledge, insubordination and amounted to a mis-conduct in violation of Rule 3(1) of the All India Services (Conduct) Rules, 1968.

19. Mr. Ghosh submitted that the allegations appearing on the face of the charge-sheet does not and cannot amount to a misconduct as in each and every allegation cannot amount to a misconduct unless some illegal things are being done with a motive. It was further submitted that it was on the basis of an oral order passed by the learned Judges of the Patna High Court such requisition for deployment of army was made and subsequently the entire facts and

circumstances was submitted to the High Court in the form of a report. The fact was also made known to the top officials of the CBI at Delhi. Accordingly the facts and circumstances will clearly evident that there was no motive and motive of any sort was not attributed in the charge-sheet and/or in the statement of allegations. It is also an admitted fact that the petitioner Dr. U.N. Biswas was sought to be removed from the post of Joint Director (East) CBI, Calcutta and posted at Patna as Joint Director, CBI by the order dated 26.9.96 but the said order was kept in abeyance in terms of the order passed by the High Court of Patna as that would have hampered the said investigation.

20. From the sequence of events which are all admitted it was sought to be argued by Mr. Ghosh that there was deliberate attempt on the part of the Central Government and the top officials of the CBI to remove Dr. U.N. Biswas who was in-charge of Investigation and in respect of the said Fodder Scam against Shri Laloo Prasad Yadav with some designate and/or ulterior motive end in view.

21. It was further submitted that because of the role played by the then Director, CBI and the top officials of the CBI, the Division Bench of the Patna High Court passed an order on 7.10.96 that reports by the concerned officers entrusted with the Investigation against Laloo Prasad Yadav, to submit to the High Court directly without being sent to the Director, CBI or any other authority and restrained the Director, CBI from meddling in any manner in the investigation of the said Fodder Scam. Under such circumstances. It was submitted that the charge of insubordination and other allegations are on the face of it motivated and wrong.

22. Mr. K.N. Bhat, learned Additional Solicitor General of India appearing on behalf of the Union of India argued that at this stage the court should not enter into the validity of the proceedings because that might cause injustice to the litigants. He also submitted that at charge-sheet stage, the court should not interfere and pointed out that the Central Administrative Tribunal, Calcutta Bench rightly rejected the petition of the petitioner.

23. In this connection, Mr. Bhat, learned Additional Solicitor General of India, relied upon the decision of the Supreme Court in the case of Union of India (UOI) and Others Vs. Upendra Singh, , wherein it was held by the Supreme Court that in case of charges framed in a disciplinary proceeding, the tribunal or court can interfere only if the charges framed no misconduct or Irregularity alleged, can be said to have been made out or the charges framed are contrary to law. At the charge-sheet stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. In this case, it was found that the Central Administrative Tribunal undertook the enquiry which ought to be held by the disciplinary authority and found that the charges were not true. Tills is not the case before us.

24. At the charge-sheet stage, the intensity of judicial review by the court is not as rigorous as in a case where the proceeding was finally concluded by the disciplinary authority. At this stage, the scrutiny of administrative action is less Intense than at the latter stage. At this stage, the validity of the proceeding can

only be challenged on a very limited ground and not on any other grounds which touches the merits of the case or the correctness of the changes. Accordingly, the Intensity of Judicial review in a case and at a stage like this will be very low.

25. Mr. Bhat further submitted that the petitioner will get ample opportunity before the departmental enquiry to prove his Innocence. It was submitted that the petitioner's case was that the requisition for army deployment was made pursuant to the oral order of the Patna High Court but no formal order was in existence, if he has taken the stand that the requisition for army deployment was made under the order of the court, he has to prove it before the departmental enquiry. Next, it was submitted that whether there is a law prohibiting the deployment of army or not a question of fact and at this stage, the court cannot go into this aspect of the matter. Mr. Bhat failed to draw the attention of this court any law which was violated by the petitioner in requisitioning deployment of army. In the charge-sheet the petitioner was charged that such an action was contrary to the law laid down for the use of armed forces in aid of civil authorities. In spite of request made by this court, Mr. Bhat failed to produce anything to show or to suggest that there is any law which has prohibited the use of armed forces in aid of civil authorities.

