(2015) 09 PAT CK 0125

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 5638, 19529 and 22444 of 2011, 19238 of 2012 and 2016 of 2013

Raiful Azam and Others APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 09 PAT CK 0125

Hon'ble Judges : Mihir Kumar Jha, J.

Bench : Single Bench

Advocate : Satyavrat Verma, for the Appellant; Lalit Kishore, PAAG, J.P. Karn, AAG-4, Sidharth Prasad, AC to AAG-4 and R.K. Verma, SC 27, for the Respondent

Judgement

Mihir Kumar Jha, J.—Trust, as they always say, is mutual and reciprocal and, therefore, whenever an adjudication has to be made on the question of breach of trust, the terms and conditions of entrustment assumes significance. It is here that the parties in these cases are at loggerheads raising several disputed questions of fact in relation to the prayer made by the petitioners, dealers under Public Distribution System (PDS), denying their liability to pay any amount by way of refund of price of rice entrusted to them as would become more clear from the individual facts in the batch of 141 writ petitions while seeking quashing of either the demand notice for payment of price of the rice by the PDS dealers or quashing of the certificate proceeding under Bihar Public Demand Recovery Act (hereinafter referred to as ''the Act'') for realization of the price of rice from the PDS dealers.

2. The batch of 141 writ applications listed today, which have been heard together and are being disposed by this common judgment, revolve primarily around one and only question, namely, fixing the liability on the P.D.S. dealers as with regard to payment of price of rice entrusted to them for its distribution to the beneficiaries of Sampurna Gramin Rojgar Yojana (S.G.R.Y.). The facts of

these five cases dealt hereinafter are merely for elucidation, inasmuch as, in all these 141 writ applications, 78 of them question initiation and continuation of certificate proceedings against the petitioners P.D.S. dealers under the provisions of the Act while in rest 63 of them the petitioners P.D.S. dealers have assailed the demand notices issued to them directing to deposit the price of undistributed rice entrusted to them in course of implementation of S.G.R.Y. all over Bihar.

CWJC No. 19238 of 2012

3. In CWJC No. 19238 of 2012, the sole petitioner, a P.D.S. dealer, has assailed the entire proceeding of the Certificate Case No. 17/2011-12 pending before the Sub-Divisional Certificate Officer, Sasaram as also a demand notice asking the petitioner to deposit price of 73.95 quintals, out of total 520 quintals of rice entrusted to him, at the rate of 13.70 per Kg, the total being Rs. 1,01,380/-.

4. According to the petitioner, herein, such demand from him was/is illegal because the petitioner was allotted 594 quintals of rice under the S.G.R.Y. scheme in between 2001-02 to 2006-07 out of which he had also distributed 520 quintals as per orders and permits issued to him from time to time and rest 73.95 quintals of rice had remained with the petitioner which could not be distributed by him due to non-issuance of permits by the competent authority. The petitioner, in this regard, has also claimed that he had kept the Block Development Officer, Sheosagar and Sub Divisional Officer, Sasaram apprised of the remaining stock of Arba Rice with him lying undistributed in absence of the permit and its continued deterioration due to passage of time.

5. The petitioner, therefore, has sought to make out a case that the demand notice dated 18.6.2011 for depositing the price of 73.95 quintals of rice after several years of entrustment to him was wholly illegal because the petitioner could not have been held responsible for rotting of Arba rice, a perishable food grain, in the intervening period inasmuch as he could not have sold such rice of S.G.R.Y. to any other person.

6. It appears that the said demand notice dated 18.6.2011 on being assailed by the petitioner in CWJC No. 15892 of 2011 was also quashed by this Court on the ground of the aforesaid notice being vague. The Block Development Officer, Sheosagar was directed by this Court to issue fresh notice as also pass his fresh order after considering the reply of the petitioner. It is however the case of the petitioner that no steps were taken for issuance of the fresh notice to him and all of a sudden the notice under Section 7 of the Act dated 2.12.2011 in Certificate Case No. 17/2011-12 was served on him asking him to pay the amount of a sum of Rs. 1,01,388/- which according to him is bad both on fact and in law.

7. In this case, the respondents have filed a counter affidavit wherein it has been explained that the petitioner did not produce the copy of the order of this Court dated 15.10.2011 in CWJC No. 15892 of 2011 and, as such, on non-payment of the amount, in question, a certificate proceeding being Certificate Case No. 17 of 2011-12 was launched and a notice under Section 7 of the Act was issued on

2.12.2011 but the respondents, after acquiring the aforesaid knowledge of the order of this Court dated 15.10.2011, had examined the matter afresh and had held the petitioner liable to pay the amount of undistributed rice, quantified at 73.95 quintals at the rate of 13.70 per Kg and the consequential order was also communicated to the petitioner.

8. The aforesaid facts in the counter affidavit justifying the demand notice as also launching certificate proceeding and fresh order has not been controverted by the petitioner by filing any rejoinder/reply.

CWJC No. 22444 of 2011

9. In CWJC No. 22444 of 2011, the sole petitioner, a P.D.S. dealer of Samastipur, has also assailed the proceeding of the Certificate Case No. 2 of 2011 for realizing the price of the food grains under S.G.R.Y. scheme to the tune of Rs. 2,45,545/-. It is the case of the petitioner herein that the rice which was supplied to him under the S.G.R.Y. scheme, was to be implemented through Panchayat, Panchayat Samiti and Zila Parishad in the proportion of 50%, 30% & 20% respectively and that the petitioner, in capacity of P.D.S. dealer, also was allotted certain amount of rice but no clear guideline was issued to him for such distribution of rice so that he could understand the manner of its distribution and preservation.

10. The petitioner thus claims that rice entrusted to him in absence of receipt of order/permit of competent authority for its distribution amongst beneficiaries under S.G.R.Y. in course of time had become rotten but after more than three to four years, he was all of a sudden asked to deposit the price of 110 quintals of rice on the basis of some audit report of a Chartered Accountant dated 6.7.2011. According to the petitioner, the Respondents on the basis of the said audit report of the Chartered Account, could not have fastened the liability against him because he was never given any authority to distribute the rice to the beneficiaries of S.G.R.Y. scheme. The petitioner has also assailed the initiation and continuation of the certificate proceedings against him under the provisions of the Act by placing reliance on the terms and conditions of the licence of a P.D.S. dealer and his case in nutshell in this regard is that in absence of a written agreement, he could not be subjected to institution of a certificate proceeding in terms of Clause 15 of the Schedule I of the Act.

11. Let it be noted that there is no counter affidavit filed in this case.

CWJC No. 2016 of 2013

12. In CWJC No. 2016 of 2013, the sole petitioner has questioned the demand notice dated 17.2.2012 issued by the Block Development Officer, Sarai Block, asking the petitioner to pay a sum of Rs. 8,44,865/- as price of rice entrusted to him under S.G.R.Y. scheme within a period of one week and for also quashing of the entire proceeding of the of the Certificate Case No. 3 of 2011-12 including the warrant of arrest issued against the petitioner in the aforesaid certificate case

for realizing of Rs. 9,62,071/-.

13. The case of the petitioner, in this writ application, a P.D.S. Dealer, in the district of Samastipur is that as a P.D.S. dealer, he had given an application to lift the stock of rice under the S.G.R.Y. scheme and 616.69 quintal of rice was allotted to him out of which after distribution of 206 quintals of rice to the beneficiaries under S.G.R.Y., he was held liable to pay a sum of Rs. 8,44,865.30/- by way of price of 410.69 quintals of rice. According to the petitioner, of the said amount arrived on the basis of an audit report, he had deposited a sum of Rs. 30,000/- after the issuance of demand notice and again a sum of Rs. 1 lac in the treasury for stay of warrant of arrest in the certificate proceedings.

14. The petitioner, in fact, has come out with his case that he had religiously complied the direction given by the authorities monitoring S.G.R.Y. schemes in the monthly meetings and, therefore, initiation of certificate proceeding was wholly unwarranted both on fact and in law, inasmuch as, he had no option but to await the further instructions and therefore if the remaining stock of 410.69 quintals of rice had become rotten, he could not have been even held liable much less for being subjected to certificate proceedings.

15. In this case also, no separate counter affidavit has been filed.

CWJC No. 5638 of 2011

16. The facts of CWJC No. 5638 of 2011 in which the entire order-sheet in course of hearing of these 141 cases on several dates had been recorded would be more illustrative in nature.

17. The three P.D.S. dealers of West Champaran district have in this writ petition sought the relief of quashing of demand notice dated 19.2.2011 issued by the Block Development Officer, Sikta in the district of West Champaran whereby and whereunder the petitioners of this case have been asked to deposit the price of left over rice entrusted to them in course of execution of S.G.R.Y. scheme.

18. In the order dated 19.2.2011, the petitioner No. 1 namely Raiful Azam in fact was informed by the Block Development Officer, Sikta that out of total amount of rice lifted by the petitioner No. 1 to the tune of 317 quintals, its price to the tune of Rs. 1,45,000/- was only deposited and the rest of the amount was still lying as dues against him.

19. Similarly, in the case of the petitioner No. 2 namely Ekbal Baitha, he was informed that out of total rice allotted to him, he was asked to deposit the price of the left over food-gains of 21.52 quintals but he had deposited only Rs. 10,000/- and the rest of the amount was still payable by him.

20. In the case of the petitioner No. 3 namely Manohar Ram, a similar demand notice was given to him by saying that the quantity of the left over rice was 286.12 quintals and its price was supposed to be deposited by him but he had

deposited only 75,000/- and the rest of the amount was not deposited by him.

21. Obviously, all the impugned orders of this writ application is against the demand notice which also contained a threat that if the amount, being the price of rice entrusted to them, was not deposited, punitive action could be taken against them either by way of institution of criminal case or certificate proceeding.

22. The main defence of the petitioners of this case and in fact almost all the cases is same and similar, inasmuch as, what is being claimed by them is that the P.D.S. dealers were only custodians of the rice which was assigned to them by the concerned officers with their specific instructions to distribute amongst the labourers on production of a requisition slip/permit to be issued by the competent authority monitoring S.G.R.Y. schemes. Their further case is that since such requisition/permit to be issued from time to time by the competent authority was not issued and whatever stocks of rice were given to them for distribution amongst the beneficiaries of S.G.R.Y. scheme, being perishable in nature, its quality had deteriorated and become rotten and, therefore, they could not be held responsible either for return of the rice or for the payment price thereof and that too at a rate of Rs. 1370 per quintal which in fact was never communicated to them when the stock of rice was almost forcibly entrusted to them by the local controlling authorities for carrying out the scheme of S.G.R.Y. not at all being governed by the terms and conditions of their P.D.S. licences.

23. In the counter affidavit that has been filed in this case, it has been stated that such rice was given to the three petitioners under S.G.R.Y. scheme and the petitioners had lifted the stock of rice from F.C.I. godown on Chanpatia and after distribution by the petitioners No. 1, out of 250 quintals of stock lifted by him, only 45 quintals of grain was distributed and for the rest of the 205 quintals, the petitioner No. 1 was required to deposit the price as the undistributed rice remained in his stock. It has also been explained that after such demand notice was given to the petitioner No. 1, he had also deposited Rs. 1,45,000/- being the part amount of the remaining rice with him but the rest of the amount had not been deposited despite repeated reminders and, that is how, the impugned order, by way of demand notice, asking him to deposit the balance amount, was issued.

24. A similar explanation has been given by he respondents even in the case of the petitioner No. 2 with the only difference that when he had been asked to deposit the amount as per the demand notice he had deposited only a sum of Rs. 10,000/- and the rest of the amount was still lying dues with him.

25. Yet again in the case of the petitioner No. 3, it has been stated that 300 quintals of rice was allotted to him but permit issued to him for distribution amongst beneficiaries of the S.G.R.Y. was only in respect of 13.88 quintals of rice and thus, for the remaining 286.12 quintals, the petitioner No. 3 was liable to either return the rice or the price thereof and when he was asked to do so, he

had deposited only a sum of Rs. 75,000/- in the Nazarat of Block Sikta.

26. The Block Development Officer, Sikta for this purpose in the counter affidavit has placed reliance on a direction issued by the Divisional Commissioner, Tirhut Division, Muzaffarpur under the letter No. 1142 dated 26.2.2010 in which all the local authorities were directed to ensure that the deposit of the price of balance stock of rice entrusted under S.G.R.Y scheme should be collected immediately and on failure of such payment by the P.D.S. dealers, they should be declared defaulter and punitive action should be taken for realization of the amount by them by way of initiating a certificate proceeding and/or criminal case.

27. The respondents, in fact, in the counter affidavit filed in this case have given a further explanation according to which the petitioner No. 1 was actually allotted 362 quintals of rice out of which he had distributed only 45 quintals of rice and thus for balance quantity of 307 quintals of undistributed rice, he was factually and legally liable to pay its price.

