
(2006) 02 RAJ CK 0082

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1670 of 2005

Maresh Chandra Tak

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-02-2006

Acts Referred:

Jai Narain Vyas University Act, 1962 — Section 10(2)
Lokayukt & Up-Lokayukt Act, 1973 — Section 10, 9
Penal Code, 1860 (IPC) — Section 109, 120B, 420, 466, 471
Prevention of Corruption Act, 1988 — Section 5(1), 5(2)

Citation : (2006) 1 RLW 838 : (2006) 2 WLC 559

Hon'ble Judges : N.N. Mathur, J;Manak Mohta, J

Bench : Division Bench

Advocate : M.C. Bhoot, for the Appellant; Girish Joshi, J.P. Joshi, N.M. Lodha, A.A.G., Panney Singh, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mathur, J.—The instant writ petition is yet another case seeking to bring to the fore serious administrative & financial irregularities against the present administrative set up of the J.N.V. University, Jodhpur, Petitioner seeks direction to the Central Bureau of Investigation to seize the entire papers, accounts & material relating to the Rajasthan Pre- Engineering Test 2003, hereinafter referred to as "RPET-2003", conducted by the respondent No. 3 Dr. Naseem Bhatia Vice Chancellor JNV University Jodhpur, Professor Rajesh Mathur and Shri Ravi Saxena, both members of the Faculty of Engineering, JNV University, Jodhpur and to investigate the entire matter and submit its detailed report in a time-bound programme.

2. It is averred that admissions to the First Year of BE/BTEXT/BR Degree Courses for the Sessions 2003-04 in various Engineering Colleges of the State of Rajasthan, were to be made on the basis of Pre-Engineering Test and so the State government authorized the respondent No. 2 i.e. J.N.V. University Jodhpur to conduct the RPET-2003. The Test was organized by the Centralized Admission

Co-ordination Committee (in short "CACC") under the chairmanship of fourth respondent Dr. Naseem Bhatia Vice Chancellor of the UNV University, respondent No. 5 Professor Rajesh Mathur Co-ordinator and Ravi Saxena, a Member of the RPET 2003 Cell. The test was conducted at various places in the State of Rajasthan. A sum of Rs. 18.50 crores was collected from the students, who appeared at the test, for keeping the fund, separate new Bank Accounts were opened in different Banks in the name of Co-ordinator RPET-2003. Ordinarily, the amount ought to have been deposited in the University Account in the University Bank, but respondent No. 5 with the approval of respondent No. 4, for ulterior purpose, opened the account in separate Bank. The handful staff was engaged for discharging the functions of the RPET-2003 without fixing the norms and thereby, the honorarium was paid to them at an exorbitant rate. The respondents No. 4 & 5 were responsible to submit a true and correct account to the University as well as to the State Government but the same was not done almost for a period of one year. Thus, the matter was agitated in the meeting of the Syndicate held on 21.9.2004, The Syndicate was required to consider the saving of the RPET-2003 to be transferred in the Pension Fund. The Vice-Chancellor assured the Syndicate members that the account shall be placed before the Syndicate at the earlier but when the words were not kept, the members in subsequent meetings continued to agitate the issue and also made demand for disciplinary action against the Coordinator of the RPET-2003. In the meeting of the Syndicate held on 1.10.2004, the Vice-Chancellor made a statement that the account has been received but she was not in position to give full details of the account. Neither the account was placed before the Syndicate nor disciplinary action was initiated against the Coordinator and the Vice-Chancellor continued to defend fifth & sixth respondents. It was specifically agitated that the University had received about 18.50 crores from the RPET-2003 out of which Rs. 14,80,00,000/- have been paid to the private Engineering Colleges but there was no account of the difference of the amount. It was apprehended that a huge amount has been misappropriated. It was also pointed out that the amount was being lavishly spent for renovation of the office of the vice Chancellor and other officials concerning RPET-2003. The costly vehicles were purchased, the huge amount was misappropriated against the expenditure on Tent. The saving of Rs. 88,54,000/- was shown but no details of the same were given. The proceedings of the Syndicate appeared in the newspaper viz., Rajasthan Palrika dated 19th Dec. 2004, wherein details of misuse of funds have been reported in detail. A copy of the Newspaper cutting has been placed on record as Ex.6. The petitioner having failed before the authorities, has approached to this Court by way of instant petition.

