(2010) 12 AHC CK 0169

In the Allahabad High Court

Case No : Writ Petition No. 9925 (MB) of 2010

Prashant Singh Gaur APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Advocates Act, 1961 — Section 24, 24A, 26, 26(3), 28
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Constitution of India, 1950 — Article 145, 226, 227
Income Tax Act, 1961 — Section 50C, 56
Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 — Regulation 8(5)
Penal Code, 1860 (IPC) — Section 141, 147, 307, 323, 332
Prevention of Damage to Public Property Act, 1984 — Section 3, 4

Citation : (2010) 12 AHC CK 0169

Hon'ble Judges : Virendra Kumar Dixit, J;Uma Nath Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for parties and perused the reports submitted by SIT (CBI) and Special Income Tax Investigation Committee. We have also given our anxious consideration to CMA Nos. 115366 of 2010 and 120218 of 2010, and the written submissions placed on record on behalf of the Law Commission of India.

2. Status report as submitted by SIT (CBI) discloses the present position of investigation into 11 cases assigned to it. We are fully satisfied with the efforts put in and the progress made in the investigation. It is also mentioned that so far 96 persons have been examined who may be cited as witnesses. However, at the very out set, just in order to dispel wrong impression, if any, that the SIT may over step during the course of investigation or some innocent members of the Bar may also be implicated, a fear totally unfounded, we would like to disclose the details of First Information Reports/R Cs registered with the names of accused persons mentioned therein as under:

(i) RC/DST/2010/S/0005 dated 04.11.2010

Under Section: 143, 147, 149, 186, 189, 353, 427, 451, and 506 IPC against Sh. Parshuram Mishra, Advocate, Lucknow and others.

Allegation:

It was alleged by Shri Raj Kumar, Reader, Judicial Magistrate-II, Lucknow that on 05.03.2008 some advocates damaged window panes, name plate of the Presiding Officer and also damaged notice board and the cause list. On the same day, Smt. Somprabha Tripathi, the then Judicial Magistrate-II, Lucknow also reported that Shri Parshuram Mishra, Advocate, Lucknow alongwith 5-6 other advocates went on a rampage indulging in violence and ransacking her chamber as also obstructing judicial work by slogan shouting.

(ii) RC/DST/2010/S/0006 dated 04.11.2010

Under Section 323, 332, 353, 504, 506, 307 IPC, Section 7 C.L.A and Section 3/4 Prevention of Damage to Public Property Act, 1984 against Sh. Shiv Sharan Upadhyay, Advocate and 15-20 other advocates.

Allegation:

It was alleged that on 06.11.2008 at about 10-10.15 AM Sh. Shiv Sharan Upadhyay, advocate alongwith 15-20 other advocates threatened and assaulted Shri Dinesh Lal Verma, Liftman and snatched the keys, threatened and assaulted Sh. Anees, Chowkidar and snatched the keys from him too, in order to stop work in the multi-storeyed building of the civil court.

(iii)RC/DST/2010/S/0007 dated 04.11.2010

Under Section 143, 147, 323, 341, 342 and 506 IPC against Sh. Siddharth Tripathi, advocate, civil courts, Lucknow alongwith 30-40 lawyers.

Allegation:

It is alleged by the complainant Sh. Devendra Singh Rawat that on 21.08.2010, as he was coming out from the Court, Shri Siddharth Tripathi, advocate alongwith 30-40 advocates had severely beaten him. Later on he was taken to P.S. Wazirganj where he was forced to sign a compromise.

(iv)RC/DST/2010/S/0008 dated 04.11.2010

Under Section 147, 323, 506 and 392 IPC against (i) Sh. Anurag Trivedi, Advocate (ii) Sh. Mirza Tausif Baig, Advocate and 20-25 other advocates.

Allegation:

It is alleged by Shri Krishna Mohan Srivastava, Advocate that on 06.09.2010 at about 1.30 PM, Sh. Anurag Trivedi, Advocate, alongwith his junior Sh. Mirza and 20-25 other advocates abused him, snatched from him Rs. 20,000/-, his ATM Card, Canteen Card of his sister as well as his father, mobile phone and files and also chased and assaulted him and tore off his clothes.

(v)RC/DST/2010/S/0009 dated 04.11.2010

Under Section 147, 353, 427, 447, 506 IPC and Section 3 of Prevention of Damage to Public Property Act, 1984 against (i) Sh. Uma Shankar Srivastava, General Secretary, Central Bar Association, Lucknow Courts (ii) Sh. Jeetu Yadav, Advocate, Lucknow Courts (iii) Sh. Avinish Dixit, Advocate, Lucknow Courts and some other advocates of Lucknow Courts.

Allegation:

It was alleged that on 27.09.2010 and 28.09.2010, a group of advocates attempting to close the Court room and offices of the District Court Campus went on rampage and manhandling the officials and other personnel of the Court, terrorizing, insulting and harassing them and ransacking the Courts and others at large. It was further alleged that when the SP City tried to get the Court opened Sh. Uma Shankar Srivastava, General Secretary, Central Bar Association, Sh. Jeetu Yadav, Advocate, Sh. Avinish Dixit, Advocate alongwith 30-35 advocates obstructed and raised slogans.

(vi) RC/DST/2010/S/0010 dated 04.11.2010

Under Section 419, 420, 467, 468, 471, 500 and 506 IPC against (i) Sh. Kr. Gajraj Singh, Advocate (ii) Sh. A.H. Khan, Advocate (iii) Sh. Raneer Singh, Advocate (iv) Sh. Ravindra Kumar Yadav, Advocate (v) Sh. Ishwar Kant @ Baba (vi) Sh. Anil Singh (vii) Sh. Manoj Kumar Singh.

Allegation:

It was alleged that Sh. Kr. Gajraj Singh, Advocate, Sh. A.H. Khan, Advocate, Sh. Ranveer Singh, Advocate, Sh. Ravindra Kumar Yadav, Advocate, in connivance with Sh. Ishwar Kant @ Baba, Anil Singh and Manoj Kumar Singh, with intention to grab land measuring 22 Bigha, 13 Biswa and 15 Biswansi, situated in village Bhaudri, District Lucknow, committed forgery by getting sale deed of the said land executed, by impersonating late Ram Prashad Ahuja who had died much before execution of the said sale deed.

(vii) RC/DST/2010/S/0011 dated 04.11.2010

Under Section 323 and 504 IPC against Sh. Akbar Hussain @ Sajju S/o Late Asgar Hussain R/o 45, South Bagh, Opp. City Mal Godown, PS Wazirganj, Lucknow and other 2 unknown persons.

Allegation:

It was alleged by the complainant Sh. Syed Masood Agha that on 04.10.2010 Sh. Akbar Hussain @ Sajjoo, advocate along with two others abused and assaulted him while he was sitting in the chamber his advocate Sh. Padam Kirti in the family Court compound.

(viii) RC/DST/2010/S/0012 dated 04.11.2010

Under Section 323, 506 and 511 IPC against (I) Sh. Ashwani Srivastava, Advocate (ii) Sh. Abhishek Singh (iii) Lh. Laxmendra Singh and two other advocates.

Allegation:

It was alleged by the complainant Sh. Prasant Singh Gaur that on 22.9.2010 when he went to attend the Civil Court in regular Suit No. 372 of 2010 (Veena Singh and Ors. v. Jasveer Singh) he was intercepted by five lawyers and asked not to appear him in the matter again. It was further alleged that five lawyers including Abhishek Singh, Ashwani Srivastava and Laxmendra Singh abused him and assaulted him.

(ix) RC/DST/2010/S/0013 dated 04.11.2010

Under Section 147, 323, 504 & 506, I.P.C. Against (i) Sh. Satyendra Kumar Awasthi, Advocate (ii) Sh. Dharmendra Kumar Yadav, Advocate (iii) Sh. Anup Kumar Rawat, Advocate (iv) Sh. Asheesh Chandra, Advocate (v) D.K. Chaturvedi, Advocate and other Advocates.

Allegation:

It was alleged by the complainant Sh. Shiv Rajmohan Nigam, advocate that on 17.03.2008 at 12.30 hrs. Sh. Satyendra Kumar Awasthi, Advocate, Sh. Dharmendra Kumar Yadav, Advocate, Sh. Anup Kumar Rawat, Advocate, Asheesh Chandra, Advocate, D.K. Chaturvedi, advocate forcibly entered his chamber and abused/assaulted him, his wife and son, as a result they sustained injuries.

(x) RC/DST/2010/S/0014 dated 04.11.2010

Under Section 147, 323, 504 & 395 IPC against Sh. Jitendra Kuril s/o Sh. Ram Chandra Kuril and 10-12 unknown advocates.

Allegation:

It was alleged by the complainant Sh. J.P. Yadav, advocate that on 28.3.09 at about 2.30 pm when he went to Court for bail matter of Satya Prakash, Sh. Jitendra Kuril, advocate alongwith 10-12 other advocates threatened him and his senior Shri Shiv Pitamber not to apply for the bail. On objecting they assaulted them badly and also snatched watch and gold chain of his senior, Shiv Pitamber.