28. Yet again, in the case of the petitioner No. 2, it has been sought to be explained in the counter affidavit that 1104 quintals of rice was lifted by the petitioner No. 2 in between 2005-06 to 2006-07 out of which he had also distributed 1082 quintals and 48 Kgs and, therefore, the price of only 21 quintals and 52 Kg. of rice had remained payable by him.

29. A similar account has also been given in respect of petitioner No. 3 that he had also lifted 300 quintals of rice out of which he had distributed only 14 quintals and, therefore, he was liable to pay the price of 286 quintals of rice.

30. Let it be noted that though an interlocutory application has been filed in this case on 12.5.2015 seeking to assail the order dated 8.4.2015, whereby and whereunder, the three petitioners were asked to deposit a sum of Rs. 2,89,290/- (petitioner No. 1), 1,11,532.70/- (petitioner No. 2) and 3,91,984.40 (petitioner No. 3) failing which their licence was sought to be cancelled, what is very significant to be noted here is that the petitioners of this case have not controverted any of the fact mentioned in the counter affidavit much less accounting given by the Block Development Officer with regard to supply of rice and, therefore, they will be deemed to have accepted the same in view of their also making part payment of the rice to the tune of Rs. 1,45,000/-, Rs. 10,000/- and Rs. 75,000/- respectively.

CWJC No. 19529 of 2011

31. In CWJC No. 19529 of 2011, the sole petitioner has assailed an order dated 25.8.2011 passed by the Deputy Development Commissioner, Munger in Record Case No. 4/2011 wherein he has been directed to pay the price of undistributed rice of S.G.R.Y. entrusted to him at the rate of Rs. 13.70/- per K.G. within a period of one week failing which not only such amount was to be realized from him by initiating a certificate proceeding but also by way of institution of a criminal case for misappropriation of the amount of the Government.

32. From the pleadings of this writ application, it is clear that the petitioner, a P.D.S. dealer at Dharhara in the district of Munger was allotted 3875 quintals of rice under the S.G.R.Y. Scheme in between the year 2002-03 to 2004-05 under the orders of the Deputy Development Commissioner, Munger and the Block Development Officer, Dharhara. The terms and conditions for distribution of the rice by the petitioner to beneficiaries of S.G.R.Y. as well as payment of handling expenses to the petitioner for the same was incorporated in such allotment orders issued to the petitioner.

33. The sole petitioner has also stated that he had distributed 1603 quintals of rice out of 2033 quintals of rice allotted to him to the concerned beneficiaries of S.G.R.Y. as per the permits sent to him by the local authorities and remaining 430 quintals of rice could not be distributed by him due to want of permit issued by the Block Development Officer, Dharhara and, as such, the demand notice dated 19.12.2009 issued by the B.D.O. Dharhara for payment of price of 430 quintals of rice according to the petitioner was bad and illegal. It is here that the petitioner has tried to raise a specific issue that he could not be held liable for making payment of price of undistributed balance quantity of rice because requisition/permit for the same was never issued to him in time and such rice of S.G.R.Y. scheme retained by him ultimately had become rotten and thus also could not be returned back by him.

34. It has been also stated that the petitioner cannot be held liable to pay any amount for the balance 430 quintals of food grains (rice), inasmuch as, he had filed a number of representations to the Block Development Officer, Dharhara including those dated 1.3.2007, 3.5.2007 and 18.3.2008 that the quality of remaining undistributed rice was deteriorating and, therefore, arrangement should be made to lift the balance stock of rice. In this regard, the petitioner has also taken a plea that when the food grains namely arba rice entrusted to him for distribution under the S.G.R.Y. scheme being a perishable commodity had got decomposed and became rotten within a period of two years of its allotment to him, he, in view of the repeated information given and request made to the Block Development Officer, Dharhara to remove the balance stock of rice, cannot be held liable much less for payment of the price of 430 quintals of rice as was initially demanded from him under the notice of the Block Development Officer dated 19.12.2009.

35. The petitioner has also stated that as against the aforesaid notice dated 19.12.2009, he had moved this Court in CWJC No. 1666 of 2010 and this Court had disposed of the writ application in terms of an order dated 28.2.2011 in CWJC No. 16366 of 2009, which for the sake of clarity and convenience, is quoted herein below:-

"Learned counsel for the petitioner and the State.

The petitioner is aggrieved by the order dated 12.11.2009 issued by the Block Development Officer, Sonepur at Saran directing him to deposit the monetary value of approximately 1200.89 quintals of rice in the Government Treasury failing which legal action would be taken.

Learned counsel for the petitioner submits that the rice in question was allotted between the years 2003-2004 to 2005-2006 for distribution under different schemes. It is his further case that permits for distribution were issued only for a part of that quantity and the rest of the rice withered away by deterioration as no permits for distribution were issued.

No counter affidavit has been filed on behalf of the respondents. This Court in C.W.J.C. No. 13973 of 2009 has noticed a similar controversy. In that case a counter affidavit had been filed with regard to a similar order but did not satisfy the Court that it was issued after a show cause notice and final determination on facts before fixing liability which was unilateral in nature. This Court, therefore, directed as follows:

"This Court therefore directs that no coercive action shall be taken in pursuance of the order dated 12.8.2009 issued by the Deputy Development Commissioner, Munger. The order is directed to be treated as a show cause notice.

Let the petitioner file their reply within a maximum period of six weeks whereafter the Deputy Development Commissioner shall pass final reasoned and speaking order in accordance with law.

If no cause is shown by the petitioner within the time indicated, the writ petition shall be deemed to have been dismissed."

The order dated 12.11.2009 is therefore directed to be treated as a show cause notice in like terms. The petitioner shall file his reply within six weeks. If the petitioner seeks any further information and or documents from the respondents to enable him to fortify his reply to the show cause notice, the respondents shall adequately respond to the same unless the information sought is considered not germane to the controversy or is already available with the petitioner, by a reasoned and speaking order.

Since the impugned order has been directed to be treated as a show cause notice the question of any coercive action, thereunder does not arise at this stage till a final adjudication is not done.

The writ application stands disposed in the aforesaid terms."

36. It is the case of the petitioner that in terms of aforesaid order of this Court dated 28.2.2011, he had filed show-cause reply before the Deputy Development Commissioner, Munger on which the impugned order came to be passed on 25.8.2011. In the aforesaid order that has been passed by the Deputy Development Commissioner, Munger in the case of the petitioner, a finding has been recorded that the claim of the petitioner that he had filed applications before the Block Development Officer, Dharhara for lifting the undistributed rice was not at all substantiated by him. The Deputy Development Commissioner,

Munger had also gone to hold that the petitioner, being a P.D.S. dealer, if he had been left with undistributed rice of S.G.R.Y. scheme, he had to ensure its rotation by way of using the same for its being sold to ration card holders under P.D.S. and by replacing the same with later stock of rice lifted by him in P.D.S. On these grounds, the show-cause reply filed by the petitioner was rejected and the impugned order, assailed herein in this case, came to be passed.

37. The petitioner while assailing the impugned order has taken a specific plea that first of all such demand of price of rice from the petitioner was bad because there was no such condition even incorporated in any allotment order issued to him that if the allotted rice could not be distributed by the concerned P.D.S. dealers in the manner prescribed to beneficiaries of S.G.R.Y., he will have to pay the price of the left over rice.

38. According to the petitioner, he, in capacity of a P.D.S. dealer, had virtually been compelled to lift the stock of rice under the allotment order because there was persistent threat of the local authorities that in default of lifting the rice under S.G.R.Y. scheme, the P.D.S. dealer licence could itself be cancelled.

39. Additionally, it has been also asserted by the petitioner that in absence of prescribed condition of S.G.R.Y. scheme or even in allotment order, the demand of price of left over undistributed rice and that too at the rate of Rs. 13.70/- per Kg. was wholly arbitrary and illegal.

40. What is more significant to be noted here from the narration of facts of this case is that it has been stated by the petitioner that on the one hand he was being asked to pay the price of the remaining quantity of 430 quintals of rice but, on the other hand, the agreed amount of handling expenses as well as transportation cost at Rs. 13/- per quintal for 2033 quintals of rice had not yet been paid to him. According to the petitioner, he was entitled for not only a sum of Rs. 26,429/- as transportation cost but also Rs. 5,40,000/- by way of storage charge for rice allotted to him under S.G.R.Y. scheme.

41. It is in this case that the respondents have filed as many as nine counter affidavits and supplementary counter affidavits in course of joint hearing of the batch of 141 writ petitioners.

42. As a matter of fact, though this writ petitioner with the batch of other writ applications were pending since 2011, no counter affidavit was filed and the number of similar cases had kept on piling and increasing in view of either launching the certificate proceeding or issuing the demand notice with a threat and coercion of the authorities to not only launch certificate proceeding and criminal case but also cancelling the licence of the PDS dealers. It was in this background that on 13.12.2012, this Court had passed an order to the following effect:-

"Looking at the large number of writ applications which have come before this Court and since the Court does not want conflicting orders to be passed on the issue of similar kind, the Court wants that the core issue should be decided with certain inputs from the Nodal Officer at the State level because varied kind of orders are being passed by the subordinate authorities in the field which has generated these litigations in hundreds, if not thousands.

Today the Principal Secretary, Food and Consumer Protection, who was requested to appear in this regard yesterday, informs the Court that the scheme under which such distribution of food grains was required to be made was being regulated and is the responsibility of the Rural Development Department, Government of Bihar. If this be so, then appearance of the Principal Secretary of the said Department would be required.

These matters will come up for consideration on 8th of January, 2013. If the proper affidavit with regard to the decision which is going to resolve such issue is put in place, then there may not be an occasion for the Principal Secretary to appear or else his attendance would be required on the next date."

43. It may be recorded here that despite aforesaid order dated 13.12.2012, no counter affidavit was filed which led this Court to pass an order dated 8.1.2013, which reads as follows:-

"The Principal Secretary, Rural Development Department is present.

It has been stated on his behalf that the matter is being placed before the Chief Secretary for inter departmental consultation and, after a decision is taken by the Chief Secretary, the matter would be placed before the Public Accounts Committee then proper decision would come up. It is submitted that the whole process would be completed bringing quietus in the matter three months.

However, it is made clear that till any further order of this Court no coercive action for recovery of any amount related with the dispute in question should be taken by the authority concerned. However, it is expected that that Chief Secretary and all the concerned, while considering this issue would also take in account the judicial pronouncement by this Court in Yamuna Nayak @ Jamuna Nayak Vs. The State of Bihar and Others, .

As prayed, put up this matter after three months in Admission II list. The personal appearance of the Principal Secretary, Rural Development Department is dispensed with for the present."

44. In the first counter affidavit which was filed by the Project Officer on behalf of the Secretary, Rural Development Department, he had taken a plea that the issue of realization of the price of rice under the S.G.R.Y. in view of the report of CAG to recover Rs. 321 crores by way of price of undistributed rice under S.G.R.Y. was pending consideration before the Public Accounts Committee and in course of meeting of inter-departmental Coordination Committee headed by the Chief Secretary held on 20.3.2013 and 24.8.2013, it was decided to seek reports from all the districts, inasmuch as, the Committee was of the view that the direction of the Public Accounts Committee had to be complied by the

Government. In that counter affidavit, it had also been stated that the Public Accounts Committee had directed the State Government to recover the amount of loss as quantified by the CAG.

45. This Court, however, was not satisfied with the aforesaid evasive approach of the respondents especially when the Public Accounts Committee also had directed the Government to recover the amount of loss as quantified in the CAG report. This would get better reflected in the order of this Court dated 17.6.2013 wherein it was recorded as follows:-

"The stand taken by the learned Additional Advocate General surely leaves impression upon this Court after having a look at the minutes produced before this Court that the decision on behalf of the State is going to be a long drawn out affair.

In view of the same, no purpose will be served by bringing these matters under the heading "for admission" on the list every now and then for further adjournments.

All these applications will be heard.

It will be open to the State to make a mention for early hearing, once they put their policy framework in place after consultation of whatever authorities are required to be consulted on the issue.

It is made clear that no coercive action, as directed earlier, will continue to prevail with regard to these petitioners."

46. After these writ applications were admitted and listed for hearing, a supplementary counter affidavit was filed on 26.8.2014, wherein, it was stated that a division bench of this Court in P.I.L. had rejected the prayer for CBI enquiry in the matter of alleged misappropriation of government money on the head of SGRY as the matter was being looked into by the Public Accounts Committee. It was also stated that the Government had requested the Chairman of the Public Accounts Committee to issue necessary guideline and when certain information for this purpose were sought for by the Public Accounts Committee, they were also supplied by the Government on 11.6.2014.

