

(2004) 03 BOM CK 0072

In the Bombay High Court

Case No : Criminal Application No. 91 of 2004 in Criminal Writ Petition No. 865 of 2003

Ranjitsing Brahmajeetsing Sharma and Additional Director
General of Police

APPELLANT

Vs

Shri Kisan Baburao Hazare alias Anna Hazare and Others

RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

All India Services Act, 1951 — Section 2, 2A, 3
Bombay Police Act, 1951 — Section 2(11), 21, 22, 23(1), 4
Constitution of India, 1950 — Article 14, 142, 21, 226, 32
Criminal Law (Amendment) Act, 1952 — Section 7(2)
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 156(1), 2, 33
Penal Code, 1860 (IPC) — Section 120B, 255, 259, 260, 263A
Police Service (Cadre) Rules, 1954 — Rule 8(1), 9

Citation : (2004) 3 MhLj 760

Hon'ble Judges : C.K. Thakker, C.J.; D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Shirish Gupta, Additional Solicitor General, V.R. Manohar, Usha Dahannkar, Shyam Dewan, Akhila Kaushik and S. Garud, instructed by Khaitan Jayakar, for the Appellant; Majeed Memon, P.A. Memon and Sebastian for Respondent No. 1, Gulam Vahanvati, General, Rai Rodrigues, Special Counsel, B.R. Patil, Public Prosecutor and Raj Thakare, Assistant Public Prosecutor for Respondent No. 2, B.R. Nanjudaiah and B.V. Phadnis, for the Respondent

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.

The reliefs sought:

1. Ranjitsing Brahmajeetsing Sharma, formerly Commissioner of Police, Mumbai and presently in detention at the Yerawada Central Prison, Pune, in pursuance of the investigation by the Special Investigating Team in the fair stamps" case has moved this application. The reliefs which he seeks are: (a) The recalling of an order dated 24th September 2003 passed by a Division Bench of this Court to

which one of us (Chief Justice C. K.Thakker) was a party; (b) The setting aside of a Government Resolution dated 26th September 2003; and (c) An injunction restraining Shri S.S. Puri from exercising the powers of the Director General of Police and to injunct him from being part of the Special investigating Team ("SIT") for conducting any investigation in respect of the fake stamps" case including Crime Register No. 135 of 2002 of the Bund Garden Police Station, Pune. The Applicant has been impleaded as a party to the Writ Petition 865 of 2003, and is the Sixth Respondent thereto.

2. The Supreme Court, while hearing a batch of Petitions under Article 32 of the Constitution of India and Criminal Miscellaneous Petitions associated therewith, clarified by an order dated 3rd February 2004 that "the High Court of Bombay is not precluded from considering Criminal Application No. 91 of 2004, pending before it". In view of this order passed by the Supreme Court, we have proceeded to hear final arguments on behalf of all the contesting parties to the Criminal Application that falls for consideration before the Court

3. Before we proceed to elaborate upon the issues which arise before the Court, we begin this judgment by adverting to two orders that were passed by a Division Bench of this Court on 4th September 2003 and on 24th September 2003. The Applicant before this Court has made a statement through Learned Counsel appearing on his behalf in these proceedings that he accepts the correctness of the order that was passed on 4th September 2003 and seeks to impugn the validity only of the subsequent order that was passed by the Court on 24th September 2003. In order to place the controversy in perspective, it would be necessary to advert to both the orders.

ORDER DATED 4TH SEPTEMBER 2003:

4. This order of the Court is prefaced with the statement that the Court perused the affidavits filed before it by (i) Mr. U.K. Mukhopadhyay, Additional Chief Secretary, Home Department, Government of Maharashtra; (ii) Mr. Sanjay S. Barve, Additional Commissioner of Police, Economic Offences Wing; and (iii) Mr. O. P. Bali, Director General of Police. Before the Court took up the matter on 4th September 2003, several orders were passed between 23rd July 2003 and 27th August 2003 to which a reference would be made later. The order of the Court dated 4th September 2003 records that the Advocate General "fairly stated that the matters may be kept pending and further interim directions may be issued". There was a submission before the Court by Ac Advocate General that the Court may direct the Respondent- State to strengthen the SIT and to enlarge the scope of the work to be undertaken by the SIT so as to include the cases referred to in the affidavit of the Additional Commissioner- of Police. On behalf of the Public Interest Petitioners a submission was made before the Court that the investigation should not be an eye-wash, making a scapegoat of lower ranked officers while ignoring the illegal acts of high ranking officers. The following directions were accordingly issued by the Court:

- "(i) The State of Maharashtra will strengthen Special investigation Team (SIT) by appointing more officers so that investigation may be expedited;
- (ii) The SIT will inquire into other cases to which reference has been made in the affidavit of Mr. Barve in Telgi's case;
- (iii) It is agreed by all the parties that such investigation may be conducted under the supervision of Mr. S.S. Puri, retired Director General of Police;
- (iv) In view of the consensus arrived at between the parties, let such investigation be done under the supervision of Mr. S.S. Puri retired Director General of Police;
- (v) SIT will make investigation and report about culpability of the officers), however his/their rank may be;
- (vi) SIT will also make investigation and report about culpability of officers of Private Companies as well as Public Sector Undertakings;
- (vii) SIT to take appropriate steps/actions for getting transcript of tape-recorded conversation produced in criminal court in the State of Karnataka;
- (viii) Additional affidavits to be filed stating as to the steps taken against Mr. Jadhav, Mr. Gaikwad and Mr. Nemade;
- (ix) Further status report to be submitted within a period of four weeks;
- (x) Mr. Puri, retired Director General of Police, be paid an appropriate amount of honorarium."

ORDER DATED 24TH SEPTEMBER 2003:

5. On 24th September 2003, this Court on the oral prayer of the Advocate General issued the following additional directions:

- (xi) In order to strengthen the Special Investigation Team (SIT). Mr. S. S. Puri will exercise all powers exercisable by Director General of Police, as if he is in service;
- (xii) Mr. S. S. Puri is at liberty to appoint such other staff, in addition to the existing staff, as may be decided by him;
- (xiii) Mr. Puri and his team will carry out the investigation of offences in respect of which the work has been entrusted to him and shall file appropriate progress report in this Court;
- (xiv) The status report which was to be submitted within four weeks as per direction No. (iv) of the order dated September 4, 2003 will now be submitted on 15th October 2003."

The order of the Court of 24th September 2003 is ex-facie an order passed in continuation of the earlier directions dated 4th September 2003. The Court has

passed directions which are in addition to those which were passed earlier at the previous hearing.

Government Resolution dated 26th September 2003:

6. In implementation of the directions that were issued by this Court on 24th September 2003, the Government of Maharashtra in the Home Department issued a Government Resolution on 26th September 2003 implementing those directions. The first two paragraphs of the Government resolution contain the following recitals:

"Vide Government Resolution No. C11 07/2002/389/Pol-12, dated the 2nd November, 2002, Government of Maharashtra has created Special Investigation Team (SIT) to make in-depth investigation and follow-up action in bogus stamps case. The SIT is headed by Shri S.K. Jaiswal, Deputy Inspector General of Police, S. R. P. F., Mumbai. Accordingly, the SIT has been investigating band Garden Police Station C.R. No. 135/2002.

2. While hearing the Criminal Writ Petition No. 865/2003 along with other Public interest Litigation, the High Court of Mumbai, by its order dated 6th August, 2003, had directed Shri Sanjay Barve, Additional Commissioner of Police, Economic Offence Wing, Mumbai to file status report regarding cases registered against A. K. L. Telgi and his associates from 1995 onwards in Mumbai."

The Resolution thereafter sets out the gist of the directions of this Court dated 4th and 24th September 2003 and provides thus:

"In modification of Government Resolution of even number dated the 2nd November 2002 and pursuant to the above directions of the High Court, the following resolution is passed:

(i) In order to strengthen the Special Investigation Team (SIT), it will now consist of Shri Subhodh Jaiswal, Deputy Inspector General of Police, SRPF, Mumbai and Shri Sanjay Barve, Additional Commissioner of Police, EOW, Mumbai and such other staff in addition to existing staff as may be decided by Shri S.S.Puri, Retired Director General of Police.

(ii) The Investigation of strengthened the SIT will be conducted under the supervision of Shri S. S. Puri, Retired Director General of Police.

(iii) Shri S. S. Puri, Retired Director General of Police will exercise all powers exercisable by the Director General of Police as if he is in service in terms of the above mentioned High Court Orders in respect of Stamps scam cases in Maharashtra.

(iv) Shri Puri will be provided the required staff, appropriate place for his office, machinery, including vehicle etc. by the DGP;

(v) Orders regarding payment of honorarium to Shri Puri will be issued separately."