(xi) RC/DST/2010/S/0015 dated 04.11.2010

Under Section 147, 323, 394, 427, 504 and 506 IPC against Prabhakar Rai and other 4-5 persons.

Allegation:

It was alleged by the complainant Sh. G.K. Singh, advocate that on 7.10.2010 at about 12 O''clock when he was going to Civil Court in connection with a case he was forcibly stopped by Sh. Prabhakar Rai, advocate and 4-5 others and demanded a sum of Rs. 60,000/-. On refusal, they snatched his case files and Rs. 3,800/-and tore off his gown. He was also assaulted with knife. In the assault he sustained injuries on the middle finger of his right hand.

3. As regards the action taken report submitted by Special Income Tax Investigation Committee, since the nature of investigation is confidential and the process is likely to take some time, it would not be desirable in the interest of justice to refer to any information as contained therein.

4. Now, coming to C.M. Application No. 115366 of 2010 filed by Shri B.P. Pandey, Advocate, on behalf of Abhishek Singh, Advocate, for setting aside the ex parte order dated 28.10.2010 with alternate prayer to assign the Cross FIR 378/2010 dated 22.09.2010 to CBI if the first prayer is not allowed, we may refer to the legal position regarding the arguments on application of provisions of Code of CPC in the writ matters with prayers for exercise of extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India by the High Courts.

5. In the case of Puran Singh and others Vs. State of Punjab and others, Hon''ble the Apex Court has held that in exercise of extraordinary jurisdiction under Article 226 or 227 of the Constitution, the High Court is free to adopt its own procedure which is reasonable and expeditious. In pp.7,10 and 11 of the judgment, the legal position has been elucidated in great details as under:

7. When the High Court exercises extraordinary jurisdiction under Article 226 of the constitution, it aims at securing a very speedy and efficacious remedy to a person, whose legal or constitutional right has been infringed. If all the elaborate and technical rules laid down in the Code are to be applied to writ proceedings the very object and purpose is likely to be defeated. According to us,in view of the conflicting opinions expressed by the different courts, the Parliament by the aforesaid amending Act introduced the explanation saying that in Section 141 of the Code the expression "proceedings" does not include "any proceedings under Article 226 of the Constitution"and statutorily recognised the views expressed by some of the courts that writ proceedings under Article 226 of the Constitution shall not be deemed to be proceedings within the meaning of Section 141 of the Code. After the introduction of the explanation to Section 141 of the Code, it can be said that when Section 141 provides that the procedure prescribed in the Code in regard to suits shall be followed, as far as it can be made applicable "in all proceedings in any court of civil jurisdiction" it shall not include a proceeding under Article 226 of the constitution. In this background, according to us, it cannot be held that the provisions contained in Order 22 of the Code are applicable per se to writ proceedings. If even before the introduction of the explanation to Section 141, this Court in the case of Babubhai v. Nandlal (supra) had said that the words "as far as it can be made applicable occurring in Section 141 of the Code made it clear that in applying the various provisions of the Code to the proceedings other than those of a suit, the court has to take into consideration the nature of those proceedings and the reliefs sought for" after

introduction of the explanation the writ proceedings have to be excluded from the expression "proceedings" occurring in Section 141 of the Code. If because of the explanation, proceeding under Article 226 of the Constitution has been excluded, there is no question of making applicable the procedure of Code ''as far as it can be made applicable'' to such proceeding. The procedures prescribed in respect of suit in the Code if are made applicable to the writ proceedings then in many cases it may frustrate the exercise of extra-ordinary powers by the High Court under Articles 226 and 227 of the Constitution.

10. On a plain reading, Section 141 of the Code provides that the procedure provided in the said Code in regard to suits shall be followed "as far as it can be made applicable, inall proceedings". In other words, it is open to make the procedure provided in the said Code in regard to suits applicable to any other proceeding in any court of civil jurisdiction. The explanation which was added is more or less in the nature of proviso, saying that the expression "proceedings" shall not include any proceeding under Article 226 ofthe Constitution. The necessary corollary thereof shall be that it shall be open to make applicable the procedure provided in the Code to any proceeding in any court of civil jurisdiction except to proceedings under Article 226 of the Constitution. Once the proceeding under Article 226 of the Constitution has been excluded from the expression "proceedings" occurring in Section 141 of the Code by the explanation, how on basis of Section 141 of the Code any procedure provided in the Code can be made applicable to a proceeding under Article 226 of the Constitution? In this background, how merely on basis of Writ Rule 32 the provisions of the Code shall be applicable to writ proceedings? Apart from that, Section 141 of the Code even in respect of other proceedings contemplates that the procedure provided in the Code in regard to suits shall be followed "as far as it can be made applicable". Rule 32 of Writ Rules does not specifically make provisions of Code applicable to petitions under Articles 226 and 227 of the Constitution. It simply says that in matters for which no provision has been made by those rules, the provisions of the Code shall apply mutatis mutandis in so far as they are not inconsistent with those rules. In the case of Rokyaybi v. Ismail Khan AIR 1984 Kar 234 in view of Rule 39 of the Writ Proceedings Rules as framed by the Karnataka High Court making the provisions of Code of CPC applicable to writ proceedings and writ appeals, it was held that the provisions of the Code were applicable to writ proceedings and writ appeals.

11. We have not been able to appreciate the anxiety on the part of the different courts in judgments referred to above to apply the provisions of the Code to Writ Proceedings on the basis of Section 141 of the Code. When the constitution has vested extraordinary power in the High Court under Articles 226 and 227 to issue any order, writ or direction and the power of superintendence over all courts and tribunals throughout the territories in relation to which such High Court is exercising jurisdiction, the procedure for exercising such power and jurisdiction have to be traced and found in Articles 226 and 227 itself. No useful purpose will be served by limiting the power of the High Court by procedural provisions

prescribed in the Code. Of course, on many questions, the provisions and procedures prescribed under the Code can be taken up as guide while exercising the power, for granting relief to persons, who have invoked the jurisdiction of the High Court. It need not be impressed that different provisions and procedures under the Code are based on well recognised principles for exercise of discretionary power, and they are reasonable and rational. But at the same time, it cannot be disputed that many procedures prescribed in the said Code are responsible for delaying the delivery of justice and causing delay in securing the remedy available to a person who pursues such remedies. The High Court should be left to adopt its own procedure for granting relief to the persons concerned. The High Court is expected to adopt a procedure which can be held to be not only reasonable but also expeditious.

6. Similarly, in another judgment of Hon''ble the Apex Court in the case of Commissioner of Endowments and Others Vs. Vittal Rao and Others, the aforesaid legal position has been reiterated as under:

17. The High Court while exercising jurisdiction under Article 226 of the Constitution has jurisdiction to pass appropriate orders. Such power can neither be controlled nor affected by the provisions of Order 23 Rule 3 CPC. It would not be correct to say that the terms of Order 23 Rule 3 should be mandatorily complied with while exercising jurisdiction under Article 226 of the Constitution. Otherwise an anomalous situation would arise such as before disposing of the writ petition, issue should be framed or evidence should be recorded, etc. Proceedings under Article 226 of the Constitution stand on a different footing when compared to the proceedings in suits or appeals arising therefrom.

7. In a later judgment in the case of Babubhai Jamnadas Patel Vs. State of Gujarat and Others, Hon''ble the Apex Court has further articulated the importance of extraordinary jurisdiction under Article 226 and 227 as under:

46. The courts, and in particular the High Courts and the Supreme Court, are the sentinels of justice and have been vested with extraordinary powers of judicial review and supervision to ensure that the rights of the citizens are duly protected. The courts have to maintain a constant vigil against the inaction of the authorities in discharging their duties and obligations in the interest of the citizens for whom they exist. This Court, as also the High Courts, have had to issue appropriate writs and directions from time to time to ensure that the authorities performed at least such duties as they were required to perform under the various statutes and orders by the administration.

8. Paras 2, 12 and 13 of the petition by way of complaint on affidavit submitted by Petitioner Shri Prashant Singh Gaur, a member of the High Court Bar need to be read carefully and are, hence, reproduced as below:

2. That the deponent with pain inform this Hon''ble Court that your judgship is infested with such anti social and miscreants who have stooped to such levels that practicing law and representing a client is no longer safe for an advocate. In

your judgship handful of person are involved only in instituting frivolous proceeding demanding ransom from the opposite party and severally thrash and threat any party opposing for the simple reasons that they are member of our legal fraternity.

12. That the deponent feels that his lord being our guardian may take initiative to weed out these anti social elements from Civil Court to keep public belief in our judicial system. This episode had happend to him and can happen to any lawyer, who defends a person contesting against these unruly hooligan developing a nexus in the Civil Courts, Lucknow and therefore request you to take initiative and clean environment of our courts setting an example against these persons and protect common litigants coming to court for redressal of their grievance.