47. In the compact supplementary counter affidavit running into 163 pages, the Government while explaining the whole mechanism and working of S.G.R.Y. in this State had also taken the following stand:-

"17. That it is stated that preamble to the guidelines of the Sampoorn Gramin Rozgar Yozana (effective from 01.04.2002) states Ministry of Rural Development Reviewed the hitherto on-going schemes of the Employment Assurance Scheme (EAS) and Jawahar Gram Samridhi Yozana (JGSY) and by merging them into one scheme launched the new scheme of the Sampoorn Gramin Rozgar Yozana with effect from 25th September, 2001. The Sampoorn Gramin Rozgar Yozana will have the following objectives:-

(a) Primary objective - the Primary Objective of the schemes was to provide additional wage employment in all rural areas and thereby provide food security and improve nutritional levels.

(b) Secondary objective - The Secondary Objective was the creation of durable community, social and economic assets and infrastructure development in rural areas.

Para 2.4 OF Chapter 11 of the Guidelines states that distribution of the food grain to the worker under the programme will be either through public Distribution System (PDS) or by the Gram Panchayat or any other agency appointed by the State Govt. The distribution of food grains was to be done at the work site itself.

As far as distribution and release of food grains under the SGRY is concerned, following provisions were made:-

(i) The Department or Rural Development was to intimate to the Department of Food and Public Distribution the quantity of foodsgrains to be released to the State, with the district-wise details. The Department of Food and Public Distribution thereafter was supposed to send an appropriate advice to the FCI under intimation to the Department and Secretary (RD) of the States, was to release foodgrains from its designated depots to the authorized agencies of the State Govt./ZPS/DRDAS.

(ii) The Department of Rural Development was supposed to release funds for the foodgrains directly to the FCI at the economic cost. The FCI was required to send bills duly verified by the DRDA/ZP to the Department of Rural Development on the basis of statement of quantities of food grains allocated, lifted District-wise, signed jointly by the PD(DRDA)/CEO Zila Parishad and District Manager, FCI.

(iii) At the District Level, the PD, DRDA/CEO/ZP was supposed to coordinate the release and lifting of stocks under the programme. No payment was required to be made to the FCI at the depots by the DRDA or authorized Agency for lifting the Food grains within the District-wise allocation communicated by the Ministry of Rural Development/Department of Food and Public Distribution.

As far as role of Public Distribution System is concerned, it is submitted that on the basis of consent given by Secretary, Food Supply and Commerce Department the PDS dealers were roped into distribute the food grains under SGRY as one of the wage component. Letter No. 1666 dated 24th April, 1997 of foods Supply and Commerce Department may also be referred to in this context. The letter states that

Nai Sarvajanik Bitran Pranali Ke Tahat Kendra Sarkar Ka Prastav Hai Ki Sunischit Rojgar Scheme/Jawahar Rojgar Yojana Ke Labhanubhogiyo Ko Bhi Bishesh Rup Se Raj Sahayta Khaddan Kiya Jai. Kendra Sarkar Ke Prastab Ke Anushar Unhe Khaddan Coupoun Diya Jayage Jishke Badle Ushi Janibtran Pranali Ke Dukan Se Khaddan Prapt Kar Sakte Hai Jishse Unka Samanya Parvarik Rashan Kard Sambandh Hai".

18. That it is stated that since Sampoorn Gramin Rozgar Yozana was started amalgamating employment assurance scheme and Jawahar Gram Samridhi Yozana and above mentioned consent of the Food, Supply and Commerce Department was already there in place to distribute the food grains (as wage component) through PDS dealers as also the above mentioned letter No. 1666 dated 24th April, 1997, therefore, while implementing the Sampoorn Gramin Rojgar Yozana the responsibility of distribution of food grains was assigned to PDS as per para 2.4 of Chapter 2 of the SGRY guidelines.

19. That it is submitted that since the task of distributing food grains (as wage component of SGRY) was assigned to PDS dealers with the consent of the Food, Supply and Commerce Department, therefore it was clear that they would be bound by the Public Distribution System (Control) order 2001, a notification issued by Food, Supply and Commerce Department wherein form II in which license to a fair price shop under Public Distribution System was to be issued. The point 16 of the duties and responsibilities enumerated therein (Form II) states that "the lincensee shall keep the Essential Commodities in proper manner and take adequate measures to prevent it from the damages due to ground moisture, rains, insects, rodents, birds, fire and such other cause are avoided." Further point 19 of form II indicates that "the licensee shall provide accounting of the actual distribution of essential commodities and the balance stock" at the end of the month and to submit a report to the Block Supply Officer with a copy to the Gram Panchayat on demand".

20. That thus it is evident that the PDS Dealers were duty bound to keep the food grain in good condition. They also had to report every month to the Gram Panchayat and Block Development Officer, apart from the licensing authority, the actual distribution and balance stock so that the stocks were kept in readiness for distribution. The practice followed in Public Distribution System in such cases is FIFO, first in and first out, so that the essential commodities are saved from destruction. This ensures that the essential commodities do not rot or waste. As such the Public Distribution System dealers are liable to give back the cost of the grains kept with them."

48. This Court, however, having found the government was not answering the queries of this Court as specifically raised by the P.D.S. dealers including those noted hereinabove and was virtually indulging in a game of blame shifting and in fact no bonafide steps were being taken for recovery of the public money to the tune of Rs. 321 crores quantified as loss to the Government in the CAG report, had, in the order dated 26.8.2014, directed the Government to file its further affidavit as to the mode and manner in which the price of food grains under the SGRY was going to be recovered.

49. In response to the order of this Court dated 26.8.2014, the Government had filed its 2nd supplementary counter affidavit wherein the query of this Court was answered in the following terms:-

"6. That the Hon''ble Court after going through the Counter Affidavit and submission made by the Principal Additional Advocate General, Hon''ble court orally directed the respondent to file a supplementary affidavit on the following points:-

I. What action government proposes to take against the officials who were responsible for not issuing direction for sale storage and timely disposal of Food Grains?

II. What is the basis of recovery of equivalent amount of balance food grains at the rate of Rs. 1,370/- per quintal?

III. Whether show cause was served to PDS dealers before instituting certificates cases against them?

IV. What were the criteria fixed by respondents to select a particular dealer to distribute food grains through them?

V. Whether the dealers when inform of their selection and the terms and conditions for the same communicated to them?

7. That before giving point wise reply to the Hon''ble Court''s query a brief background to the point wise submissions seems pertinent.

8. That Sampoorn Grameen Rojgar Yojana (SGRY) was started in year 2002-03, under the guideline vide Para- 2.4 of chapter-2 of the Sampoorna Grameen Rojgar Yojana, the PDS dealers were given the task of food grains distributions against the coupons under the schemes. The detail guideline of Ministry of Rural Development, Govt. of India has already been annexed as Annexure - ''F'' to the first supplementary counter affidavit.

9. That it is stated that state Govt. in the Department of Rural Development has given direction to District Administration in respect of implementation on Sampporana Gramin Rojgar Yojana (SGRY) vide letter No. 6981 dated 28.09.2002.

10. The total worth of the food grains that was lifted and not distributed under the schemes by the PDS dealers is Rs. 334.50 Crore (Three hundred thirty four crore and fifty lacs), out of which till now Rs. 52,54 Crore (Fifty two crore and fifty four lacs only) has been recovered. It is submitted that as per the direction of the Hon''ble Court vide order in CWJC No. 19529/2011 Sadanand Yadav Vs. State of Bihar and others. The state had stayed the measures to realize the dues from the PDS dealers.

11. That it is pertinent to mention here that since PDS dealers were asked to lift and distribute food grains on the basis of the consent of the department of Food and Consumer Protection. Therefore, the dealers were to be bound by the terms and conditions enumerated in the license issue to the PDS dealers in form-II under Public Distribution System (control) order 2001, wherein under Para-16 states "the licensee shall keep the Essential Commodities in the proper manner

and take adequate measure to prevent it from the damages due to ground moisture, rains, insect, rodents, birds, fire and such other cause are avoided." And Para 19 states "the licensee shall provide accounting of the actual distribution of essential commodities and balance stock at the end of the month and to submit the report to Block Supply Officers" (refer Annexure-H to its supplementary counter affidavit.).

12. That it is submitted that when recovery process started several dealers had filed writs before the Hon''ble Court asking for various relief including that their part of the story also to be heard by the competent authority before initiating cases under PDR act or instituting FIR against them. The Hon''ble Court had directed the respondents to issue notice to such petitioners and heard them before filing certificate cases or FIRs against them. In this background notices were served to many PDS dealers one among them being petitioner in CWJC No. 19529/2011 Sadanand Yadav.

13. That it is also submitted that the guidelines/directions received from Govt. of India were transmitted down the line copies of which are annexed as Annexure - ''F''. These directions were further transmitted down the line by the BDOs to the PDS dealers, stating therein inter alia that safety of storage of food-grain shall e on the dealers.

14. That nevertheless, the food grains remained in the go-downs of PDS dealers which neither could be distributed as wage component nor could be disposed off through other means, described in the directions sent to the district authorities. On the basis of the record available in the department, the Department have issued show cause to all the concerned officers asking them to explain within twenty days of the receipt of the letter as to why responsibility should not be fixed upon them for lapses in safe up keep of food grains and disciplinary action not be initiated vide letter dated 12.09.2014.

15. The point-wise reply to above queries are as follows:-

I. The Government has served show cause notices to all concern DDCs and BDOs posted in different districts during the period of the scheme.

II. It is submitted that as per para-1.4 of the Sampoorna Grameen Rojgar Yojana guidelines the programme was available in two streams, the first stream was to be implemented by the District and Intermediate Panchayat and 50% of the total funds and food grains was allocated in this stream and ratio of distribution between Zila Parishad and Intermediate Panchayats in the ratio of 40:60. (Annexure-''F'')

The second stream was to be implemented at Panchayat Level and 50% of fund and food grains was earmarked for the Panchayat.

It is further submitted that as para-2.5.II of the Sampoorna Grameen Rojgar Yojana guidelines, the Rural Development Department Govt. of India was to release funds for the food grains to FCI at economic cost. The economic cost for the year 2005-06 as communicated by FCI is Rs. 1,370/- per quintal. Since, the Rural Development Department, MoRD has paid to FCI at Rs. 1370/- per quintal hence the recovery has also been done at the same rate.

III. In response of the 3rd Query of the Hon''ble Court it is submitted that show cause were served to the dealers before instituting certificate cases against them as annexed be evident from ''K'' series.

IV. In response of 4th query of the Hon''ble High Court it is submitted that the sole criteria for selecting a particular PDS dealer was proximity of their PDS shops to the worksite under the scheme which would be evident from letter dated 05.03.2002 issued to all the Deputy Development Commissioners.

V. In response to the 5th query of the Hon''ble High Court it is submitted that the then BDOs vide issuing food grains lifting orders to the selected PDS dealers had asked the concern PDS dealers to keep the food grains safely and report the details of food grains distribution on the basis of permit issued by the competent authorities and also the balance food grains. It is further submitted that since PDS dealer were entrusted the task and they are supposed to follow the guideline of the license.

16. That the State Govt. has initiated the process of recovery of such unspent food grains equivalent amount from the PDS dealers by way of persuasion and certificate cases. In the process till now out of Rs. 381.75 crore Rs. 52.54 crore has been recovered.

17. That meanwhile CAS while auditing randomly in some districts it has been noticed the huge unspent food grains in the custody of PDS dealers and matter came up in Public Account Committee and further it has started reviewing monthly to recover the same as well as to fix up the responsibility on concerned officials.

18. That the respondents humbly submit that in the light of the order Hon''ble court in various cases coercive steps for realization of the said dues has been stopped.

19. In the light of the above facts and submissions, it is prayed that the Hon''ble Court may issue suitable direction for realization of the balance amount of rupees Rs. 281.75 crore from the PDS dealers."

(Underlining for emphasis)

50. On perusal of the aforesaid affidavit, it thus became clear to this Court that the Government was more or less holding only the PDS dealers responsible for the loss caused to the government exchequer without taking into account the duty and responsibility of the officials who had issued the food grains to the PDS dealers and whose recovery having been not made, the CAG had quantified the loss to the government exchequer to the tune of Rs. 334 crore approximately. It was in that background that this Court on 18.9.2014 had passed another detailed

order, which reads as follows:-

"Heard learned counsel for the parties.

Pursuant to the earlier order of this Court dated 26.8.2014 both Mr. Anjani Kumar Singh, Chief Secretary and Mr. S.M. Raju, Departmental Secretary are present. In their presence the issue involved in these batch of writ applications have been discussed at length.

From the perusal of materials on record as well as after hearing the learned counsel for the parties as also the Chief Secretary and the Departmental Secretary it transpires that the State Government has been saddled under the report of CAG to recover a loss of Rs. 334 crores which is the price of arba rice allotted to the P.D.S. dealers under the Food for Work Scheme and/or SGRY. In the CAG report it is very specific that such loss to the Government ex-chequer has been caused on account of inaction, negligence or willful laches on the part of the officials, who were executing/supervising such schemes.