3. It was brought to the notice of this Court that in another writ petition being D.B. Civil Special Appeal No. I 88/2002, wherein serious allegations have been made against University authorities as to misuse of the funds of the University, this Court by order dated 25.8.2004 had directed the Principal Secretary Finance, Government of Rajasthan to depute a team of officer to look into the record &

make a report to this Court. Pursuant to the directions of this Court, the State Government constituted a Committee consisting of Director Treasury & Accounts Jaipur, Joint Director Local Fund Audit Department Jodhpur, Assistant Accounts Officer Local Fund Audit Department Jodhpur and Assistant Accounts Officer Local Fund Audit Department, Jaipur. The said Committee had already made two reports to the court. The Committee also reported non-cooperative attitude of the authorities of the J.N.V. University. Thus, considering all the facts and circumstances of the case, this Court by order dated 22nd March, 2005 set up a Committee as follows:

Pending consideration, the prayer made by the petitioner to get the matter investigated by the CBI, we consider it appropriate that the committee already constituted by the Finance Secretary to look into the allegations made in the instant petition and submit a preliminary report. The said committee shall be presided by Shri M.D. Vaishnav, Registrar Administration, Rajasthan High Court, Jodhpur. The Registrar General, Rajasthan High Court is directed to obtain appropriate approval from the Hon'ble Chief Justice for permitting to take services of Mr. Vaishnav as indicated in the order.

4. The Committee submitted a report on 12th August, 2005 in a sealed cover. The report runs in 25 pages accompanied by 15 Annexures running in 52 pages. The conclusion of the report is extracted as follows:

CONCLUSION

It was the function of the Centralised Admission Coordination Committee RPET-2003 to frame rules and regulations but the same was not done. It was resolved in CACC meeting to authorize chairman RPET-2003 to take necessary action regarding smooth conduct of RPET. It seems, in the light of this resolution, RPET cell member Shri Ravi Saxena and Co-ordinator Sh. Rajesh Mathur proposed action on adhoc basis and got approval of the Chairperson in most of the cases. For smooth conduct of RPET, activities should have been assessed, planned and rules & regulation should have been assessed, planned and rules & regulation should have been framed in consultation with CACC. But no rules and regulations were framed and followed. The purchases and expenditure seems to have been done in an arbitrary manner.

In purchase of Stores (including services) upon tender procedure was avoided although there was ample time. This is despite of the fact that intimation for conducting RPET-2003 was given well in time to Jai Narayan Vyas University, Jodhpur. A false urgency was created. Even the limited tender procedure was not followed properly.

In payment of honorarium, conveyance allowance, travelling allowance etc. govt. rules and scales prescribed were ignored and huge payments were made arbitrarily. Excessive and arbitrary payment is also evident in secret expenditure because almost double amount of expenditure as compared to RPET-2004 conducted by Director, Technical Education, Jodhpur has been incurred.

RPET-2003 cell was not a permanent establishment, hence, purchases of fixed assets such as Toyota Qualis AC Vehicle, LG. Split Air Conditioner, furniture, and computer hardware etc. should have been avoided alongwith expenditure incurred on decorating the Chairman's chamber/office. These funds were not meant for this purpose.

The payment made for unused tent facility was wasteful expenditure in lacs.

Here it would not be put of context to mention that where University rules were not available or are silent GF & AR (established and time tested rules of Govt. of Rajasthan) should have been followed, in the utilization of public money.

Accounting system followed and maintenance of record is also quite poor. It does not give clear picture of account position of various private and government engineering colleges. Advance amount to Shri Rajesh Mathur, Coordinator needs clarifications.

The purchases made and the expenditure incurred to the tune of above one crore of rupees during the RPET-2003 programme seems to have been done in an arbitrary & autocratic manner and in gross violation of the basic provisions of GF&AR, It smells of the malafide intention of the University Authorities who practically seem to have indulged in wrongful gain or wrongful loss to the public money.

Further, some of the record of expenditure and the Register produced before the committee prima facie shows that the same has been prepared afresh and after passing of the Judicial Order dt.22.3.2005 in the case No. 1670/2005 Mahesh Chandra Tak v. State of Rajasthan. Various cutting/overwriting in some record further indicates doubts in the genuineness of the expenditure.