13. That the deponent is deeply grateful and is obliged towards the senior members of the Bar and fellow colleagues, who encouraged and supported the deponent to take a stand against this growing menace in absence of such support this issue also would be just another incident happening everyday in the subordinate courts.

Thus, the averments of petition are essentially not a complaint about an sporadic incident like Petitioner''s case but primarily against the unruly atmosphere prevailing in the District Court premises which till before our earlier orders (as above) were passed was prominently marked with the incidents of violence indulged into by some criminal elements who had succeeded to a large extent in hijacking the justice delivery system. It has also come to our notice that most of such incidents have remained unreported due to the fear of the said criminal elements. Thus, the situation being emergent, some extraordinary measures were required to deal with such elements firmly in order to uproot them, and also in order to eradicate the illegal activities, as alleged going on in the court campus. In this background we passed the following three orders dated 05.10.2010, 25.10.2010 and 28.10.2010, which on reproduction read as:

Hon''ble Uma Nath Singh, J.

Hon''ble V.K. Dixit,J.

Pursuant to the order dated 04.10.2010, learned Advocate General U.P. Sri Jyotindra Mishra, Inspector General of Police, Lucknow Zone, Sri K.L. Meena, District Magistrate and D.I.G. Lucknow and the office bearers of local Bar Associations are present in Court. A complaint on affidavit in terms of the above order filed in Court by Sri Prashant Singh Gaur, Advocate, a Member of the High Court Bar, Lucknow Bench, is taken on record.

It is the one of numerous such incidents of physical violence with the members of bar, litigants, police officers, witnesses and court staff that have happened in the past inside and outside the District Court premises at Lucknow in connection with pending litigations in that Court. As per reports, oral or otherwise, of the police, and of the civil administration, as also of the judicial officers including the District Judge, there are about 330 cases registered, against 243 members of the Lucknow District Court Bar, at different police stations which also include 5 cases of murder, 3 cases of kidnapping, 53 cases of land grabbing, and 75 cases of violence, inside and around the District courts premises between 2005 and 2010.

It is also stated by the members of Lucknow Bar who are the regular practitioners of the Lucknow District Court that interference with judicial works in that court, by way of creating the atmosphere of reign of terror against the parties, lawyers, who file Vakalatnamas and appear in cases, and also by putting the judicial officers under all types of pressure, has become a regular feature. It appears that there is a systematic attempt by the criminal-elements of the society to criminalize the legal profession also, by inducting the law graduates with criminal background in the Bar, and that is why, in the Jam-packed court today, the entire Bar has risen to the occasion to narrate their awful stories with prayers that if the legal profession is not purged of criminal elements, the lower courts would have to be closed in the near future. It is also stated at the Bar that there are a few self-proclaimed lawyers (with and without Law degree) with abhorrent criminal records of heinous offences who have formed some small groups comprising of such members of the District Bar who also have the criminal bent of mind. They are working like Mafia dons by recruiting and indoctrinating the young lawyers, with weak financial back grounds or personal weaknesses into the crimes-world and forcing them to become a misguided lot of the Bar with assurance to get them quick bucks with all the modern luxuries of life. They have virtually taken over the control of legal profession by wreaking vengeance and unleashing terror against the lawyers, litigants, police officers, administrative officers and the members of public, who have till date only remained defensive and on the receiving end. It is also informed that in the past few years, these criminal elements in the Bar have also misused the court''s premises on the strength of muscle powers, for carrying out illegal activities and the occupations other than the legal profession like property dealing/grabbing and taking all types of contracts including the contracts for assaulting the litigants, police officers, and witnesses etc. as also for pressurising the judicial officers.

Sri Raj Kumar Yadav, President of the Central Bar Association of District Court, Lucknow, also has some frightful story to tell, and he assures the Court of his fullest co-operation in purging the Bar of the said criminal elements and the outlaws. Sri N.K. Seth, a learned senior counsel of the High Court, intervenes to submit some documents in order to show as to how the properties-grabbers-wings of the criminal elements of the District Bar have captured a huge prime property of Lucknow. There is also a complaint that a Journalist-cum-Advocate member of the High Court Bar, Shri Chitambar was brutally attacked and assaulted for daring his appearance in a criminal case in the District Court, and even his gold-chain and watch were also snatched away and not returned till date. Some Advocates also complain that a lady member of the High Court Bar for her appearance in some case was hit with legs on her back by these miscreants. In this background, when there is hue and cry all over by the members of the Lucknow Bar seeking protection against the inhabitants of the dens of criminal activities said to be operating from the District Court''s premises, and when the authorities of learned District Judge and the Civil and Police Administration are undermined and disobeyed, this Court is under a bounden duty to consider the reliefs prayed for in exercise of the jurisdiction under Articles 226 and 227 of the Constitution of India. It is also obvious from the deteriorating law and order position in the District Court''s premises that the local police, seems to have become demoralized and thus ineffective for various reasons, to tackle, deal with and control the situation as it is also evident from the past several incidents when it was forced to remain standing as a mute spectator. This lukewarm posture and position are prominently noticeable from the unexplained delay in the investigation of such cases.

That apart, there have been some incidents of direct confrontation, scuffle and tiffs between the members of Bar and the local police which may now give a feeling of insecurity, like large scale false implication, in the minds of the Members of Bar. In these premises set out hereinabove, we are of the considered view that the local police may not be in a position to deliver the results and deal with these cases effectively without inviting complaints and criticism.

Hence, now the only course left to the Court is to look out for the central police agencies for assistance to the court which alone can under the present circumstances carry out the directions of this Court impartially and independently. Thus, we direct the Joint Director, Intelligence Bureau, Regional Office Lucknow, to submit his report in a sealed cover about the criminal activities being indulged into and carried out by the members of District Court Bar from inside and outside the court premises having reflections on the functioning of Bar and courts in the light of and on the line of the aforesaid reports and complaints. The local Intelligence Unit (LIU) of the State Police shall render all necessary assistance, and submit the complete materials/ information available with it to the Joint Director, Intelligence Bureau.

The Deputy Inspector General of Police-cum-S.S.P. and the District Magistrate, Lucknow, shall also furnish the entire records available in their offices and with the Lucknow District Police relating to such cases as aforesaid to the Joint Director, Intelligence Bureau for submission of a comprehensive but independent report in terms of the directions. The Director, C.B.I. shall constitute an special team of C.B.I. Officers under the supervision of a senior officer, not below the rank of Joint Director, who shall have no connection with the State of U.P. The Joint Director so nominated by the C.B.I. Director shall remain present in the Court on the next date of hearing so as to carry out the directions and to receive the records and materials to be submitted by the Joint Director, Intelligence Bureau, to this Court, for investigation into such/these cases. The District Judge, Lucknow, shall submit his report directly to this Court. Both the authorities as aforesaid, namely the Joint Director, I.B. and the District Judge, Lucknow, shall submit their reports to the Court in advance, say a day before the next date of listing.

Moreover, looking to the seriousness of the situation we deem it expedient in the interest of justice to issue notice to the Attorney General for India, the Law Secretary, Government of India, and the Member-Secretary, Law Commission, Government of India to give their views as to whether the existing provisions of the Advocates Act and the Bar Council Rules are adequate enough to protect the legal profession from the intrusion of criminal elements and as to whether the Advocates with criminal records should be allowed to continue in practice till they purge themselves of the charges, and also as to what suitable measures, they would suggest, in the obtaining facts and circumstances in order to purge the legal profession of criminals and outlaws.

We also issue notice to the Chairman, Central Board of Direct Taxes, to constitute a team of Income Tax Officers who shall examine the cases of tax evasion and consequent penalty and confiscation, if any, in the wake of allegations of economic offences and property grabbing etc. to be investigated by the C.B.I.

Also issue notice to the Chairman, Bar Council of India, and a fresh notice to the Chairman, Bar Council of U.P., to extend their co-operation and to submit their response in the interest of legal profession. At the end, we would like to make it clear that this exercise has been undertaken only on the request of the Bar to protect its serious, peace loving, dedicated and committed members who form 90% of the strength of Bar, from any type of interference of the kind as alleged in the complaints, in pursuing and practicising the legal profession.

Learned Advocate General, Officers of the police and civil administration and office bearers of the Bar Associations, who are present today, shall also remain present on the next date of hearing. List on 25.10.2010 at 2.00 P.M. Matter to remain part heard.

The Registrar shall communicate this order to all the concerned authorities at the earliest by fax for compliance. 05.10.2010

Hon''ble Uma Nath Singh,J.

Hon''ble Virendra Kumar Dixit,J.

Copies of written submissions on behalf of learned Attorney General for India and Union Law Secretary, and also on behalf of I.B. (Subsidiary Intelligence Bureau) U.P., filed and referred to during the course of Court proceedings, are taken on record.