The State Government having received CAG report, therefore, was under bounden duty to comply the audit objection and therefore, the actions were taken against the P.D.S. dealers who were entrusted such rice. The Departmental Secretary has informed this Court that out of Rs. 334 crores a sum of Rs. 52.54 crores has already been recovered from the P.D.S. dealers but still a sum of Rs. 281.46 crores have to be realized from the P.D.S. dealers.

The petitioners in the batch of these 106 writ petitions have come out with a clear case that they would not be liable to pay single paise because the term and condition of lifting stock of arba rice to them was quite specific. Mr. Ajay Kumar Thakur, leading argument on behalf of the petitioners has explained that the P.D.S. dealer had no choice but to comply the order of the Governmental authority in lifting the stock of arba rice from month after month and distributing the same to only those persons for whom an authority slip could be issued by the controlling authority, namely, Panchayat Sachiv/B.D.O./D.D.C. at the level of Gram Panchayat/Panchayat Samiti/Zila Parishad level respectively. Mr. Thakur, however, explains that the P.D.S. dealers had therefore also no choice but to retain these Arwa rice because sufficient number of authority slips were never issued to distribute such arba rice to the beneficiaries of the Schemes under food for work and/or SGRY and that is how the rice supplied to them in the year 2001-03 in course of time became rotten and thus, they were also not in a position to return them in the year 2010 when for the first time they were asked to either return the rice or price of such stock or arba rice. According to him the certificate cases filed against the P.D.S. dealers therefore is wholly unjustified specially when their liability has also never been fixed by any authority in accordance with law.

The Departmental Secretary has also not been able to produce any authentic material to satisfy this Court that the P.D.S. dealers could have sold arba rice given to them under the scheme for food for work and/or SGRY in open market.

His reliance on Clause 16 of the license of the P.D.S. dealers is also misplaced because arba rice could not have been prevented from its being damaged for such a long period.

The batch of these writ applications have been filed in the year 2011 and from different orders passed by this Court it would transpire that an assurance was being given by the Departmental Secretary that the matter was under active consideration of the State Government for finding out a way out to recover the amount. The orders dated 13.12.2012, 8.1.2013, 17.6.2013 and 6.8.2014 of this Court are only illustrative in nature which would themselves go to show that the department was all the time trying to inform this Court that some sort of decision at the highest level was likely to be taken.

Today when the issue has been discussed in presence of the Chief Secretary and the Departmental Secretary now it has been conveyed that the Government has decided to take action also against the concerned Deputy Development Commissioners, Block Development Officers and the Panchayat Secretaries who by their indiscriminate action had allowed the Arwa rice to be given to the P.D.S. dealers without making them accountable in any manner for upkeep/ maintenance/return of those stock of Arba rice. It has been also conveyed to this Court that the recovery price of Arba rice cannot be less than 13.70 per Kg. because that much amount has already been given by the Ministry of Rural Development to the F.C.I. and as such, recovery of the said price alone can fetch to the amount of Rs. 342 crores which is the amount of loss caused to the Government under the Food for Work Scheme and/or SGRY.

The petitioners, on the other hand, have a grievance that they have been subjected to certificate proceeding under the Bihar Public Demand Recovery Act even without determination of their actual liability. The case of the petitioners in fact is that none of them had been given even a show cause notice before fixing their liability and all of them had only been straightway asked to pay the price of Arba rice allotted to them under the Scheme of Food for Work and/or SGRY.

In such a situation learned Principal AAG in course of his submissions before this Court has come out with certain possible solution for which he will have to revert back to the State Government for a final decision. This Court has full confidence that solutions being suggested by the learned Principal AAG in presence of the Chief Secretary and the Departmental Secretary before this Court may not only lead to recovery of loss of amount caused to the State Government but will also lead to redressal of the grievance of the petitioners. Thus while giving leave to the State Government in taking such a decision apart from other aspects the following factors should also be taken into consideration:-

(a) If the decision of the concerned authority allotting Arba rice to P.D.S. dealers had contained no definite condition of its being used in any other manner and/or its disposal by way of sale to any other persons save and except its being distributed to beneficiaries of Food for Work Scheme/SGRY or its being returned within a fixed time frame, how alone a P.D.S. dealer, to the complete exclusion of officials, can be held to be responsible for damage of rice whose price is sought to be realized from P.D.S. dealer and that too without making the officials accountable for sharing such loss alongwith the P.D.S. dealers.

(b) The Government should be prepared to constitute an independent Tribunal/ authority to determine the liability of the P.D.S. dealers vis-a-vis the erring officers on whose orders the P.D.S. dealers were supplied Arba rice under the Scheme of Food for Work and SGRY.

(c) If the Government, therefore, is now going to take action also against the DDC/BDO and the Panchayat Secretaries and/or any other erring officials, it should not (sic) be a mere lip service but such erring officials should also be made liable to pay at least half of the amount of loss sustained by the government and the rest half only be recovered from the P.D.S. dealers."

(underlining for emphasis)

51. The third supplementary counter affidavit in fact was filed on 21.10.2014 in the background observations made in the order of this Court dated 18.9.2014 wherein it had been stated that the Government had decided to issue show-cause notice to the Deputy Development Commissioners and Block Development Officers posted in different districts and blocks during the execution of the S.G.R.Y. scheme and it had also enclosed the list of 134 Deputy Development Commissioners vide Annexure-P as also the list of 19 Block Development Officer of Purnea district, 47 of Patna district, 34 of West Champaran district, 35 of Nalanda district, 24 of Nawadah district, 26 of Darbhanga district, 7 of Jehanabad district, 19 of Jamui district, 27 of Gopalganj district, 10 of Lakhisarai district, 25 of Rohtas district, 32 of Muzaffarpur district, 16 of Munger district, 5 of Madhepura district, 10 of Madhubani district, 26 of Bhojpur district, 16 of Bhagalpur district, 13 of Banka district, 17 of Buxar district, 51 of East Champaran district, 19 of Jamui district, 16 of Supaul district, 21 of Saran district, 32 of Siwan district, 31 of Sitamarhi district, 16 of Saharsa district, 8 of Samastipur district, 13 of Sheihpura district, 33 of Vaishali district, 36 of Gaya district, 11 of Khagaria district, 11 of Kishanganj district, 5 of Araria district, 9 of Arwal district, 10 of Aurangabad district and 35 of Katihar district. Additionally, in such supplementary counter affidavit, the State Government had also taken a stand that all the Collector and the Deputy Development Commissioner of all the districts of this State were directed to ascertain the names of concerned Mukhia and Panchayat Secretary who were also delegated with the task of monitoring of food grains under the SGRY and also seek explanation from them in respect of loss of Rs. 334 crores assessed by the CAG in the implementation of S.G.R.Y scheme.

52. This Court, accordingly, by an order dated 22.10.2014 had adjourned the hearing of all the writ petitions and given time to the Government to furnish the complete list of PDS dealers and the government officials Panchayat-wise, block-

wise and district-wise allegedly responsible for causing loss to the government exchequer keeping in view the government policy decision as contained in the circular vide letter No. 6981 dated 28.9.2002 which had clearly fixed individual responsibility in the execution of S.G.R.Y. scheme by way of supervision on the Divisional Commissioner, Collector, Deputy Development Commissioner, Sub-Divisional Officer, Block Development Officer by assigning them duty to inspect 5, 10, 15, 15 and 20 schemes on monthly basis.

53. Thereafter, the fourth supplementary counter affidavit was filed on behalf of the Secretary of the Rural Development Department on 11.2.2015 wherein it was stated that a decision had been taken on 5.2.2015 at the level of Secretary of the Rural Development Department to issue show-cause notice to all concerned Panchayat Secretaries, Mukhias and PDS dealers under the supervision of District Magistrate through the District Panchayat Raj Officers and Sub-Divisional Officers for fixing responsibility in respect of loss caused to the government exchequer in S.G.R.Y. scheme. On perusal of the aforesaid supplementary counter affidavit and on being informed that the full details of PDS dealers and officers of some of the districts including Lakihsari, Gaya, Jehanabad and Madhubani were yet to be collected, the hearing of all the cases was deferred till 11.3.2015 with a direction to produce the complete list of names of all concerned P.D.S. dealers and the concerned government officials.

54. In compliance of the aforesaid order, the fifth supplementary counter affidavit was filed giving names of all the P.D.S. dealers and the concerned officials and upon its perusal as well as also hearing both the parties, this Court had passed its order dated 11.3.2015 as with regard to taking steps for fixing responsibility on the other senior government officials including Divisional Commissioners, Collectors and Sub Divisional Officers keeping in view the government policy contained in Circular dated 28.8.2002. Such order of this Court dated 11.3.2015 reads as follows:-

"Heard learned counsel for the parties.

2. Pursuant to the earlier order of this Court dated 11.2.2015, fifth supplementary counter affidavit has been filed on behalf of the Secretary, Rural Development Department wherein it has been said that the data relating to remaining four districts, namely, Lakhisarai, Gaya, Jehanabad and Madhubani has been collected with identification of the name of P.D.S. Dealers and the name of the officers and such data has also been uploaded on the departmental website. In the said supplementary counter affidavit, it has further been stated that the show-cause notice to the concerned officials of the district of Nawada, Sheikhpura, Gopalganj, Jehanabad, Katihar, Arwal and Banka had been issued and steps for issuance of show-cause notice to the officers of the other districts would be taken after analyzing the reports submitted by the district including liability of the concerned officials.

3. Mr. Pradip Kumar, Secretary to the Rural Development Department, who is

present in person, has initially sought a period of three months time for issuance of such show-cause notice. However, in course of discussion, he has agreed that instead of individual show-cause notice to the concerned officers, if such notices are published in the newspaper block-wise containing the name of the officers as also name of the P.D.S. Dealers, the issue, relating to fixing liability for recovery of the amount, in question, would be easier and also speedier. For this purpose, he has sought a month''s time for publication of notice in the newspaper.

4. At this stage, Mr. Rajendra Narain, learned counsel appearing on behalf of some of the intervenors, namely, Bihar Administrative Services Association (B.A.S.A.) has submitted that somehow an order of this Court has been taken to be an authority for only nibbling the officers of the lowest rank, namely, Block Development Officer or Deputy Development Commissioner but, a as a matter of fact, if the scheme of Sampurna Gramin Rojgar Yojana is carefully examined, the responsibility of supervising the scheme by holding periodical monthly inspection was lying on the higher officials beginning from Divisional Commissioner and, to that extent, he relies on Clause-15 of the Scheme notified by the Government on 28.8.2002 relevant portion whereof reads as follows:-

5. The issue is very significant namely the government has been put to loss of Rs. 321 crore and the figure is not in dispute because the report of C.A.G. has been accepted by the State Government and the steps have been taken for recovery of such amount initially from the P.D.S. Dealers and now from the concerned officials. When such a step has already been decided to be taken by the State Government itself it would not auger well for an efficient administration to fix responsibility only on the immediate controlling authority namely Deputy Development Commissioner and/or Block Development Officer and/or Panchayat Sewak and/or Panchayat Secretary specially when the scheme had envisaged an over all inspection and supervision by the higher officials namely Development Commissioner, District Magistrate, Deputy Development Commissioner, Sub-Divisional Officer and Block Development Officer. In a case where the responsibility is being sought to enforced only on Panchayat Sewak and/or Mukhia, the Block Development Officer or the Deputy Development Commissioner apart from Divisional Commissioner, District Magistrate and Sub-Divisional Officer cannot be said to be having no responsibility in safeguarding the government exchequer which has been lost on account of either negligence or dereliction of their duty as specifically provided in the policy of the government dated 28.8.2002. Therefore, the Departmental Secretary, who is present in person, should reexamine the entire aspect from the broader angle as to who are the government officials who can be held responsible for causing loss to the state exchequer to a huge sum of Rs. 321 crore approximately.

6. This Court must make it more clear that when in its earlier order dated 18.9.2014, it had recorded the statement of the Chief Secretary and the Departmental Secretary that an action was now also sought to be taken against the Deputy Development Commissioner, Block Development Officer and/or

Panchayat Secretary and the Mukhia, it had never expressed its final opinion as with regard to the involvement of only those named officials. The whole idea of this Court was only to get a clear picture as to who are the persons apart from the P.D.S. Dealers who are equally guilty in siphoning of Rs. 321 crore of the government revenue. Thus, if the scheme framed by the Government had fixed the responsibility on the Divisional Commissioner to inspect five schemes in a month, District Magistrate at least ten schemes in a month, Deputy Development Commissioner fifteen schemes in a month, Sub-Divisional Officer fifteen schemes in a month and Block Development Officer twenty schemes in a month by holding monthly inspection, the chapter will not end only by issuing notices on the Deputy Development Commissioner/Block Development Officer/Panchayat Secretary and/or Mukhia.

