

(2012) 07 AP CK 0084

In the Andhra Pradesh High Court

Case No : Public Interest Litigation No. 220 of 2012

E. Giri Yadav

APPELLANT

Vs

Union of India and six Others

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Constitution of India, 1950 — Article 142(2), 164, 164(3), 256, 257
Criminal Procedure Code, 1973 (CrPC) — Section 158, 173

Citation : (2012) 6 ALT 512

Hon'ble Judges : Vilas V. Afzulpurkar, J; V. Eswaraiyah, J

Bench : Division Bench

Advocate : S. Ramachandra Rao for Mr. K.R. Prabhakar, for the Appellant; Ponnamm Ashok Goud, (Asst. Solicitor General), Mr. P. Kesava Rao, (SPL. SC for CBI) and Mr. R. Ramachandra Reddy, (SC for ACB), for the Respondent

Final Decision : Dismissed

Judgement

Vilas V. Afzulpurkar

1. We have heard Mr. S. Ramachandra Rao at length. The reliefs sought for in these public interest litigations may be noticed as under:

Relief sought in PIL. No. 220 of 2012:

the High Court may be pleased to issue an appropriate writ, order or direction more in the nature of Writ of Mandamus declaring the failure of the Union of India in discharging its Constitutional duties under Articles 355 & 356 of the Constitution of India though there is a constitutional breakdown in the State of Andhra Pradesh as illegal, unjust, arbitrary and unconstitutional and consequently direct the Union of India to invoke, exercise and discharge its Constitutional duties by discharging and exercising its constitutional duties and functions under Articles 355 and 356 of the Constitution of India by imposing President's Rule in the State of Andhra Pradesh forthwith or pass such other further orders as this Hon'ble Court may deem fit and proper in the prevailing

circumstances in the State and as per the requirements of this case.

Relief sought in PIL. No. 221 of 2012:

the High Court may be pleased to issue an appropriate writ, order or direction declaring that the 1st respondent Sri Botsa Satyanarayana is not constitutionally eligible to hold the office of Minister in the Andhra Pradesh Cabinet or pass such other order or orders as this Hon"ble Court may deem fit and proper in the circumstances of the case.

2. It would be noticed from the above that in PIL. No. 220 of 2012 petitioner seeks a Mandamus against the Union of India to invoke its powers under Articles 355 and 356 of the Constitution of India and consequently, impose Presidential Rule in the State of Andhra Pradesh. In PIL. No. 221 of 2012 though a declaratory relief against the first respondent, who is holding office of Minister is sought, in other words, is in the nature of a Writ of Quo Warranto.

At this stage, it would also be appropriate to notice Articles 355 and 356 of the Constitution of India.

355. Duty of the Union to protect States against external aggression and internal disturbance.- It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.

356. Provisions in case of failure of constitutional machinery in State.-

(1) If the President, on receipt of report from the Governor of the State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation -

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the president to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation issued under this article except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation: Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of [six months] from the date on which under this clause it would otherwise have ceased to operating, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People:

Provided also that in the case of Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab, the reference in the first proviso to this clause to "three years" shall be construed as a reference to [five years].]

(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such proclamation shall not be passed by either House of Parliament unless -

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of

such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned:

Provided that nothing in this clause shall apply to the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab.]

3. Both these public interest litigations proceed on an assumption that there is a breakdown of Constitutional machinery in the State of Andhra Pradesh. The said assumption is drawn by the petitioner on the basis of the investigation report(s) submitted by the Anti Corruption Bureau (ACB) of the State alleging massive corruption relating to the shops leased out by the State to vend Indian Made Foreign Liquor (IMFL) in the State of Andhra Pradesh under the State's Excise Policy for the year 2011-2012.

4. Petitioner has made extensive averments based on the information contained in the aforesaid reports. It is also alleged that all the said information and reports are available on the official website i.e. www.acbap.gov.in, of ACB. Reference has also been made to the said information by contending that several shops raided by ACB, during investigation, are found to be held by licensees, who are white card holders (below poverty line) or the licensees, who are benamis for influential people and that the majority of the licensees are low paid employees of such ostensible licensees. Consequently, on the basis of the very nature of the economic strata from which the white card holders or said benami licensees belong, it was impossible for them to have paid lakhs of rupees towards license fee and invested huge amounts for running of liquor outlets. It is also alleged that the ostensible licensees have connived and colluded to knock away a large number of shops in the name of their cronees and have conducted business in gross violation of the Andhra Pradesh Excise Act and the Rules made thereunder by resorting to large scale sales of non-duty paid liquor, loose sales at the shops, operation of belt shops etc. It is also alleged that in order to manage and screen away all the violations, huge amounts of bribes were paid to excise officials, police officials and others and as per the report, a syndicate was formed for carrying out the aforesaid large scale violations for which, allegedly, accounts were maintained by the syndicate, which the ACB claims to have unearthed and quantified with respect to each District.

