

(2006) 04 P&H CK 0097
In the Punjab And Haryana At Chandigarh
Case No : C.M. No's. 5016 and 6173 of 2005

Neeraj Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Advocates Act, 1961 — Section 49
Constitution of India, 1950 — Article 14
Government of India Act, 1915 — Section 108

Citation : (2006) 144 PLR 8 : (2006) 3 RCR(Civil) 140

Hon'ble Judges : J.S. Khehar, J

Bench : Single Bench

Advocate : Rajiv Atma Ram and Hem Raj Mittal, for the Appellant; R.S. Cheema K.S. Natwa and Ajay Kaushik and J.S. Bains, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Khehar, J.—Civil Misc. No. 5016 of 2005 has been filed on behalf of respondent Nos. 2 to 4, Under Rule 31 of Chapter 4(F) of the High Court Rules and Orders, read with Clause 26 of the Letters Patent. Rule 31 of Chapter 4(F) of the High Court Rules and Orders is being extracted hereunder:

31. Difference of Opinion.- In case a difference of opinion between the Judges constituting a Bench hearing a petition, the points of difference shall be decided in accordance with the procedure laid down in Clause 26 of the Letter Patent

Clause 26 of the Letters Patent, which has been referred to in Rule 31, extracted above, is also being reproduced hereunder:

26. Single Judges and Division Courts.- And we do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Lahore, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court, thereof, appointed or constituted for such purpose in pursuance of section once hundred and eight of

the Government of India Act, 1915 ; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there be a majority, but, if the Judges be equally divided, they shall state the point on which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.

2. It is pertinent to mention that three separate orders were passed while deciding C.W.P. No. 6196 of 2004 on 14.2.2005. The first order was passed by Hon''ble Mr. Justice Surya Kant on 14.2.2005 (the instant order will be referred to as the "main Order, passed by Hon''ble Mr. Justice Surya Kant", hereinafter). The next order was passed on the same day by Hon''ble the Chief Justice Mr. Binod Kumar Roy (this order will be referred to as the "Order passed by the Hon''ble Chief Justice", hereinafter). In the order passed by Hon''ble the Chief Justice, reference was made to various observations and the conclusions recorded in the Main Order by Hon''ble Mr. Justice Surya Kant. The third order was also passed on 14.2.2005. It was passed by Hon''ble Mr. Justice Surya Kant after he had gone through the order passed by the Hon''ble Chief Justice. This order bears the title, "Post Judgment Script" (the third order shall, therefore, be referred to as the "Post Judgment Script" of Hon''ble Mr. Justice Surya Kant, hereinafter).

3. In C.M. No. 5016 of 2005, filed on behalf of respondent Nos. 2 to 4, it is alleged that the Hon''ble Judges who decided C.W.P. No. 6196 of 2004 on 14.2.2004, expressed different views on a number of issues. It is, therefore, that the applicants have sought appropriate directions under Rule 31 of Chapter 4(F) of the High Court Rules and Orders, read with, Clause 26 of the Letters Patent through the instant application. The nature of conflict between the Main Order passed by Hon''ble Mr. Justice Surya Kant, and the Order passed by the Hon''ble Chief Justice, is sought to be reflected through paragraphs 2 to 4 of the aforesaid application. Paragraphs 2 to 4 of the aforesaid application are being reproduced hereunder:

2. That the Hon''ble Chief Justice has held that the writ petition has been filed in public interest and that it cannot be said that he is not a public spirited person or that he lacks bonafide or that he is a busy body." The Hon''ble Mr. Justice Surya Kant has held "yet it is more than difficult to hold him a public spirited person at whose instance a P.I.L. should be entertained.

3. Again the Hon''ble Chief Justice has held that:

The decision of his Excellency the Governor of Punjab-cum-Administrator, Chandigarh Administration that the impugned allotment requires taking up of corrective steps suggests that it was made apparently arbitrarily, clandestinely, illegally and unconstitutionally. Obviously, it cannot be corrected in view of our findings by making its re-allotment with the allottee. It has to be auctioned in

terms of the observations and findings referred to in the judgment that is to say by a transparent process. It is clarified that the allottee cannot take advantage of any type from the earlier settlement culminating into lease deed (Xerox copy Annexure R-6/3) executed by the President of India through the Estate Officer, U.T., Chandigarh in favour of the Chandigarh Law Institute Private Limited through its Director Ripjit Singh Narang as the allotment itself has been held to be unconstitutional.

On the other hand, the Hon"ble Mr, Justice Surya Kant has held:

Since we have not been informed by the Chandigarh Administration of any further decision in the matter, and keeping in view our observations and the fact that the Executive Head of the U.T. Chandigarh has already taken a conscience, fair, reasonable and transparent decision to which reference has already been made by us, we dispose of this Writ Petition with the following directions:

(i) Administrator, U.T. Chandigarh will take the "necessary corrective steps" in the matter within a period of two months from today.

(ii) In the light of the well settled law that allotment of a public property should conform to Article 14 of the Constitution, we hold that the corrective step to be taken by the learned Administrator, U.T. Chandigarh will have to be in consonance with the aforesaid constitutional philosophy.

(iii) The Chandigarh Administration is directed to take a policy decision while keeping in view the observations made in this judgment for allotment of available institutional sites to ensure that allotments are made objectively and in a transparent manner.

(iv) The site in question can thereafter be allotted by inviting applications through a public notice and giving opportunity to all prospective allottees including Respondent No. 6-Institute, if eligible.

(v) Till the decision as taken as per directions (i) to (iv) above, and the site in question is allotted/disposed of in accordance with law, our ad-interim order restraining further constructions thereupon by Respondent Nos. 6 to 9 shall continue to operate.

(vi) The Chandigarh Administration will enforce Clause 18 of the "Allotment of Land to Educational Institutions (Schools) Etc. on Lease-hold Basis in Chandigarh Scheme, 1996" forthwith and allottees of the school sites shall be required to give an undertaking in writing to this effect within three months from today. In the event of their failure and/or reluctance to give the undertaking, as directive above, it will be open for the Chandigarh Administration to cancel the allotment of the school sites in accordance with law.

4. That further the Hon"ble Chief Justice has held that:

I have gone through the order prepared by Surya Kant, J. I fully agree with the views taken by him. Paragraphs 39 to 44 of his order except the following words

occurring in Paragraph 44 "though it is more than difficult to hold him a public spirited person at whose instance a PIL should be entertained" and in Paragraphs 61 and 62 except those which may be at variation made by me below.