7. This Court for the time being would not like to say anything further and would expect the Departmental Secretary to file his further supplementary counter affidavit after its being duly vetted by the by the Chief Secretary of the State of Bihar.

8. The Departmental Secretary, who is present in the Court, however, has sought time to respond to this submission of Mr. Rajendra Narain.

9. Such prayer is allowed and he is given four weeks'' time to file another supplementary counter affidavit answer also this issue of culpability of higher officials as envisaged in the government policy dated 28.08.2002 already quoted above but only after making verification from the records as to whether the concerned Divisional Commissioner, District Magistrate, Deputy Development Commissioner, Sub-Divisional Officer and Block Development Officers had conducted the periodical monthly inspection as laid down in the aforesaid government policy decision dated 28.8.2002 already quoted above.

10. It is made clear that nothing said in this order but also even in earlier orders shall come in the way of the Departmental Secretary in fixing the individual responsibility even against the higher officials, namely, Divisional Commissioner, District Magistrate and Sub-Divisional Officer if he finds that they too had failed to discharge their duty as specifically laid down in the government policy dated 28.8.2002.

11. This Court would also expect him to furnish the name of the concerned District Magistrate, Deputy Development Commissioner, Sub-Divisional Officer and Block Development Officer for the period 2003-06 regarding which details have been given in the affidavit filed till today disclosing names of P.D.S. Dealers/ concerned Deputy Development Commissioner/Block Development Officer/ Panchayat Sewak and/or Mukhia.

12. Put up all these cases on 15.4.2015 under the same heading.

13. The Departmental Secretary who is present today shall again remain present in person on that day."

(underlining for emphasis)

55. On 13.4.2015 in the sixth supplementary counter affidavit that was filed by the Government, it had come out to defend the Divisional Commissioners and the District Collectors by taking a plea that their role was only to monitor, supervise and coordinate with the officials of different departments and, as such, they could not be held personally responsible for any loss or shortcoming found in the implementation of the S.G.R.Y. scheme. To that extent, it would be relevant to quote paragraph Nos. 7 to 18 of the sixth supplementary counter affidavit which reads as follows:-

"7. That, at the very outset, it is respectfully submitted that the Divisional Commissioners and Districts Collectors are eyes and ear of the government and are the nodal officer in the field. They have their territorial jurisdiction with regard to monitoring, Supervision and Coordination in respect to various Schemes having been undertaken by different Departments within their territory.

8. That, it is also further stated that the works of various Schemes undertaken by the different departments are to be implemented and carried on by the concerned Department and its Officials as each Department has its own separate hierarchy of Officials to look into the proper implementation. The Divisional Commissioners and District Collectors in such a situation will have only to Monitor, Supervise and Coordinate with the Officials of the different Departments, and in case, any difficulty or non cooperation in the concerned Department is found or for better implementation of the Scheme, it help of the any other Department is required then in such a situation the Commissioners and Collectors of the District have their role in coordinating in such a manner that the Schemes undertaken by different Department are properly implemented. Similarly, the Sub-Divisional Officers have also the same role within his jurisdiction.

9. That, it is also further stated and submitted that as far as the implementation of the various Schemes in proper manner is concerned, it is responsibility of the concerned Department. Thus, it can be easily said that the Commissioners and District Collectors have very limited role to play as indicated above and they cannot be said to be responsible for any loss or shortcoming subsequently found in implementation of the Schemes.

10. That, the deponent states and submits that monitoring of various Schemes and their inspection are done at the level of the Divisional Commissioners and District Magistrates in their concerned areas. So far as the responsibility of Sub-Divisional Officers are concerned, the monitoring and supervision of work of various Schemes is in addition to his established duty as Sub-Divisional Officer. As per the letter No.:- 6987 dated 28.09.2002 as quoted in the order itself, the said officials have been given the responsibility of inspection of at least 5 to 20 Schemes being conducted under SGRY. It has also been found that Divisional Commissioner while inspecting 5 Schemes in one District or Block cannot be

acquainted with the entire Scheme being conducted throughout the Division and by inspecting 5 or 20 Schemes, final conclusion cannot be drawn for all the Schemes going on under different Departments.

11. That, it is also respectfully stated and submitted that the problem for loss of food grains arose only when SGRY Scheme was closed down in 2006, otherwise, the process of lifting of food grains and its distribution was a continuous process on year to year basis.

12. That, in fact, the issue of non-utilization of undistributed food grains arose only after launching of NREGA which provided payment of wages in cash only and not in form of food grains.

13. That, it is also further respectfully stated and submitted that the responsibility of High Officials was only to find out during course of inspection as to whether schemes are implemented in their due spirit or not. They have to oversee the scheme with naked eye. The deponent further states and submit that by the aforesaid letter, the responsibility to the Higher Officials were given keeping in view the guidelines for implementation of various Schemes and it has been found that their responsibility to that extent was limited for only monitoring the scheme during that period. The sole responsibility of utilization of resources was with the implementing agency and not supervising authority.

14. That, the deponent further states and submit that the responsibility of Higher Officials has been re-examined in context with the letter dated 28.09.2002 and the guidelines issued for implementation of the various Schemes and it has been found that their responsibility to that extent was limited for only monitoring the Scheme during that period and they cannot be held responsible for loss to the exchequer.

15. That the Rural Development Department has written letter to the General Administration Department to furnish the list of DM and SDO''S posted during 2003-06 wide letter No.-258185 dated 24.03.15 and response is still awaited. As soon as the said list is obtained by the department the same will be brought on record before this Hon''ble court.

16. That Rural Development Department has written to all the present Division Commissioner and District Collector to furnish the report of the enquiry conducted during 2003-06 by the then Commissioners and Collectors of SGRY Schemes if available. As soon as said report is obtained the same will be brought on the record before the Hon''ble court.

17. That it is humbly submitted that the show cause notices has been issued to the BDO ''s posted at the time of closing of the SGRY scheme. To make the process speedier, the notices are mailed to the head of the office of the present place of posting of the concerned official and also through registered post with the copy of the evidence of the charges leveled against them and same has also been uploaded on the departmental web side rrd.bih.nic.in. Till date notices has

been issue to the officers related to 36 districts. Some notices has been issued to the blocks related Patna district also. It is further submitted that information regarding these above has also been sent to the Information and Public Relation Department to publish it in the daily news papers.

18. That it is further submitted that the process of issuing show cause notices to deputy development commissioner is in progress. After the completing the process of the issuing notices the list of officers will be brought before this hon''ble court."

56. It was along with this sixth supplementary counter affidavit that a consolidated list of 689 Block Development Officers was enclosed and full breakup of quantity of remaining rice with the PDS dealers as also its price to be realized from them was disclosed. Additionally, the Government had produced the evidence of its being serious in realization of loss caused to the government exchequer by way of issuance of a press communique directing all the Deputy Development Commissioners and Block Development Officers to file their show-cause reply as to why they not be subjected to recovery of the part of amount of loss sustained by the government in S.G.R.Y.

57. This Court, however, was not satisfied with the aforesaid statement in the sixth supplementary counter affidavit, inasmuch as, a conscious attempt was being made to shield the Divisional Commissioners, Collectors and Sub-Divisional Officers and thus on 15.4.2015 an order was passed by this Court, relevant portion whereof reads as follows:-

"This Court is literally amazed that a claim is being made by the Departmental Secretary that the order of this Court dated 11.3.2015 has been complied as sought to be explained in the 6th supplementary counter affidavit. If the State does not wants to take action against the Divisional Commissioners, District Magistrates, Sub Divisional Officers who, under the government decision dated 28.8.2002, were specifically assigned duty to supervise the scheme by holding monthly inspection and wants now to fasten responsibility, both criminal and civil, only against the dealers deals in Public Distribution System by at best expanding the horizon, that too in view of the different orders passed by this Court, only against the Block Development Officers and Deputy Development Commissioners, the oblique motive for the same becomes obvious.

The State Government is literally trying to shield the senior officials who have jointly contributed to the organized loot of government money to tune of Rs. 321 crores approximately in the food for work scheme as reported by the Accountant General. As a matter of fact, the First Information Reports also were filed only against the P.D.S. dealers without fixing ay criminal liability even against the Block Development Officers and Deputy Development Commissioners.

This Court, therefore, is of the prima facie view that the matter relating to loss of Rs. 321 crores to the State exchequer needs to be investigated by an independent agency preferably the Central Bureau of Investigation as it involves a number of senior officers holding the post of Division Commissioner, District Magistrate and Subdivisional Officers.

Before this Court would however order for the C.B.I. enquiry, it will give one more opportunity to the State Government to come out with a clear affidavit as to how it proposes to deal with the issue. The Secretary to the Department, who is present in person, must on the next day give complete figure of total number of criminal cases with full details of each of the case block-wise and district-wise on affidavit so that if need be those criminal cases become the base for enquiry by C.B.I. In addition to it, the affidavit shall contains the names of all the Divisional Commissioner, all the District Magistrates, all the Deputy Development Commissioner, all the Sub-Divisional Officers as well as all the Block Development Officers who were posted at different places all over Bihar where the amount of Rs. 321 crores approximately was misappropriated in the period when the scheme was in force i.e. from 28.09.2002 to 31.12.2006.

Mr. Sidharth Prasad, learned counsel for the State, for this purpose prays for and is allowed two weeks'' time to come out with a clear stand of the State Government on affidavit which must be sworn by the Chief Secretary of the State of Bihar himself."

58. The Chief Secretary of the Government of Bihar having regard to the aforesaid order of this Court dated 15.4.2015 had filed 7th supplementary counter affidavit on 5.5.2015 wherein the details of 689 criminal cases in the 38 districts against the PDS dealers were disclosed and in addition to it, the name of 48 Divisional Commissioners, 204 Collectors, 202 Deputy Development Commissioners, 412 Sub Divisional Officer apart from 2640 Block Development Officers was given. The government had also in such affidavit also come out with a suggestion that in view of the alleged involvement of more than 3506 officers and 5994 P.D.S. dealers in the quantified loss of revenue of more than 300 crores of rupees, it was prepared to constitute an independent Enquiry Commission headed by a retired High Court Judge to examine all the issues for fixing individual responsibility, both criminal and civil, with respect to the loss of government money to the tune of Rs. 321 crore approximately as also ways and means for recovery of the said amount both from the P.D.S. dealers and/or officials. The government however had taken a plea that the criminal cases and the certificate proceeding pending against the PDS dealers during the proceedings before the Enquiry Commission should be stayed by this Court only on realization of at least 50% of the amount from them.

59. Thus, when all these cases were heard on 6.5.2015, this Court had found that not only the 5994 PDS dealers including the petitioners of these 141 cases but even a large number of government officials right from the Divisional Commissioner and Block Development Officer numbering to be more than 3500 were under the zone of enquiry for ascertaining the loss caused to the government and that the Government was really serious to recover the amount of loss as quantified by the CAG by fixing individual responsibility on the PDS

dealers as well as the government officials by constituting an independent Enquiry Commission headed by a retired Hon''ble Judge of this Court, the further hearing was adjourned to enable the learned counsel for the petitioners to address to the aforesaid stand taken by the State Government. On that day, this Court had passed the following order:-

"Heard learned counsel for the parties.

Pursuant to the earlier order of this Court dated 15.4.2015, not only the Chief Secretary of the State of Bihar along with Departmental Secretary has appeared in person but 7th Supplementary counter affidavit has been filed duly sworn by the Chief Secretary of the Government of Bihar mentioning wherein apart from enclosing the district-wise list of criminal cases against the PDS dealers, the names of Divisional Commissioner, District Magistrates, Deputy Development Commissioners, Sub-Divisional Officers and Block Development Officers who were posted all over the State of Bihar in the concerned areas for the period 2002 to 2006 has been enclosed in paragraph Nos. 5, 6 & 7. The Chief Secretary has also given a clear indication that the State Government is really concerned for realization of the 321 crores of the loss caused to the Government exchequer and, for that purpose, the Government has decided to constitute a Commission headed by a retired High Court Judge to examine the entire issue. To that extent, paragraph Nos. 5, 6 & 7 of the aforesaid supplementary counter affidavit being relevant is quoted herein below:-

"5. That in pursuance to the order passed by the Hon''ble Court on 15.04.2015, the State Government considered the entire aspect as to how entire issues are to be dealt with and after much deliberation, if the Hon''ble Court so permits, the State Government is willing to constitute a commission headed by a retire Hon''ble Judge of this Hon''ble Court to examine the entire issues and fix the individual responsibilities both Criminal and Civil with respect to loss of Government money to the tune of approximately Rs. 321 Crores and also to suggest ways and means for recovery of the said amount.

6. That the aforesaid commission will examine the involvement of not only the PDS dealers but also the Government Officials who are found responsible for such loss to the Government.

7. That on receipt of the report of the commission the Government will take appropriate action against those who are found to have caused loss to the State Government."