5. Learned senior counsel had laid great stress on the tables set out in the affidavit together with gist of various reports 1 to 14 said to have been prepared by ACB. Reference also is made in the affidavit to another PIL. No. 70 of 2012 and WP. No. 34080 of 2011 pending before this Court.

6. With regard to PIL. No. 221 of 2012 the same reports of the ACB are relied upon to contend that the first respondent is reported to be the ostensible licensee of large number of shops for which licensees are his men, who include

small time employees/family members/close associates, as his benamis and allegedly, the first respondent through the syndicate is alleged to have indulged in large scale violations of the Excise Act and the Rules resulting in massive liquor scam all over the State. It is alleged that when an upright officer of ACB unearthed this scam, the first respondent, allegedly, wrote a letter to the Congress High Command and using his influence got the said upright officer transferred, through the third respondent and planted an officer sympathetic to him so as to cover up the scam.

7. Learned senior counsel has extracted in the affidavit the letter of the first respondent, allegedly, written to the President, AICC and on our specific query as to the source and authenticity of the letter, the learned senior counsel has fairly stated that the letter and the content are published in the press. On the basis of the allegations, as above, the learned senior counsel contended that the first respondent, having been found by ACB, as involved in a large scale liquor scam cannot continue as a Minister and is Constitutionally ineligible to hold the office of the Minister.

8. Several allegations against the third respondent also have been made by contending that the third respondent has actively supported the first respondent in stifling the investigation by ACB by removing an inconvenient, honest officer from the post and by making convenient administrative changes with a view to stifle the investigation and further action. It is also alleged that the then Excise Minister and the first respondent in PIL. No. 221 of 2012 are both, allegedly, involved as political leaders of the alleged liquor syndicate and the said men in power, who are directly and indirectly involved in the scam, are, allegedly, protected by the third respondent. Certain statements of the third respondent, allegedly, made during the Assembly proceedings and outside in trying to protect the then Excise Minister are also referred to along with the fact that the said Excise Minister is later arrested by the Central Bureau of Investigation (CBI) in another scam and is presently in judicial custody. The third respondent, therefore, is accused of shielding his allegedly corrupt cabinet colleagues.

9. During the hearing, the learned senior counsel would contend that prima facie material produced by the petitioner, which largely comprises of reports of ACB, on investigation, this Court would be justified in drawing presumption in favour of the petitioner to call upon the respondents to explain the circumstances appearing against them. Learned senior counsel would also contend that since several malafide actions are alleged against the named respondents, they may be called upon to explain the same by giving opportunity of rebutting. In other words, the learned senior counsel would contend that in a public interest litigation when prima facie material is placed by the petitioner before the Court, this Court would not be justified in declining to entertain the public interest litigation, which deserves to be admitted by issuing notices to the respondents.

10. As the learned senior counsel, perhaps, felt that we were not inclined to entertain the PIL's for the reasons mentioned hereunder; in order to impress

upon us that these PIL's ought not to be rejected in limine , learned senior counsel argued specific proposition that this Court is bound to issue notices to note the version of the respondents, as per the decision of the Supreme Court in Vishwanath Chaturvedi Vs. Union of India (UOI) and Others, and that it is not permissible to dismiss the PIL's in limine ex parte. Learned senior counsel would implore upon us that as Constitutional Court, it is our duty to take appropriate corrective action by issuing necessary directions so as to arrest the abuse of power and colossal corruption, as revealed by the premiere investigating agency of the State viz. ACB. Apart from the decision in Vishwanath Chaturvedi'S case (1 supra), the learned senior counsel has cited number of decisions, reference to which would be made hereunder.

11. Various other related allegations are also made in the affidavits filed in support of the PIL's, which are largely based upon the press reports, inferences of the media and perceptions of the petitioner. The reports of ACB, filed in the affidavits, are, allegedly, based upon the information available on the website, as above, but the conclusions drawn, insinuations made and conclusions as to violations of law drawn therefrom are either based on perceptions of the petitioner or perceptions in the media, both print and electronic. The allegations are also based upon some proceedings ensuing in the ACB Court, where the persons accused and the prosecutors, during the hearing, have made allegations and counter allegations against each other.