While the Hon''ble Mr. Justice Surya Kant has held (in post judgment script):

Having heard the order containing the view-point of Hon''ble the Chief Justice which has been read out by His Lordship in the Court and thereafter having gone through its contents on pronouncement, it needs to be clarified that the views, factual conclusions and/or the directions as contained in para Nos. 10, 12, 13, 14 and 15 thereof, to which I am unable to subscribe and which do not form part of the judgment which I have pronounced today, are not the views, factual conclusions and/or the directions issued by the Division Bench.

4. Civil Misc. No. 6173 of 2005 has been filed by the Chandigarh Law Institute (impleaded as respondent No. 6 in the writ petition), for the same reasons, for which Civil Misc. No. 5016 of 2005 has been filed. Herein also the applicant seeks appropriate directions under Rule 31 of Chapter 4(F) of the High Court Rules and Orders, read with, Clause 26 of the Letters Patent. In the instant application, the points of difference have been reflected through the averments made in paragraph 3. Paragraph 3 of Civil Misc. No. 6173 of 2005 is being extracted hereunder:

3. That a perusal of para 1 of the judgment rendered by the then Chief Justice, Mr. Justice B.K. Roy and the "Post Judgment Script" rendered by Hon''ble Mr. Justice Surya Kant, clearly indicates the points of difference between the Hon''ble Judges, making it expedient for the matter to be referred to an Hon''ble Bench for hearing on the same. For ready reference, para 1 of Hon''ble the then Chief Justice's judgment and the "Post Judgment Script" of Hon''ble Mr. Justice Surya Kant are reproduced hereunder.

Para 1 of Hon''ble the then Chief Justice's judgment:

Chief Justice: I have gone through the order prepared by Surya Kant, J. I fully agree with the views taken by him in Paragraphs 39 to 44 of his order except the following words occurring in Paragraph 44 "though it is more than difficult to hold him a public spirited person at whose instance a PIL should be entertained" and in Paragraphs 61 and 62 except those which may be at variation made by me below.

Post Judgment Script of Hon''ble Mr. Justice Surya Kant:

Having heard the order containing the view point of Hon''ble the Chief Justice which has been read out by His Lordship in the Court and thereafter having gone through its contents on pronouncement, it needs to be clarified that the views, factual conclusions and/or the directions as contained in the para Nos. 10, 12, 13, 14 and 15 thereof, to which I am unable to subscribe and which do not form part of the judgment which I have pronounced today, are not the views, factual conclusions and/or the directions issued by the Division Bench.

I have gone through the order prepared by Surya Kant, J. I fully agree with.

5(a). In order to understand, and to appreciate, the controversy raised by the applicants, the Court's attention has been invited to an order passed in similar circumstances in *Rajinder Singh v. State of Punjab* 1976 P.L.J. 133. In *Rajinder Singh's* case (supra), the main controversy was adjudicated upon by a Division Bench comprising Hon'ble Mr. Justice P.C.Pandit and Hon'ble Mr. Justice C.G.Suri. Both the Hon'ble Judges, who comprised the Division Bench, expressed different/divergent views, through separate orders dated 3.10.1973. Hon'ble Mr. Justice P.C.Pandit recorded his conclusions in the following manner:

In view of what I have said above, I would hold that the Additional Director had violated the provisions of the Scheme and his order, therefore, deserves to be quashed. The result is that this appeal is accepted, the judgment of the learned Single Judge reversed and the order of the Additional Director quashed. In the circumstances of the case, however, I would make no order as to costs.

On the other hand, Hon'ble Mr. Justice C.G.Suri, inter alia, recorded the following conclusions:

No provision of the scheme may appear to have been violated by the allotment of more than one take to the appellants in only one of the three grade. Any delicately adjusted arrangement should not be disturbed by us unless there is a flagrant abuse of the provision of the scheme or the principles of natural justice. Duty to do justice is enjoined on all judicial or quasi-judicial Tribunals at all times and it is not necessary that the Tribunal should be reminded of this duty in each and every paragraph of the scheme. I am, therefore, inclined to agree with the learned Single Judge that this Court should not try to get into the merits of the case unless the impugned order of respondent No. 1 is shown to be perverse or mala fide.

(b) In view of the difference of opinion, between the Hon'ble Judges comprising the Bench, which decided *Rajinder Singh's* case (supra), the matter was placed before a third Judge (Hon'ble Mr. Justice B.R.Tuli) nominated by Hon'ble the Chief Justice. The nominated third Judge, while disposing of the issue canvassed before him, recorded the following conclusions, after making a reference to Clause 26 of the Letter Patent:

From the last portion of this clause, it is evident that the third Judge, to whom a reference is made, can decide the point in difference between the Judges of the Division Bench who are equally divided and not the appeal as a whole. The appeal has to be decided in accordance with the opinion of the third Judge on the point in difference read with the opinions of the other two Judges. Under these circumstances, I feel that the reference to a third Judge in this case is not in accordance with Clause 26 of the Letters Patent. The appeal could have been referred to the Division Bench to state the point on which the Hon'ble Judges differed but unfortunately, both the Hon'ble Judges constituting the Bench have since retired. The learned Counsel for the parties agree that the reference is not

in terms of Clause 26 of the Letters (Patent and that they have not been able to find any precedent as to what should be done in these circumstances. I am, therefore, of the opinion that this appeal should be placed before another Division Bench for hearing it on merits. The papers may be placed before My Lord the Chief Justice for constituting a Bench to hear the appeal.

Consequent upon the passing of the aforesaid order, Hon''ble the Chief Justice constituted a fresh Division Bench, to reddecide the main case.

(c) It is the vehement contention of the learned Counsel for the applicants referred to above, that the instant controversy is identical to the one adjudicated upon by this Court in Rajinder Singh's case, and as such, since in the instant case as well, the two Hon''ble Judges comprising the Bench, which passed its final order in C.W.P. No. 6196 of 2004 on 14.2.2005, did not" state the point upon which they differ(ed)...", the main case has to be posted for rehearing afresh by a Division Bench, in the same manner as Rqjinder Singh's case (supra).

6A. Learned Counsel for the applicants also invited the Court's attention to a decision rendered by the Delhi High Court in Amar Pal Singh Vs. Election Commission of India, . While interpreting Clause 26 of the Letters Patent, the Court concluded as under:

The mandate of law is that in case the Division Bench is composed of two Judges and the Judges are equally divided in opinion as to the decision to be given on any point, they should spec,,ically state the point upon which they differ and the case should be heard on that point only by a third Judge and the point should be decided according to the opinion of the majority of Judges.

In this case the Judges were equally divided. They should have specifically stated the point upon which they had differed and the case could be heard on that point only by another Judge. It is obvious that hearing by another Judge is confined to the specific points stated and cannot cover the whole case again. But the order of reference in this case states that the papers may be laid before Hon''ble the Chief Justice and he may designate a third Judge to hear the matter. The learned Judges ought to have stated explicit as to what was to be decided by a third Judge. The expression "matter" used in the reference has not been clarified as to the points to be decided by the third Judge ; especially in the facts and circumstances of this case and in view of the stand taken by Mr. Bansal, In the absence of the clarification, it is.not possible to answer the reference.