5. Learned Additional Advocate General byway of filing an application made a demand for copy of the Report expressing the intention of the State Government to have an audit enquiry in relation to the financial irregularities against the JNV University, Jodhpur by the Finance Department (Audit). The prayer was opposed by Mr. M.C. Bhoot, learned Counsel for the petitioner. It was submitted that an attempt has been made not only to eyewash but also to whitewash the Report submitted by the Committee set up by the court. It was also submitted that this Court directed enquiry into the administrative & financial irregularities, alleged to have been committed by the University authorities in the matter of holding of RPET Examination, pending adjudication of the ultimate prayer for investigation by the CB1, by a Committee which is of quasi judicial nature being headed by the Registrar of the High Court, an officer of the status of District Judge. Such a report cannot be permitted to be discredited. It was further submitted that the other member of the Committee is a senior most Accounts Officer of the State i.e. Director (Treasury) and, as such, instead of giving a copy of the Report to the State Government for administrative enquiry, the matter may be entrusted to the C.B.I, to register the F.I.R. on the basis of the said report and to proceed with the investigation. A similar request was made by the learned Counsel in other

cases where similar allegations of financial irregularities were made against the University authorities.

6. It was submitted by one of the petitioners appearing in different petition that Dr. Naseem Bhatia, Vice-Chancellor of the University, is highly influential & the State Government will not be in a position to institute any sort of enquiry against her. At the cost of repetition, it was submitted by Mr. Bhoot and other counsel that neither the State Government nor the Chancellor are in a position to even issue a single line show cause notice to Dr. Naseem Bhatia. thus, for free & fair investigation, a prayer was made to straightway entrust the investigation to the C.B.I, on the basis of the Vaishnav Committee Report. However, considering all the facts & circumstances of the case, the Court ordered as follows:

10. On careful consideration of the entire matter, we do not find any justified reason not to accept the prayer made by the Additional Advocate General to make the report submitted to this Court available to the State Government. Accordingly, we direct the Dy, Registrar, Judicial, Rajasthan High Court, Jodhpur to give a copy of the report submitted by the Committee headed by Shri M.D. Vaishnav to Shri N.M. Lodha, Additional Advocate General.

7. Learned Additional Advocate General made another application for delivery of the original record to the State Government required for initiating the enquiry. This Court by order dated 1.9.2005 directed to give a photo copy of the record to the State Government.

8. Respondent No. 5 Professor Rajesh Mathur and respondent No. 6 Ravi Saxena also filed an application to make them available the copy of the preliminary report of the Committee headed by Shri M.D. Vaishnav, Registrar. The application was opposed by Mr. M.C. Bhoot. It was submitted that in view of the serious allegations made against the three officers viz., Dr. Naseem Bhatia Vice Chancellor, Professor Rajesh Mathur Coordinator and Ravi Saxena Member, RPET-2003, the Court for its prima facie satisfaction appointed the Enquiry Committee and the question before the Court is only that on the basis of the material available, should direction be given for investigation by an appropriate "police agency? The Vaishnav Committee is only a fact finding Committee. The persons affected are not required to be heard before lodging a F.I.R, However, in the interest of justice, we directed to supply a copy of the Report to Mr. J.P. Joshi, learned Counsel appearing for JNV University Jodhpur and all other respondents including the Vice-Chancellor, Coordinator and the Member of the RPET-2003.

9. It is reported by Mr. N.M. Lodha, learned A.A.G., that the matter is pending consideration to initiate an enquiry against the persons concerned on the basis of the report of the Vaishnav Committee before the State Government and the Chancellor. Mr. M.C. Bhoot, learned Counsel for the petitioner, reiterated his apprehension of an attempt to eyewash or whitewash the report by the State Government as well as the Chancellor. It was further submitted that the State

authorities somehow wants to buy time to allow Dr. Naseem Bhatia to complete her term of three years, which is expiring on 9th February, 2006. It was, thus, prayed that no further time may be given and the matter may be finally heard. Thus, this Court by order dated 2.1.2006 posted the case for final hearing on 9.1.2006.

10. Mr. J.P. Joshi has put in appearance on behalf of the JNV University, Jodhpur and other respondents. The reply to the writ petition has been filed on behalf of respondents No. 5 and 6. The reply is supported by the affidavit of Professor Rajesh Mathur. Though Dr. Naseem Bhatia Vice Chancellor has been made party respondent by name, she has chosen not to rebut the allegations levelled against her by filing the counter affidavit.