12. Learned senior counsel would, therefore, contend, on the allegations aforesaid, that the manner in which the Government of the State is being carried on, the massive levels of corruption and violations of law by men in power and cabinet colleagues of the third respondent clearly demonstrates that the Government of the third respondent is not being carried on in accordance with law and the Constitution of India. The alleged acts of the third respondent in protecting and shielding his, allegedly, corrupt political leaders and cabinet colleagues and the further alleged acts of stifling the investigating agency, according to the learned senior counsel clearly amounts to serious breakdown of Constitutional machinery in the State. It is, therefore, urged that in order to safeguard the public interest and the rule of law, the Constitution envisages power of the union of India to give necessary directions under Article 355 of the Constitution of India and also justifies invocation of power of the union of India under Article 356 of the Constitution of India. Learned senior counsel, therefore, submitted that it is a fit case where both the PIL's deserve to be entertained by calling upon the respondents to show cause against the relief sought for.

13. Learned senior counsel for the petitioner placed strong reliance upon the following decisions:

In S.R. Bommai and others Vs. Union of India and others etc. etc., the learned senior counsel relied upon various paragraphs (from SCC) viz. 56, 57, 63, 80, 82, 160, 216, 218, 219, 227, 250, 254, 256 and 275. That decision primarily deals with justiciability with regard to the power exercised by the Union of India

under Article 356 of the Constitution of India. However, reference to Article 355 of the Constitution is also made in the context as both the Articles 355 and 356 are interlinked Articles falling in the same chapter of "emergency powers" and hence, the paragraphs relevant for our purpose are extracted hereunder:

56. Article 355 makes an important provision. It casts a duty on the Union to protect States against external aggression and internal disturbance, and to ensure that the Government of every State is carried "in accordance with the provisions of the Constitution". This article corresponds to Article 277A of the Draft Constitution. Explaining the purpose of the said article to the Constituent Assembly, Dr Ambedkar stated as follows:

Some people might think that Article 277A is merely a pious declaration, that it ought not to be there. The Drafting Committee has taken a different view and I would therefore like to explain why it is that the Drafting Committee feels that Article 277A ought to be there. I think it is agreed that our Constitution, notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces, nonetheless is a Federal Constitution and when we say that Constitution is a Federal Constitution, it means this, that the Provinces are as sovereign in their field which is left to them by the Constitution as the Centre is in the field which is assigned to it. In other words, barring the provisions which permit the Centre to override any legislation that may be passed by the Provinces, the Provinces have a plenary authority to make any law for the peace, order and good government of that Province. Now, when once the Constitution makes the provinces sovereign and gives them plenary powers to make any law for the peace, order and good government of the province, really speaking, the intervention of the Centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition which, I think, we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, as we propose to authorise the Centre by virtue of Articles 278 and 278A, it must be by and under some obligation which the Constitution imposes upon the Centre. The invasion must not be an invasion which is wanton, arbitrary and unauthorised by law. Therefore, in order to make it quite clear that Articles 278 and 278A are not to be deemed as a wanton invasion by the Centre upon the authority of the province, we propose to introduce Article 277A. As Members will see, Article 277A says that it shall be the duty of the Union to protect every unit, and also to maintain the Constitution. So far as such obligation is concerned, it will be found that it is not our Constitution alone which is going to create this duty and this obligation. Similar clauses appear in the American Constitution. They also occur in the Australian Constitution, where the constitution, in express terms, provides that it shall be the duty of the Central Government to protect the units or the States from external aggression or internal commotion. All that we propose to do is to add one more clause to the principle enunciated in the American and Australian Constitutions, namely, that it

shall also be the duty of the Union to maintain the Constitution in the provinces as enacted by this law. There is nothing new in this and as I said, in view of the fact that we are endowing the provinces with plenary powers and making them sovereign within their own field, it is necessary to provide that if any invasion of the provincial field is done by the Centre it is in virtue of this obligation. It will be an act in fulfilment of the duty and the obligation and it cannot be treated, so far as the Constitution is concerned, as a wanton, arbitrary, unauthorised act. That is the reason, why we have introduced Article 277A." (Constituent Assembly Debates, Vol. IX, p. 133)

57. Articles 278 and 278A of the Draft Constitution referred to above correspond to present Articles 356 and 357 of the Constitution respectively. Thus it is clear from Article 355 that it is not an independent source of power for interference with the functioning of the State Government but is in the nature of justification for the measures to be adopted under Articles 356 and 357...