On the basis of the conclusions drawn in Amar Pal Singh's case (supra), learned Counsel for the applicants vehemently contend, that since the Hon''ble Judges comprising the Division Bench, which decided C.W.P. No. 6961 of 2004, did not"...specifically state the points upon which they differ(ed)...", the whole case would have to be reheard, as Clause 26 of the Letters Patent, would not be applicable, to the matter in hand.

6B. Learned Counsel for the applicants also invited the Court's attention, to a

decision rendered by the Lahore High Court in *Mt. Sardar Bibi v. Haq. Nawaz Khan and Anr.* AIR 1934 Lah 371 The Division Bench which passed the original order disposing of *Mt. Sardar Bibi's* case, comprised of Hon''ble Mr, Justice Coldstream and Hon''ble Mr. Justice Jai Lal, In the separate orders passed by them, they had recorded different/divergent opinions, on the same issues. The matter then came to be referred to a Full Bench, comprising of three Hon''ble Judges. Referring to Clause 26 of the Letter Patent, the Full Bench took upon itself the task of deciding the controversy, by first, delineating the points of difference, and then, deciding the points on which the earlier Bench had differed, (b) The factual position as it emerges from *Mt. Sardar Bibi's* case reveals, that although there was a difference of opinion expressed by the two Hon''ble Judges comprising the Division Bench, which decided the controversy in the first instance ; the points of difference had not been stated by the Judges comprising the Division Bench, Yet, since the counsel for the rival parties were agreed, on the points of difference expressed by Hon''ble Mr, Justice Coldstream and Hon''ble Mr. Justice Jai Lal, the Full Bench, adjudicated upon the points on which the earlier Bench had differed, under Clause 26 of the Letters Patent, Observations made in reference to Clause 26 of the Letters Patent are being reproduced hereunder:

In the case before us the points of difference between the learned Judges of the Division Bench have not been stated expressly and to this extent the reference is defective. These points are, however, apparent from their respective judgments, and counsel for both sides agreed before us that it was unnecessary to remit the case to the Division Bench to have the question formally drawn upon. Accordingly at the commencement of the hearing, the points requiring decision by the Bench were formulated by us, with the concurrence of both the parties as follows.

In view of the decision rendered in *Aft. Sardar Bibi's* case also, learned Counsel for the applicants canvassed for appropriate orders, under Clause 26 of the Letters Patent.

6C. In view of the cumulative effect of the judgments rendered. In reply to: *Rajinder Singh's*, *Amar Pal Singh's* and *Mt. Sardar Bibi's* case (*supra*), learned Counsel for the applicants assert, that the legal position on the issue canvassed in the present two applications, is well settled. Basing their claim, on the alleged divergence of opinion expressed by the Hon''ble Judges, who decided C.W.P. No. 6196 of 2004 on 14.2.2005, learned Counsel assert that appropriate directions should be issued, in terms of the precedents relied upon by them.

7. According to the learned Counsel for the applicants, the points of difference clearly emerge from the Order passed by Hon''ble the Chief Justice, relevant part whereof is being extracted hereunder:

I have gone through the order prepared by Surya Kant, J. I fully agree with the views taken by him in Paragraphs 39 to 44 of his order except the following

words occurring in Paragraph 44 "though it is more than difficult to hold him a public spirited person at whose instance a PIL should be entertained" and in Paragraph 61 and 62 except those which may be at variation made by me below.

According to the learned Counsel for the applicants, the points of difference, also clearly emerge from the Post Judgment Script of Hon"ble Mr. Justice Surya Kant, which reads as under:

POST JUDGMENT SCRIPT

Having heard the order containing the view-point of Hon"ble the Chief Justice which has been read out by His Lordship in the Court and thereafter having gone through its contents on pronouncement, it needs to be clarified that the view, factual conclusions and/or the directions as contained in para Nos. 10, 12, 13, 14 and 15 thereof, to which I'm unable to subscribe and which do not form part of the judgment which I've pronounced today, are not the views, factual conclusions and/or the directions issued by the Division Bench.

February 14, 2005. Sd/- Justice Surya Kant.

It is, therefore, submitted that the Hon"ble Judges deciding CWP No. 6916 of 2004 on 14.2.2005, themselves acknowledged, the points of differences. While Hon"ble the Chief Justice did not agree with the narration recorded in paragraphs 44, 61 and 62 in the Main Order passed by Hon"ble Mr. Justice Surya Kant. Whereas, Hon"ble Mr. Justice Surya Kant did not agree with the narration recorded in paragraphs 10, 12, 13, 14 and 15 of the Order passed by Hon"ble the Chief Justice.

8. The prayer made in Civil Misc. Nos. 5016 of 2005 and 6173 of 2005, is vehemently opposed by the learned Counsel for the non-applicant petitioner. According to the learned Counsel for the non-applicant petitioner, there is no occasion for rededecision of the matter already adjudicated by the Division Bench which decided C.W.P. No. 6916 of 2004 on 14.2.2005. In this behalf it is submitted that the mandate of Rule 31 of Chapter 4(F) of the High Court Rules and Orders, read with Clause 26 of the Letters Patent, presupposes "...a difference of opinion between the Judges constituting a Bench hearing a petition " While repudiating the prayer made in the instant miscellaneous applications, it is asserted, that there is/are no point(s) on which different opinion(s) has/have been expressed, by the Hon"ble Judges who decided C.W.P. No. 6916 of 2004 on 14.2.2005.

9. For arguments sake (without acknowledging the same), even if it is assumed, that paragraphs 10, 12, 13, 14 and 15 of the order passed by Hon"ble the Chief Justice and paragraphs 44, 61 and 62 of the Main Order passed by Hon"ble Mr. Justice Surya Kant, factually constitute the points of difference between the views and conclusions expressed by the Hon"ble Judges, (constituting the Bench which decided C.W.P. No. 6916 of 2004 on 14.2.2005) the said points of difference can be summarised under two heads, firstly, the conclusions drawn on

the issue of maintainability of the writ petition, as a public interest litigation. And secondly, the eventual direction issued by the Bench while disposing of the main case. Aspect relating to maintainability of the Writ Petition as a "Public Interest Litigation."