11. A preliminary objection has been raised as to the maintainability of the instant writ petition filed by a practicing advocate under the label of "Public Interest Litigation". It is averred that the entire writ petition is based on Newspaper Report without asserting the basic scheme of the examination. The entire purpose of the writ petition is to malign and tarnish the image of the responsible officers of the University. The respondents No. 4, 5 and 6 have acted in discharge of their official duty and, therefore, they have been wrongly impleaded as party respondents. On merits of the case, it is averred that the State Government by letter dated 23.1.2003 entrusted the task of conducting the RPET-2003 to J.V.N. University, Jodhpur. The then Vice Chancellor Shri K.R. Choudhary issued an order appointing Professor Rajesh Mathur as Coordinator, Dr. Rajendra Karwa Member and Shri Ravi Saxena, Member of the RPET-2003. The composition of the Central Admission Coordination Committee (in short, "CACC") was issued by the Vice-Chancellor by order Ex.R.5/2 dated 1.2.2003. It is submitted that instead of respondents No. 4, 5 and 6, petitioner ought to have impleaded the CACC as party respondent. It is further averred that a meeting of the Vice-Chancellor, JNV University, its Registrar and O.S.D., Technical Education was held under the chairmanship of Secretary, Technical Education on 30.1.2003, wherein the agenda for sparing part of the income of Entrance Test for proposed Technical Universities was adjourned to next meeting. The first meeting of the CACC was held under the Chairmanship of fourth respondent on 20.2.2003. In the meeting, a Calendar of examination was prepared and other decisions were taken. It is denied that a sum of Rs. 18.50 crores were received from the students, who participated in the Test. It was submitted that the sale of RPET-2003 forms started from 10.3.2003 and the cost of the form was kept same as it was for the last year. The students applying for the RPET-2003 were required to submit their application forms upto 5 p.m. by 16th April, 2003 and were also required to submit a DD of Rs. 500/- for Engineering and DD of Rs. 500/- for Architecture and DD of Rs. 600/- for Engineering & Architecture both. In total, 27227 forms were sold and the Coordination Committee received 22975 forms duly filled-up mostly alongwith the examination fee by the last date of submission of the applications i.e. 16.4.2003. Thus, a total amount of Rs. 1,49,70,354/- was received by the Coordinator, CACC. Petitioner has given the

imaginary figure of Rs. 18.50 crores. It is further averred that the amount received was not required to be deposited in the University fund. As per the decision of the CACC, a separate bank account was opened in the Bank of Baroda in the name of Coordinator, CACC and another account was opened in UCO Bank for convenience. The sale proceeds of the examination forms and the fee received from the candidates were required to be kept separately and, therefore, different accounts were opened. As regards the payment of honorarium, it was submitted that the staff was discharging duties in addition to their normal duties and, therefore, they were entitled to honorarium. As regards submission of account, it was submitted that the account was given to the State Government on 22.12.2003. During the counselling, partial fee was collected from the students and accordingly a sum of Rs. 10,000/- was received from the students of SC/ST category & girls who got admission in the Government funded course and Rs. 15,000/- from the students falling in the General Category, who got admission in the Government funded course. A sum of Rs. 25,000/- was received from the students who got admission in self sufficiency course. In addition, a sum of Rs. 5000/- was collected from the students, which was refundable, who desired to keep his/her name in the waiting list and desired to re-appear in the re-counselling scheduled to be held from 19.8.2003. On 19.8.2003, the counselling was over. The 90% of the fee received from the students was remitted to the Engineering Colleges by demand drafts from 12.9.2003 to 17.9.2003 and thereafter account of RPET-2003 was submitted to the State Government on 22.12.2003. The account was also submitted to the Financial Adviser of the University vide letter dt. 19.10.2004. The accounts submitted by the respondents, were finally audited by the auditor. The audit report dated 29.3.2005 has been placed on record. Thus, a prayer has been made to dismiss the petition.