7. Submissions:

(i) The Applicant specifically stated through Counsel in the course of these proceedings that what he seeks is an order recalling the subsequent directions that were issued on 24th September 2003 and an order setting aside the Government Resolution dated 26th September 2003. There is no challenge either to the jurisdiction of the Court to issue the directions that were issued on 4th September 2003 or to the actual directions that were issued on that date. The submission which has been urged before us is that the directions issued on 24th September 2003 are per incuriam. Counsel urges that these directions are but an "innocuous mistake in ignorance of the relevant provisions of law" and if the relevant statutory provisions had been brought to the attention of the Court, these directions would not have been issued. The substance of the grievance of the applicant is that by and as a result of Clause (xi) of the additional directions issued on 24th September 2003, the Court has directed that Mr. S.S. Puri will exercise all powers exercisable by the Director General of Police as if he is in service. The submission is that on that date Mr. Puri was not in service and the order of the Court reflects this fact. According to the Applicant, as a result of the directions issued by this Court, there would be two Directors General of Police in the State of Maharashtra on and from 26th September 2003 and that this would be contrary to the provisions of the All India Services Act, 1951 read with the Indian Police Service (Cadre) Rules, 1954 and the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955 which provide that for the State of Maharashtra there shall be one post of Director General and Inspector General of Police. Section 2 of the All India Services Act, 1951, defines the expression "an All India Service" to mean the services known as the Indian Administrative Service, the Indian Police Service, or any other service specified in Section 2-A. Section 3 empowers the Central Government to make rules for the regulation of recruitment and conditions of service of persons appointed to an All India Service. Rule 2(1)(a) of the I.P.S. (Cadre) Rules, 1954 defines a "Cadre Officer" to mean a member of the I.P.S. Rule 8(1) prescribes that save as otherwise provided in the rules, every cadre post shall be filled by a cadre officer. Rule 9 lays down that a cadre post shall not be filled up by a person who is not a cadre officer except in certain eventualities such as, if there is no suitable cadre officer and if the vacancy is not likely to last for more than three months. The Schedule to the I. P. S. (Fixation of Cadre Strength) Regulations, 1955 lays down that in the State of Maharashtra, there would be one post of Director General and Inspector General of Police. The submission that has been urged is that by directing that Shri S.S. Puri will exercise all powers exercisable by the Director General of Police as if he is in service, the Court has made an additional appointment of a Director General of Police in violation of these statutory provisions and the rules.

(ii) The next submission of the Applicant is that in the exercise of the jurisdiction under Article 226 of the Constitution, the High Court cannot overstep limits prescribed by statute. The Code of Criminal Procedure, 1973 defines the

expression "investigation" in Section 2(h) and the expression officer-in-charge of a police station" in Section 2(o). Relying on the provisions of Sections 33, 154 and 156 of the Code, it has been submitted that the order which has been passed by the Court trenches upon the statutory machinery which has been envisaged in the Code for investigation of offences. The directions which were issued on 24th September 2003, it is urged, violate the scheme for the investigation of offences under the Code of Criminal Procedure and must be recalled

8. The assumption and exercise of jurisdiction by the Court:

(i) The circumstances placed before the Court:

In the present case, as indeed in many others, submissions on law cannot be evaluated as if they were disembodied entities standing aloof from facts. The assumption of jurisdiction by this Court in the batch of proceedings under Article 226 of the Constitution has to be assessed in the context of the circumstances which were brought before the Court to constitute the foundation for the invocation and exercise of jurisdiction.

9. Writ Petition 865 of 2003 was instituted in the public interest for invoking the jurisdiction of this Court under Article 226 of the Constitution. Shri Anna Hazare, the Petitioner before the Court invoked jurisdiction on the basis of the following averments:

10. On 7th June 2002, the Pune Police arrested three persons in possession of counterfeit stamps and registered a case, C. R. 135/2002 under Sections 120-B, 255, 259, 260, 263-A, 263B, 471, 472, 474 and 34 of the Penal Code at Bund Garden Police Station, Pune. It was alleged that in the course of investigation, the Pune Police carried out searches at several places including Pune, Mumbai and Bhiwandi and seized a huge cache of counterfeit stamps, stamp-papers and printing machinery worth over Rs. 2,100 crores. The Pune Police filed the first chargesheet on 3rd September 2002, by which 20 persons were chargesheeted and 19 were shown as wanted accused. The records, it was alleged, showed that the crime was committed by an organised crime syndicate run by Abdul Karim Telgi. The criminal activities of this syndicate, it was stated, started several years ago; they stretched across several States in India and as many as 27 cases had been registered against Telgi and his associates in the country. The Petition contains an averment that Mr. S.M. Mushrif, the Seventh Respondent, who as Additional Commissioner of Police (Crime), Pune supervised the investigation had levelled serious allegations against Senior Police Officers including the Applicant, R.S. Sharma, in letters dated 16th October 2002 and 23rd October 2002 inter alia addressed to the Additional Chief Secretary to the Government of Maharashtra. The Government of Maharashtra thereupon constituted a Special investigating Team (SIT) on 2nd November 2002 headed by Shri S.K. Jaiswal, Deputy Inspector General of Police, S. R. P. F., Mumbai, to make an in-depth investigation and for follow up action in the bogus stamp papers" case. The SIT,