26. Mr. Bhat further submitted that Shri A.P. Durai an officer of the Central Government was entrusted with the responsibility enquiring into the matter certain findings were made on which reliance was placed and set out in the affidavit-in-opposition filed by Shri P.S. Pillai Under Secretary to the Government of India, Ministry of Home Affairs, New Delhi and it was on the basis of the said report and finding of A.P. Durai the charge-sheet was issued. We have perused the said affidavit-in-opposition and we are really surprised that at the charge-sheet stage which according to Mr. Bhat is a stage which is premature on the part of this court to interfere, certain observations have been quoted which has been stated to have been made and found on enquiry by one Shri A.P. Durai that:

1. Brigadier NauUyal's letter (X-10) puts paid to the story given by the CBI officers and the Standing Counsel. He says "Justice S.N. Jha clarified that the Hon'ble Spl. Court has not given any direction for requisition of Army to assist the CBI party to execute Non Bailable Warrant against Shri Laloo Prasad Yadav, former Chief Minister of Bihar. He mentioned that the CBI was told that should the CBI wish they could seek assistance of the Army. Thus there was no direction from the Hon'ble court to the Army to provide the assistance.

2. In a serious matter like this, it is to be wondered why a written petition was not filed by the Standing Counsel on behalf of the CBI and written orders obtained thereon. This would have given an opportunity for the Monitoring Bench to hear both the parties concerned, namely, the CBI who were Investigating the AHD scam cases and had charge-sheeted the relevant case and the State Government who were responsible for maintenance of law and order.

3. It is of interest that the Monitoring Court have not recorded their "oral

directions" if any. I have obtained the copies of order sheets of the Monitoring court (X-23 & X-24) and found that there were no transactions in RC No. 20(A)/1996-Patna between 25.7.97 and 4.8-97.

4. I quote from an article written by Shri P.P. Rao, Sr. Advocate, Supreme Court of India (X-37) "courts of law do not generally offer oral advice to any party. Being an institution a court can only speak in writing. Orders of a court are always dictated in the open court and written in clear terms. Even if any judge of a High Court were to offer such Informal advice it was the duty of the CBI officials to point out the relevant portions of law to the High Court and seek written directions.

5. In the circumstances, the plea of "oral directions" as a justification for the unauthorised actions of the Joint Director (East) Dr. U.N. Biswas, SP/AHD/CBI Shri V.S.K. Kaumudi and Standing Counsel, CBI/Patna High Court Shri Rakesh Kumar, cannot be accepted.

In pursuance of the said report of Shri A.P. Durai, the Government felt very much concerned about the action of the petitioner and after giving due consideration to the issue it was decided to Initiate disciplinary proceedings against the petitioner."

27. In the said affidavit-in-opposition affirmed by Mr. Pillai it was stated that the petitioner shall be given full opportunity of his actions in seeking Army help. The various issues which are likely to be examined in the enquiry are :--

(a) Whether the petitioner had only directed his subordinate to carry out the order of the Hon"ble High Court (for which the petitioner's Intervention was not needed) or whether he acted in the manner alleged in the charge-sheet.

(b) Whether he acted in excess of his authority.

(c) Whether he did try to contact his superiors or whether despite suggestions by subordinates he decided to Ignore his superiors".

28. The entire report of the said Sri A.P. Dural, on the basis of which a decision was taken and a chargesheet was Issued and a portion of which was relied on, had not been annexed. It was not mentioned that the said deponent had not reserved any leave to produce the report before the court. We have no hesitation in holding and/or placing it on record that the said affidavit was not drafted according to the rules and procedures of this court and was quoted certain portions of the report submitted by Mr. Dural according to the convenience of the said deponent and no Judge to understand the purport and the contents of the said report, certain Exhibits were mentioned as X-10, X-23, X-24 etc. without indicating the nature and the character of the documents referred to therein. The respondents should bear in mind that the respondents can rely and refer to the entire report or not but they are not entitled to quote some portions and some portions which may be convenient to them and not disclosing the whole of it and no offer was made in behalf of the affidavit that they would produce the same at the hearing, if necessary. Such a course of action amounts to producing some

processed materials and the attention of the court was sought to be highlighted on some specified portions hiding or concealing the other part of the report, this course of action was highly Improper and at least before this court such a practice is highly deprecated. It is well-settled principle that at the chargesheet stage, a party cannot challenge the correctness of the chargesheet only on the ground that on the basis of the facts disclosed no misconduct is there.