12. After copy of the report was given to the learned Counsel for the University, he has submitted a synopsis. It is submitted that the Vaishnav Committee has recorded the finding against respondents No. 4 to 6 in violation of principles of natural justice. They were not given opportunity of hearing. Reliance is placed on a decision of the Apex Court in the case of Maneka Gandhi reported in (1978) SCC 248 . It is also submitted that the petitioner has an alternate remedy under Sees. 9 and 10 of the Lokayukt & Up-Lokayukt Act, 1973. It is further submitted that the instant petition under the label of "P.I.L." is not maintainable- He has placed reliance on a decision of the Apex Court in Ashok Kumar Pandey Vs. The State of West Bengal and Others, . He has also given a sequence of events in Appendix-B. The major part of it is already referred in the reply submitted on behalf of the University. An attempt has been made to explain the expenditure. Similarly, reply has also been given with respect to secret expenses, honorarium, conveyance allowance & stationery etc.

13. During the course of arguments, petitioner by way of filing an additional affidavit (a copy of which has been served on the learned Counsel for the respondents), has brought to the notice of this Court some glaring facts to show

the nexus between the fourth respondent Dr. Naseem Bhatia Vice Chancellor and the respondents No. 5 & 6. It is averred that the account of RPET-2003 was not submitted before the Syndicate by the fifth respondent and he continued to enjoy the protection of fourth respondent, Meanwhile, Dr. Naseem Bhatia managed to muster majority in the Syndicate by nominating the fifth respondent Rajesh Mathur & Prof, Kalpana Mathur. She convened the last meeting of the Syndicate of her tenure on 27.12.2005 to carry out the agenda conferring benefits financially or otherwise on her and the people around her. By one of the Resolutions, Professor Rajesh Mathur was appointed as Chief Engineer of the Building Cell of the University irrespective of the fact that there is no such post. Never in the history of the University, a Professor was appointed as Chief Engineer. To accommodate her own persons, the bungalows earmarked for the Registrar & the Financial Adviser have been taken under the common pool. Certain teachers working "temporarily have been made permanent without following the procedure prescribed. There has been neither screening nor selection. The entire purpose has been to accommodate the wife of respondent No. 6 Ravi Saxena, who has been working as temporary teacher in the University. In disregard to the provisions and the decisions of the courts, Dr. Naseem Bhatia's favourites i.e. Professor Rajesh Mathur, Kalpana Mathur and Arvind Rai were made Head of the departments. Their appointments are under challenge before this Court. Dr. Naseem Bhatia in order to overreach the process of the Court and to further enlarge the undue favour, has got the resolution passed by her own influence to the effect that promotees under the CAS Scheme shall be treated at par with the duly selected candidates. The eyebrows have been raised as the resolution is in conflict with the verdict of the Supreme Court. The dissent note given by the nominees of the State and the representatives of the teachers" Union has been ignored against the majority mustered by her as indicated above. Another resolution has been adopted to reimburse the Electricity and Water Charges of the residence of Vice-Chancellor and thereby she conferred financial gain on herself. In order to give rational look, it has been made effective from the year 1970, knowing well that no former Vice-Chancellor will be in position to raise such Bills, or even if raised, it must be meagre in comparison to Bills of last three years.

14. We have heard learned Counsel for the parties & considered the rival contentions. As regards the maintainability of the writ petition under the label of "Public Interest Litigation", we are conscious of the parameters laid down by the Apex Court In the matter of entertaining the "Public Interest Litigation". There is a self-imposed restriction. The approach has to be, to discourage the writ petitions filed by the persons, who Indulge In wild & reckless allegations. Simply because a petition has been filed by an advocate, It cannot be said that he is a busy body and, as such, he should not be heard. It depends on the facts of each case. In certain cases, a member of the Bar can definitely be vitally interested in preservice of the rule of law and purity in the public institution. If there are glaring cases of corruption, a lawyer will be well within his right to approach to

the Court particularly when the State & the other authorities have ignored the instances of corruption, which have become public. On careful consideration of the entire matter, we are satisfied that the instant petition is not for personal gain but for ensuring purity in public Institutions. It is significant to notice that under the orders of this Court, the entire matter has been probed by a Committee of five persons set up by this Court. The Committee is headed by a judicial Officer of the rank of District Judge and four experts in Accounts & Audit. It would be a travesty of justice that after having seen the report of the Committee which has found a strong prima facie case against the respondents No. 4, 5 & 6, the petition is dismissed for one or the other reason as to the maintainability of the petition.