10. The applicants in Civil Misc. No. 5016 of 2005 i.e. respondent Nos. 2 to 4 had filed a common written statement in response to the pleadings in C.W.P. No. 6916 of 2004, A solitary preliminary objection, was contained therein, pertaining to the maintainability of the writ petition, as a public interest litigation. The aforesaid preliminary objection, is being extracted hereunder:

1. That the present Public Interest Litigation is not maintainable as the petitioner is a fictitious person and his identity/residence has not been established. The learned Counsel for the Chandigarh Administration, Sh. Rajiv Atma Ram vide letter dated 2.5.2004 had requested the Deputy Commissioner, Jalandhar to verify as to whether any person named Neeraj Sharma s/o Late Sh. Ashok Sharma resides in Gali No. 1, Hardev Nagar, Jalandhar (A true copy of the same is annexed as Annexure R-1). The Deputy Commissioner, Jalandhar vide his letter No. MA/2004/Spl.I dated 4.5.2004 informed that no such person was residing at the given address (A true copy of the same is annexed as Annexure R-1). Hence, the present Public Interest Litigation has been filed in the name of fictitious person and this Hon"ble Court may direct his presence in the Court.

It is further submitted that the absence of correct particulars would make service of petitioner impossible in any appeal or other proceedings. Further, the affidavit filed in respect of the CWP is also false as it does not have the correct address of the petitioner, Further on verification it is found that the signatures in the register of the Oath-Commissioner, (Mr. R.S. Rattan) do not tally with the signatures on the affidavits in support of the CWP and those on the CWP itself.

The petitioner has made vogue averments of mala fides. No person against whom these vogue allegations are directed has either been named or impleaded as a respondent.

11. The applicant in C.M. No. 6173 of 2005 i.e. respondent No. 6 had filed a joint written statement along with respondent Nos. 8 and 9, wherein also a preliminary objection had been raised on the issue of maintainability of C.W.P. No. 6916 of 2004 as a public interest litigation. Relevant extract of the pointed objection raised on the aforesaid issue at the hands of respondent No. 6 i.e. the applicant in C.M. No. 6173 of 2005, is also being reproduced hereunder:

1. (i) That the petition is not maintainable as the same has not been filed with an honest purpose and with bonafide intention. The petitioner is neither a social worker nor a philanthropist as no detail in this regard has been provided in the petition nor the petition has been stated to be filed in the interest of any community or public at large at Chandigarh. The petitioner has also not disclosed his credentials in the right and correct perspective, which is essential ingredient in view of the judge made law pursuant to the judgment rendered by the Hon"ble

Apex Court. In this regard, reference may be made to the judgment of the Hon'ble Apex Court Ashok Kumar Pandey Vs. The State of West Bengal and Others, . The relevant para Nos. 4, 12 and 14 are reproduced as under:

4. Where there is material to show that a petition styled as a public interest litigation is nothing, but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly regulated and abuse averted it also becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well. There must be real and genuine public interest involved in the litigation and not merely an adventure for a knight errant or poke one's nose into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge or enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in Janata Dal Vs. H.S. Chowdhary and Others, and Kazi Lhendup Dorji Vs. Central Bureau of Investigation and Others, A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petition but also with a clean heart, clean mind and clean objective. See The Ramjas Foundation and Others Vs. Union of India and Others, and K.R. Srinivas Vs. R.M. Premchand and Others, .

12. Public Interest Litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or a member of the public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases, with exemplary costs.

The court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The Court has to act ruthlessly while dealing with impostors and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.

(ii) It is the settled law that the Courts must do justice by promotion of good faith and prevent the law from crafty invasion and must maintain social balance by interfering where ever it is necessary in the interest of justice but must refuse to interfere where it is against social interest and public good. In the case at hand, the answering respondent have made all endeavour to set up an educational institution for the purpose of imparting legal education after obtaining affiliation with the Punjab University for the purpose of offering a five year integrated B.A.L.L.B. (Hons.) course for the benefit of the residents of Chandigarh and also the nearby States i.e. Punjab, Haryana, Himachal Pradesh, Rajasthan, Jammu and Kashmir and of course all other States would be entitled to compete accordingly. It shall be appropriate to pursue para No. 2 of the petition where the petitioner had defined himself to be a dedicated social worker, but not even a single act of social work has been described or prescribed by him nor name of any organization has been mentioned of which he is a member propagating the social cause for the society. A social worker works in the society and not in a hidden way. He further goes on to make a bald averment that the market value of the land allotted to the institute would be more than Rs. 50 crores. Neither any basis nor any mathematical calculations have been disclosed or provided as to from where such a figure has been coined.

(iii) De hors of this, the petitioner has not cared to find out that the land has been allotted by the Chandigarh Administration for the purpose of setting up of an educational institution and that the land has been allotted to an educational institution as per the notification issued by it on March 7, 2002, the convention and the procedure of the Estate Office. It shall be appropriate to mention here that the said notification has not been challenged by anyone by way of any petition or civil suit to the knowledge of the answering respondents. It is obvious that without verifying the facts, the vexatious petition has been filed by the petitioner for achieving unscrupulous gains by way of putting a spoke in the process of construction of the building, as has been stated hereinabove. Such an

act, which is full of personal interest or sadistic pleasure is not sustainable under law and that the PIL would not be sustainable if that be the cause to achieved by the petitioner. The Hon"ble Apex Court has categorically observed that the credentials of the applicant must be ascertained and secondly the prima facie correctness of nature of information given by him should also be ascertained by analyzing the appropriate averments supported by prima facie evidence, No such effort has been made nor the petitioner has substantiated his plea as aforestated.

(iv) The Hon"ble Apex Court has also given a word of caution that the information given in such a petition should not be vague and indefinite and that whatever information has been given should also establish the gravity and seriousness in law. This is lacking in the entire pleadings in the petition.

(v) The petitioner has disclosed his personal interest that he wanted to permanently settle in Chandigarh and, therefore, approached the Chandigarh Administration to find out as to whether any scheme would be available for a person like the petitioner for the allotment of residential house and that he being a common man, was bluntly told that he could buy a house by public auction as there is scarcity of land and that the answering respondents have been allotted prime commercial land at a throwaway price and that in the alternative the land could have been allotted to a housing society for construction of 100 flats wherein thousands of persons like the petitioner could have been accommodated.

(vi) It is strange that the petitioner has shown total ignorance in regard to the housing societies which are in existence at Chandigarh and that the Chandigarh Housing Board has also floated innumerable schemes for housing persons belonging to weaker and other sections of the Society. He has nowhere disclosed that he had made any endeavour in filing the application with the Chandigarh Housing Board or any of the Society incorporated for this purpose at Chandigarh. It is obvious that the petition has been filed with mala fide intention to achieve only one objective that by some way or the other the institute should not be able to commence the course in the current session. It is obvious that it is not a public interest litigation but "paise income litigation", as has been observed by the Hon"ble Apex Court in such circumstances.

