

(2012) 07 AHC CK 0246

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24997 of 1993

M/s. Preeti Nursing Home

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 21
Penal Code, 1860 (IPC) — Section 2(aa), 69

Citation : (2012) 9 ADJ 631 : (2012) 135 FLR 295 : (2013) 1 LLJ 136

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Ravi Kant and Tarun Agrawal, for the Appellant; Satish Chandra, Satish Chaturvedi, Sachindra Upadhyay, Dhananjai Awasthi and S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Sudhir Agarwal, J.—Heard Sri Ravi Kant, Senior Advocate assisted by Sri Tarun Agarwal for the petitioner and Sri Sachin Upadhyay for the respondents. The petitioner "M/s Preeti Nursing Home" is said to be a registered partnership firm u/s 69 of Indian Partnership Act, 1932 (hereinafter referred to as "Act, 1932") having three partners namely Dr. (Mrs.) Preeti Gupta, Sri Amit Gupta and Dr. P.C. Gupta. It was founded in September, 1979. It is carrying on a Nursing Home at 39, C.Y. Chintamani Road, Allahabad. It also claims to have employed in all 10 persons; three permanent and seven casual/temporary workers including Trainees/Apprentices nurses and other staff for running the aforesaid establishment.

2. There is another establishment having some similarity with the name though not exactly the same, namely "M/s Preeti Hospital", which was founded in 1990. It is also an independent firm and registered with Registrar of Firms, Chits and Societies u/s 69 of Act, 1932 and partnership consists of Sri Anuj Gupta, Amit Gupta, Smt. Sushila Gupta and Dr. (Mrs.) Preeti Gupta. In order words, it may be

said that in both the establishments, two partners are same but rest are different. Rest have no interest in common with the aforesaid establishment.

3. It however also cannot be disputed that both the establishments are different entities in the eyes of law for all purposes.

4. It is also said that there is a third institution/establishment namely M/s Preeti Medical Research and Charitable Trust situated at 29-B, Panna Lal Road, Allahabad which is a charitable institution registered under the Indian Trusts Act, 1882 (hereinafter referred to as "Act, 1882").

5. The respondent Nos. 1 and 2 are the officials under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "Act, 1952") and are the "Authorized Officer" under Act, 1952 as defined in Section 2(aa) of Act, 1952. Besides other, they are responsible for ensuring observance and compliance of the aforesaid Act, 1952 by the establishments which are governed by the said Act and are under statutory obligation to comply with the provisions thereof.

6. Alleging that an inspection was made by an Enforcement Officer on 9th May, 1991 and he found 22 employees at the petitioner's establishment, respondent No. 1 issued a notice on 31st March, 1992 to the petitioner "M/s Preeti Nursing Home" stating that number of employees in its establishment being 22 since 28th February, 1987, it was incumbent upon it to comply with the provisions of Act, 1952. Since the Act, 1952 had become applicable upon the petitioner establishment from the said date, therefore it should pay contribution/dues under Act, 1952 of the aforesaid workers for the period 1st March, 1987 to 31st March, 1992 on or before 25th April, 1992.

7. The notice was replied by petitioner vide Annexure 3 to the writ petition denying the factum of having employed 22 persons at its establishment. It is said that "M/s Preeti Nursing Home" and "M/s Preeti Hospital" both are different entities. The employees working at two places cannot be clubbed for applying and attracting the provisions of Act, 1952. It is said that from the report it appears that the Officer concerned has clubbed employees of all the three establishments namely M/s Preeti Nursing Home, M/s Preeti Hospital and M/s Preeti Medical Research and Charitable Trust, which was wholly illegal. It is also said that M/s Preeti Hospital having been founded in April, 1990, by no stretch of imagination, Act, 1952 can be made applicable upon it since 1987 i.e. before the date of its establishment. Therefore the notice is wholly illegal. Similarly, M/s Preeti Medical Research and Charitable Trust having been founded in 1989, the same flaw apply to it also.

8. The respondent No. 1, it appears, did not pass any order and on the contrary went on to press its demand by issuing another notice dated 24th August, 1992 whereafter petitioner as well as the other two establishments came to this Court in Writ Petition No. Nil of 1992 challenging the notice dated 31st March, 1992 and 24th August, 1992 alleging that despite their objections pending and having

not been decided by the respondent authorities, yet they are pressing their demand. The writ petition was disposed of vide judgment dated 9th November, 1992 directing the respondent authority to decide objection/ representation of the petitioner and other two institutions by a reasoned and speaking order within a period of three months.