15. It is contended by Mr. J.P. Joshi, learned Counsel for the respondents that preliminary Report, known as "Vaishnav Committee Report" can not be looked into being in violation of principles of natural justice. In our view, there is no substance in the contention raised. It is well settled that a preliminary enquiry is held for the purpose of collection of facts in regard to the allegations made in the complaint. It is not necessary to associate the person against whom the allegations are made in such enquiry. The only purpose of the preliminary enquiry is to determine whether there is a prima facie for a decision to be taken by the appropriate authority, may it be the court or any other appropriate authority, to direct for administrative or police action. Even otherwise, in the instant case, a copy of the Report has been given to the respondents. Mr. J.P. Joshi, learned Counsel for the respondents, has discussed the entire report threadbare and made the submissions in that regard. On the basis of such report, a decision is to be taken by this Court to direct an administrative/police action. There is no provision even in the Code of Criminal Procedure for the observance of principles of natural justice for filing an F.I.R. The parties affected will have full opportunity to show their innocence before the authority conducting enquiry or investigation. Thus, the contention raised by the learned Counsel for the respondents stands rejected. Similarly, there is no substance "in the contention raised that the petitioner has an alternate remedy available under the Lokayukt Act.

16. Coming to the merits of the case, it is submitted by Mr. Bhoot learned, counsel for the petitioner, that the Vaishnav Committee has found the figure shown in income and expenditure both not reliable. There is a discrepancy running in lacs of rupees. The examination of record reveals that all purchases were made on adhoc basis and in haphazard way. Even the limited tender procedure was not followed properly. In many cases, approval of the Vice Chancellor has been taken for short term but despite of this, all purchases were made by getting hand quotations and spot purchases. Payments were made according to Bills raised by the Firms without checking their genuineness. After referring number of instances of payment being without actual work being done, the Committee observed as to huge loss of public money. The Committee also noted cutting and overwriting in comparative statement in respect of certain

Firms, whose rate Rs. 4,01,000/- has been replaced by Rs. 5,25,000/-by overwriting. It was observed that cutting and overwriting in comparative statement and increased quantity with additional items in successful tenders bid, make it doubtful. The income and expenditure account shows a huge honorarium of Rs. 13,13,690/-for RPET-2003. This was approved by the Vice-Chancellor without verifications. Payment for catering was approved at the rate of Rs. 73,000/- but the payment was made for Rs. 4,36,530/-. Manipulation in tenders has been pointed out. The Committee also pointed out instances where details of adjustment bills are lacking or not matching. In many cases, with the approval of the Vice Chancellor, advance has been adjusted even before liability occurred. The counselling programme was scheduled from 3.7.2003 to 20.7.2003 which was cancelled on 4.7.2003 i.e. only after a day's programme. The Firm M/s, Gandhi Associates & Decorator, Ahmedabad raised a bill for 18 days bearing No. 261 dt.8.7.03 for Rs. 7,50,000/- & the CACC meeting held on 8.7.2003. The bill was verified for the period upto 20th July, 2003 and paid for, irrespective of the fact that it was not clear on files. The inspection team vide memo dated 12.4.2005 desired clarification in this regard. The Committee replied by letter dated 14.4.2005 that it was not fault of the Tent Arranger. Hence, he has been paid in full like on such other occasions. The Committee has opined that this logic cannot be accepted especially when they were using public money involved in lacs of rupees. Learned Counsel has referred-to the decision of the Apex Court in Ghulam Din Buch etc. etc. Vs. State of Jammu and Kashmir, wherein it is held that where the matter was dealt with in hurry and the public servant did not make enquiries about the carriage rates and acted against the accepted norms, There is an apparent complicity of such officer in the corruption. In another decision of the Apex Court in Abdulla Mohd. Pagarkar v. State , in such circumstances, an inference can be drawn of siphoning public money to cause wrongful loss to the public institution as a conspiracy with the contractor to share the extra profit. Learned Counsel has dealt with the entire report there adbare ,and pointed out that each items smacks element of corruption. The Coordinator Rajesh Mathur and Member of the Committee Ravi Saxena and a purchase Committee of handful of persons prepared the papers and the Vice-Chancellor as Chairman of the CACC readily appended the word "approved" and signed. It was a team work. According to Mr. Bhoot, it was a conspiracy on the part of Rajesh Mathur, Ravi Saxena and Dr. Naseem Bhatia along with other known and unknown persons with the Contractor and other traders to share extra profit amount and wrongful loss to the University. It is vehemently argued that if the work has got executed in disregard to the rules and even the ordinary norms of the procedure is not adopted, such regard may be sufficient to initiate investigation and collection of facts to put such person to trial on criminal charge under the Indian Penal Code as well as Prevention of Corruption Act. At the cost of repetition, Mr. Bhoot has invited our attention to the various items of the report revealing irregularities in the affairs of the RPET-2003 Examination. Audit report was got prepared after passing of the judicial order dated 22.3.2005. We have gone through the Audit Report. On face, it appears to be a patch work.