29. In our view, atleast the principle on the basis of which the court can interfere with the criminal investigation as laid down by the Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, . should at least apply in case of departmental proceeding. In this case the Supreme Court held that High court may, in exercise of the power under Article 226 of the Constitution of India interfere in proceedings relating to cognizable offence to prevent abuse of process of any court or otherwise to secure the ends of justice. However, the power could be exercised sparingly and that too in the rarest of rare cases. In that case, it was laid down that where allegations made in the First Information Report or the complaint even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the court can interfere. Further it was laid down that where uncontroverted allegations made in the FIR or complaint and the evidence collected. In support of the same do not disclose the commission of any offence and make out a case against the accused, the court can Interfere. Mala fides and bias are also the ground which can be gone into at the initial stage for the purpose of Interfering with the criminal investigation. The State of West Bengal v. Swapan Kumar AIR 1984 SC 049, the Supreme Court held that if the materials do not disclose an offence no investigation should normally be permitted. If satisfied that no offence is disclosed it would be the duty of the court to Interfere with any Investigation and stop the same to prevent any kind of uncalled for and unnecessary harassment to an Individual.

30. If this be the position even in an criminal investigation in that event, we are of the view that the same principle should equally apply to a departmental proceeding. The petitioner has been charged that the petitioner has violated the provisions of Rule 3(1) of the All India Services (Conduct) Rules, 1968 which provides "every member of service shall at all times maintain absolute Integrity and devotion to duty and shall do nothing which is unbecoming of a member of service." Supreme Court in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., , in paragraph 21 of the said Judgment considered similar provisions as in Rule 3(1) of the said Rules and in this connection, the Supreme Court observed that "Rule 4 bears the heading "General". Rule 5 bears the heading "misconduct". The draftsmen of the 1975 rules made a clear distinction about what would constitute misconduct. A general . expectation of a certain decent behaviour in respect of employees keeping in view corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by Itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated

misconduct in Rule 5. Any attempt to telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that may ex post fact interpretation of some Incident may not be camouflaged as misconduct.

31. In *Union of India (UOI) and Others Vs. J. Ahmed*, the Supreme Court considered the concept of misconduct in service jurisprudence and held that misconduct means, misconduct arising from ill-motive, but acts of negligence, errors of Judgment or Innocent mistake, do not constitute such misconduct.

32. Accordingly, unless something illegal has been done and arising from ill-motive, action does not come within the scope and ambit of the expression misconduct. Only exception is that gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings.

33. In *Union of India and Others Vs. K.K. Dhawan*, It was held that in case of exercise of Judicial or quasi-judicial power, the disciplinary action can be taken in cases (a) where the officers had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty, (b) if there is prima facie material to show recklessness or misconduct in discharge of his duty, (c) if he had acted in the manner which is unbecoming of a government servant, (d) if he had acted negligently or that he omitted the prescribed condition which are essential for exercise of statutory power, (e) if he had acted in order to unduly favour a party, and (f) if he had actuated by corrupt motive however small the bribe may be. However a mere technical violation or merely because the order was wrong and the action not falling under the above enumerated Instances, disciplinary action is not warranted.

34. In *Union of India v. A.N. Saxena* AIR 1992 SC 1293 the Supreme Court held that when an officer is performing judicial or quasi-judicial functions, disciplinary proceeding regarding any of his actions in the course of such proceedings, should be taken only after great caution and a gross scrutiny of his actions and only if the circumstances so warrants. The initiation of such proceedings, it is true likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence, the need for extreme care and caution before initiation of departmental proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions for the discharge or purported to discharge his functions. Where the action of such officer indicates culpability namely a desire to oblige himself or unduly favour one of the parties or improper motive there is no reason why disciplinary action

should not be taken.