(vii) The reading of the entire petition shows that the petitioner has shown his desire to settle down at Chandigarh by acquiring a house. Is it that the answering respondents have to provide a house to him or has it to be his own effort and endeavour that he has to make a shelter for himself by applying for the same with the requisite authorities. It is the settled law that if the averments contained in the petition show that the petition has been filed as a "private interest litigation", the same would deserve to be dismissed with exemplary costs. It is not to the knowledge of the answering respondents as to whether by causing such impediment in the accomplishment of setting up of an educational institution, the loss caused to the society and also to the answering respondents would be compensated in any manner whatsoever. The petitioner has not been able to spell out any public interest, as is evident from the entire reading of the

petition, whereas, the public interest has been spelt out explicitly by disclosing the aforesaid facts i.e. setting up of an educational institution for imparting legal education. It is the settled law that setting up of an educational institution is a charitable work and is in the interest of the society and public at large.

(viii) The perusal of the averments in the petition show that the petitioner has made a miserable attempt while leveling allegations that respondent Nos. 6 to 9 are very influential persons and he has tried to show that respondent No. 8 is the Additional Standing Counsel for U.T. Chandigarh and that his brother is a very senior Judicial Officer in Haryana. Does this make a person an influential person? There are more than eight additional Standing Counsel on the panel of U.T. Chandigarh, can we assume that all of them are influential persons. The relations may acquire certain posts because of their hard work and intelligence projected by way of being successful in the competitive examination, that would not mean that every person who occupies such a post, his relation would become an influential person. It is unfortunate that such personal allegations have been levelled by the petitioner. This in itself would show that the petition has not been filed with bona fide intention. The allegations levelled are emphatically denied.

(ix) The petitioner has not stopped here and has stated that two Directors of the Institute are still at the stage of completing their law course and are still students and, therefore, the sources of funding of the said project may also be ordered to be enquired into. It is not an effort or an act to malign respondent Nos. 8 and 9 ? PIL is not meant for probing into the assets and liabilities of an individual. The petitioner does not have in his mind the public interest but has a particular interest in his mind for getting the probe ordered into the financial assets of respondent Nos. 8 and 9. This in itself shows and the answering respondents apprehend that the petitioner has not filed the present petition himself but is a proxy for a person who does not wish to disclose his name and has personal animus with respondent Nos. 8 and 9 and the family. Respondent Nos. 8 and 9 are major as they are of the age of 27 and 25 years and have the requisite experience, as has been disclosed in the facts stated hereinabove and are, therefore, entitled and independent to choose their vocations. The right has been conferred upon every citizen under the Constitution of India.

(x) It is strange that in the subsequent application filed by the petitioner which has been registered as Civil Misc. Application No. 8485 of 2004 in which he has categorically stated that respondent Nos. 8 and 9 are the sons of a sitting Judge of this Hon"ble Court and that this fact has come to his knowledge now. It is absolutely false averment which has been made, as is evident from the perusal of the memo of parties in the petition, the petitioner has very deftly avoided giving the name of the father of the said respondents but has given the residential address as "presently residing at House No. 34p5, Sector 24, Chandigarh". It shows definitely that the petitioner was aware that in whose house the respondents are residing. Further, he has levelled the frivolous allegation allegedly claiming that respondent No. 7 has been getting the

beneficiary leverage because the fiduciary relationship with the answering respondent Nos. 8 and 9. The aforesaid application has been dismissed by this Hon''ble Court vide order dated May 12, 2004 by passing the following order:

C.M. No. 8485 of 2004.

Through this application, the applicant writ petitioner has come up with a prayer for issuance of appropriate directions under inherent powers of this Court stating inter alia that respondent Nos. 6 to 9 floated a company in the name and style of Chandigarh Law Institute Pvt. Ltd. in September, 2003, that respondent No. 7 is a practicing Advocate of this High Court for the last many years and one of the Directors of the Law Institute, which is the subject matter of this writ petition, along with respondent Nos. 8 and 9 about whom, the petitioner has come to know that they are sons of an Hon''ble Judge of our High Court despite being one of the Directors of the company and thereby having a fiduciary relationship with respondent Nos. 8 and 9, Respondent No. 7 continued to appear in the court of the Hon''ble Judge even though it was incumbent upon him to disclose to the counsel appearing opposite him in the cases before the Hon''ble Judge in regard to the aforementioned relationship and only in such cases, where no objection from the other side was raised, would have argued the cases, as per the standards of professional conduct and etiquettes ; that it is believed that respondent No. 7 never disclosed his relationship to his colleagues appearing for the other side ; that thus a direction may kindly be issued for calling a list of all such cases in which respondent No. 7 had appeared before the Hon''ble Judge after entering into the business relationship with respondent Nos. 8 and 9 ; and that the orders passed in those cases may be ordered to be recalled and declared null and void.

2. Heard Shri Ajay Kaushik, learned Counsel appearing in support of the prayer made in this application.

3. The question as to whether respondent No. 7, in view of his alleged relationship with the sons of the Hon''ble Judge of this Court, should have appeared before the Hon''ble Judge, cannot be adjudicated in this Public Interest Litigation for more than one reasons.

4. It has been held in some cases adjudicated by the Patna High Court (which is within the personal knowledge of one of us, namely, the Chief Justice) that the words "shall not, should not", referred to in the rules framed in Chapter II, Part VI of the Bar Council of India Rules, 1975 u/s 49(I)(c) of the Advocates Act read with the proviso thereto, cannot be resorted to for the purpose of restraining an Advocate from appearing before an Hon''ble Judge. The remedy in such cases is before the Bar Council itself.

5. It is true that fraud renders a proceeding nullity but the question as to whether any fraud was practiced on Court or by Court can be appropriately adjudicated at the instance of the party who is victim of the alleged fraud and may not be gone into in this writ proceeding where the issues are whether the

allotment of land by the Chandigarh Administration can stand the scrutiny of Article 14 of the Constitution of India or not.

6. For the reasons afore-mentioned, this application is dismissed.

(xi) The aforestated facts reflect and disclose the malicious mind of the proxy through the petitioner, thus, the petition appears to have been filed for settling some personal vendetta and, therefore, the petition cannot be termed as a genuine " public interest litigation". Consequently, the petition deserves to be dismissed with exemplary costs. It is obvious that the petition has been filed by the petitioner as a proxy and that some else is involving in initiating this personal venomous litigation against the said respondents. It is absolutely clear from the endeavour and the effort and the manner in which it has been asked that their resources should be enquired into for the purpose of setting up of the educational institution.