82. It will be convenient at this stage itself, also to illustrate the situations which may not amount to failure of the constitutional machinery in the State inviting the Presidential power under Article 356(1) and where the use of the said power will be improper. The examples of such situations are given in the Report² in paragraph 6.5.01. They are:

(i) A situation of maladministration in a State where a duly constituted Ministry enjoying majority support in the Assembly, is in office. Imposition of President's rule in such a situation will be Extraneous to the purpose for which the power under Article 356 has been conferred. It was made indubitably clear by the Constitution- framers that this power is not meant to be exercised for the purpose of securing good Government.

(ii) Where a Ministry resigns or is dismissed on losing its majority support in the Assembly and the Governor recommends, imposition of President's rule without exploring the possibility of installing an alternative Government enjoying such support or ordering fresh elections.

(iii) Where, despite the advice of a duly constituted Ministry which has not been defeated on the floor of the House, the Governor declines to dissolve the Assembly and without giving the Ministry an opportunity to demonstrate its majority support through the "floor test", recommends its supersession and imposition of President's rule merely on his subjective assessment that the Ministry no longer commands the confidence of the Assembly.

(iv) Where Article 356 is sought to be invoked for superseding the duly constituted Ministry and dissolving the State Legislative Assembly on the sole ground that, in the General Elections to the Lok Sabha, the ruling party in the State, has suffered a massive defeat.

(v) Where in a situation of "internal disturbance", not amounting to or verging on abdication of its governmental powers by the State Government, all possible

measures to contain the situation by the Union in the discharge of its duty, under Article 355, have not been exhausted.

(vi) The use of the power under Article 356 will be improper if, in the illustrations given in the preceding paragraphs 6.4.10, 6.4.11 and 6.4.12, the President gives no prior warning or opportunity to the State Government to correct itself. Such a warning can be dispensed with only in cases of extreme urgency where failure on the part of the Union to take immediate action, under Article 356, will lead to disastrous consequences.

(vii) Where in response to the prior warning or notice or to an informal or formal direction under Articles 256, 257, etc., the State Government either applies the corrective and thus complies with the direction, or satisfies the Union Executive that the warning or direction was based on incorrect facts, it shall not be proper for the President to hold that "a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution". Hence, in such a situation, also, Article 356 cannot be properly invoked.

(viii) The use of this power to sort out internal differences or intra-party problems of the ruling party would not be constitutionally correct.

(ix) This power cannot be legitimately exercised on the sole ground of stringent financial exigencies of the State.

(x) This power cannot be invoked, merely on the ground that there are serious allegations of corruption against the Ministry.

(xi) The exercise of this power, for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution, would be vitiated by legal mala fides.

219. While it is not possible to exhaustively catalogue diverse situation when the constitutional breakdown may justifiably be inferred from, for instance (i) large-scale breakdown of the law and order or public order situation; (ii) gross mismanagement of affairs by a State Government; (iii) corruption or abuse of its power; (iv) danger to national integration or security of the State or aiding or abetting national disintegration or a claim for independent sovereign status and (v) subversion of the Constitution while professing to work under the Constitution or creating disunity or disaffection among the people to disintegrate democratic social fabric.

254. The Union of India, when discovery order nisi is issued by this Court, would act in aid of the Court under Article 142(2) and is enjoined to produce the material, the foundation for action under Article 356. As held earlier before calling upon the Union to produce the material, the court must first find strong prima facie case and when the records are produced they are to be considered in camera.

(Emphasis supplied in present context)

Reliance is also placed upon *State of Maharashtra v. Sarangdharsingh Shivdassingh Chavan* (Referring to report of Sarkaria Commission) wherein the Supreme Court considered the abuse of executive power to give special treatment to accused on instructions of a Constitutional functionary like the Chief Minister was held unwarranted and condemnable. Reliance is placed upon paras 25, 26, 29, 30, 32 to 36, 38, 39, 41 of the judgment of Hon''ble Sri Justice A.K. Ganguly and paras 49, 56, 57, 63 to 66 of the judgment of Hon''ble Sri Justice G.S. Singhvi. To the extent relevant for our purpose paras 38, 39 and 56 are as under:

38. This being ground reality, as the Chief Minister of the State and as holding a position of great responsibility as a high constitutional functionary, Mr. Vilasrao Deshmukh certainly acted beyond all legal norms by giving the impugned directions to the Collector to protect members of a particular family who are dealing in moneylending business from the normal process of law. This amounts to bestowing special favour to some chosen few at the costs of the vast number of poor people who as farmers have taken loans and who have come to the authorities of law and order to register their complaints against torture and atrocities by the moneylenders. The instructions of the Chief Minister will certainly impede their access to legal redress and bring about a failure of the due process.