35. In *Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another*, , it was held that unless either in the certified standing order or in the service regulations an act or omission is prescribed as misconduct. It is not open to the employer to fish out some conduct as misconduct and punish the workmen. It is necessary for the employer to prescribe what would be the misconduct so that the employer knows the pitfall he should guard against.

36. We have to consider in view of the principle laid down in the aforesaid cases whether the action compliant of against the petitioner as Indicated in the chargesheet amounts to a misconduct in the service jurisprudence and whether the facts of the case warranted initiation of the proceedings.

37. Admittedly, in the Instant case, on the basis of the allegations and/ or imputations as appearing from the chargesheet and/or the statement of imputations, no motive has been attributed that Dr. U.N. Biswas for instructing his subordinates to seek help of the army, which is stated to be not warranted and contrary to law. Incidentally a question may arise is what is the effect even if the arrest was made after deploying army and/ or with the help of army, does it amount to an Illegal arrest for which the accused has to be released and the arrest has to be Ignored as not made in accordance with law? All Police Officers when are authorised under the provisions of Criminal Procedure Code to arrest in person in respect of cognizable cases and when the courts Issued a Non-Bailable Warrant for arrest, the object is to arrest and the manner and procedure followed for arrest is not very much relevant.

38. Incidentally, the principle laid down by the Supreme Court in *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*, , may be referred to. Section 132 of the Income Tax Act, 1961 laid down the condition precedent for exercise of power of search and seizure by the Income Tax Authorities and it also laid down the procedure to be followed while making search and seizure. In that case, it was alleged by the petitioner that there was some irregularity in the matter of search and seizure and Supreme Court in this connection observed that at the most the same could be an irregularity but not an illegality and it cannot invalidate this search and seizure. In this connection, the Supreme Court laid down that the search and seizure may be illegal and/or Irregular but when a material is obtained illegally the court is not concerned with how it was obtained. In this connection, the Supreme Court relied on the decision of the American Supreme Court in the case of *Olmstead v. United States* (1928) 272 US 438 as well as the decision of the Privy Council in *Kuruma v. The Queen*, 1955 AC 197.

39. In *Kuruma*'s case, the body of Kuruma was searched by the police Officers who are not authorised under the law to carry out search and seizure. But in course of such unauthorised search and seizure some ammunition was found in the unlawful possession of Kuruma. The question was whether the evidence with

regard to the finding of ammunition on the person of Kuruma could be shut out on the ground that the evidence that has been obtained by an unlawful search. It was laid down by the Privy Council that it could not be shut out because the presence of ammunition was a relevant piece of evidence on the charge of unlawful possession. In *Olmstead's* case, the American Supreme Court decided that wire tapping did not constitute an unreasonable search and seizure in violation of the 4th Amendment it did so on three grounds. (1) Since the wire tap itself had not been made in *Olmstead's* premises, there was no physical trespass. (2) *Olmstead* had not intended that his voice should reach only to ears those present in the room--he had projected his voice to those and outside and (3) what had been seized from *Olmstead* was his spoken word. Nothing tangible had been taken that would make applicable the constitutional Injunction requiring a warrant describing "things to be seized". Of course, the American Supreme Court Judgment in *Olmstead* (1928) stood overruled and totally a contrary view was taken in the subsequent decisions of the American Supreme Court in the cases of *Katz v. United States* (1967) 389 US 347. *Goldman v. United States* (1942) 316 US 129, *Bergarv. New York* (1967) 388 US 41. Accordingly, in view of the *Pooran Mal's* decision of the Supreme Court (*supra*) even if the search and seizure was Illegal that will have no effect on the proceeding Initialed on the basis of the seizure of the relevant papers and documents or in other words that cannot Invalidate the proceeding u/s 132 of the Income Tax Act even if the search and seizure was made in an illegal manner. Accordingly, even if arrest is made of an accused by adopting a procedure which is irregular and/or unauthorised that cannot Invalidate the arrest or the proceeding. in *Kuruma's* case Privy Council laid down that even if the search was made by persons not competent the validity of the proceeding Initiated on the basis of the seizure of ammunition could not be Invalidated. Accordingly, even if a person is arrested unlawfully. Irregularly on the basis of a search warrant or otherwise no right is created or could be created in favour of the accused person for release.