On request of learned Additional Solicitor General of India, personal appearance of learned Attorney General for India is dispensed with until further orders. In Para 7 of the written submissions on behalf of I.B., it is averred as follows:

7. That the concern of the Hon''ble Court regarding criminal activities in the

Court was discussed in the Government of India, Ministry of Home Affairs and the Government of India views the issue raised by the Hon''ble Court as matter of concern and is fully prepared to extend all help in its investigation. However, it is humbly submitted for consideration of the Hon''ble Court that the appropriate agency for doing this investigation is the Central Bureau of Investigation (CBI).

We thus record a note of appreciation for the response shown by the Ministry of Home Affairs, Government of India, in extending and pledging all help in the investigation of cases in question.

However, considering the nature of job, an organization like I.B. is required to perform, it would be appropriate to grant the prayer for exemption of the organization from participation in the proceedings of this case as directed vide our earlier order dated 05.10.2010.

Learned Counsel for the Bar Council of India and the Bar Council of U.P. pray for and are granted time till the next date of hearing to file affidavits.

Moreover, Sri Sanjeev Sachdeva, learned Counsel who appeared for the Bar Council of India also placed on record a judgment and order of the Supreme Court passed in W.P. (Civil) No. 494 of 2008 incorporating therein certain proposals as mooted by the B.C.I. in order to provide the mechanism for guidance and governance of disciplinary proceedings initiated and undertaken on the complaints of misconducts alleged against the members of Bar.

Sri I. B. Singh, learned Senior Counsel, appearing for the Bar Council of Uttar Pradesh also makes statement on instructions pledging the full support of State Bar Council in the efforts to rid the legal profession of undesirable and criminal elements operating from the District Court premises. During the course of hearing, this Court wanted to know: (1) as to whether it is possible to set up an organization like ''Legal Profession Authority of India'' to be headed by a retired Supreme Court Judge while keeping its democratic character intact by including in a body like Council, the elected members from Bar with regional establishments all over the country at places having seats of State Bar Councils to be head by the retired Judges of High Courts with State Bar Councils consisting of the elected members of Bar at that level and (ii) as to whether the learned Attorney General for India can take up this issue and advise the Government of India to bring a suitable legislation by way of amendment in the Advocates Act. In response thereto, learned Additional Solicitor General, assured the Court to bring these points to the notice of learned Attorney General for his views.

Learned Additional Solicitor General shall also submit requisite data in detail about the disciplinary proceedings and their outcome since 1963, when a leading judgment on lawyers'' misconduct was pronounced as reported in AIR 1963 SC 1313.

At this stage, learned Additional Solicitor General of India, Dr. Ashok Nigam, prayed for constituting a Special Investigation Team (SIT) to investigate the criminal cases pending against the criminal elements of Bar as referred to in the report of Learned District and Sessions Judge, Lucknow, and the complaints addressed to this Court. Thus, we direct the constitution of a SIT to be headed by Joint Director of Central Bureau of Investigation, Shri O.P. Galhotra, who is present in Court, which shall comprise the members of Special Task Force of U.P. and the paramilitary forces of the Central Government in order to conduct the investigation and prosecution of the cases in question independently, and to take the proceedings to their logical conclusion.

As the Law Commission of India has not entered appearance today, we issue a fresh notice to know its views by way of written submissions on the next date of hearing.

On request of learned Chief Standing Counsel, U.P., appearance of Inspector General of Police, Lucknow, Dy. Inspector General of Police, and District Collector, Lucknow, is exempted only for the next date of hearing. However, they shall continue to appear and participate in all the Court proceedings thereafter.

A copy of complaint connected with incident in Madiyaon police station referred to this Court be handed over to learned Chief Standing Counsel for submitting the reply and report of DIG, Lucknow. List on 28.10.2010 at 2.00 PM.

Order Date: 25.10.2010

Hon''ble Uma Nath Singh, J.

Hon''ble Virendra Kumar Dixit, J.

Pursuant to our earlier orders dated 05.10.2010 and 25.10.2010, Shri O.P. Galhotra, Joint Director, CBI, and Shri M.P. Singh, Chief Commissioner of Income Tax, are present in Court. Their appearance is recorded.

Affidavit of Bar Council of U.P., a short note containing some relevant information on behalf of Bar Council of India and a brief synopsis by way of submissions placed by learned Counsel for CBI in Court are taken on record.

In continuation of oral submissions made on the last date of hearing pledging full support on behalf of Bar Council of U.P., Shri I.B. Singh, learned senior counsel, filed an affidavit reiterating the support of State Bar Council as under:

4. That, Bar Council of Uttar Pradesh fully supports the concern of this Hon''ble Court in connection with maintaining the decorum in the legal profession.

That apart, it also appears that the Bar Council of U.P. has fixed a meeting on 31.10.2010 with an agenda to take steps for implementation of orders passed by this Court, and to submit its views on a detailed affidavit.

The short note containing the steps taken by the Bar Council of India as submitted by Shri J.N. Mathur, learned Senior Counsel, also need to be noticed which, if implemented in toto, may help a lot in restoring the declining standard, eroded prestige and decaying credibility of the legal profession. These steps are reproduced as below:

1. Unique Identification Number [UIN]: On 26th September 2010, the Executive Committee of the Bar Council of India approved the proposal for Unique Identification Number. Aim is to track students from the time he joins a law course-becoming graduate-enrollment as an advocate-passing of AIBE-disciplinary action (if any)-years of experience in the Bar. UIN would be alpha numeric number. When a student joins a law college he would be given an identification number and another set of alpha numerals would be added to it once he graduates and enrolls with a Bar Council and alpha numerals would be further added after clearing AIBE etc. The Bar Council of India and State Bar councils would maintain all the details starting from a student joining law college/ university. This would entitle the Bar Council to track the history of a lawyer starting from the law college he studied till the present status. The lawyer would further need to use this UIN in his or her Vakalathnamas and an improper UIN or number would not entitle one to file a Vakalathnama. This would in turn help tracking the quacks in the profession because UNI would directly track the details/history of the lawyer. The Bar Council of India is in the process of collecting the data for the same.

2. All India Bar Examination [AIBE]:

In the ongoing case of Bar Council of India v. Bonnie Foi Law College, SLP (c) No. 22337 of 2008, the Hon''ble Supreme Court of India, while deciding on the issue of affiliation of law colleges with the Bar Council of India, noted its concerns about the diminishing standards of professional legal education in India. The bench consisting of Hon''ble Mr. Justice Dalveer Bhandari and Hon''ble Mr. Justice H. L. Dattu constituted a three member committee consisting of the Solicitor General of India, Mr. Gopal Subramanium, the President of the Bar Association, Mr. M. N. Krishnamani and the then Chairman of the Bar Council of India, Mr. S.N.P. Sinha to submit a report on thorough reform of legal education in India. One of the recommendations of this three-member committee was the introduction of a qualifying examination to practice law in India. The Bar Council of India, through resolution No. 97/2009 in its meeting held on October 24, 2009 adopted the report of the 3-member Committee. The Hon''ble Supreme Court of India through its order dated December 14, 2009, endorsed the idea of a qualifying examination to practice law in India. The final rules for conduct of the Bar Examination were approved by the Legal Education Committee and the Bar Council of India in their duly constituted meetings dated April 10, 2010 and April 30, 2010.

In Bonnie Foi case, the Hon''ble Supreme Court stated that "...we deem it appropriate to direct the Central Government to ensure that the entire programme framed by the three-member Committee is operationalized forthwith. We further direct the concerned institutions to fully cooperate with the Bar Council of India.."

The Bar Council of India passed resolution No. 73/2010 u/s 49(1)(ah) of the Advocates Act, 1961. Section 49(1)(ah) clearly states that the Bar Council of India may make rules for discharging its functioning under the Act. This should be read harmoniously with Section 7(d) of the Act, which lists "safeguard[ing]the rights, privileges and interests of the advocates" as one of the functions of the Bar Council of India. Specifically, Section 49(ah) of the Act clearly states that the Bar Council of India has the power to make rules on "the conditions subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practice as an advocate in a court."

Consequent to the resolution, the rules of the All India Bar Examination were inserted into Part VI, Chapter III of the Bar Council of India Rules and duly notified in the Gazette of India on June 12, 2010.

The examination is scheduled on December 5, 2010. The examination will be of 3.30 hours duration and will consist of 100 objective questions on various different legal subjects both substantive and procedural laws, that are taught by law schools in accordance with Legal Education Rules, 2008. The AIBE shall be an ''open book'' examination and the candidates are allowed to carry the preparatory materials, books or any materials they wish except for electronic devices like pagers, cell phones etc.

The AIBE will be conducted in nine languages, and the preparatory materials sent to each candidate will be in the same language as the one they choose to write the AIBE. The AIBE shall be conducted at 27 cities across India-in a major city in most states in India. Upon successfully clearing the AIBE, an advocate will be permitted to practice law in India and will receive a "Certificate of Practice" from the Bar Council of India.