39. The aforesaid action of the Chief Minister is completely contrary to and inconsistent with the constitutional promise of equality and also the Preamble resolve of social and economic justice. As the Chief Minister of the State Mr. Deshmukh has taken a solemn oath of allegiance to the Constitution but the directions which he gave are wholly unconstitutional and seek to subvert the constitutional norms of equality and social justice.

59. Article 164 lays down that:

164. Other provisions as to Ministers.- (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor.

Article 164(3) lays down that the Governor shall before a Minister enters upon his office, administer to him the oath of office and secrecy according to the form set out in the Third Schedule, in terms of which, the Minister is required to take oath that he shall discharge his duties in accordance with the Constitution and the law without fear or favour, affection or ill will. However, the cases involving pervasive misuse of public office for private gains, which have come to light in the last few decades tend to shake the peoples' confidence and one is constrained to think that India has freed itself from British colonialism only to come in the grip of a new class, which tries to rule on the same colonial principles. Some members of the political class who are entrusted with greater responsibilities and who take oath to do their duties in accordance with the

Constitution and the law without fear or favour, affection or ill will, have by their acts and omissions demonstrated that they have no respect for a system based on the rule of law.

Reliance is also placed upon the decision of the Supreme Court in VISHWANATH CHATURVEDI's case (1 supra) and particularly, paras 34 and 36. In the said decision arising out of a writ sought for against the Union of India to take appropriate action to prosecute respondents 2 to 5 under the Prevention of Corruption Act, the Supreme Court was of the view that such prayer cannot be straightaway granted and on consideration of facts and circumstances, the Supreme Court directed the Central Bureau of Investigation to conduct preliminary enquiry and submit a report. We fail to see any relevance of the said decision for the facts and circumstances of the present case.

Reliance is also placed upon the decision in State of Maharashtra and Others Vs. Sarangdharsingh Shivdassingh Chavan and Another, nd para 55 thereof is as under:

55. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.

Reliance is also placed upon the decision of the Supreme Court in Vineet Narain and Others Vs. Union of India (UOI) and Another, This decision is primarily relied upon by the learned senior counsel to point out that when allegations of malafides are made against the third respondent in, allegedly, protecting his cabinet colleagues and allegedly, stifling the investigation by ACB, based on this decision, it is contended that the allegations of malafide unless rebutted, are to be accepted. Relevant paras 16 and 18 may be noticed as under:

16. It is, no doubt, true that allegations of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation, in fact, are made in several of the cases which have come up before this and other courts and it is found that they have been made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of it at least might stick. Consequently it has become the duty of the Court to scrutinise these allegations with care so as to avoid

being in any manner influenced by them, in cases where they have no foundation in fact. In this task which is thus cast on the courts it would conduce to a more satisfactory disposal and consideration of them, if those against whom allegations are made came forward to place before the court either their denials or their version of the matter, so that the Court may be in a position to judge as to whether the onus that lies upon those who make allegations of mala fides on the part of the authorities of the status of those with which this appeal is concerned, have discharged their burden of proving it. In the absence of such affidavits or of materials placed before the Court by these authorities, the Court is left to judge of the veracity of the allegations merely on tests of probability within nothing more substantial by way of answer. This is precisely the situation in which we find ourselves in the present case.

18. The next question is as regards the inference to be drawn from these facts which in the absence of their denial have to be taken as true. It is here that we have felt the greatest uneasiness, because if the facts which serve as the foundation for the plea of mala fides are made out, the only question would be whether the inference of mala fides on the part of the Chief Minister would be a reasonable one to draw. It is at this point that we are faced with the necessity of having to proceed without there being any effective answer to the propriety of drawing the inference which the appellants desire. There has been no denial by the Chief Minister, nor an affidavit by any person who claims or can claim to know personally about the truth about these allegations. The Secretary to the Home Department - one Mr. S. A. Iyengar has filed a counter affidavit in which the allegations we have set out earlier have been formally denied. He says, "I have been expressly instructed and authorised by the Hon'ble the Chief Minister to state that the allegations suggesting personal animus and giving mandate are false and mischievous and have been deliberately made to create an atmosphere of sympathy." The learned Advocate General did not suggest that the Court could act upon this second-hand denial by the Chief Minister, as the statement by Shri S.A. Iyengar is merely hearsay. We are, therefore, constrained to hold that the allegations that the Chief Minister was motivated by bias and personal ill-will against the appellants, stand unrebutted.