(xii) The petitioner referred to Dr. V.K. Bansal through whom the Institute is impleaded as respondent No. 6 as the former Chairman of the Department of Laws, Panjab University, Chandigarh holding or reaching a particular designation would not make a person influential, as it has been projected in the present petition. The said respondent has to his credit 36 years teaching experience and he has acquired laurels in the field of law teaching and that his papers submitted in the various conferences have been appreciated. It goes without saying that the petitioner had the audacity to file an application for initiation of an enquiry by C.B.I. and that in that application registered as Civil Misc. Application No. 8484 of 2004, it has been mentioned that the said respondent is closely related to a sitting Judge in the Hon"ble Apex Court. This averment was noticed by this Hon"ble Court and it was observed to be scandalous in nature. Resultantly, the Bench, vide its order dated May 12, 2004, permitted the petitioner to delete the para in the application accordingly. The excerpt of the order reads as under:

After some arguments, Shri Ajay Kaushik, learned Counsel for the applicant-writ petitioner comes up with a prayer to delete the following words occurring in paragraph 9 of this application, after he fairly stated that it is not the case that any influence was exercised by him in relation to the allotment in question at the same time, he is also a close relative of a Hon"ble Juge of the Apex Court.

In the interest of justice, we permit this prayer. The afore-mentioned words stand deleted.

(xiii) The aforestated facts show that the petition is definitely not a public interest litigation but is a personal interest litigation allegedly filed by the proxy through the petitioner. The petitioner has also mentioned that he wanted to acquire the residential house and he has not been able to get one. This in itself amounts to personal interest litigation and not public interest litigation.

(xiv) It is the settled law that if the PIL is filed by mere busy bodies, meddlesome, interlopers, wayfarers or officious intervenes having absolutely no

public interest except for personal gain or private profit or other oblique consideration, such person cannot be allowed to abuse the process of Court by initiating vexatious or frivolous litigation. The aforesaid principle has been enunciated by the Hon"ble Apex Court while rendering judgment Janata Dal Vs. H.S. Chowdhary and Others, . The relevant paras read as under:

64. In contract, the strict rule of locus standi applicable to private litigation is relaxed and a broad rule is involved which gives the right of locus standi to any member of the public acting bonafide and having sufficient interest in instituting an action for redressal ; of public wrong or public injury, but who is not a mere busybody or a meddlesome interloper ; since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community of disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting bona fide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like action popularis of Roman Law whereby any citizen could bring such an action in respect of a public delict.

109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold.

110. It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invested concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard ;yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees of criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from the undue delay in service matters, Government or private persons awaiting the disposal for tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc... are all standing in a, long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for

themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

111. In the words of Bhagwati, J. (as he then was) "the Courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J. "the applications of the busy bodies should be rejected at the threshold itself and as Krishna Iyer, J. has pointed out, "the doors of the Courts should not be ajar for such vexatious litigants.

In sum and substance, it is apparent from the preliminary objections filed by the applicants i.e. respondent Nos. 2 to 4 and 6, that the very maintainability of the writ petition was contested. The prayer, at the hands of the applicants on the basis of the same was, that C.W.P. No. 6916 of 2004, be dismissed summarily. Having deliberated on the issue in detail in the Main Order passed by Hon''ble Mr. Justice Surya Kant the following conclusions was recorded in paragraph 44:

On a consideration of the whole matter, we are of the view that this Petition unfolds, certain burning issues of vital public importance like: (i) as to whether allotment of a public property can be made by the Chandigarh Administration without a public notice and/or considering the competing claims; (ii) whether an allotment made in such a manner can sustain when it is directly in the teeth of Article 14 of the Constitution? and (iii) why the authorities of Chandigarh Administration are keeping Clause 18 of the 1996 Scheme merely in the statute book and are not enforcing it while allotting school sites on concessional rates? Although the Petitioner is a resident of Punjab State and is an income tax payee and cannot be dubbed as a "complete stranger" to these issues so as to throw him out of the Court at the threshold for want of locus standi and/or pro-bono publico, yet it is more than difficult to hold him a public spirited person at whose instance a PIL should be entertained. However, in view of the subsequent events to which reference is made in the later part of this judgment, the above mentioned objection does not detain us from proceeding with the matter.

In sum and substance, Hon''ble Mr. Justice Surya Kant did not accept the instant preliminary objection, at the hands of the respondents, so as to throw out the writ petition, as not maintainable.

12. In so far as Hon''ble the Chief Justice Mr. Binod Kumar Roy is concerned, the issue under reference was dealt with, and his views and conclusions were inter alia, expressed in paragraphs 10, 12 and 13 (which is the basis of the order passed by Hon''ble the Chief Justice) pertain to the issue of the instant preliminary objection. Paragraphs 10, 12 and 13 of the order passed by the Hon''ble the Chief Justice Mr. Binod Kumar Roy on 14.2.2005 are being extracted

hereunder.

10. The property in question belongs to the Chandigarh Administration, which under our constitutional philosophy really belongs to the people, who gave the Constitution of India to themselves for their governance. Undoubtedly the Chandigarh Administration is a trustee, whose duty is also to see that the property belonging to the Chandigarh Administration is not allowed to be squandered and/or sold away at a throwaway price like in the instant case as pointed out by its Audit Department itself that there is a clear-cut loss of about Rs. 139 crores to the Exchequer. Apparently everything was done in a clandestine manner. Unprecedented settlement of the land in question in favour of the Chandigarh Law Institute was done surprisingly within few days. We appreciate the ambition of the Directors of the Company but their private interest is pitted against public interest. Had the settlement been made through open bid/auction the Chandigarh Administration may have got even more than Rs. 139 crores.

12. In the instant case there was an apparent favour in favour of Chandigarh Law Institute whose Directors are influential persons. Shri Shailendra Jain, Advocate is the Standing Counsel of the Chandigarh Administration, two of the respondents are law students being sons of a sitting Judge of this Court (who have become Advocates during pendency of this writ petition, as it transpired during hearing) and one is Professor Bansal, Head of the Law Department of Panjab University. The company is a profit making company. Nothing has been produced before us to show that this company is not a profit making company. It was also pointed out during hearing that the Bar Council of Punjab and Haryana which is a statutory body to whom land measuring about 5-1/2 kanals only has been allotted to for Rupees One Crore Fifty Four Lacs in the year 2002. As rightly observed in *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, , it is difficult to draw a strict line of demarcation as to what matter and to what extent a PIL should be entertained but having regard to the peculiar facts and circumstances of the instant case I am of the view that there exists strong reasons to entertain this Writ Petition, which is true Public Interest Litigation and not a Private Interest Litigation nor Propaganda seeking litigation, and appeared necessary to enquire into the affairs of Chandigarh Administration in the interest of justice. The instant Writ Petition appears to be the first one, which has been filed by the petitioner. Keeping in mind the dictum laid down in Paragraph 41 of *D.S. Nakara (supra)* simply because it is his first endeavour to knock the doors of this constitutional Court it cannot be said that he is not a public spirited person or that he lacks bonafide or that he is a busy body. The Respondents have miserably failed to show that he has been set up mala fide by someone or that he is a busy body. He is a public spirited person. The cause ventilated by him is worth considering and the report of the Audit submitted to the Chandigarh Administration proves the allegations made by him.