9. The aforesaid order having been conveyed to the respondent No. 1, it appears that respondent No. 1 gave opportunity of hearing to the petitioner and other establishments and thereafter passed order dated 21st April, 1993 holding that "M/s Preeti Nursing and Maternity Home" having come into existence vide partnership dated 13th September, 1982 would stand covered by the Act, 1952 w.e.f. 13th September, 1987 in the light of the report dated 9.5.1991 submitted by the "Area Enforcement Officer". It is this order which is under challenge before this Court.

10. A counter-affidavit has been filed by the respondents stating candidly that respondent No. 1 has applied Act, 1952 through its final order, impugned in this writ petition, only to "M/s Preeti Nursing Home" 39, C.Y. Chintamani Road, Allahabad and not to M/s Preeti Hospital. It is admitted that "M/s Preeti Nursing Home" is an independent body but by itself has been employing more than 20 persons vide Enforcement Officer's report dated 9th May, 1991. It is also said that petitioner could not adduce any evidence otherwise to contradict the said report hence final order has been passed which is correct.

11. This matter has been pending for the last 19 years. Earlier it was heard by this Court on 3rd November, 2011 when Sri Ravi Kant, Senior Advocate appeared on behalf of petitioner and Sri Satish Chaturvedi, Senior Advocate had put in appearance on behalf of respondents. It could not be concluded and hence was taken up on 8th November, 2011, 2nd July, 2012, 3rd July, 2012. On 2nd July, 2012 when it was taken up, no counsel appeared on behalf of the respondents. The case was adjourned for the next date on the request of Sri Ravi Kant, who undertook to inform the counsel for the respondents. On the next date i.e. 3rd July, 2012 he informed that Sri Satish Chaturvedi has seized to be counsel on penal of the respondents and now Sri Dhananjay Awasthi is the advocate on penal. He thus requested the Court to take up this the matter on the next day so that in the meantime he may inform Sri Dhananjay Awasthi. On 4th July, 2012, he informed that Sri Dhananjay Awasthi has been apprised of this matter and thereafter when the case was called in revised list, he commenced his arguments and concluded. However, during this period none appeared for the respondents.

12. After hearing counsel for the petitioner, the Court found that matter needs explanation from the respondents also and therefore directed to inform Sri Dhananjay Awasthi, Advocate and postponed hearing for 5th July, 2012.

13. Again on 5th July, 2012 none appeared for the respondents. It is in these circumstances, having no other alternative, this Court directed respondent Nos. 1 and 2 to appear on the next date alongwith record so that this writ petition,

which is pending for the last almost two decades, may be decided.

14. Today Sri Brijesh Kumar Mishra, Regional Provident Fund Commissioner-II, Allahabad alongwith Sri Akshay Bhardwaj, Assistant Enforcement Officer, Regional Provident Funds Office, Allahabad are present and also represented by Sri Sachindra Upadhaya, Advocate.

15. Sri Upadhaya informed that now the office of Provident Fund has been established at Allahabad which is the Nodal office to pursue Court cases also. They are trying to keep track all the cases pending before this Court but it appears that present matter was omitted to be noticed and hence none could appear before this Court. List of cases pending in this Court has been filed alongwith an affidavit. He also showed two registers of cases which are of the period of January, 2002 and onwards but with respect to the old matters, no proper explanation could be given as to how and in what manner old cases are being looked into.

16. The maintenance and tracking of old cases is really disturbing. It shows pathetic and pitiable condition of respondents Department showing lack of seriousness on their part in pursuing Court cases. The respondents are the authorities responsible to ensure compliance of labour welfare enactment, where interest of poor labourers are involved. They are expected to show much more seriousness, keenness and careful watch and persuasion of Court cases, which unfortunately is not visible and apparent in this matter. It is a matter which needs enquiry to find out who is responsible for these kind of laches and lapses and such officials deserved be dealt with strictly in accordance with law.

17. Having said so I do not intend to deviate my attention to a side issue so as to disturb chain of thoughts relevant for adjudication of issues in question.

18. It has been admitted before this Court by Sri Sachindra Upadhyay, appearing on behalf of respondents, as also Sri Brijesh Kumar Mishra, who is present in the Court and has also averred in counter-affidavit that Act, 1952, by means of the impugned order has been found and made applicable only to one establishment namely "M/s Preeti Nursing Home" situated at 39, C.Y. Chintamani Road, Allahabad and M/s Preeti Hospital has not been covered thereunder.