Bar Council of India has received more than 12,000 forms and is in the process of dispatching preparatory materials to the candidates in the languages opted by them.

3. Continuing Legal Education [CLE]: Continuing Legal Education program popularly known as CLE will be setup as an immediate priority. In few countries it is also known as Continuing Professional Development (CPD). It is highly necessary to augment the information, integrity and confidence of advocates in the country to compete at international levels. The CLE/CPD refers to professional education of lawyers after the admission to the bar. Many countries of the world require their lawyers to pursue CLE/CPD to renew their licence to practice.

To begin with Bar Council of India is proposing CLE on a voluntary basis and gradually is intending to make it compulsory and gaining minimum number of credits would be a condition precedent to renew practice licence or enrollment. Lawyers would need to undergo various seminars, classes, lectures on various subjects or topics proposed by the Bar Council of India including ethics and the lawyers can further score credits through book reviews, writing articles, lecturing etc. Like in other countries it would be mandatory for a lawyer to undergo lectures or class on professional ethics. The lectures would be delivered by leading academicians, and legal luminaries of national and international stature.

4. Renewal of Sanad/ enrollment/ practice licence: as stated above to begin with CLE would be on voluntary basis and once it is made mandatory in near future gaining requisite credits through various lectures, classes, writings, reviews etc. would be condition precedent to renewal of licence of practice. If a lawyer does not do the mandatory CLE his licence to practice would be cancelled. This would endure the lawyers keep themselves updated through the CLE and this would in turn help them improve skills and knowledge.

5. Lawyer''s Helpline: The BCI is proposing to constitute a helpline for lawyers who are stressed. The team which would man the helpline would consist of psychologists, experienced lawyers etc and the distressed lawyers can seek their advice, opinions, suggestions, share problems etc without disclosing their names. This would help lawyers a lot in this stressed out and highly demanding profession.

6. Ethics Division: The Bar Council of India proposes to constitute a Ethics Division under the leadership of Attorney general of India. The Bar Council of India has drafted a new set of detailed Code of Ethics which is required to be followed by Advocates. This code contains (i) an advocate''s duty in connection with briefs, (ii) an advocate ''s duty to the court, (iii) an advocate''s duty to the client, (iv) an advocate''s duty to the opponent, (v) an advocate''s duty to colleagues (vi) an advocate''s duty to impart training, (vii) an advocate''s duty to render legal aid, (viii) restriction on employments undertaken by advocates and (ix) general duties. The Code also lays down the standard of presentation before a court, prohibition on misleading statements, maintenance of confidentiality and privilege, standard to be followed in cases of conflict of interest and remuneration and professional fees.

Furthermore, the new Code emphasizes that an advocate is expected to conduct himself/herself with honesty, dignity and self-respect. An advocate is expected to treat opposing advocates and all witnesses and officers of the court with dignity and respect and refrain from making any personal statements against any of them unless it pertains to the merits of the case. An advocate must not knowingly make a false statement to the opponent in relation to the case (including its compromise).

7. Disciplinary Committee Division-One of the functions of Bar Council of India inter alia is to lay the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council and to deal with and dispose of any matter arising under this Act, which may be referred to it by a Sate Bar Council. BCI has proposed an exclusive department to handle Disciplinary matters. The department would consist of members of the Bar Council of India. The proceedings would be held in a hall which would be a look alike of court halls

in order to create an atmosphere. The Disciplinary Committee shall scrupulously and efficaciously decide the matters pending before the committee expeditiously. The committee shall strictly follow the principles of natural justice and shall give due notice to the parties. The committee shall strictly adhere to the time prescribed in the Advocates Act, 1961. The Committee shall meet at regular intervals and would mandate itself to clear the arrears of the cases. The Committee shall ensure that no inconvenience and injustice is caused to any lawyer as well as the person aggrieved.

On a careful perusal of the brief synopsis of the submissions on behalf of CBI and the report of learned District & Sessions Judge, Lucknow, we direct the SIT headed by Shri O.P. Galhotra, Joint Director, CBI, to take up the investigation into the following incidents:

(i) The incident referred to at Para-2 of the report of learned District & Sessions Judge, Lucknow, pertaining to violence and intimidation in the Court of a Judicial Magistrate on 05.03.2008.

(ii) The incident referred to at Para-5 of the report of learned District & Sessions Judge, Lucknow, pertaining to incident of threat and violence with the lift-man of the multi-storeyed building of Civil Court, Sri Dinesh Lal Verma, on 06.11.2008, which was referred to Hon. High Court.

(iii) The incident referred to at Para-12 of the report of learned District & Sessions Judge, Lucknow, pertaining to a group of advocates beating up a litigant as he was coming out from the Court on 21.08.2010. He was reportedly forced to compromise the case under duress.

(iv) The incident referred to at Para-13 of the report of learned District & Sessions Judge, Lucknow, pertaining to a group of advocates assaulting an advocate, snatching valuables and tearing off his clothes, on 06.09.2010. The criminal case about the incident is reported to have been closed by police.

(v) The incident referred to at Para-16 of the report of learned District & Sessions Judge, Lucknow, pertaining to a group of advocates attempting to close the court rooms and offices of the District Court campus who went on rampage and man handling the officials and other personnel of the court, and ransacking the courts on 27.09.2010 and 28.09.2010.

(vi) The incident referred to at Para-17 of the report of learned District & Sessions Judge, Lucknow, pertaining to land grabbing by a group of lawyers by impersonation and forgery.

(vii) The incident referred to at Para-18(iv) of the report of learned District & Sessions Judge, Lucknow, pertaining to a complaint by a private person against lawyer alleging physical violence on him while he was sitting in the chamber of his counsel on 04.10.2010.

(viii) The incident referred to in the complaint submitted by Shri Prashant Singh

Gaur, Advocate to the Hon''ble Administrative Judge, Lucknow, dated 04.10.2010 alleging assault/beating in the Court premises by 5 lawyers on 22.09.2010.

(ix) Complaint of Smt. Usha Nigam, Advocate, Civil Court, Lucknow, with reference to Case Crime No. 106/2008 registered on 17.03.2008 on 12.30 PM at P.S. Wazirganj, Sub-district Sadar, Lucknow, lodged by Shri Shivraj Mohan, Advocate.

(x) Case Crime No. 137/2009 registered u/s 395 IPC at P.S. Wazirganj, Sub-district Sadar, Lucknow, on 25.03.2009 at 2.30 PM lodged by Shri J.P. Yadav, Advocate, and

(xi) F.I.R. No. 398/2010 u/s 147, 323, 394, 427,, 504 and 506 I.P.C. (Case Crime No. 458/10) registered at P.S. Wazirganj, Lucknow, on 07.10.2010.

At this stage, we also make it clear that the SIT of CBI shall have all the powers of the State police apart from the powers given to them under their department''s notification which covers the area of investigation by the CBI. They shall thus also investigate and apply the provisions of special enactments passed by the State of U.P. in appropriate cases in order to restore public faith in law enforcing agencies and the judicial system.

Further, we also direct the State Government to constitute a team of investigating officers of CB(CID) to investigate into the remaining pending cases against the criminal elements of District Bar which are not being assigned to SIT, in coordination with the head of SIT for early disposal of such cases. We also constitute a Committee comprising of Principal Law Secretary and Director of Prosecution, State of U.P., to assist Trial Courts in expeditious disposal of all the criminal cases pending against the criminals who have intruded into the District Bar.

Shri D.D. Chopra, learned Counsel, appearing for Income Tax Department filed notification (F. No. CCIT/ CCA/ Lko/ H.C./Inv./2010-11) dated 27.10.2010) issued by the Government of India, through the Office of Chief Commissioner, Income Tax, constituting a special team of Income Tax Officers for investigation in terms of our order dated 05.10.2010. The Chief Commissioner, Income Tax, who is heading the team, shall be supplied all necessary informations in possession of SIT, DIG, Lucknow, and other Government offices relating to the cases of land grabbing. They shall investigate into acquisition and possession of properties and also the financial resources with reference thereto, evasion of tax and the consequent penalties and confiscation etc. They shall be provided all the logistic support including the members of SIT in conducting raids during the course of search and seizure under the Income Tax Act.

We also direct the Chief Secretary, Principal Secretary (Home), Principal Secretary (Law), Principal Secretary (Revenue), and Director General of Police, U.P., to provide all infrastructural and logistic support to SIT of CBI and Chief Commissioner of Income Tax in discharge of their duties as and when it is so requested by them.

Shri Jyotindra Mishra, learned Advocate General, assures the Court that the State Government shall provide all necessary help and full support as indicated hereinabove to SIT of CBI and Chief Income Tax Commissioner in discharge of their duties.

Shri I.H. Farooqi, learned Assistant Solicitor General of India appearing for Law Commission of India and Union Law Secretary assures the Court to place on record the views of concerned authorities of Central Government on the question of formation of proposed ''Legal Profession Authority of India'' and also the information relating to security auditing of District Court Lucknow, which had witnessed a serial bomb blast in the past, say about 2 years back.