13. I thus hold that this writ petition is maintainable.

In sum and substance, Hon"ble the Chief Justice Mr. Binod Kumar Roy also did not accept the instant preliminary objections, at the hands of the applicants/respondents, so as to throw out the writ petition, as not maintainable.

13. It, therefore, emerges, that although different reasons have been recorded by the members of the Bench which disposed of C.W.P. No. 6916 of 2004 on 14.2.2005, the conclusion record by them on the issue of maintainability was the same. Merely because the members of the Bench have traversed over different terrain, to record their conclusions, yet since the conclusions recorded by them are to the same effect, I am of the view that the judgment/order passed in the Order passed by Hon"ble the Chief Justice Mr. Binod Kumar Roy, on the one hand, and that passed in the Main Order of by Hon"ble Mr. Justice Surya Kant, on the other, cannot be said to have rendered a different opinion on the instant point so as to attract the applicability of Rule 31 of Chapter 4, Part F, of the High Court Rules and Orders, read with, Clause 26 of the Letters Patent. Aspect relating to the directions by which C.W.P.6916 of 2004 has been disposed of.

14. In so far as the instant issue is concerned, Hon"ble Mr. Justice Surya Kant recorded his directions in paragraphs 60, 61 and 62 of his Main Order dated 14.2.2005. The same are being extracted hereunder:

60. On January 17, 2005, Shri Rajiv Atma Ram, learned Senior Counsel representing Respondent Nos. 2 to 4 informed us that His-Excellency Governor of Punjab-cum-Administrator, U.T. Chandigarh, after carefully going through the records of the case, has come to a conclusion that "corrective steps" are necessary; that the options are being: (i) either to cancel the lease of the land to the Chandigarh Law Institute forthwith; or (ii) to require the Institute to pay an enhanced rate for the land, as it has already taken possession of the land and started construction, though further constructions stand stayed by this Court, and thereby would it be fairer to give it an opportunity to retain the lease at an enhanced rate?" The learned Senior Standing Counsel also informed that the Administrator, U.T. Chandigarh has decided to seek an opinion of the learned Attorney-General of India for as to which of the two options afore-mentioned is more practicable and in the event of the latter, which of the several administered rates, if any, should be levied. The matter was accordingly further adjourned. On the subsequent dates of hearing i.e. on January 24, 2005 and January 31, 2005, we were informed that since the opinion of the learned Attorney-General of India was still awaited, the Administrator U.T. Chandigarh has not been able to take a formal final decision in the matter, We, therefore, proceeded to conclude the hearing clarifying that it will be open for the Chandigarh Administration to apprise within one week, if it has received any opinion of the learned Attorney-General of India and the decision, if any, taken by His Excellency Governor of Punjab-cum-Administrator, U.T. Chandigarh.

61. Since we have not been informed by the Chandigarh Administration of any further decision in the matter, and keeping in view our observations and the fact that the Executive Head of the U.T. Chandigarh has already taken a conscience,

fair, reasonable and transparent decision to which reference has already been made by us we dispose of this Writ petition with the following directions:

(i) The Administrator, U.T. Chandigarh, will take the "necessary corrective steps" in the matter within a period of two months from today.

(ii) In the light of the well settled law that allotment of a public property should conform to Article 14 of the Constitution, we hold that the corrective step to be taken by the learned Administrator, U.T. Chandigarh will have to be in consonance with the aforesaid constitutional philosophy.

(iii) The Chandigarh Administration is directed to take a policy decision while keeping in view the observations made in this judgment for allotment of available institutional sites to ensure that allotments are made objectively and in a transparent manner.

(iv) The site in question can thereafter be allotted by inviting applications through a public notice . and giving opportunity to all prospective allotted including Respondent No. 6-Institute, if eligible.

(v) Till the decision are taken as per directions (i) to (iv) above, and the site in question is allotted/disposed of in accordance with law, our ad-interim order restraining further constructions thereupon by Respondent Nos. 6 to 9 shall continue to operate.

(vi) The Chandigarh Administration will enforce Clause 18 of the "Allotment of Land to Educational Institutions (Schools) Etc. on Lease-hold Basis in Chandigarh Scheme, 1996," forthwith and allottees of the school sites shall be required to give an undertaking in writing to this effect within three months from today. In the event of their failure and/or reluctance to give the undertaking, as directed above, it will be open for the Chandigarh Administration to cancel the allotment of the school sites in accordance with law.

62. Let a copy of this order be handed over to Ms. Jai Shree Thakur, learned Counsel representing the Union Territory of Chandigarh for its intimation to and follow up action by the authorities concerned.

As against the aforesaid directions recorded by Hon''ble Mr. Justice Surya Kant, Hon''ble the Chief Justice Mr. Binod Kumar Roy recorded his directions in paragraphs 14 and 15. The same are also extracted hereunder:

14. The decision of his Excellency the Governor of Punjab-cum-Administrator, Chandigarh Administration that the impugned allotment requires taking up of corrective steps suggests that it was made apparently, arbitrarily, clandestinely, illegally and unconstitutionally. Obviously, it cannot be corrected in view of our findings by making its reallocation with the allottee. It has to be auctioned in terms of the observations and findings referred to in the judgment that is to say by a transparent process. It is clarified that the allottee cannot take advantage of any type from the earlier settlement culminating into

lease-deed (xerox copy Annexure R-6/3) executed by the President of India through the Estate Officer, U.T. Chandigarh in favour of the Chandigarh Law Institute Private Limited through its Director Ripjit Singh Narang as the allotment itself has been held to be unconstitutional.

15. We have full hope and trust in His Excellency the Governor of Punjab-cum-Administrator, Chandigarh Administration in finding out (i) who were the persons responsible for the apparent acts of commission? (ii) whether the same requires taking of any disciplinary action? and (iii) whether it requires even launching of prosecution?

15. A perusal of the Post Judgment Script of Hon''ble Mr. Justice Surya Kant (extracted above) reveals, according to the learned Counsel for the applicants, a clear expression of opinion at the hands of Hon''ble Mr. Justice Surya Kant, that he does not subscribe to the directions, inter alia contained in paragraphs 14 and 15 of the order passed by Hon''ble the Chief Justice. Likewise, the order passed by Hon''ble the Chief Justice (extracted above) reveals, according to the learned Counsel for the applicants, a clear expression of opinion at the hands of Hon''ble the Chief Justice Mr. Binod Kumar Roy, that he does not subscribe to the directions, inter alia contained in paragraphs 61 and 62 of the Main Order passed by Hon''ble Mr. Justice Surya Kant.