19. Now, in the backdrop of this factual admission on the part of respondents, the Court would endeavour to find out whether proceedings preceding the impugned final order justify such an inference on the part of the respondents.

20. A photo-copy of the alleged enquiry report signed by Provident Fund Inspector on 24.11.1991 and forwarded to Regional Provident Fund Commissioner on 26.11.1991 has been placed on record as Annexure 1 to the counter-affidavit. The name of Inspector mentioned therein is Sri R.S. Gupta who is said to have visited the establishments on 9.5.1991, 11.6.1991 and 23.11.1991. At item No. 3 in the said report there is a column of name of establishment which is filled in by hand, mentioning "M/s Preeti Nursing Home"

and "M/s Preeti Hospital" both. In the column relating to address of establishment, it mentions "Nursing Home, 39 C.Y. Chintamani Road and Hospital, Kachehari Road, Allahabad".

21. Ex facie, and evidently it is a combined report of two establishments namely "M/s Preeti Nursing Home" and "M/s Preeti Hospital". There is nothing on record to show as to on which date the said Inspector visited and inspected M/s Preeti Nursing Home and then M/s Preeti Hospital. In the column at item No. 10 the number of employees in the month of February, 1987 are mentioned as 22. It is also mentioned that number of staff has been taken as per copy of attendance register/ sheet attached. Here again it is not clear whether it refers to M/s Preeti Nursing Home or M/s Preeti Hospital. There is a hand written slip/sheet in which certain names of doctors and other staff are mentioned total whereof comes to 22. On the top of this sheet, there is no mention whether it is in respect to M/s Preeti Nursing Home or M/s Preeti Hospital or both. But on the right side of the paper, M/s Preeti Nursing Home, 39 C.Y. Chintami Road, George Town Allahabad, Proprietor Dr. A.K. Gupta has been mentioned under the signature of Mr. R.S. Gupta which is dated 9th May, 1991.

22. On a query made from learned counsel for the respondents, if the said sheet was prepared on 9th May, 1991 itself then what was found during visits made on 11th June, 1991 and 23rd November, 1991 and where is the report of the said two days, he could not give any reply at all. He was further enquired that list of the staff mentioned in the hand written page may have been added in the subsequent visits of different establishments to which the respondents did not rule out possibility thereof.

23. Thus it is evident that the respondents proceeded to treat combined inspection report of two different establishments namely "M/s Preeti Nursing Home" and "M/s Preeti Hospital" as one and this is evident from the copy of notice dated 31st March, 1992 (Annexure 2 to the writ petition), which is also addressed to "M/s Preeti Nursing Home" and "M/s Preeti Hospital" both. This is also evident from para 2 of the impugned order which says that provisions of Act, 1952 were made applicable to "M/s Preeti Nursing Home" and "M/s Preeti Hospital" from 28th February, 1987 vide respondent No. 1's office letter dated 31st March, 1992. However, later on respondent No. 1 has held that Act, 1952 is applicable only to "M/s Preeti Nursing Home" w.e.f. February, 1987 and for that purpose has solely relied on inspection report dated 9.5.1991/24.11.1991 (Annexure 1 to the counter-affidavit). The said Act, 1952 has been applied w.e.f. 13.9.1987 observing that the establishment in view of the partnership deed dated 13.9.1982 came into existence had completed 5 years on 13.9.1987 and therefore the Act would apply from that date.

24. Sri Ravi Kant, learned counsel for the petitioner submitted that whatever said by respondents even if admitted, in order to hold the Act, 1952 applicable from September, 1987 it was incumbent upon the respondents to show that on 13th September, 1987 and thereafter the petitioner establishment had employed 20 or

more persons. Prior to 13th September, 1987 in accordance with the order of the respondent No. 1 himself, the Act was not applicable, and if that is so, number of staff even if it was 20 or more, would not make the Act, 1952 applicable.

25. Before 13th September, 1987 the application of the Act was not extended to the petitioner establishment since it was not more than five years old which is the period of exemption to a new establishment as is admitted by the respondents. Therefore number of staff employed by the establishment concerned during this period is of no legal consequences. The alleged employment of 22 persons in February, 1987 would be wholly irrelevant for the purpose of application of Act, 1952 to the petitioner's institution w.e.f. 13th September, 1987 unless it is shown that the number of staff employed was 20 and more on and after 13.9.1987 and once that is found so, even if there is decrease, the applicability of the Act, 1952 would remain unchanged.