In course of making submissions, Mr. Lalit Kishore, learned Principal Additional Advocate General has also submitted that the State Government is further prepared to stay the criminal case as also certificate proceeding till findings of the Commission with regard to the complicity/liability of the persons concerned, officials and/or P.D.S. dealers is conclusively arrived at.

This Court in its interim order dated 15.10.2014 had made it clear that at least

50% of the certificate amount should be paid by the petitioners, the P.D.S. dealers, in order to continue the order of stay passed by this Court pertaining to impugned certificate proceeding.

Learned counsel for the petitioners now had taken a stand that they would like to address this Court as with regard to the stay of the certificate proceeding/ criminal prosecution against the P.D.S. dealers including the petitioners only on payment of 50% of the demand.

That being so, put all these cases on 15.5.2015 at 2.15 PM for further hearing when the Chief Secretary will no longer be required to remain present in person though the Departmental Secretary shall again remain present on that day."

(Underlining for emphasis)

60. Pursuant to the aforesaid order, when the matter was heard on 15.5.2015, though the proposal of the State Government of entrusting the whole issue of recovery of loss to the government exchequer to an independent Enquiry Commission was accepted by the learned counsel for the petitioners, arguments were made on behalf of the petitioners firstly with regard to the price of rice, inasmuch as, according to the CAG report, the price of rice was only Rs. 630 per quintal whereas the realization of the amount from the PDS dealers was being sought to be made at the rate of Rs. 1370 per quintal and secondly with regard to payment of 50% of amount by the PDS dealers including the petitioners for stay of criminal case/criminal proceeding. In such a situation, the State was directed to file further affidavit under the order dated 15.5.2015, which reads as follows:-

"Heard learned counsel for the parties.

One of the issue being raised by learned counsel for the petitioners as with regard to fixing the liability of the fair price shop dealers including the petitioners of all these cases is the price of rice entrusted to them.

Mr. Satyavrat Verma, learned counsel appearing on behalf of the petitioner in the first case having filed the interlocutory application seeking amendment in the relief has sought to highlight on the basis of a permit issued to the petitioner that the price of rice was Rs. 6.24 paisa and as such the liability now being fixed against the petitioner and other fair price shop dealers @ 13.70 paisa is not only exorbitant but also the device to realize more amount from the petitioner and other fair price shop dealers.

Mr. Lalit Kishore, PAAG, on the other hand has produced a communication of the Food Corporation of India by way of circular dated 25/27.10.2005 notifying the cost of the rice for the year 2005-06 @ Rs. 13.70 per quintal for the common rice, Rs. 14.22 per quintal for the Grade-A rice and Rs. 14.05 per quintal for the Weighted rice.

He has submitted that it is this rate of Rs. 13.70 paisa which has been made the basis by the C.A.G for computing the loss incurred by the Government Exchequer to the tune of Rs. 321 crores approximately.

This part of the statement of Mr. Lalit Kishore, is sought to be controverted by Ms. Sushmita Mishra, learned counsel for the petitioner (C.W.J.C No. 19529 of 2011) on the basis of her own reading of the C.A.G. report that even C.A.G has calculated the loss not @ Rs. 13.70 per kg but only @ Rs. 6.25 per kg.

As this aspect may have implication on the liability of the fair price shop dealers, this Court would give time to the State to examine and also file an affidavit with supporting documents as to what rate the price of rice has to be computed for recovery of the loss computed by the C.A.G to the tune of Rs. 321 crores approximately. The Secretary of the department also must disclose the district wise and case wise details of certificate cases lodged against the P.D.S. dealers all over Bihar with the certificate amount and quantity of Rice against each one of them.

Put up all these cases after summer vacation on 3rd July, 2015 as a tied up matter.

The Secretary to the department who is present today shall be also required to remain present on that date i.e. 03.07.2015.

Let a copy of this order be supplied to Mr. Lalit Kishore, P.A.A.G. for its compliance."

61. In compliance of the aforesaid order dated 15.5.2015, a voluminous 8th supplementary counter affidavit was filed wherein the issue relating to price of the food grains was sought to be explained by taking a plea that the price of rice would be only Rs. 13.70 paise per KG and to that extent, the explanation of the government was as follows:-

"3. That this Hon''ble Court vide its order dated 15.5.2015 was pleased to direct to file an affidavit with supporting documents as to what rate the price of rice has to be computed for recovery of the loss computed by the C.A.G. to the tune of Rs. 321 crores approximately and further to disclose the District wise and case wise details of certificate cases lodged against the P.D.S. Dealers all over Bihar with the certificate amount and quantity of Rice against each one of them.

4. That it is respectfully stated and submitted that the rate of Food grains supplied to the labours and calculated on the BPL rates so the permits issued contains rate of Rs. 6.24 per Kg. on the other hand the price of the Food grains (Rice) as fixed by the Food Corporation of India was Rs. 13.70 Per Kg. The bill of the Food Grains supplied by FCI was raised at the rate of Rs. 13.70 per Kg to the Ministry of Rural Development, Govt. of India. Thus the claim that the liability of the PDS Dealers is being fixed on the higher rate is not correct.

5. That it is further submitted that one of the Learned Counsel namely Sushmita Mishra for the petitioner on the basis of her on reading of CAG report had

submitted before this Hon''ble Court that even CAG has calculated the loss not at the rate of Rs. 1370 per KG but only at the rate of Rs. 6.25 per Kg. In this regard it is respectfully submitted that the report read by the learned counsel was of CAG with regard to the functioning of PRIs in State of Bihar. In column No. 2.12 of this report clearly states that "...........0.51 Lacs Quintal of food grains valuing Rs. 3.19 Crores. (Subsidise rate)................." It means that the calculation was made on subsidise rate. On the other hand as per report of CAG as communicated to Rural Development Department and to the PAC the rate of the Food grains has been calculated at the rate of Rs. 13705 per MT which is equivalent to Rs. 13.70 Per KG."

62. Along with this 8th supplementary counter affidavit, the list of district-wise and case-wise details of the PDS dealers with quantity of rice and its amount was also submitted. Additionally, the Respondents had taken the stand the price of 15,54,959 quintal of rice to the tune of Rs. 1,13,12,67,834/- had been sought to be recovered by initiating 4985 certificate cases and a sum of Rs. 10,58,45,401/- had also been recovered in the pending certificate cases.

63. This Court however was literally amazed with the statistics given by the Respondents, inasmuch as, CAG report had quantified the loss of Rs. 321 crore and recovery being sought to be made through certificate proceedings was to the tune of Rs. 113.12 crores and thus recovery for loss of Rs. 208 crores remained unexplained. This Court, accordingly, had directed the State to file its further counter affidavit by an order dated 3.7.2015, relevant portion whereof reads as follows:-

"2. Pursuant to the earlier order of this Court, the Departmental Secretary is present and has filed a voluminous affidavit explaining the whole aspect. On the basis of such affidavit, Mr. Sidhharth Prasad, learned counsel appearing on behalf of the respondents-State, has pointed out that both from the letter of the F.C.I. and the report of the C.A.G. submitted to the Public Accounts Committee, it becomes absolutely clear that the rate of the rice supplied to the P.D.S. dealer, whose recovery of price is now sought to be made would be @ Rs. 13.70 per Kg. He has also explained that whatever was being contended by the petitioner in C.W.J.C. No. 19529 of 2011 by way of showing ''subsidized rate'', was actually never meant to be the rate of rice for the P.D.S. dealers rather said ''subsidized rate'' was prescribed for the labourers who had to be supplied such rice by way of their remuneration under the scheme of food for work.

3. Learned counsels for the petitioners, having been served with the voluminous affidavit, are not in a position to immediately give their reply and want time to examine this aspect.

4. Mr. Siddharth Prasad has also produced an unaffidavited statement showing that in 38 Districts of the State of Bihar, 4985 certificate cases have been filed to recover the price of 15,54,959 quintals of rice and the total amount involved in such certificate case is to the tune of Rs. 1,13,12,67,834/-. The said computation

also gives detail of the amount already realized to the tune of Rs. 10,58,45,401/- and the computation, therefore, produced before this Court will show that still the Government intends to recover a sum of Rs. 1,00,38,30,604/- from the pending 4985 certificate cases.

5. This Court however is not satisfied with this half baked statistics. It has to be kept in mind that the Government has to aim and strive to recover Rs. 321 crores as reported to be the amount of loss in the report of CAG. Whatever, therefore, is sought to be recovered from the certificate cases would be at best 1/3rd amount inasmuch as a sum of Rs. 208 crores approximately remains out of the purview of certificate cases.

6. This Court, for the time being, will not come to the conclusion that the Government does not intend to recover this amount at all by way of certificate proceedings specially when it has been orally communicated to this Court by Mr. Siddharth Prasad on the basis of oral instruction from the Department Secretary that a sum of Rs. 52 crores approximately has already been recovered.

7. Taking all these aspects into consideration, and also that that this Court cannot shut its eyes to the total loss sustained by the Government to the tune of Rs. 321 crores approximately, as reported by the CAG, it would direct the Departmental Secretary to file a fresh affidavit disclosing the full figure of the amount sought to be recovered, the persons from whom said amount is to be recovered as well as the mode and manner in which the such amount is going to be recovered has been sought to be and/or going to be recovered as well as updated district wise report of pending certificate cases all over Bihar with amount involved therein as well as amount recovered and balance amount which has still to be recovered."

64. In compliance of the aforesaid order dated 3.7.2015, 9th supplementary counter affidavit was filed on 9.9.2015 wherein the Government now came out to say that the figure of loss of 321 crore as quantified by the CAG on verification was found to be only to the tune of Rs. 215 crore which was to be recovered from the 5994 PDS dealers. To that extent, it would be relevant to quote paragraph Nos. 3 to 6 of the 9th supplementary counter affidavit which reads as follows:-

"3. That this Hon''ble Court vide its order dated 03.07.2015 was pleased to direct to file an affidavit in respect of the recovery of Rs. 321 Crores as reported to be the amount of loss in the report of C.A.G. In this regard it is humbly submitted that AG, Bihar has not reported any specific amount of loss in its report. In fact, audit was conducted by AG in view districts only as sample. On the basis of findings of such audit reports prepared by CAG, Rural Development Department directed all the districts to calculate the balance food grains of SGRY and NFFW. Accordingly reports were submitted by all the districts and the same were compiled. This amount was approximately Rs. 321 Crores. Recently on minute scrutiny of the compiled district wise data it has been found that the figures mentioned therein suffers from the defects of miscalculation. Details of left over food grains and its equivalent amount has been collected from all the districts afresh along with recovered amount and the persons from whom the said amount is recovered or is to be recovered and the total loss to the State exchequer is Rs. 2158941663.99 approximately.

4. That the last column of the fresh data sent by all the 38 districts reveal that amount is to be recovered from 5994 dealers details of which is being annexed.

5. That it is further submitted that the quantity of the left over food grains for which no steps has been taken yet for recovery has also been communicated by the districts. In this regard letters have been issued to all the DMs to initiate action for the said amount.

6. That it is further submitted that in order dated 03.07.2015 the court has also pleased to direct to disclose the mode and manner in which the recovery of left over food grains for which process of recovery has not been initiated. From perusal of annexure ZD series it is apparent that the department has decided to initiate certificate cases against all the dealers from whom amount of food grain is to be recovered if till date no such action has been taken and if there is no stay operating in favour of the dealers from competent Court/authority."

65. Having regard to the aforesaid stand of the State Government, this Court, on 9.9.2015, had passed the following order:-

"Heard learned counsel for the parties.

At the outset, the respondents, in compliance of the order of this Court dated 3.7.2015, have filed 9th supplementary counter affidavit wherein three things have been explained. Firstly, it has been said that amount of loss quantified in the CAG report of Rs. 321 crore on verification has been found to be only Rs. 215.89 crore approximately (Rs. 2158941663.99/-). Secondly, it has been said that this amount has to be realized from 5994 dealers all over Bihar out of which 27.09 crore have already been recovered and for the rest of the amount, such recovery has to be made on the basis of certificate proceeding. Finally, it has been conveyed by Mr. Lalit Kishore, PAAG that the State Government in view of the earlier observations made during hearing of these cases by this Court would be prepared to constitute a Commission of three members headed by a retired high court Judge for going into each and every aspect in relation to the dispute, in question, so that recovery of such amount of public money can be made from the erring persons expeditiously.

Strictly speaking, all these writ applications are relating to realization of government revenue and if there has been a certificate proceeding against the petitioners being P.D.S. dealers bound by clause 16 of their licences that could not have been questioned in writ jurisdiction in there writ petitions in view of the law laid down by the Division Bench judgment of this Court in the case of Sawar Mal Choudhary and Others Vs. State Bank of India and Others, .