Reliance is placed upon the decision of the Supreme Court in *C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation*, wherein the decision in *C.S. ROWJEE's* case (5 supra) was applied.

Reliance is also placed upon the decision of the Supreme Court in *Kazi Lehndup Dorji v. Central Bureau of Investigation* (1986) 1 SCC 133 gh. That was a case where the Government of Sikkim having consented to investigation by the Central Bureau of Investigation had later withdrawn the consent and the notification of withdrawal was questioned. It was held that the notification is only prospective and does not affect the investigation conducted on the basis of consent earlier given. We fail to see any relevance of this decision to the issue involved in the present case.

A Division Bench judgment of this Court in *Kazi Lhendup Dorji Vs. Central Bureau of Investigation and Others*, is also relied upon. The said case dealt with inaction of the first respondent therein in granting sanction to prosecute the fourth respondent therein under the Prevention of Corruption Act. The said decision also has no application.

Lastly, reliance is placed upon a Full Bench judgment of this Court in *Dronamraju Satyanarayana v. N.T. Rama Rao* 2010 ALT (Cri) (2) 147 and the following paras are relied upon:

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 under 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 Prof. 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 Bhagwati, J. (as he then was) in the Judge's case *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 rules 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 action bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury

23. ... The accountability of the executive to the people through the judiciary cannot be set at naught by any self-induced doubts regarding their 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 Government machinery are alleged by the petitioner with sufficient material particulars, we cannot throwout the writ petitions on the untenable ground of locus.

14. The substance of the allegations of the petitioner, as noticed above, emanate

from various reports of ACB, press reports of statements said to have been made by public functionaries, Ministers and various reports and analysis thereof appearing in print and electronic media. While it is well-settled that this Court would not act upon the press reports, excluding averments of the petitioner based on that and assuming that the reports of ACB relied upon in the affidavits are based upon ACB's own website, We will proceed and consider whether petitioner has made out any prima facie case warranting invocation of extraordinary jurisdiction by this Court. In our considered view, our answer to the above question has to be in the negative, as it would be impermissible in law to draw conclusions as to breakdown of the Constitutional machinery in the State based on the aforesaid material.

15. A detailed analysis of the contentions raised by the learned senior counsel will give rise to following questions for consideration:

1. Whether the report(s) of investigation by ACB finding involvement of certain persons named therein, is conclusive?
2. Even assuming answer to the above question is in the affirmative, whether it can be said that the parameters requiring invocation emergency provisions under Article 355 and consequently, Article 356 of the Constitution of India are even prima facie satisfied by the petitioner?
3. Whether the petitioner has made out any ground to substantiate that the administration in the State is not carried on in accordance with the Constitution?
4. Even assuming that there are circumstances showing mal-administration, whether any ground exists to issue Mandamus to Union of India to invoke Articles 355 and 356 of the Constitution of India?

As mentioned above, our answer, to all the questions posed, is in the negative and reasons therefor are as follows.

QUESTIONS 1 and 2:

16. The Anti Corruption Bureau is a separate establishment under the State formed under G.O.Ms. No. 1880 General Administration (S.C-C) Department dated 16.12.1960, which is now headed by a Director General and assisted by Directors, Additional Directions and Joint Directors etc. The Director General reports directly to the Chief Secretary to the Government and works independently of the Police department of the State. The investigations carried out by ACB are in accordance with the provisions of the Code of Criminal Procedure and the report of the investigation is also required to be made, as provided u/s 158 read with 173 Cr.P.C. The said report of investigation is, therefore, subject to orders of the jurisdictional Magistrate on which further proceedings under Cr.P.C for trying an offence alleged are taken up. In the case on hand, ACB authorities are said to have submitted number of reports to the State Government in the ongoing investigation, which is being carried on, relating to violations under the A.P. Excise Act and the Rules made thereunder,

along with various other related offences under the Prevention of Corruption Act. However startling the reports are and even accepting that the liquor scam involved officials of Excise, Police department apart from members of liquor syndicate, who are, allegedly, in league with politicians and public servants, we fail to see how the said reports can be seen as a piece of conclusive evidence, particularly, for the purpose of the relief sought for in the present case. In our opinion, the said report(s) of investigation are on par with that of a report submitted by any police officer and merely on the basis of the conclusions drawn in the said report, it can neither be held that the persons named therein are guilty of commissions and omissions nor can the persons named therein be treated as convicted, at this stage, for the offence alleged.