Lastly, we again clarify that all the directions issued in this matter earlier and hereinabove are only meant to apply in the cases against the criminals who are at war with the innocent and regular members of the legal profession and thus the SIT and Income Tax team shall take all necessary precautions in their exercise of powers to gain confidence and command the respect of legal fraternity.

This matter shall remain part heard.

List on 29.11.2010 at 02.00 P.M.

28.10.2010

9. In view of all the aforesaid, we would like to clarify that this Court has not acted on its own but on a complaint made by a learned member of the High Court Bar known as ''The Oudh Bar Association'' and after seeking the reports of all the concerned authorities including the learned District & Sessions Judge, Lucknow. Moreover, despite a large number of civil and criminal cases involving the members of the District Bar, this Court has taken all precaution to confine the order only to those incidents that took place inside the District Court premises conveying a wrong message that the criminal elements are above the law; they have hijacked the justice delivery system, and overawed and over-powered the judicial officers and the officers of State Law enforcing Agencies. Besides, these orders have been passed in exercise of extraordinary jurisdiction under Articles 226 & 227 of the Constitution of India for speedy relief in the nature of a rescue operation in order to restore public faith in the judicial system and the Rule of Law. Having examined the reports of the authorities, the Court has segregated only those cases which relate to the incidents inside the court premises. Moreover, these cases are based on FI Rs or complaints and the Court has not gone into the incidents which have remained unreported or related to occurrences that have happened outside the Court campus although complaints in respect of those incidents also, are pouring into, on regular basis. Thus, the Court has assigned only 11 cases falling in one category, namely those relating to threat and incidents of violence that occurred inside the court premises, to the

SIT (CBI). Since the case against applicant Abhishek Singh also comes in that category, therefore, it has been given to SIT (CBI) for investigation.

10. We may also clarify that when the complaint of Petitioner was entertained on judicial side, notices were issued to: (1) Advocate General, U.P., (2) Director General of Police, U.P., (3) District Collector, Lucknow, (4) DIG/SSP, Lucknow, (5) President and Secretary, Central Bar Association, and (6) President and Secretary, Lucknow Bar Association.

11. In view of notices to aforesaid authorities including the office bearers of the District Bar Association, it was a notice to all the members of the said Bar Associations and further, the aforesaid orders were passed in the jam-packed court room. That apart, the matter is only at investigation stage and the applicant''s rights as an accused to defend his case are not hampered or defeated in any manner by these three orders passed by this Court and such rights are well protected under the provisions of Cr.P.C and other enactments dealing with the subject matter.

12. In his application (C.M.A. No. 120218 of 2010), Prashant Singh Gaur has also prayed for transfer of Cross FIR against him and others to CBI.

13. Thus, we partly allow both the applications namely C.M.A. No. 115366 of 2010 and C.M.A. No. 120218 of 2010 to the extent of assigning the investigation of Cross F.I.R/Case Crime No. 378 of 2010 lodged by Abhishek Singh, Advocate, against Petitioner Prashant Singh Gaur, Advocate and others at P.S. Wazirganj on 22.09.2010 to SIT (CBI) as it also originates in one of those incidents which took place inside the District Court campus. However, insofar as the prayer for setting aside the order dated 28.10.2010 is concerned, it is hereby declined and rejected in the premises and for the reasons set out herein above.

14. The Law Commission of India has also submitted its views in terms of directions given in our earlier orders, wherein, besides highlighting the quality of legal education, discipline in examination system and the relevance of All India Bar Examination, it has given certain very useful suggestions to tackle the problems on hand as:

1. Now, a survey of relevant provisions of the Advocates Act may be made.

Re: enrollment as advocate (relevant provisions - Section 24, Section 26 and Section 24A and 28)

Section 24 prescribed the qualifications and conditions to be fulfilled for being admitted as an advocate. Section 26 deals with disposal of applications for admission as an advocate. It lays down that every application shall be referred to the enrollment Committee of Bar Council. The Committee shall dispose of the application in the prescribed manner. If the enrollment Committee proposes to refuse the admission, the matter shall be referred to the Bar Council of India. The opinion of Bar Council of India will prevail. Section 24A specifies disqualification for enrollment. Inter alia, conviction for an offence involving moral turpitude is a ground to refuse admission. However, the disqualification shall cease to have effect after a period of two years from the date of release of the convicted applicant. Reference may also be made to Section 28. A State Bar Council is empowered to prescribe the conditions subject to which a person may be admitted as an Advocate. In the application form prescribed by Bar Council of Uttar Pradesh, there is no column regarding the pendency of a criminal case and details thereof and conviction, if any, in a criminal case. The applicant is only required to produce a character certificate testifying the fact that "he bears a good moral character and a fit and proper person to be admitted as an Advocate.

Re: Conduct of advocates

Section 35(1) lays down that if a State Bar Council on the basis of a complaint or otherwise is satisfied that an Advocate on its roll has been guilty of professional or other misconduct, it shall refer the case to its Disciplinary Committee. The Disciplinary Committee after giving opportunity of hearing to the Advocate concerned can dismiss the complaint or reprimand the Advocate or suspend the advocate from practice for a specified period or remove the name of advocate from the State roll. The disciplinary committee of State Bar Council is required to dispose of the complaint expeditiously and in any case the proceeding shall be concluded within one year. Section 36 deals with disciplinary powers of Bar Council of India. Sub-section (2) of Section 36 empowers the disciplinary committee of BCI either on its own motion or on a report by State Bar Council or on an application made to it by any interested person withdraw for inquiry before itself any disciplinary proceedings pending against any advocate before the committee of any Bar Council and dispose of the same.

Re: Rule-making power

Power of High Court to make rules (Section 34): The High Court can make rules laying down the conditions subject to which an advocate shall be permitted to practise in a High Court and courts subordinate to it. The Bar Council of India may make rules prescribing the conditions subject to which an advocate shall have the right to practice in a court, the standard of professional conduct and etiquette to be observed by advocates, general principles for guidance of State Bar Council etc. (vide S. 49A State Bar Council may make rules u/s 28 relating to the form of application for admission on its rolls, the manner in which such application has to be disposed of and the conditions subject to which a person may be admitted as advocate.

Section 49A confers concurrent power on the Central Government to make rules to carry out the purposes of the Act including the matters specified in (a) to (f) of Sub-Section 2. If the rule made by a Bar Council is repugnant to the rule made by Central Government, the rule framed by Central Government will prevail.

2. In response to Question No. 1, the systems/measures which can be put in place without amending the law are set out below:

3. There must be means of tracking the criminal cases pending against an advocate. the Magistrate who gets a copy of FIR and/or chargesheet or a private complaint against an advocate, shall send the intimation to the District Judge concerned who in turn shall apprise the High Court and send a copy to the Bar Council of the State. A register shall be maintained by the specified branch of High Court. The said branch of High Court may also communicate the information to the Bar Council once in a month. The Bar Council may be furnished with copies of relevant documents.

4. The Bar Council may initiate disciplinary action on the basis of material that led to the filing of chargesheet against the accused advocate. However, such a step should not be automatic. The Bar Council may have due regard to the nature and gravity of charge, the moral turpitude involved and the incriminating material available in deciding on the need to initiate the disciplinary proceeding. In this context, it is pointed out that s. 35 of the Advocates Act uses the expression "professional or other misconduct" which apparently takes within its sweep the misconduct unconnected with the profession also. Further, attention is drawn to the preamble to Chapter II of Part VI of the BCI Rules according to which an advocate is expected to "comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or a member of the Bar in his non-professional capacity may still be improper for an advocate."

5. Simultaneously, a nominated Judge of High Court and the District Judge concerned may monitor and take necessary steps for the expeditious conclusion of investigation and trial of the criminal cases involving advocates. It is of utmost importance that the investigation into cases involving the advocates and the trials of such cases are completed without unnecessary delay. Priority ought to be given to such cases. The reasons for delay including the dilatory tactics adopted by the accused advocate should be brought to the notice of High Court. The High Court may in its turn issue necessary instructions.

6. If an accused advocate applies for enrollment, it may be refused for the time being, i.e. till the conclusion of criminal proceedings, provided the committee is satisfied on a perusal of the FIR, the chargesheet and other relevant material that the applicant is not fit to be enrolled as an advocate. The discretion to refuse admission is implicit in s. 26. However, mere pendency of a criminal case involving moral turpitude by itself will not justify refusal of admission. Obviously, the discretion has to be exercised reasonably and with circumspection. Further, the fact that s. 24A prescribes disqualifications for enrollment does not mean that in the absence of such disqualificatory factors, a law graduate having qualification prescribed in s. 24 is automatically entitled for enrollment. If s. 24A is attracted, the enrollment Committee has no option but to reject the application. However, even in the absence of such disqualification, the Committee has the authority to look into the character and conduct of the candidate. Of

course, the decision of enrollment Committee is subject to the overriding decision of BCI u/s 26(3). The State Bar Council may consider framing appropriate rules u/s 28(2) of the Act laying down specific guidelines to the enrollment Committee to dispel the possible doubts in this regard. In any case, the Bar Councils should have a column in the application for enrollment regarding the criminal cases pending and the details thereof and the past convictions if any and whether the candidate has been detained under any law of preventive detention.