40. The charge against the petitioner was that requisition for Army help for executing non-bailable warrant of arrest was contrary to law, no law has been shown or could be referred to the court which had been contravened by the petitioner in directing his subordinates to get permission from the court for seeking army help and/or to write a letter to the Army Authorities for its deployment.

41. So far as getting approval from the Director of CBI is concerned, the investigating officer in the instant case was under the direct control and supervision by the Division Bench of the Patna High Court. It is well-settled principle that a police officer who is discharging his powers and duties under the law is only answerable to the law and not to any other persons.

42. In *R. v. Metropolitan Police Commissioner*, reported in (1968) 1 All ER 763, (Court of Appeal) Lord Denning M.R. said in connection with the office of the

Commissioner of Police that "I have no hesitation, however, in holding that like every constable in the land, he should be, and is, independent of the executive. He is not subject to any order of the Secretary of State save that under the Police Act, 1964, the Secretary of State can call on him to give a report or to retire in the Interest of efficiency. I hold it to be the duty of every Commissioner of Police, as it is of every Chief Constable, to enforce the law of the land. He must take steps so as to post his men that the crimes may be detected and that an honest citizen may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself". Accordingly, in such matter of investigation and arrest, an investigating officer is not answerable to any one but except that he is the servant of law and not a servant of anyone else.

43. The charge was that he on his own and without prior approval and authorisation from the Director of CBI and without justification and authority and in violation of the law, called army help. There is no requirement under the provisions of the Criminal Procedure Code and/or under the different orders which has been placed before this court passed by the Patna High Court that he has to take steps after obtaining approval from Director, CBI, Delhi. It was said that such an action was without justification of course on the basis of the materials of record, there was undoubtedly justification for the simple reason that for the first time in the history a criminal case was started against a sitting Chief Minister of a State and secondly, the District Magistrates and the Police Officials of the State were under his direct and Indirect control and under such circumstances it does not require any research work to hold that prosecution would have failed if the course of action as directed has not adopted in this matter by the Hon''ble Supreme Court of India and the Hon''ble High Court of Patna has not given such protection for investigation and arrest.

44. It is stated by Mr. Bhat that after the chargesheet was filed, the Patna High Court become functus officia in issuing any order regarding arrest. Whether action of the Patna High Court was right or wrong is a matter not for this court because thereafter the matter went to the Supreme Court at the instance of the CBI-, against the order of the Patna High Court and if the action of the petitioner in seeking oral permission and writing a letter to the Army authority at his instance is illegal and unlawful of such a magnitude as it is sought to be made in that event, nothing prevented the parties is to take exception to the conduct of the petitioner but admittedly that was not done so. The Director of the CBI and/or the Union of India had every opportunity to draw the attention of the Supreme Court that Dr. U.N. Biswas has committed a gross misconduct and acted unlawfully and without jurisdiction in directing his subordinates to mention in the matter before the Division Bench of the Patna High Court and to obtain direction and to write a letter to the Army Authority for the deployment of the Army. If the matter was so serious as it transpires. In that event they would have sought direction from the Supreme Court and/or form the Patna High Court for that