26. It is no doubt true that even if number of persons employed in a establishment falls below 20 would not discontinue application of Act, 1952 once the Act applied but this condition would apply only when Act is otherwise applicable to an institution, in respect of the number of persons and other conditions. As soon as the establishment engages 20 or more persons, the Act will commence to apply and thereafter it will continue to do so even if the number of persons employed falls below 20 subject however to other provision relating to initial exemption etc..

27. Coming to other aspects of the matter, once it is evident that inspection was made by Enforcement Officer of both the establishments namely "M/s Preeti Nursing Home" and "M/s Preeti Hospital" and he had prepared a combined inspection report for both the establishments on the basis whereof respondent No. 1 also proceeded to treat both the establishments one and the same, this Court finds it difficult to rely such combined inspection report so as to apply the Act, 1952 on petitioner's establishment only on the basis of number of staff of two establishments in respect where to it could not be demonstrated by respondents that the report mentioned only the staff of petitioner's establishment and not that of "M/s Preeti Hospital". Once the respondents throughout treated two establishments one and the same, and proceeded commonly against the two, as soon as they formed opinion that the two establishment are different, it was incumbent to find out the number of staff employed therein separately. The inspection report prepared by the Inspector treating both the establishments as one and the same cannot be relied on to hold that numbers of employees mentioned therein are referable only to one establishment and not both.

28. During the course of arguments before this Court, learned counsel appearing for the respondents and also respondent No. 1 who was present in person, having gone through the inspection report as also own order dated 31.3.1992, could not dispute this fact and also could not place any material before this Court to show that 22 staffs were employed only in petitioner's establishment and it

did not include staff of "M/s Preeti Hospital", which was also inspected by the said Inspector and common inspection report was prepared by him treating both the establishments, one and the same.

29. The respondent No. 1, in the present case, in view of the above combined report has acted wholly illegally and had shown complete lack of application of mind. A serious consideration of an important matter like the present one which involves application of a Labour Welfare statute is conspicuously missing. In the garb of monitoring and supervising compliance of a welfare statute, employer or the establishment should not be unnecessarily harassed so as to hamper their functioning compelling the owner or the person responsible for its management to run office of respondent No. 1 instead of concentrating on his own substantive work.

30. A deliberate and intentional defiance of statute must be seriously viewed and checked. Simultaneously an intentional or deliberate harassment by officials of the respondents also warrants a stern action so that they may not take advantage of their position causing undue hardship, harassment and otherwise embarrassment to the people at large. It cannot be doubted that respondents are Authorized "Officers" of a statutory body and are officers and the employees of Government of India. They possess wide statutory powers going to the extent of penalizing and prosecuting the violators. They are capable to use their wide powers to the extent of causing threat to otherwise honest establishment(s) so as to gain undue favour or advantage on the pretext of saving from such harassment etc. A threat of extending huge financial liability can always compel an establishment to offer favour(s), monetary or otherwise, to the officials extending such threat. This is nothing but a kind of extortion which has now extended to the field of alleged implementation of statute, though illegally, but by the time the sufferer would be relieved from such illegal act under a judgment or verdict of Court, his long drawn harassment would have caused much serious impact and consequence upon him deteriorating his establishment in various ways besides wastage of his own time and money.

31. The respondents being the State Government, i.e., "State" under Article 12 of the Constitution of India, its officers are public functionaries. As observed under our Constitution, sovereignty vests in the people. Every limb of constitutional machinery therefore is obliged to be people oriented. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour. It is high time that this Court should remind the respondents that they are expected to perform in a more responsible and reasonable manner so as not to cause undue and avoidable harassment to the public at large. The respondents have support of the entire machinery and various powers of the statute. An ordinary citizen or a common man is hardly equipped to match such might of the State or its instrumentalities. Harassment of a common man by public authorities is socially abhorring and legally impermissible. This may harm the common man personally but the injury

to society is far more grievous.