7. It is also necessary that the law degree certificates filed by the advocates who are already enrolled are verified by Bar Councils whenever a doubt arises. Further, the verification of certificates before the date of enrollment itself is necessary and for this purpose, the websites of the Universities can be accessed.

8. The various lawless acts of the advocates referred to by the High Court and in the complaint made by Shri PS Gaur prima facie constitute offences punishable under the penal law and at the same time they may be regarded as acts interfering with the course of justice. In the latter case, appropriate action under the Contempt of Courts Act can be taken without prejudice to any disciplinary action that may be initiated by the Bar Council. In appropriate cases, directions can be given to Bar Council to hold an inquiry under s. 35, as has been done by the Supreme Court in WP(Civil) No. 494 of 2008 (vide order dated 30th July, 2010). The mere pendency of criminal case may not be a bar to initiate disciplinary action.

9. There is another important aspect which needs attention. S. 34 of the Advocates Act empowers the High Court to make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto. This section has been given a restricted meaning confining it to the appearance in courts. A distination has been drawn between the right to practise and the right to appear in courts. In other words, the High Court in exercise of its powers u/s 34 read with Rules cannot debar the delinquent advocate from practising, though if he/she is found guilty of contumacious conduct or of an offence/professional misconduct involving moral turpitude, the High Court can prevent the appearance of such person in the court on behalf of the client.

10. A Constitution Bench of Supreme Court held in the case of Supreme Court Bar Association Vs. Union of India and Another, After the coming into force of the Advocates Act, 1961, matters connected with the enrollment of advocates as also their punishment for professional misconduct is governed by the provisions of that Act only, since the jurisdiction to grant licence to a law graduate to practice as an advocate vests exclusively in the Bar Council of the concerned State, the jurisdiction to suspend his licence for a specified term or to revoke it also vests in the same body" (vide p.1915 para 69). It was then clarified: "in a given case it may be possible for this Court or the High Court to prevent the contemenor advocate to appear before it till he purges himself of the contempt, but that is

much different from suspending or revoking his licence or debarring him to practise as an advocate" (vide p. 1918 para 78). In the above case, the Supreme court overruled the law laid down in In re: Vinay Chandra Mishra (the alleged contemner), to the extent it sanctioned the imposition of punishment of suspending the licence to practise on the ground that the advocate committed contempt of court.

11 The High Court''s power to make rules u/s 34 and the contours of such power has been laid down by another Constitution Bench of Supreme Court in Harish Uppal v. UOI AIR 2003 SC 739. The following are the significant observations made in para 44:

One last thing which must be mentioned is that the right of appearance in Courts is still within the control and jurisdiction of Courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in Court can only be within the domain of Courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding conditions on which a person (including an Advocate) can practice in the Supreme Court and/or in the High Court and Courts subordinate thereto. Many Courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self restraint is exercised, Courts may now have to consider framing specific rules debarring Advocates guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the Courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of Bar Councils. It would be concerning the dignity and orderly functioning of the Courts.

(p. 757 of AIR)

(emphasis supplied)

12. Some of the observations made in the recent case of R.K. Anand Vs. Registrar, Delhi High Court, are also relevant in this context: The observations at pages 238 and 239 may kindly be perused. At para 239, the Hon''ble judges said:

We may also add that these illustrations are not exhaustive but there may be other ways in which a malefactor''s conduct and actions may pose a real and imminent threat to the purity of Court proceedings cardinal to any Court''s functioning, apart from constituting a substantive offence and contempt of Court and professional misconduct. In such a situation the Court does not only have the right but also the obligation to protect itself. Hence, to that end it can bar the malefactor from appearing before the Courts for an appropriate period of time.

13. In tune with the above observations made in Harish Uppal and RK Anand, the Hon''ble High Court may consider framing appropriate rules u/s 34. Whether or not the advocate had conducted himself in a manner unbecoming of his professional status is a matter on which a definite finding has to be recorded at the appropriate stage after giving an opportunity to the advocate. These aspects

have to be taken care of by the rules framed by the High Court.

14. It may be mentioned that in Bar Council of India Vs. High Court of Kerala, the Hon''ble Supreme Court upheld Rule 11 of the Rules framed by Kerala High Court forbidding a lawyer from appearing/pleading in any Court unless he has purged himself of the contempt.

15. Next, the question whether an order of interim restraint of practice can be passed by the Bar Council against the advocates facing disciplinary proceedings also arises for consideration. When there is a strong prima facie case apparent from the facts that an advocate is facing charges of serious nature in more than one criminal case and he has been adopting dilatory tactics to avoid investigation or trial and that the advocate has been behaving in an objectionable manner with the other advocates and court staff, should not the Bar Council pass an order directing suspension of his practice as interim measure till the disciplinary proceeding is concluded or for a limited period? However expedient it might be to pass such an order, it is highly doubtful whether such power is vested in the Bar Council under the existing provisions of law. Whether such power can be spelt out by treating the same as an implied, incidental or ancillary power is at best, a debatable point. If such power has to be exercised, it is desirable that the Bar Council of India may consider framing an appropriate rule in this regard, on the analogy of Regulation 8 (5) of the Indian Medical Council (Professional conduct Etiquette and Ethics) Regulations, 2002. The Law Commission is not inclined to make a definite suggestion in this regard without knowing the view point of the Bar Council and other stake holders.

16. At the same time, in order to create a congenial atmosphere free from the local pressures and persuasions, it is advisable that the disciplinary committee of the Bar Council takes up consideration of such disciplinary cases against such advocates. The proceedings if initiated by the State Bar Council can be transferred to the Bar Council of India. The Bar Council of India can also take up such matters suo moto u/s 36(2) of the Advocates Act.

15. We are fully satisfied with the impartial investigation being carried out by the SIT (CBI) and the Special Income Tax Investigation Committee but we need to ponder over and introspect as to what went wrong that a day has come when we are compelled to use stringent measures for getting over and containing the State of Lawlessness in the District Court''s premises. The one and the only major cause that seems to be a great attraction is the earning out of landed properties deals. It is the landed properties deals that have given birth to the offences like land grabbing, fraudulent transactions in property dealing and the violence in Courts. Not only that but it has also provided the anchor for committing other major offences inside and outside the District Court premises. That apart, realty sector has now become a major area to attract the investment of black money and the evasion of income tax. The different estimates of quantifying the unaccounted wealth/income which are circulating or invested in the reality sector of India, put the figure varying from 1/3rd of the G.D.P. to

equivalent of G.D.P. In spite of various legislations and drives to curb the flow of black money, the reality sector has continued to attract investment of unaccounted income and is one of the widely used tool of money laundering. A realistic long term solution to the flow of unaccounted wealth into and out of transactions in immovable property can be systematically addressed by the setting up of a National Property Exchange on the same lines as that of the stock or the commodities exchange operational for trading in stocks/commodities. Now there is pressing need to regulate reality sector.

16. Besides addressing the issue of circulation of black money, the major spin offs of this initiative would be: (i) The strengthening of Indian economy by the introduction of the out of circulation black money which may be in the range of Rs. 10,00,000 crores; (ii) Complete transparancy in all immovable property transactions since the prices would be market dependent and driven by Pure economic considerations; (iii) Fraudulent land transaction can be avoided and minimized in a similar manner as has been witnessed in the case of securities; (iv) The eligibility of buyer and seller can be identified with the help of UIN/PAN; (v) fake transactions like sale of land to more than one parties can be avoided; (vi) the existence of organized crime syndicates which are directly involved in land deals etc. would also end; (vii) the misuse of public office and the rampant corruption for land allotment can be completely wiped off once there is a regime of bringing out an on line "Initial Public Officer" (IPO) which can be controlled by the National Property Transaction Board of India (NPTBI); (viii) drastic reduction of property related litigation as the regulator would be the appellate authority for arbitrating transfer related issues and only writ petitions before the Hon''ble High Courts and Hon''ble the Supreme Court would be entertained; (ix) on the lines of Securities Transaction Tax the stamp duty collected by the State Government will be a percentage of the sale consideration which will be very much above the circle rate values which are revised only after a few years and have very little correlation with the actual market value and does not take into consideration the dynamics of local variance for determining the circle rates. This would boost up the revenue collection of the State by many folds; (x) the income generated under the direct taxes head would also grow many folds once the true value of sale is disclosed at the exchange and a legislation to collect Tax at Source (TCS) is implemented to be paid by the seller, which can be collected and deposited by the exchange into the Central Exchequer; (xi) for the present, there are a lot of litigation for arriving of the value of the any property whether it is for Direct Taxes purposes or for institutional finance purposes, as the methods of valuation can be challenged easily. The ambiguity in the assessment of the valuation officer (Government or Private) will be completely ruled out since the markets would fix the price and it would be dynamic and real; (xii) greater transparency in property deals would give options to the security and investigation agency to monitor non obtrusive investments by dubious elements.