Attempt is being made to mislead the Court. The Committee observed:

...Further except Bill Register and Stock Register, all the four books of Accounts seems to have been prepared at a stretch and not on day to day basis because (i) The Income and Expenditure account submitted to Vice-Chancellor on 27.9.2004 contains different amount from that of Expenditure book balance on this date under various heads, whereas no transfer entries/cutting/additions etc. are found in expenditure book after this date, (ii) The register at serial No. 1 to 4 are quite new and seems to be not handled frequently, even the ink of pen for the full period (from 26.2.2003 to 28.3.2005) seems to be same. Thus, the above books of accounts seems to have been prepared recently and got audited on 29.3.2005 after the Hon"ble High Court passed order on 22.3.2005.

17. Thus, the submission of Mr. Bhoot is that police investigation by an independent investigating agency like the C.B.I, is required to be made as to whether Dr. Naseem Bhatia, Vice-Chancellor, JNV University, at the material time by corrupt and illegal means or by otherwise abusing her position as public servant in conspiracy with other persons either known or unknown, particularly Rajesh Mathur and Ravi Saxena conferred on herself and others, pecuniary advantage, causing wrongful loss to the University and its employees and, thereby, committed offence u/s 420, 466, 471/109/120B IPC and Section 5(1) (a), 5(1)(b) and 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, Learned Counsel has heavily relied upon a recent decision of the Apex Court in Sanjiv Kumar v. State of Haryana 2005(5) SCC 517 , wherein in the identical circumstances, the Apex Court directed for the investigation by the C.B.I. Learned Counsel has also referred to another decision of the Apex Court in Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary Vs. State of Punjab and others, wherein it is held that in the matter of public importance, in order to do complete justice and to instill confidence in public mind, direction can be given for investigation by a specialized agency like the C.B.I.

18. It is a matter of experience that in the public institutions, headed by corrupt and undeserving persons, sometimes, caucus is formed of handful of persons sharing common object to fritter away (**canj ckaV**) the funds and positions at the cost of public money and merit. They often seek shelter under the high sounding works like "autonomy" or "prerogative". When such matter comes to the court, they plead for non-interference. It must be realized that the rule of law has always recognized power of judiciary to review legislative and administrative act. Judges decide the cases as they come before them, mindful the need to keep passions and prejudices out of decisions. Normally, this Court would not encourage a vague or motivated "Public Interest Litigation" but when glaring things come to its notice, it will not fold its hands in despair and declare the judicial hands off. It is time to tell the people claiming "prerogative" in exercise of the powers that it is not absolute. It has to be exercised strictly in accordance with the provisions of law and for the public good and none else. It is

now well settled that the exercise of powers in the name of "prerogative" can be reviewed by the Courts just as any other discretionary power, which is vested in executive in order to ensure that the same has not been abused. It is now judiciously recognized that the "prerogative power" is as capable of abuse as is any other power. Thus it is for the Courts to ensure the reasonable & proper exercise of power as and when a complaint as to its misuse is made to it. In the instant case, the material which has come on record, is eye opener. As already stated, it is a case of squandering away of public money, misuse of high public office by forming a caucus, misleading the people and the Court. As such, the process of enquiry initiated with the setting up of Committee headed by a judicial officer with other officers, cannot be left half way.

19. It may be stated that while we have prepared the judgment and ready for pronouncement, in another case listed on 30.1.2006 being D.B. Civil Writ Petition No. 2563/2005 "Suo Moto v. Rajasthan University", the Additional Advocate General has placed on record a letter dt.27.1.2006 from the office of the Governor's Secretariat, Jaipur under the signatures of Shri Sharad Mehra, Sr. Accounts Officer, intimating the content of Her Excellency the Governor to cause enquiry in the subject matter. The letter reads as follows:

Please refer to your letter No. MG/SONI/95, dated 18.1.2006 regarding D.B. Civil Writ Petition No. 2563/2005 Suo Moto Vs. State and Ors. & D.B.C.W.P. No. 1670/2005 Mahesh Chandra Tak Vs. State of Rajasthan and Ors. As has been informed to you on telephone, I am directed inform you that Chancellor and H.E. The Governor of Rajasthan intends to cause an enquiry to be made into the alleged financial irregularities and illegalities committed in the Jai Narain Vyas University, Jodhpur u/s 10(2) of Jai Narain Vyas University Act, 1962. the procedural course of enquiry will be adopted soon.