This Court, however, having taken into account its earlier orders passed in the batch of these writ petitions that there was something more where the officials monitoring these schemes on account of their indiscriminate action or negligence have also, along with the petitioners P.D.S. dealers, have become liable to explain their actions would deem it expedients in the ends of justice to constitute an independent commission to be headed by a retied High Court Judge with two members one each from the retired officers of Indian Administrative Service and Indian Audit and Accounts Service as also suggested and agreed by the State Government for examining and fixing the responsibility amongst P.D.S. dealers and the government officials in relation to the loss caused to the State Exchequer and its recovery from the erring persons.

In that view of the matter, this Court would now like to pass its final order after hearing the learned counsels for all the parties on all the related issues including suggestions if any as with regard to the name of Chairman and Members of the proposed Commission.

Put up all these cases for further hearing on 15.9.2015."

66. Thereafter, arguments of both the parties were heard on 15.9.2015 during which Mr. Lalit Kishore learned PAAG on the basis of instruction received by him had suggested few names of the Chairman of the Enquiry Commission, who was to be assisted by two members, one representing the administrative side and the other for accounts matter being retired I.A.S. and I.A.A.S. officers respectively. Learned counsel for the petitioners had also not objected to the proposed names of Chairman and members of Enquiry Commission.

67. From the pleadings on record in these cases, this Court would find that these 141 cases are only the tip of the iceberg. As a matter of fact these cases are mere elucidation of the enormous problem being faced by the State of Bihar which is duty bound in law to recover the amount of loss quantified in CAG report. There is a serious dispute even in respect of amount of loss in S.G.R.Y. The government in its various affidavits, as noted above, has come out with different varying figures and has even sought to contest the amount of loss as assessed by the CAG. The Enquiry Commission will therefore has to firstly go in this crucial question of amount of loss with reference to the report of CAG.

68. The Enquiry Commission thereafter will be required to examine the issue of recovery of such amount of loss not only from 5994 PDS dealers but also from the erring government officials and/or the concerned person of local authorities namely Zila Parishad, Panchayat Samiti and Panchayat including Panchayat Secretaries and Mukhia of Gram Panchayat who too were associated in the implementation of S.G.R.Y. scheme.

69. As of now whatever has been done by the State Government and/or its officials by way of instituting 689 criminal cases and 4985 certificate cases against the selected lot of 5994 PDS dealers is definitely not going to make the State Government to recover the amount of total loss in S.G.R.Y. quantified by

the CAG, inasmuch as, in the period of almost last nine to ten years, the Government has recovered only 27.09 crore as against its own projected figure of loss of Rs. 215.89 crore whereas the earlier figure of loss as quantified in the report of the CAG was Rs. 321 crore. What is still more significant to be noted here is that till the date of filing of these writ applications, not a single government official was found to be guilty in any manner in the loss caused to the government but when the petitioners and/or intervenor Bihar Administrative Service Association had brought materials to show that the government officials were in fact fully responsible for causing such loss, some halfhearted steps were taken by way of issuance of show-cause notice against the Deputy Development Commissioners/Block Development Officers/Panchayat Secretary.

70. By now, the law is well settled that the public officers have to be also held accountable for their acts of omission and commission. Reference in this connection may be made to the judgment of the Apex Court in the case of Lucknow Development Authority Vs. M.K. Gupta, , in the case of State of A.P. Vs. Food Corporation of India reported in 2004(13) SCC 53 and in the case of Delhi Airtech Services Pvt. Ltd. and Another Vs. State of U.P. and Another, . The apex Court in this regard in the case of Lucknow Development Authority (supra) had approved the following observation of Misfeasance in public office as explained by Wade in his book of Administrative Law

"Even where there is no ministerial duty as above, and even where no recognized tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury."

71. Having held so, the Apex Court in the case of Lucknow Development Authority (supra) had also laid down law as with regard to fixing responsibility on the erring government officials in the following terms:-

"11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socioeconomic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modem society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers'' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries."

72. A similar view was taken by the Apex Court in the case of Food Corporation of India (supra) wherein recovery of costs in the frivolous legal proceeding was sought to be made from the officer concerned for negligence in prosecuting litigation on behalf of the State. The Apex Court in this regard had held as follows:-

"2. In this view, while dismissing the applications seeking condonation of delay, we direct that enquiry be made forthwith by the State Government as to the person responsible for this state of affairs, recover from such person the costs involved in filing these petitions and submit the report to this Court within a period of four weeks."

73. In the case of Delhi Airtech Services (P) Ltd. (supra) relating to the lapses by the public officials in the land acquisition resulting into huge loss to the government exchequer on account of negligence and/or overt act of the officials had also held as follows:-

"213. These authorities are instrumentalities of the State and the officers are empowered to exercise the power on behalf of the State. Such exercise of power attains greater significance when it arises from the statutory provisions. The level of expectation of timely and just performance of duty is higher, as compared to the cases where the power is executively exercised in discharge of its regular business. Thus, all administrative norms and principles of fair performance are applicable to them with equal force, as they are to the Government department, if not with a greater rigour. The well established precepts of public trust and public accountability are fully applicable to the functions which emerge from the public servants or even the persons holding public office.

214. In the case of State of Bihar and others Vs. Subhash Singh, , this Court, in exercise of the powers of judicial review, stated that the doctrine of ''full faith and credit'' applies to the acts 108 done by the officers in the hierarchy of the State. They have to faithfully discharge their duties to elongate public purpose.

215. The concept of public accountability and performance of functions takes in its ambit, proper and timely action in accordance with law. Public duty and public obligation both are essentials of good administration whether by the State or its instrumentalities. In the case of Center for Public Interest Litigation and Another Vs. Union of India (UOI) and Another, , this Court declared the dictum that State actions causing loss are actionable under public law. This is a result of innovation, a new tool with the courts which are the protectors of civil liberties of the citizens and would ensure protection against devastating results of State action. The principles of public accountability and transparency in State action are applicable to cases of executive or statutory exercise of power, besides requiring that such actions also not lack bona fides. All these principles enunciated by the Court over a passage of time clearly mandate that public officers are answerable for both their inaction and irresponsible actions. If what ought to have 109 been done is not done, responsibility should be fixed on the erring officers; then alone, the real public purpose of an answerable administration would be satisfied.

216. The doctrine of ''full faith and credit'' applies to the acts done by the officers. There is a presumptive evidence of regularity in official acts, done or performed, and there should be faithful discharge of duties to elongate public purpose in accordance with the procedure prescribed. Avoidance and delay in decision making process in Government hierarchy is a matter of growing concern. Sometimes delayed decisions can cause prejudice to the rights of the parties besides there being violation of the statutory rule.

217. This Court had occasion to express its concern in different cases from time to time in relation to such matters. In the case of State of Andhra Pradesh v. Food Corporation of India [(2004) 13 SCC 53], this Court observed that it is a known fact that in transactions of Government business, no one would own personal responsibility and decisions would be leisurely taken at various levels.

218. Principles of public accountability are applicable to such officers/officials with all their rigour. Greater the power to decide, higher is the responsibility to be just and fair. The dimensions of administrative law permit judicial intervention in decisions, though of administrative nature, which are ex facie discriminatory.

The adverse impact of lack of probity in discharge of public duties can result in varied defects, not only in the decision making process but in the final decision as well. Every officer in the hierarchy of the State, by virtue of his being ''public officer'' or ''public servant'', is accountable for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with its rigours in the larger public interest and for proper governance."

74. Recently, the Full Bench of this Court in the matter of illegal appointment had adopted the same yardstick for fixing responsibility against the government officers in the case of Ram Sevak Yadav Vs. The State of Bihar and Others, wherein it was held as follows:-

"41. The public power to make appointment on public posts is conferred for public good. The power is given to the officer concerned by the government in trust, that it shall be used and not abused. If the trust is belied, the protection conferred upon a government servant stands denuded. The answerability and accountability is then individual of the officer. The government is duty bound to take appropriate civil/criminal action against the officer. The illegality in the appointment is not a one way street. If there was someone willing to pay a price for the job, there was another waiting to take advantage of the same by fixing a price. It is not without reason that majority of such appointments relate to class III and IV posts. The standard by which the government professes to act is the same standard by which its actions shall be judged. Therefore whenever the government terminates an appointment being illegal, it is the constitutional duty of the government to simultaneously take action against the officials who belied the trust of the government. Those who made hay while the sun shined must see the darker cloudy days also. In Bimal Kishore Rai Vs. The State of Bihar and Others--> it was directed:

"16. In cases where an appointment is found to have been illegally made, the courts quash the appointment and, therefore the appointee suffers the consequence. However, the real guilty person, namely, the appointing authority does scot free. The result is that even though large number of such appointments have been quashed by the courts, the appointing authorities have showed total indifference to the orders passed by the courts, and they continue to make such appointments. It is a well-known fact, so far as this state is concerned, that appointment in majority of cases has to be bought. The ordinary citizen who has concern for the law and morality, must suffer, even if in terms of capability and merit he is far superior to the unscrupulous ones, who managed the appointments. We have, therefore, felt the need to issue some directions in this regard, so that the appointing authorities, who are primarily guilty in such matters, and who exploit the jobseekers taking advantage of their hardship, are equally punished when such illegal appointments are brought to the notice of the government. I, therefore direct that in each and every case where an appointment is said to have been illegally made, in the sense that the rules governing the appointment have not been followed, and the appointment is made by flouting the law in such a manner that the motive of the appointing authority becomes suspect, simultaneously with the cancellation of such illegal appointment, action must be initiated against the appointing authority, and in appropriate cases they should be immediately suspended pending departmental proceedings. If such action is not taken, courts will doubt the genuineness of the reason shown by the government for cancellation of such appointment. I direct that this should be complied with by the government in each and every case where an appointment is sought to be cancelled on the ground that it was illegally made in circumstances which give rise to a suspicion that the appointment was made on extraneous consideration, including money."

42. Court orders are not mere platitudes or idealistic rhetoric incantation. They are meant to be complied with. We therefore direct the State Government to identify the officials concerned with the present appointments and take appropriate action against them in accordance with law and expeditiousness. Let a report be then submitted within eight weeks."

75. Thus, based on the aforesaid authoritative pronouncement, this Court, keeping in view of the government policy decision dated 28.8.2002, is of the view that the Enquiry Commission, as agreed by the government, has to also go into the question of fixing individual responsibility not only against the 3506 officers right from Divisional Commissioners to Block Development Officers whose name and details have already been disclosed in the various affidavits filed by the government but also the concerned person of Gram Panchayat/ Panchayat Samiti/Zila Parishad including Panchayat Secretary and Mukhia.

76. As noted above, from the facts in these five writ applications itself, the P.D.S. dealers claims that they had virtually been compelled to lift the stock of rice under S.G.R.Y. and distribute only as per the restriction given in the requisitions and/or permits issued by the authorities at the level of Panchayat, Panchayat Samiti and the Zila Parishad and that they had been also reminding the authorities of the deteriorating condition of the rice. The respondent officials however have come out to say that they were P.D.S. dealers and they were aware as to how the food grain has to be kept in terms of Clause 16 of the terms and conditions of the PDS licence and that if the rice was getting rotten, they could have very well kept on revolving and replacing the same by distributing it and keeping the new rice received by them in their stock.

77. What is more important to be seen here is that the rice of S.G.R.Y. entrusted to PDS dealers had not become rotten in a day or a month or a year. If these rice were given to the P.D.S. dealers in the different years while S.G.R.Y. scheme was being implemented and these schemes as per government circular were to be monthly monitored right from the Divisional Commissioner to the Panchayat, Block Development or Panchayat Sevak and if no one had cared to see the plight of the P.D.S. dealers with regard to such claim of rice being rotten on account of its being kept in their stock awaiting the issuance of requisition permits for their distribution to the labourers, can it be said that the P.D.S. dealers alone had

become liable for the recovery of the entire loss sustained by the Government to the tune of Rs. 321 crore as per CAG and Rs. 215 crore as per the State of Bihar?

78. Learned counsel for the petitioners in fact have placed reliance on a judgment of this Court in the case of Yamuna Nayak @ Jamuna Nayak Vs. The State of Bihar and Others, wherein it was held that the petitioner PDS dealer was to only store rice for distribution through the agent to the labourers under S.G.R.Y. scheme and, as such, when they had no liberty to sell the rice, they could not have subjected to recovery of the price of rice. In this regard, emphasis has been given on the observation and findings recorded in paragraph Nos. 7, 8 & 9 which, according to the learned counsel for the petitioner, would also cover their cases. Let it be noted that in the case of Yamuna Nayak (supra), it was held as follows:-

"7. The counter affidavit does not disclose that the Rural Development Authorities after 2002 and till 6.8.2009 issued any letter to the dealers to sell the rice in question or to return the rice to the godown from which it was lifted and by the impugned notice want to get over this lacunae on their part. The role of the P.D.S. dealer in this particular scheme was that of a store keeper. The dealer could not have sold the rice without permission nor could utilize it for any other purpose without there being any authorization by the competent authority. Rice being perishable item must have deteriorated to the extent that it cannot be declared to be fit for human consumption.