Proposed organization structure of the Land Exchanges (Lex)

1 A three tier arrangement for these exchanges is proposed at the national, state and the district level.

2 There will be a regulatory authority at the national and the state level to observe the functioning of these exchanges which will set the guidelines for day to day operations and also act as an arbitrator for operational disputes.

3 An apex dispute resolution council may be the last appellate authority for resolving disputes, in the time bound manner.

4 The existing offices of the sub-registrar at the district level can provide rating and give profile (whether the title of the property is dispute free or not) of properties to be transacted. This would forewarn the buyer and expose him to the risk before undertaking the transaction.

Role of the land exchanges

1 Since land is a state subject, these land exchanges would have limited role of arriving at the fair market value of any immovable property transactions and maintain complete transparency in such transactions. It would have representative from the district/state government and the Central Government for the day to day operations. The repository of all records would continue to be the sub registrar who would provide credit rating to the property in question.

2 The exchange would enable the buying/selling of immovable property and ensure settlement of accounts between members and facilitate registration of the transfer deal once the stamp duty and direct taxes dues are paid by the transacting parties.

3 The working of the land exchanges would be based on online sale and purchase of immovable properties, using the land records available on the data base of the district/state authorities as a result of the e-governance initiative undertaken by the State Governments. The transactions would be on same lines as that of the securities and commodities exchange.

4 All the land exchanges, in the three tier system, would have registered member who would operate as brokers between a prospective buyer and a seller, There will be a chain of registered sub brokers who would provide an interface between a client and the exchange. Depending on the base value and rating of a property, the same would be listed on the appropriate exchange for trading.

5 The client and the broker/sub broker can have an escrow account arrangement with a banker inter-mediatory.

6 The client (seller/buyer) would be the end user who would be identified with the UIN/PAN.

Operationalising the above scheme

1. Today the Income Tax Department has a robust, dedicated, intranet computer network, of its own, in place in all the districts along with the network of its

fanchisees i.e. NSDL, UTI. This network of the department can be utilised and hosted on a separate server alongwith the date from the State Government repository of land records and the complete district wise database of the immovable property of the holdings can be uploaded on a customized software for hosting and trading purposes. The existing circle rate and the standard used by the sub registrar for determining the value of a immovable property for stamp duty purposes can serve as the reserve base price for initial trading. This would provide a virtual auction platform for property transaction giving a better deal to the owners.

2 Clients proposing to undertake a transaction can either open an individual "Propmat" account or trade through registered broker/sub broker using a escrow account.

3 There is an existing fleet of personnels with the Direct Taxes department of the Central Government and that of the Sub-registrar/Registrar at the state level who can jointly man offices of these exchanges at the state/district level. These officers, particularly those from the Direct Tax department are particularly oriented towards evaluating transaction of immovable properties and running of such exchanges. Thus a joint team of State Government and the Central Government can be deputed to man these exchanges which would be multiplying their revenue collection many folds.

4 The State Government would provide the land/offices for the setting up of such center at district level.

5 Since the implementing agency at the grassroot level is likely to come up with stiff resistance from various quarters including the organized crime sector a dedicated security cover is to be provided in the initial stages, till the scheme is fully operational as it would be in public interest.

6 The Central Board of Direct Taxes (CBDT) and the State Government (Through the Chief Secretary) may comprise a team which would submit its proposals for the setting up and operationalising of such an institution as discussed above. Since the basic infrastructure and information for executing the above, already exists and would be strengthened by the UIN project of the Government of India, efforts in this direction would require a gestation period of about six month in those areas where land records have already been digitized and database created. In other areas the State Government may speedup the computerization program of the land records in a time bound manner.

Other steps which can be taken to strengthen the provisions of circulation of unaccounted wealth would include the strengthening of the provisions of the Direct Taxes Act:

(a) Reintroducing the provisions of chapter XX-C of the I.T. Act, 1961 with amendments.

The earlier provision of chapter XX-C of the I.T. Act, 1961 restricted the transfer of immovable property in certain cases where the transfer of any immovable property in a specific area exceeded a certain monetary limit. There was an ambiguity in terms of properties which would qualify for this section as it was very difficult to prove and bring in to records cases in which there was a quantified difference between the actual sale consideration and the documented sale consideration.

Like other statues in the Direct Taxes Act., the magnitude of the variance between the actual sale consideration and the stamp duty consideration can be adopted for qualifying property for purchase by Central Government of immovable property in certain cases of transfer.

(b) It appears that for the present Income Tax Department may be finding it very difficult to implement the provisions of Section 50C of the I.T. Act, 1961 which mandates the payment of capital gains on transactions where in the sale consideration is lower then the value as prescribed for stamp duty purposes. This is primarily so due to the fact that the seller of the property is in most of the cases, not assessed to income tax and cannot be traced at the address in the sale records. For this it may be proper that a Tax Collection at Source (TCS) be legislated at the point of transfer of immovable assets which can be collected by the Registrar of property from the seller at the time of transfer.

(c) An effort was made in the Finance Act 2009, to bring the buyer of a immovable property if he was transacting for a consideration which was less than the stamp duty value of the property by an amount exceeding Rs. 50,000/-, w.e.f. 01.10.2009 by amending Section 56 of the I.T. Act, 1961, however, this provision was withdrawn in the finance Act 2010 with retrospective effect. This provision was a good deterrent for the buyer for desisting from transacting in immovable property at rates lower than the prescribed circle rate. The above amendment needs to be reintroduced.

(d) A concept of "Arms length pricing" should be introduced in Direct Taxes Act for transaction for immovable property in the same lines as those available for transfer pricing while determining the income of multinationals. This would help in establishing the fair market value of transactions when compared to comparable transactions.

(e) It also appears that the Income Tax Department is not well equipped to address the security concern at the gross root level when it comes to handling the menace of organized crime in nature of land or educational Mafia. Any worthwhile investigation always comes up with a resistance which would be typical of a organized crime syndicate. In view of the changed complexion of responsibility it would be prudent if the State Government/Central Government provide a dedicated security cover to the officials involved in such investigations.

17. Now coming to the submissions on behalf of the learned Attorney General for India, amongst others, it has also been mentioned in para ''D'' that a direction be given to the Bar Council of India to consider the framing of rules providing

disqualification from enrollment of advocates in case of their being found involved in any criminal acts involving moral turpitude etc. It runs as:

(D) The Bar Council of India may be directed to consider the framing of rules providing disqualification from enrollment of advocates in case of their being found involved in any criminal acts involving moral turpitude and also providing for taking of disciplinary action for suspension/revocation of "Sanad/license" to practice in such cases. However, the provisions even if enacted would have to be made applicable prospectively.

In view of all the aforesaid, we direct that:

(i) the Registrar General Allahabad High Court shall place this order before Hon''ble the Chief Justice to consider framing of Rules in terms of suggestions given by the Law Commission of India as above vide page 23 (p.3) and page 25 (p.11);

(ii) the Bar Council of India as well as the Central Government shall consider framing of Rules to provide disqualification from enrollment of advocates in case of their being found involved in any criminal acts involving moral turpitude etc. as mentioned in the submissions on behalf of learned Attorney General for India herein above;

(iii) the Bar Council of U.P. shall consider to provide a column in the application for enrollment regarding criminal cases pending and the details thereof and the past convictions, if any, and whether the candidate has been detained under any law of preventive detention, as submitted by the Law Commission of India in p.6 at page 26 supra;

(iv) the Chairman, Central Board of Direct Taxes and the Government of India (Ministry of Finance) shall consider to set up a National Land Stock Exchange with Operationalising Mechanism as discussed in the preceding pages;

(v) the State of U.P. shall consider to register all the property dealers engaged in the occupation of land/property dealing in the State by passing suitable legislation and framing Rules which may, inter alia, also include the provisions prescribing minimum qualification and verification of criminal antecedents of applicants. The State may also consider while undertaking Legislation regarding the registration and issuance of licences etc. that the preference should be given to technically qualified unemployed graduates with adequate reservation in terms of State policy for women and under privileged citizens of the State, and (vi) the Chairman, Central Board of Direct Taxes, shall consider to direct a close scrutiny of income of all the property dealers engaged in this occupation in the State of U.P. for the purpose of assessing their unaccounted income under the provisions of Income Tax Act.

18. With the aforesaid directions, we adjourn the matter to 18.03.2011 with direction to the SIT (CBI), Special Income Tax Investigation Committee and all other authorities as directed herein above to submit their progress reports. The

DIG Lucknow shall also submit his report about the alleged incident of beating of lawyer Shri Pankaj Chaturvedi.

19. List on 18.03.2011 at 02.00 P.M.