purpose. Whether the Hon''ble Judges of the Division Bench of the Patna High Court had passed an oral order or not, the existence of which is being disbelieved by Mr. Durai who was appointed as an one man Commission the easiest and simplest method is to get the same verified before the said Hon''ble Judges merely by mentioning. Mr. Bhat submitted that on record there was no order and it was highly improper on the part of the Hon''ble Judges of the Patna High Court to pass oral order and direction. It is a very unfortunate state of affair that the conduct of the Hon''ble and respectable Judges of the Patna High Court is sought to be criticised before this court and that we do not find any bona fide reasons and grounds to make any comments on the conduct of the learned Judges of the Division Bench of the Patna High Court who were entrusted to monitor the case by the Supreme Court, a course of action which was unusual but the Hon''ble Supreme Court did it for the purpose following the principles of judicial activism in a public interest litigation to create confidence of the people in the administration, that nobody is above the law and anybody may figure an accused whatever high he may be, no favour or advantage would get by holding such a high office. That is why in order to prevent the Interference and creating a hindrance in the way of investigation, the Supreme Court had directed a particular course of action to be followed and it is needless to point out that unless the Supreme Court of India had laid down such a procedure the investigation could not move an inch. Supreme Court also pointed out that every officer of the CBI associated with the investigation has to functions as a member of a cohesive team which is engaged in the common pursuit of a fair, honest and complete investigation into the crimes alleged. It is needless to further emphasise that the exercise has to be carried objectively and fairly, mindful of the fact that the majesty of law has to be upheld and the truth of law preserved, which does not discriminate between individuals on the basis of their status, position or power. The law treats everyone as equal before it and this has to be kept in view constantly in every State action to avoid violation of the right to equality guaranteed in Article 14 of the Constitution.

45. Accordingly, whether there was oral order of the Hon''ble Judges of the Patna High Court or not, is immaterial in deciding the issue before this court as we do not find that there was any impediment created by any law that writing a letter seeking army deployment for the purpose of execution of a non bailable warrant is an action contrary to law and punishable under the law.

46. Charge of insubordination and lack of knowledge is wholly unwarranted as it is unthinkable that a senior IPS who is in charge of investigation still now and it appears that he is a Doctorate, can be charged with the lack of knowledge and charged with insubordination when there is nothing on record and there was no charge that he has acted contrary to any direction given by the higher authorities in accordance with law. Nothing has been brought to the notice of the court that when an officer of the CB1 makes an investigation, he is the servant of the law but he is not acting as a mere subordinate to the Director, CBI who has also been directed by the Hon''ble High Court not to interfere in the matter of investigation.

47. Whatever may be the object and the purpose of initiating such a departmental proceeding against a senior IPS, the court is more concerned with the morale of the member of the police forces who are in charge and making investigation and it is the duty on the part of the court in public interest and for bringing the offenders to justice not to allow the investigating officer to be victimised and terrorised. This is a factor which may not play in the mind of the Central Government, Central Government may be guided for several factors relevant or irrelevant, there may be motive but the court can not go into this aspect of the matter but the court is concerned with the principle of fairness even in the filed of departmental proceeding.

48. In Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , it was held that the public authorities are accountable to people, public authorities should Justify the action assailed on the touch stone Justness, fairness, reasonableness and as a prudent owner.

49. In Secretary of State for Education and Science v. Metropolitan Borough Council of Temeside, (1976) 3 All ER 665, which was followed by the Supreme Court in U.P. Financial Corporation v. Gems Cap (India) Ltd. In AIR 1993 SC 1435. that the obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of Justice. This doctrine is complimentary to the principles of natural justice. The court can Intervene when an action of the administrative authority is unfair and unreasonable.

50. In Re: S & M Laboratories and the Queen, 99 DLR (3d) 160, (Ontario Court of Appeal) it was held that in the absence of any statutory provision for a decision by a statutory authority not discharging judicial or quasi-judicial but purely administrative and the authority was in no way acting as arbiter between two Independent parties, the authorities are still under an obligation to act fairly.

51. Accordingly, we are clearly of the view on the basis of the facts and circumstances of this case and the case laws mentioned above that the allegations on the face of it does not disclose any misconduct which had given any cause of action on the part of the Central Government to initiate the departmental proceeding. In view of the fact that there is no law which has been contravened by the petitioner as alleged in the chargesheet and the statement of imputation that seeking army help for execution of a non-bailable warrant is contrary to the law in the absence of any law. Secondly, the deployment of army was not in fact made and accordingly, matters boils down only to the point that mere issuing art oral direction over telephone by the petitioner to his subordinates to move the Hon"ble Judges of the Patna High Court for a direction for employment of army for the purpose of execution of the arrest of non-bailable warrant Issued against Laloo Prasad Yadav in a very peculiar and unprecedented situation and writing a letter under his direction to the army authorities amount to a misconduct which warrants initiation of a departmental proceeding for Imposing punishment. Mere writing a letter without anything

more does not in our view, amounts to a misconduct or lack of knowledge per se does not and cannot amount to any misconduct.