16. Paragraph 60 of the Main Order passed by Hon''ble Mr. Justice Surya Kant notices two alternative corrective steps suggested by his Excellency-Governor of Punjab- cum-Administrator. U.T., Chandigarh i.e. either to cancel the lease of land granted to the Chandigarh Law Institute forthwith, or to require the Institute to pay an enhanced rate for the land allotted to it. While issuing his directions in paragraph 61 in the Main Order of Hon''ble Mr. Justice Surya Kant, reference was again made to the corrective steps suggested by his Excellency the Governor of Punjab-cum-Administrative, U.T. Chandigarh at serial (i). Yet, in so far as the site allotted to the Chandigarh Law Institute is concerned, the directions in the Main Order passed by Hon''ble Mr. Justice Surya Kant were clear, definite and unambiguous. In so far as the site allotted to the Chandigarh Law Institute is concerned express directions can be stated to have been recorded at serial (iv) in paragraph 61. The directions contained at serial (iv) on a closer analysis reveals the following steps. Firstly, the process of allotment of the site earlier allotted to the Chandigarh Law Institute, should commence after the Chandigarh Administration takes a policy decision specifying the procedure of allotment of available institutional sites. This is apparent from the words "The site in question can thereafter..." contained at the beginning of the Clause (iv). Secondly, before allotting the site, the Chandigarh Administration was directed to invite applications through a public notice, so that all prospective allottees including the Chandigarh Law Institute, have an opportunity to vie for the same. Thirdly, the allotment of the site in question was directed to be finalised only in favour of an eligible candidate (i.e., after determining the eligibility of the Chandigarh Law Institute as well). This aspect of the directive necessarily implies that the Court

had not evaluated the aspect of eligibility of the Chandigarh Law Institute, but was conscious of its importance, as an imperative requirement. And finally, as a matter of overview, the direction required that the allotment of the site in question (presently allotted to the Chandigarh Law Institute), should be made in a manner which conforms with the guidelines depicted in directive No. (ii) i.e. that it should conform to the Constitutional philosophy contained in Article 14 of the Constitution of India.

17. Despite of the positive directions contained in the Main Order passed by Hon"ble Mr. Justice Surya Kant, which have been interpreted in the preceding paragraph, Hon"ble Mr. Justice Surya Kant left it to the wisdom of the Chandigarh Administration, to lay down the procedure, for making a fresh allotment of the site earlier allotted to the Chandigarh Law Institute. Significantly, in the Main Order passed by Hon"ble Mr. Justice Surya Kant, he did not specify the exact manner or procedure to be followed, for making a fresh allotment of the site earlier allotted to the Chandigarh Law Institute.

18. Allotments of public property, can be made in conformity of the Constitutional philosophy enshrined in the Constitution, in a number of ways. As for instance allotment by auction, which permits all eligible applicants to bid for the same. In the instant process of allotment, the highest bidder succeeds in bagging the allotment, if he is otherwise eligible, and does not suffer from any disqualification. Allotment may also be made, in conformity with the said philosophy, on merit, by choosing the most suitable eligible applicant, who according to the wisdom of the selecting body, is likely to raise and run the institute in a manner, which would be better than all the other applicants. Allotment can also be made, within the framework of the aforesaid philosophy, simply by a draw of lots, from amongst the eligible applicants. All the modes of allotment, cited as instances above, are in conformity with the Constitutional philosophy, envisaged in the directives contained in the Main Order passed by Hon"ble Mr. Justice Surya Kant.

19. A perusal of the averments made in paragraph 14 of the order passed by Hon"ble the Chief Justice Mr. Binod Kumar Roy, however, reveals that in his directions, he expressly went on to specify the manner of allotment, of the site, earlier allotted to the Chandigarh Law Institute. Hon"ble the Chief Justice Mr. Binod Kumar Roy directed that the site was to be allotted by way of auction.

20. The question to be determined is, whether the direction, contained in the order passed by Hon"ble the Chief Justice, is at variance with the directions passed by Hon"ble Mr. Justice Surya Kant.

21. A perusal of the directions contained in the Main Order passed by Hon"ble Mr. Justice Surya Kant, and the order passed by Hon"ble the Chief Justice, reveal a common effect i.e., the allotment of the institutional plot earlier made in favour of the Chandigarh Law Institute stood cancelled. Even though Hon"ble the Chief Justice Mr. Binod Kumar Roy, in his ultimate directive required the site earlier

allotted to the Chandigarh a Law Institute, be reallocated on auction, yet, the instant direction is squarely in consonance with the directions contained in the Main Order passed by Hon''ble Mr. Justice Surya Kant. Needless to mention, that a process of auction, by necessary implication, requires invitation to all eligible prospective allottees through public notice, and as such, also conforms to the Constitutional philosophy enshrined in Article 14 of the Constitution of India because under the instant procedure, the choice for allotment has to be in favour of the highest eligible bidder, who does not suffer from any disqualification. In the manner examined above, the direction in the order passed by Hon''ble the Chief Justice, all the steps of the procedure envisaged in the directions contained in the Main Order passed by Hon''ble Mr. Justice Surya Kant (analysed in paragraph 19 above), have implicitly been adhered to. In view of the above, there appears to be absolutely no point of difference/divergence in the parameters within the frame work of which the two members of the Bench issued their directions.

22. Viewed in terms of the deliberations and conclusions recorded in paragraphs 19 to 22, hereinabove, it is not possible to conclude, that there was legally any point of difference in the order passed by Hon''ble the Chief Justice Mr. Binod Kumar Roy, on the one hand, and the Main Order passed by Hon''ble Mr. Justice Surya Kant, on the other, in so far as the directions by which C.W.P. No. 6916 of 2004 was disposed of on 14.2.2005. At the cost of repetition, it may be stated, that although there may apparently seem to be a difference in the thought process, and also the relative rigour of the expressions used, in the order passed by Hon''ble the Chief Justice on the one hand, and the Main Order of Hon''ble Mr. Justice Surya Kant, on the other, yet, it has not been possible to conclude that there was any divergence/ difference in the directions recorded in their separate orders. In the aforesaid view of the matter, no occasions whatsoever arises for issuing any order in terms of Rule 31 of Chapter 4(F) of the High Court Rules and Orders, read with Clause 26 of the Letters Patent, in so far as the present issue is concerned.

23. Conclusions:

For the reasons recorded above, since no point of difference seems to emerge, from the two points agitated on behalf of the applicants, on which separate deliberations have been recorded hereinabove, there is no merit in the prayer made in the instant applications, under Rule 31 of Chapter 4(F) of the High Court Rules and Orders, read with Clause 26 of the Letters Patent. Both the applications are, as such, liable to be dismissed.