32. Crime and corruption, thrive and prosper in society due to lack of public resistance. An ordinary citizen instead of complaining and fighting mostly succumbs to the pressure of undesirable functioning in offices instead of standing against it. It is on account of, sometimes, lack of resources or unmatched status which give the feeling of helplessness. Nothing is more damaging than the feeling of helplessness. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match inaction in public oriented departments, gets frustrated. It erodes the credibility in the system. This is unfortunate that matters which require immediate attention are being allowed to linger on and remain unattended or proceed in a whole through illegal manner.

33. No authority can allow itself to act in a manner which is arbitrary. Public administration no doubt involves a vast amount of administrative discretion which shields action of administrative authority but where it is found that the exercise of power is capricious or other than bona fide, it is the duty of the Court to take effective steps and rise to the occasion otherwise, the confidence of common man would shake. It is the responsibility of the Court in such matters to immediately rescue such common man so that he may have confidence that he is not helpless but a bigger authority is there to take care of him and to restrain the arbitrary and arrogant unlawful inaction or illegal exercise of power on the part of the public functionaries.

34. In our system, the Constitution being supreme, yet the real power vests in the people of India since the Constitution has been enacted "for the people, by the people and of the people". A public functionary cannot be permitted to act like a dictator causing harassment to a common man and, in particular, when the person subjected to harassment is a poor innocent citizen in the category of farmer/agriculturist. Their plight cannot be allowed to be ignored.

35. No authority can allow itself to act in a manner which is arbitrary. Public administration no doubt involves a vast amount of administrative discretion which shields action of administrative authority but where it is found that the exercise of power is capricious or other than bona fide, it is the duty of the Court to take effective steps and rise to the occasion otherwise the confidence of common man would shake. It is the responsibility of the Court in such matters to immediately rescue such common man so that he may have the confidence that he is not helpless but a bigger authority is there to take care of him and to restrain the arbitrary and arrogant unlawful inaction or illegal exercise of power on the part of the public functionaries.

36. In a case like this, this Court would have to deal with the cases of such extortion and harassment of a common man otherwise it would give licence to the officials to exploit honest and law abiding person including the corporate bodies to surrender to the demand of such mischievous and nefarious officials

only to save themselves from otherwise serious torture or long drawn litigation etc. Here is a case where this Court finds it worthwhile to refer observations of Lord Hailsham in *Cassell & Co. Ltd. v. Broome*, 1972 AC 1027 and Lord Devlin in *Rooks v. Barnard and others*, 1964 AC 1129 referred and quoted in *Lucknow Development Authority Vs. M.K. Gupta*, , as under:

An Ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law.....A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it.....Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. (para 10)

37. The above observations as such have been reiterated in *Ghaziabad Development Authority Vs. Balbir Singh*, .

38. A time has come when this Court must remind the Government, Central or the State, as the case may be, to take such matters with due seriousness and concern so that an attitude of dragging the people to litigation by extending such threat, the officials may not extract undue advantages or personal gains from helpless people. They must take steps to protect people from such harassment in the hands of officials otherwise on the one hand it would encourage corruption on the part of the officials and on the other hand common people would suffer in silence. This would be against objectives of the Constitution which contemplates a Welfare State to work to do justice social, economic and political, to all the persons.

39. When public authorities act irrelevant, illegally, and it appears that their action lacks bona fide, such action, in my view, would also take colour of corruption. The term "corruption" has various shades.

40. In general the well accepted meaning of corruption is the act of corrupting or of impairing integrity, virtue, or moral principle; the state of being corrupted or debased; lost of purity or integrity; depravity; wickedness; impurity; bribery. It further says, "the act of changing or of being changed, for the worse; departure from what is pure, simple, or correct; use of a position of trust for dishonest gain."

41. Though in a civilised society, corruption has always been viewed with particular distaste to be condemned and criticised by everybody but still one loves to engage himself in it if finds opportunity, ordinarily, since it is difficult to resist temptation. It is often, a kind, parallel to the word "bribery", meaning whereof in the context of the politicians or bureaucrats, induced to become corrupt.

42. The Greek Philosopher Plato, in 4th Century BC said, "in the Republic that

only politicians who gain no personal advantage from the policies they pursued would be fit to govern. This is recognised also in the aphorism that those who want to hold power are most likely those least fit to do so." While giving speech before the House of Lords William Pitt in the later half of 18th Century said, "Unlimited power is apt to corrupt the minds of those who possess it." Lord Acton in his letter addressed to Bishop Creighton is now one of the famous quotation, "Power tends to corrupt and absolute power corrupts absolutely."