52. In our view, every action or inaction does not and cannot amount to misconduct unless there was some mens rea or some lapses of high magnitude. The term mens rea refers to the state of mind of the accused at the time of the commission of an act. The traditional maxim is "actus non facit reum nisi mens sit rea". I.e., the act is not guilty unless the mind is also guilty. The specific requirement of mens rea is that the accused has been acting maliciously.

53. In a disciplinary proceeding the delinquent is not an accused, but in considering the word misconduct the same meaning of mens rea as applicable in a criminal case of offence should also apply.

54. In this case, petitioner Dr. U.N. Biswas was conferred with the statute to exercise the power of arrest which is a statutory power. It is well-settled that power to do anything carries with it all powers necessary to achieve that object and or anything incidental or ancillary thereto and in such a matter he is only subject to control of the court concerned whose order was sought to be carried out by him and in such case the Disciplinary Authority has no power to take exception and exercise disciplinary power in respect of the matter which was done pursuant to the order of the court and it is that court which can only take exception. But, the Disciplinary Authority cannot punish the officer concerned unless he has acted in a manner as would reflect on his reputation or integrity and that he has acted in a reckless manner and/or he has acted negligently or that in gross abuse of his power in order to favour a party or actuated by means of any corrupt motive.

55. The charge of violation of Rule 3(1) of the said Rules is not maintainable in view of the principles laid down by the Supreme Court in A.L. Kalra's case (supra) and in the chargesheet there was no allegation that the impugned action has badly reflected on his reputation or integrity and that he had acted with some motive and/or actuated by corrupt motive.

56. Mr. Ghosh's submission with regard to bias and close mind disclosed in the chargesheet cannot be ruled out so easily. From the language used in the chargesheet. It appears that the authorities concerned had committed itself to a view in advance an enquiry, and that it can be said that after such conclusion about the guilty of the petitioner in the chargesheet no justice may be seen to be done as it is well-settled that, justice must not be done but seems to have been done. The chargesheet read with several paragraphs of the affidavit may indicate a case of bias but since we have held that the chargesheet does not disclose any misconduct and in the facts and circumstances, the chargesheet was wholly unwarranted, unfair and illegal. It is not necessary for us to go into such questions.

57. While action as an Investigation officer Dr. Biswas was discharging his statutory rights and duties and in such a matter he is to act under the control of

the court which has issued non bailable warrant of arrest and/ or monitoring court. If the monitoring court had passed an order, oral or otherwise that can not be the subject matter of any disciplinary proceeding as that should result in interfering with the judicial power of the State by the administration. The care and caution which ought to have been taken into consideration before issuing the chargesheet as pointed out by the Supreme Court in the case of *Union of India v. A.N. Saxena* (supra) had not been taken.

58. The petitioner is still acting as an Investigating officer and that in the facts and circumstances of this case an Impression would also be created in the mind of public at large that the Government does not want the Investigating officer to move in the matter in a manner and in the spirit as he was doing, should not be allowed to be done for the benefit of some, which is contrary to public Interest. It is now well-settled that transparency should be there in every sphere of life. Even, if an Investigating officer who is still in charge of the Investigation, is sought to be punished in a manner. In that event there is every apprehension that the case pending in the Criminal Court against the accused concerned, may fall Inasmuch as an officer who is charged with such a disciplinary proceeding will first try to save himself at any cost and the interest of the prosecution would be insignificant to him but the court cannot allow such a state of affair, the court cannot allow criminal investigation or a trial, fail because the government may not like it. It is also on the record that the petitioner was sought to be removed from the place and that the Supreme Court and the High Court at Patna had to intervene in order to stop the hands of the Central Government or the top officials of the CB1 who might be interested in seeing that the prosecution fails.