17. The Constitution of India contains emergency provisions under Chapter XVIII, which commences with Article 352 dealing with proclamation of emergency and ending with Article 360 dealing with provision as to financial emergency. Article 355 of the Constitution of India imposes a duty on the Union of India to protect the States against external aggression and internal disturbances so as to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution of India. We fail to see how Article 355 of the Constitution of India can be invoked by the petitioner to seek a Mandamus from this Court merely on the basis of indictment of certain public servants by ACB in its report. The report by itself being inconclusive, we cannot read the said report as conclusive evidence so as to form the satisfaction that the Government of the State is not being carried on in accordance with the provisions of the Constitution of India. The Government of the State representing an elected majority cannot be charged with a serious default of not carrying on the Government in accordance with the provisions of the Constitution of India merely because in a police officer's report some public servants including Ministers are said to have been indicted.

18. In our view, a duly elected Government of the State is empowered under the Constitution of India to discharge its Constitutional responsibility and it would be wholly impermissible to lightly interfere with the mandate it has.

19. The affidavit of the petitioner and the contentions raised by the learned senior counsel had made a reference to PIL. No. 70 of 2012 pending on the file of this Court and reports of the ACB, which are referred to herein, having been submitted to this Court in the said PIL. We had called for the said PIL and have seen the averments therein as well as the status reports, which are placed in the sealed cover. Report of Director General, ACB to the Chief Secretary, Government of Andhra Pradesh under Rc. No. 15/RCO-KNR/2011 dated 25.01.2012, which is annexed as P2 in PIL. No. 220 of 2012 was also annexed as P1 in PIL. No. 70 of 2012. The said report given to the Government of Andhra Pradesh mentions about the investigation conducted so far and registration of 22 cases by ACB against various accused in those cases and that investigation is being taken up and is going on. In PIL. No. 70 of 2012, the status report from the Joint Director,

Special Investigation Team, ACB was called for and was filed in 18 volumes in 2 trunk boxes. Vide order of this Court dated 19.03.2012 therein, the learned standing counsel for ACB was allowed to take the said two boxes back and to produce them whenever required. The status report was also seen by this Court and kept again in a sealed cover. This Court, in PIL. No. 220 of 2012 is considering the very same reports of ACB, which are subject matter of PIL. No. 70 of 2012, though the relief sought in the said earlier PIL is for giving functional independence to ACB and for ancillary relief as to monitoring of investigation carried on by ACB. While the said PIL is pending, the relief sought for in the present PIL's are far more serious, drastic and would amount to removal of elected Government of the State.

20. In this background, therefore, We are satisfied that both the questions, as above, having been answered in the negative, no ground is made out by the petitioner, even prima facie, to entertain these PIL's.

QUESTIONS 3 and 4:

21. During the hearing of these matters, learned senior counsel very fairly stated that Article 355 and 356 of the Constitution of India are interlinked and are part of emergency provisions. To the extent of the background in which the relief, based on the said provisions, is sought for, it was essential for the petitioner to establish that the Government of the State is not being carried on in accordance with the provisions of the Constitution of India. The analysis of the said two Articles, which is subject matter of various decisions of the Supreme Court to which we will instantly refer to, we, however, feel it essential to notice the analysis in H.M. Seervai's Constitutional Law of India, IV Edition, Volume 3. The relevant portion thereof would substantially answer the contentions of the petitioner. Those portions are as under:

29.12 Section 45 of the G.I. Act, 35 provided for failure of constitutional machinery for the Federation in Part II. Chapter V of the Act entitled

Provisions in case of failure of Constitutional Machinery" and S.93 provided for such failure in the Province in Part II. Chapter VI which was similarly entitled. Section 45(1) ran as follows:

45. Power of Governor-General to issue Proclamations. -

(1) If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation -

(a) declare that his functions shall to such extent as may be specified or any of the powers vested in or exercisable by any Federal body or authority;

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or

in part the operation of any provisions of this Act relating to any Federal Body or authority;

Provided that nothing in this sub-section shall authorise the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provisions of this Act relating to the Federal Court.

Section 93 was mutatis mutandis the same except that the Governors of Provinces were substituted for the Governor General, and the Government of the Province was substituted for the Government of the Federation.