43. Corruption is a term known to all of us. Precise meaning is illegal, immoral or unauthorized act done in due course of employment but literally it means "inducement (as of a public official) by improper means (as bribery) to violate duty (as by committing a felony)." It is a specially pernicious form of discrimination. Apparently its purpose is to seek favourable, privileged treatment from those who are in authority. No one would indulge in corruption at all if those who are in authority, discharge their service by treating all equally.

44. We can look into it from another angle. Corruption also violates human rights. It discriminates against the poor by denying them access to public services and preventing from exercising their political rights on account of their incapability of indulging in corruption, of course on account of poverty and other similar related factors. Corruption is, therefore, divisive and makes a significant contribution to social inequality and conflict. It undermines respect for authority and increases cynicism. It discourages participation of individuals in civilised society and elevates self interest as a guide to conduct. In social terms we can say that corruption develops a range bound field of behaviour, attitude and beliefs.

45. Corruption is antithesis of good governance and democratic politics. It is said, that when corruption is pervasive, it permeates every aspect of people's lives. It can affect the air they breathe, the water they drink and the food they eat. If we go further, we can give some terminology also to different shades of corruption like, financial corruption, cultural corruption, moral corruption, ideological corruption etc. The fact remains that from whatever angle we look into it, the ultimate result borne out is that, and the real impact of corruption is, the poor suffers most, the poverty grows darker, and rich become richer.

46. It is not that the Apex Court is oblivious of the situation at ground level. It had also occasion to comment thereon time and again. In Secretary, Jaipur Development Authority v. Daulat Mal Jain, 1997 (1) SCC 34:

...When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as "corruption".

47. In High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another, , the Court held:

Corruption, appears to have spread everywhere. No facet of public function has been left unaffected by the putrefied stink of "corruption". "Corruption" thy

name is depraved and degraded conduct.....In the widest connotation, "corruption" includes improper or selfish exercise of power and influence attached to a public office.

48. Again the Court in *B.R. Kapur v. State of T.N.*, 2001(7) SCC 231, said:

...scope of "corruption" in the governing structure has heightened opportunism and unscrupulousness among political parties, causing them to marry and divorce one another at will, seek opportunistic alliances and coalitions often without the popular mandate.

49. In *State of Andhra Pradesh Vs. V. Vasudeva Rao*, , the Court took judicial notice of this epidemic and said:

... The word "corruption" has wide connotation and embraces almost all the spheres of our day-to-day life the world over. In a limited sense it connotes allowing decisions and actions of a person to be influenced not by rights or wrongs of a cause, but by the prospects of monetary gains or other selfish considerations.

50. In a democratic system governed by rule of law, the Government does not mean a lax Government. The public servants hold their offices in trust and are expected to perform with due diligence particularly so that their action or inaction may not cause any undue hardship and harassment to a common man. Whenever it comes to the notice of this Court that the Government or its officials have acted with gross negligence and unmindful action causing harassment of a common and helpless man, this Court has never been a silent spectator but always reacted to bring the authorities to law.

51. In my view, here is a case where petitioner has been put under the threat of a huge demand though unfounded on the basis of ex facie illegal report and it is only since the petitioner has not surrendered, the matter has come to this Court. The respondents thus cannot be allowed to gain from their illegal demands based on impugned order which is indefensible in view of the above discussion. The impugned order is therefore not only liable to be set aside but here is a case which deserves to be allowed with exemplary cost.

52. Here I may remind Apex Court's decision in *Delhi Jal Board Vs. National Campaign for Dignity and Rights of Sewerage and Allied Workers and Others*, , wherein the Court said in reference to Article 21 which guarantees the right to life and liberty, that it will be denuded of its significant content if the power of this Court were limited to passing orders of removing executives illegal orders/action only and nothing more than that. The Court further said that one of the telling ways in which violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for

the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection, the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others, it is necessary to educate ourselves into accepting that, respect for the rights of individuals, which is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the Petitioner's rights. It may have recourse against those officers. 9

53. In the result, the writ petition is allowed. The impugned order dated 21.4.1993 (Annexure 10 to the writ petition) passed by respondent No. 1 is hereby quashed. The petitioner shall be entitled to cost which I quantify to Rs. 5 lacs. It is, however, made clear that it would be open to the respondents to recover the amount of cost from the concerned officials who are responsible in prosecuting the above illegal and unauthorized proceedings after making such enquiry as provided in law.