8. In such circumstances the notice to the dealers to sell the rice and deposit the money with the Block Development Officer and that too at the current market rate is unreasonable and unfair. The carelessness, if at all, appears to be on the part of the Rural Development Authorities, as they have not explained or discharged the duties which were assigned to them by the Central Government.

9. In the circumstances the order as contained in Annexure-1, dated 6.8.2009 is quashed. The matter may be examined by the respondent Secretary of the Department for fixing the responsibility to the persons entrusted with the scheme."

79. This Court, however, would immediately clarify that the individual facts of the case of Yamuna Nayak (supra) or the pleadings made therein cannot cover the case of all 4985 PDS dealers, inasmuch as, from the facts noted to these five cases alone, it would become clear that the allotment order of rice to the PDS dealers had contained certain terms and conditions including the provision for payment of transportation/handling/storage expenses. Yet again, from the facts of these fives case alone, it would also transpire that the petitioners when asked to make payment of the balance amount of rice left with them had also made certain payment. All these aspects noted herein were not noticed in the case of Yamuna Nayak (supra) and, therefore, this Court would not exonerate the petitioners and/or PDS dealers but then there is also individual defence differing from the case to case which has to be taken into account while fixing the

individual liability for payment of balance amount of price of rice for which they have been subjected to either demand notice or certificate proceedings. This job of factual analysis of each of the PDS dealers including the petitioners cannot be done by this Court in exercise of power under Article 226 of the Constitution of India and, hence, the necessity of an independent Enquiry Commission specially when the Government before this Court had repeated tried to give a clean chit to the Divisional Commissioners, Collectors and Sub Divisional Officers.

80. All these aspects therefore will require some fact finding by way of leading of evidence. The deck for such enquiry now has been cleared in the form of availability of the name of PDS dealers with quantity of rice allotted to them and the amount which is said to be realized from them on account of their remaining undistributed in the stock and ultimately making them liable either by way of demand notice or certificate proceeding.

81. As noted above, more than 689 criminal cases have also been filed apart from institution of 4985 number of certificate proceedings which have caused havoc with the P.D.S. dealers including the petitioners who have either voluntarily or under coercion have deposited the amount as also shown in the pleading portion of these writ applications.

82. There is in fact also a serious dispute with regard to rate, inasmuch as, the P.D.S. dealers had been claiming Rs. 6.30/- per Kg. as the rate of the rice and questioning the rate being charged by the authorities is at Rs. 13.70 paise. This aspect of the matter, therefore, shall also be conclusively decided by the Enquiry Commission.

83. It thus becomes clear that an enormous task is yet to be done for realization of the public revenue. The CAG has quantified the loss to the tune of Rs. 321 crore whereas the State Government comes out to say that the loss is only to the tune of Rs. 215.89 crores approximately. The State Government wants to realize the amount of 215.89 crores approximately from the PDS dealers without taking into account that if indiscriminate distribution of rice was made in favour of the PDS dealers by the officials without monitoring the scheme in terms of the government policy dated 28.8.2002, it cannot effectively recover the amount of loss caused to the government.

84. In such a situation, constitution of a high level independent Enquiry Commission headed by a retired Hon''ble High Court Judge as already suggested and agreed by both the parties is also found to be absolutely necessary by this Court which can go into all the related aspects arising in respect of recovery of loss of government money in S.G.R.Y. as found in the report of C.A.G.

85. Recourse to constitution of high level expert enquiry committee has been taken by the Apex Court and this Court time and again where the vexed question of fact and law is to be determined in the light of the evidence adduced by the parties. As a matter of fact, when this Court has found it virtually impossible to decide the dispute in absence of all the relevant materials, it would find full

justification to constitute a Committee and refer the dispute for collection of the relevant data or facts with the help of whom the dispute can be resolved. Reference in this connection may be usefully made to the observation and direction given by the Apex Court in the case of Gulam Abbas and Others Vs. State of U.P. and Others, , Rural Litigation and Entitlement Kendra, Dehradun and Others Vs. State of U.P. and Others, , in the case of Rural Litigation and Entitlement Kendra, Dehradun and Others Vs. State of U.P. and Others, , M.C. Mehta and Another Vs. Union of India (UOI) and Others, , in the case of Vishal Jeet Vs. Union of India and others, , in the case of Paramjit Kaur Vs. State of Punjab and Others, and in the case of A.P. Pollution Control Board Vs. Prof. M.V. Nayadu (Retd.) and Others, .

86. As a matter of fact, in the case of Suresh Chandra Sharma Vs. Chairman, Upseb and Others, , the Apex Court as with regard to the allegation of large scale theft of electricity and irregularity in the functioning of the Uttar Pradesh State Electricity Board had constituted a high power committee to enquire into the allegation and submit a report. Even recently, a Division Bench of this Court of which I also was a member in the case of The State of Bihar & Ors. Vs. Sohan Roy reported in 2010(2) PLJR 397 as with regard to the illegal appointment in the Health Department had constituted a One Man Committee to look into the various facets of nature of appointment of the writ petitioners with a view to adjudicate the legality of their appointment and continuance in service.

87. Thus, in order to go to the root of the matter, this Court as agreed between the parties would constitute a Three Men Enquiry Commission headed by the Hon''ble Justice Uday Sinha, a retired judge of this Court, who shall be assisted by two members, namely, Mr. Sanjay Singh, a retired I.A.S. Officer and Mr. Arun Kumar Singh, an officer of Indian Audit and Accounts Service.

88. The aforesaid Enquiry Commission shall look into all the various facets of the supply and distribution of the rice, in question, under S.G.R.Y. through the P.D.S. dealers including the writ petitioners with a view to primarily fix the responsibility on the P.D.S. dealers vis-a-vis government officials in the matter of recovery of the price of rice which could not be distributed under the S.G.R.Y. Scheme and remained with the P.D.S. dealers, quantified by the C.A.G. to the tune of Rs. 321 crore and by the Government of Bihar to the tune of Rs. 215 crore.

89. The Enquiry Commission for this purpose shall also go into the following aspects:-

(i) The quantum of actual loss sustained to the government, in S.G.R.Y.

(ii) The terms and conditions of allotment of rice to P.D.S. dealers under S.G.R.Y. for its distribution to the beneficiaries.

(iii) The manner of allotment of rice to the PDS dealers.

(iv) The payment of transportation/handling/storage charges to PDS dealers.

(v) Price of rice on which recovery has to be made.

(vi) Whether 5994 PDS dealers alone will be responsible for recovery of the aforesaid loss or even the officials entrusted with the task of regulating and monitoring the SGRY scheme including 48 Divisional Commissioners, 204 Collectors, 202 Deputy Development Commissioners, 412 Sub Divisional Officer apart from 2640 Block Development Officers as well as concerned person of Zila Parishad/Panchayat Samiti/Gram Panchayat including Panchayat Secretary and Mukhia.

(vii) The Enquiry Commission in fact will also have to fix the quantum of amount of recovery to be made from the PDS dealers and/or officials so that not only 5994 PDS dealers being subjected to at least 689 criminal cases and 4985 certificate proceedings alone are not made liable in isolation unless the Enquiry Commission comes to a conclusion that the Government officials had discharged their duty religiously in the matter of monitoring and supervising SGRY scheme all over the State.

(viii) The Enquiry Commission may also go into any other related aspect for ensuring recovery of the total loss of revenue caused to the state exchequer in the execution and implementation of the S.G.R.Y. scheme all over Bihar in the period 2002 to 2006.

(ix) The Enquiry Commission shall also be free to make any interim as also final recommendation for recovery of entire loss of government revenue under S.G.R.Y. scheme.

90. The Enquiry Commission shall hold its sitting in the building situated in House No. 42, Harding Road, Patna or any other government building to be notified by the Secretary, Rural Development Department on or before 31.10.2015.

91. The State Government shall also provide all the facilities including a Secretariat with its Secretary, namely, Sri Sanjay Kumar Singh, the Deputy Secretary in the Department of Food and Civil Supplies.

92. The Chairman of the Enquiry Commission shall be provided with all the facilities in terms of salary and perks that are made available to the sitting judge of a High Court minus amount of his monthly pension.

93. The Chairman of the Enquiry Commission shall be free to utilize services of a stenographer of his own choice who shall be paid his monthly remuneration by the State Government.

94. Similarly, two members, being the retired government officials shall also be provided with salary and perks that is made available to the officer in the rank on the post from which they have retired minus the amount of their monthly pension.

95. The Three Men Enquiry Commission shall start functioning from 2nd

November, 2015 and after deciding the manner of its functioning, it shall also proceed to conduct hearing district-wise by issuing a notice in the newspaper containing the name of the P.D.S. dealers of that district as also the officials who are found to be posted on different posts right from the Divisional Commissioner to the Block Development Commissioner/Panchayat Secretary of that district. It is in this way that for each of the district, the Three Men Enquiry Commission shall judge the individual responsibility of the P.D.S. dealers and/or government officials or both and on the basis of the evidence to be adduced by them.

96. It will be always open for the P.D.S. dealers including the writ petitioners as also the concerned government officials to file their separate applications before the Enquiry Commission explaining their cases as also adduced evidence before the Enquiry Commission on or before 30.11.2015 or by any further extended period under the order of the Enquiry Commission.

97. The Enquiry Commission in course of district-wise hearing shall afford an opportunity to both the P.D.S. dealers as well as officials of the State Government either in person or through authorized counsel.

98. The Enquiry Commission irrespective of filing of such individual application by the P.D.S. dealers shall process to conduct hearing on the photocopy of the complete records of these five writ applications which shall be made available to the Enquiry Commission by the Secretary of Rural Development Department.

99. The Enquiry Commission shall be assisted by Mr. Lalit Kishore, P.A.A.G. and Mr. Sidharth Prasad, AC to PAAG on behalf of the State Government who have appeared before this Court in course of hearing of the batch of the writ petitions.

100. The Secretary of the Rural Development Department and for that purpose any other authority of the State Government if required to produce any record or evidence before the Enquiry Commission shall be bound to produce those records for smooth functioning of the Enquiry Commission.

101. This Court hopes and believes that the proceeding before the Enquiry Commission shall be conducted on day to day basis and concluded within a period of six months commencing from 2.11.2015 in course of which the Enquiry Commission shall be at liberty to also dispose of the matter district-wise fixing the liability of the P.D.S. dealers and/or the concerned government officer or representative of local authority i.e. Zila Parishad or Panchayat Samiti or Panchayat including Chairman, Zila Parishad Pramukh of Panchayat Samiti or Mukhia of Grma Panchayat.

102. As noted above, under the different orders of the authorities as well as interim orders passed by this Court, certain amount of payment has already been paid by the petitioners P.D.S. dealers for staying of the further proceedings of pending certificate cases.

103. Keeping all these aspects into consideration and that the exact liability of the P.D.S. dealers is yet to be determined, this Court, keeping in view that as of

now only Rs. 1,13,12,67,834/- is sought to be recovered from PDS dealers as against quantified loss of Rs. 215.89 crores calculated by the State Government (see 8th supplementary counter affidavit and Para-64 of this judgment) and almost only one third amount of loss of Rs. 321 crores quantified by CAG as of now has been passed on PDS dealers, would direct that such of the P.D.S. dealers who would deposit 50% of the total amount in the pending 4985 certificate proceeding and/or 689 criminal cases will have the protection of stay of their certificate/criminal proceeding till the final adjudication made by the Enquiry Commission and consequential revision of the amount of certificate dues, if any.

104. In order to enable the P.D.S. dealers including the petitioners to get stay of the certificate proceeding, the amount of deposit of 50% of the certificate amount can be paid in three equal monthly installments.

105. Upon receipt of the final report of the Enquiry Commission or part thereof being district-wise, the amount involved in the certificate proceeding if it is varied in the case of the petitioners and/or other P.D.S. dealers, the same shall be accordingly reduced or enhanced.

106. It is however made clear that if any P.D.S. dealers would be found to have paid any amount in excess to the liability of amount fixed by the Enquiry Commission, the same shall be refunded to the P.D.S. dealers within a period of three months from the date of report of the Enquiry Commission but, on the other hand, if it is found that further amount beyond 50% is payable the same shall be deposited by the PDS dealers failing which the same shall be recovered through pending and/or fresh certificate proceedings.

107. If the Enquiry Commission also finds such amount to be recovered from the concerned Government officials and they fail to deposit within three months, it will be open for the Government to recover the same from their payable salary/ retirement dues of those officials as per the provisions made in the Bihar Government Servant (Classification, Control & Appeal) Rules and/or Bihar Pension Rules.

108. With the aforementioned observation and direction, these applications along with other batch of cases listed today, 141 in number, are disposed of.