20. This aspect has been dealt with in para 9 of our judgment. Still, the Communication only says that the Hon"ble Chancellor intends to cause an enquiry to be made in the alleged financial irregularities and illegalities committed by the J.N.V. University u/s 10(2) of the Jai Narain Vyas University Act, 1962. We may remind that the report of the Vaishnav Committee was given to the learned Additional Advocate General on his request almost five months back i.e. on 1.9.2005. The State and the Hon"ble Chancellor kept complete silence as to the action to be taken by them on the report of the Vaishnav Committee. Even at the initial stage, learned Counsel for the petitioner expressed his apprehension that copy of the report is sought by the State only with a view to eye-wash & whitewash the report. After having waited for five months in the instant case and more than one year in another case, under the hope that the State or the Hon"ble Chancellor will take serious view of the matter involving serious allegations of corruption, ultimately we heard the arguments and reserved the judgment on 23.1.2006. The persons allegedly involved have been allowed to continue & abuse the position. It clearly appears that such persons are in position to influence high authorities in the State

responsible to take ultimate effective decisions. Thus, we need not stay our hands, simply on the basis of Communication dated 27.1.2006 addressed to the Additional Advocate General.

21. To be more sure, before taking a decision to entrust the matter to the C.B.I., we requested learned Counsel for the C.B.I, in the High Court to get the matter examined by the officers of the C.B.I. as to advise if it was a fit case for investigation by the C.B.I. The report of the Vaishnav Committee was handed over to the learned Counsel. Studying the report, the C.B.I, after extracting relevant findings of Vaishnav Committee opined that on scrutiny of the preliminary report, it prima facie indicates commission of gross irregularities in organizing the RPET-2003 which has resulted in wasteful expenditure causing huge loss to the Exchequer. We make it clear that explanation given by the respondents as to the Report has been considered by us. It is not desirable to express any opinion either way, else it may prejudice the enquiry or investigation. Suffice it to say that we are satisfied that there is sufficient material against certain persons involving corruption for enquiry or investigation.

22. In view of the aforesaid, without expressing any opinion on merits of the case looking to the nature of allegations made and the mighty people involved, we are of the opinion that it would be in the interest of justice to entrust the matter for enquiry or investigation to the C.B.I.

23. Consequently, we allow the writ petition & direct as follows: "

(i) The matter is entrusted to the Central Bureau of Investigation to register a case against (1) Dr. (Mrs.) Naseem Bhatia, Vice-Chancellor, JNV University, Jodhpur; (2) Professor Rajesh Mathur; and (3) Ravi Saxena, by name & other known or unknown persons, primarily on the basis of Vaishnav Committee Report, referred-to above and other relevant matter for enquiry or investigation. It will be open for the C.B.I, authorities to look into the contents of judgments, delivered today, in connected matters being (1) D.B. Civil Writ Petition No. 1837/2005 "M.M. Gehlot v. J.N.V. University and (2) D.B. Civil Special Appeal No. 188/2002 "State of Rajasthan v. Sarita Choudhary".

(ii) The Deputy Registrar (Judicial), Rajasthan High Court, is directed to communicate a copy of this order forthwith to the Director, CBI, New Delhi accompanied by the Vaishnav Committee Report, one set of the paper book and the relevant papers so that the DBI may apprise itself of the allegations and the counter- allegations for the purpose of initiating enquiry or investigation. The Director, CBI will take a decision to entrust the matter to an officer at the appropriate level for enquiry or investigation of the matter. The Investigating Officer may collect the relevant record (six bags) lying with Deputy Registrar (Judicial) necessary for enquiry or investigation of the matter. Till then, the record shall remain in Court Custody;

(iii) The enquiry or investigation to be completed with reasonable expedition & despatch;

(iv) Before parting, we would like to clarify that what has been stated hereinabove, is based only on the averments contained in the pleadings of the parties and the Report. It will not have any reflection on fair enquiry or investigation by the Central Bureau of Investigation.