29.18 But the language of Arts. 355 and 356 presents difficulties. First, what is meant by the expression "the government of a State is not carried on according to the provisions of the Constitution"? Secondly, does Art. 356 empower the President to impose the President's Rule to secure good government? As to the second question, the following dialogue in the Constituent Assembly is instructive:

Pandit Hirday Nath Kunzru (United Provinces: General):

May I ask my honourable Friend to make one point clear? Is it the purpose of article 278 and 278A to enable the Central Government to intervene in provincial affairs for the sake of good government of the Provinces?"

The Honourable Dr. B.R. Ambedkar: " No. No. The Centre is not given that authority.

Pandit Hirday Nath Kunzru: "Or only when there is such mis-government in the province as to endanger the public peace?

The Honourable Dr. B.R. Ambedkar: "Only when the government is not carried on in consonance with the provisions laid down for the constitutional government of the provinces. Whether there is good government or not in the province is not for the Centre to determine. I am quite clear on the point.

29. 22 It is clear from the judgments of the Privy Council and our Sup. Ct. cited above, that the literal meaning of an Article ought not to be given to it if it practically destroys the autonomy of the States. In this connection, it may be noted that if the framers of our Constitution had intended that the Union should be able to supervise and interfere in the administration of State to secure good government, the framers would have adopted a unitary Constitution for India with a large devolution of power in favour of the States. The very fact that the framers enacted a federal constitution with a Parliamentary form of government for the Union and the States shows that internal sovereignty was to be divided between the Union and the States. A literal construction of the wide general words of Art. 356 which could enable the Union Executive to cut at the root of the democratic parliamentary form of government in the States must be rejected in favour of a construction which would preserve that form of government. The exercise of that power must be limited to "a failure of constitutional machinery",

that is, to preserving the parliamentary form of government from internal subversion, or from a deliberate deadlock created by a party or a group of parties, or from a deadlock arising from an indecisive electoral verdict which makes the carrying on of government practically impossible.

22. In S.R. BOMMAI's case (2 supra), in para 82, extracted earlier, the Supreme Court has recorded para 6.5.01 of the report of the Sarkaria Commission on Centre-State relations and sub-para (x) thereof is relevant for our purpose, which is quoted again for reference:

(x) This power cannot be invoked merely on the ground that there are serious allegations of corruption against Ministry.

In paras 253 and 254, it was held as under:

on the Courts satisfying that the strong prima facie case has been made out and if it is a High court, it should record reasons before issuing "discovery order nisi", summoning the records from the Union of India...the Court must find strong prima facie case and when the records are produced they to be considered in camera.

23. From the above it is clear that keeping in view the reliefs sought for in these PIL's, unless this Court is satisfied that there exists strong prima facie case, it would neither entertain the PIL's nor it would issue any notices. The contentions of the learned senior counsel that malafides having been alleged against the third respondent, We ought not to decline the entertainment of PIL's at the threshold, is without substance and rejected, as the issuance of notice or calling upon the respondents to show cause against the allegations would arise provided this Court is satisfied of a strong prima facie case to warrant entertainment of these PIL's. Our view is also fortified by a categorical statement of law in para 290 in S.R. BOMMAI's case (2 supra), which is as follows:

290. It must be made clear even at this stage that while no writ petition shall be entertained by any court before the actual issuance of Proclamation under clause (1), it shall be open to a High Court or Supreme Court to entertain a writ petition questioning the Proclamation if it is satisfied that the writ petition raise arguable questions with respect to the validity of the Proclamation.

24. The above caution is administered by the Supreme Court with reference to Article 356 of the Constitution of India and therefore, perhaps, ingeniously the learned senior counsel for the petitioner has sought primary relief with reference to Article 355 of the Constitution of India and consequential relief relating to Article 356 of the Constitution of India. As noted above, since both the said Articles are interlinked a Mandamus cannot be issued to the Union of India to invoke Article 355 of the Constitution of India and thereafter, Article 356 of the Constitution of India.

25. We are, therefore, satisfied that no reasons exist, from the material produced by the petitioner, for this Court to draw even a prima facie conclusion that the

Government of the State is not being carried in accordance with the Constitution of India. In view of the above, Questions 3 and 4, therefore, are also answered in the negative against the petitioner. In view of our discussion while answering the questions 1 to 4, as above, mere report of ACB cannot be taken into consideration to displace the first respondent from the Constitutional office of a Minister in the Government of the State, as sought for in PIL. No. 221 of 2012.

Consequently, the public interest litigations fail and are dismissed with exemplary costs quantified at Rs. 50,000/- each payable to the Secretary, A.P. High Court Legal Services Authority. As a sequel, the interlocutory applications, if any, shall stand dismissed.