59. In the chargesheet it has been alleged that the petitioner, who is a Doctorate, has lack in the knowledge and we do not find any basis for making such unwarranted and uncharitable charge in the chargesheet. The Central Government may be the disciplinary authority but the disciplinary authority cannot use the disciplinary proceedings or the chargesheet as a vehicle of libel and to undermine and disgrace in an unwarranted manner. Such a charge lacks in bona fides. An employer in service jurisprudence cannot be allowed to have a privileged position. Regarding the absolute right of the employee, the Supreme Court in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, have said that in a case even where the Government has taken steps in accordance with the terms and conditions of service the Supreme Court observed that such a privilege is not there as it is borrowed from the archaic common law concept that employment was a matter between the master and servant only. In the first place, this rule in its "original absolute form is not applicable to Government servants. Secondly, even with regard to private employment, much of it has passed into the fossils of time. "This rule held the field at the time when the master and servant were taken more literally than they are now and when, as in early Roman Law, the rights of the servant, like the rights of any other member of the house-hold, were not his own but those of his pater familias." The overtones of this ancient doctrine are discernible in the

Anglo-American jurisprudence of the 18th century and the first half of the 20th century, which rationalised the employer's absolute right to discharge the employee. "Such a philosophy", as pointed out by K.K. Mathew J. (vide his treatise: "Democracy. Equality and Freedom", page 326) "of the employee's dominion over his employer may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers."

60. Further where an Investigating officer is discharging powers and functions under the provisions of Code of Criminal Procedure and under the control and jurisdiction of the Patna High Court which has been directed by the Supreme Court to monitor the case, it is not open to the Central Government to issue such chargesheet, questioning of a particular stage of the investigation and/or the case without the knowledge and/or approval of the court which has Issued non-bailable warrant against the accused, no steps should be allowed to take which would hinder the fate of the case, and which will stand in the way of the prosecution or which will tend to help the accused in any manner whatsoever.

61. Accordingly, we are clearly of the view that the course of action that was taken in the matter was taken with a view to deter the petitioner who is an investigating officer and which would have a chilling effect on the progress of the case and further it does not appear that the action that has been taken was bonafide and was fair and reasonable in the facts and circumstances of this case. If the Government is allowed to Interfere the matter in the manner in that event, that would help the Government to Interfere with the judicial functions by making an investigating officer Inactive by terrorizing him and/or which may have the effect of victimizing it. Before Issuing such chargesheet, the Government should have considered the escalating reaction. that would have followed because of their decision which on the face of it does not appear to be bona fide and/or made in public interest but on the contrary it was wholly contrary to public Interest and the administration of justice. Central Government has taken tills step, may be for some reasons which is not disclosed but the court cannot allow such a state of affair to continue in which the investigating officer should be kept engaged in defending his own case rather than devoting time in the matter of Investigation and/or the progress of the case.

62. This is also in our view a machinations move adopted by the Central Government which is contrary to law and which can not be allowed.

63. We do not find any reason on the part of the Central Government to take serious exception in initiating a proceeding in respect of any action taken by the petitioner in connection with the said case when the case is pending before a court of law and further, the Supreme Court of India, the Hon'ble Judges of the Patna High Court and/or the designated Criminal Court before whom the case is pending had not taken any exception to this aspect of the matter and in our view, it would lay down a dangerous proposition if the Government proceeds against the Investigating officer for anything done as an investigating officer

without obtaining leave and permission from the court to which an Investigating officer is answerable and as an investigating officer Dr. Biswas is answerable to the court and not to the administration or to the head of his department and accordingly, in such matter, we are clearly of the view that the Central Government has acted illegally and mala fide in Initiating proceeding against Dr. Biswas as an investigating officer who is still incharge of the investigation which will spoil the investigation and the end result would be disastrous. The attitude of the court and the administrations are quite different. The court is concerned to preserve and protect the administration of Justice and to see that the same is not broken down.

64. Accordingly, we set aside the order passed by the Tribunal dated 12.3.1998 and the chargesheet issued under memo No. 26011/6/98-IPS.II which is annexed to the petition is also set aside and is quashed. The writ application is thus allowed.

There will be no order as to costs in the facts and circumstances of this case.

Let xerox certified copy of this order be given to the parties as expeditiously as possible, if applied for.

R.K. Mitra, J.

65. I agree.

66. Application allowed