it was stated, submitted its repeat sometime in April 2003. According to the Petitioner, the SIT report describes "the dubious conduct of the Pune Police in such an important case of counterfeit stamps as an act of collective irresponsibility". According to the Petitioner, the SIT report showed that the Police had received a communication from the Karnataka Government to the effect that while monitoring and recording telephonic conversation of A. K. L. Telgi, the Karnataka Police received information that M.C. Mutani, Assistant Commissioner of Police, Pune had accepted a bribe of Rs. 15 lakhs and had struck a bargain with Telgi for the deletion of the names of his wife and certain others from the chargesheet. According to the Petitioner, the SIT report indicates serious irregularities and lapses on the part of the Applicant, R.S. Sharma, who was then Commissioner of Police, Pune. it was alleged that though the applicant was aware of the dubious credentials of A.C.P. Mulani, the latter was included in the SIT formed in September 2002 even after Mulani was transferred by the Government on 4th September 2002 from the City of Pune upon receipt of information from the Karnataka Government. The Petitioner averred that though the SIT report had made a severe indictment of the Applicant herein, on 24th April 2003, the then Deputy Chief Minister of Maharashtra, (Shri Chhagan Bhujbal) held a press conference in connection with the Action Taken Report and had given a clean chit to the Applicant. The allegations which were levelled by Shri S. M. Mushrif were thereafter confirmed and reiterated in the Jaiswal Report as well as in the notings by Shri O. P. Bali, Additional Director General of Police (Law and Order). Though an enquiry in a serious matter was pending against the Applicant, he was appointed to the coveted post of Commissioner of Police, Mumbai with effect from 1st January 2003. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution contending that there are substantial reasons to believe that police officers who had carried out investigation in the counterfeit stamps case had been irresponsible and negligent and had not performed their duties in accordance with law. It was alleged that a section of highly placed I. P. S. Officers in Maharashtra had indulged in corrupt practices and actively connived with criminal activities of a nature and magnitude that was liable to derail the Indian economy. Stringent punitive action was, it was urged, consequently warranted. The Petitioner has, therefore, contended that this is a case involving serious criminal offences, spreading over several years, and relating to counterfeit stamps and stamp papers which deprived the public exchequer of thousands of crores of rupees. The operation, it was alleged, was known to officers in the higher echelons of the State of Maharashtra, despite which they had deliberately or otherwise failed to take action against the culprits. There was strong prima facie evidence that some of the officers responsible for the investigation had bargained with the main culprit and collected a vast amount of money by misusing their power and offices. These corrupt practices of officers who were deputed to carry on investigation had subverted the integrity of the administration of justice and the rule of law. The Action Taken Report published by the then Deputy Chief Minister was alleged to be an eye-wash and in these circumstances, the Court was urged to intervene in the matter in order

to ensure that the faith of the common man in the administration of justice is not destroyed.

11. The directions which were sought in the petition before the Court included (i) Production of the report submitted by the SIT, headed by Shri S. R. Jaiswal; (ii) Production before the Court of the Action Taken Report; (iii) A direction to the State of Karnataka to produce the records of the telephone conversations of A. K. L. Telgi, the prime accused in the stamp scam case which allegedly indicated the receipt of Rs. 15 lakhs by A. C. P. Mulani; (d) Production before the Court of the report submitted by Mr. O. P. Bali, the then Additional Director General of Police; (e) A direction to the State of Maharashtra to take deterrent punitive action against guilty Police Officers in accordance with the recommendations of the SIT report; and (f) Initiation of civil and criminal action against those Police Officers who were indicted in the SIT report.

(ii) Proceedings after July 2003:

12. A Division Bench of this Court issued notice in Writ Petition 865 of 2003 on 2nd July 2003 and in companion Writ Petition 705 of 2003 and Public Interest Litigation 58 of 2003. On the request of the Advocate General of Maharashtra, the Court granted three weeks" to the State Government to file its reply. The batch of matters appeared before the Court on 23rd July 2003 at which stage the Court had before it an affidavit filed by the Additional Chief Secretary in the Home Department along with a status report dated 18th July 2003. The Division Bench directed the State Government to file a farther affidavit keeping in view several allegations made in the Petitions before the Court, particularly in Writ Petition (St.) No. 26331 of 2003 wherein it was stated that despite the fact that a complaint had initially been filed as early as on 31st July 1995, no action had been taken for six years. There were, therefore, specific allegations of inaction on the part of the investigating agencies. On 6th August 2003, the batch of matters again came up before the Division Bench and a further affidavit was filed by the Additional Chief Secretary in the Home Department. The Division Bench noted that particulars had been supplied as regards cases and the action taken between 1995 and 2002, The State Government stated before the Court that in view of the on going investigation by Bond Garden Police Station and the other cases registered against A.K.L. Telgi and his associates since 1995, "the State Government would not hesitate to strengthen the Special investigation Team so as to link the investigation of all these cases to unearth the scam and take it to its logical end." Hence, it would be necessary for the Court to emphasize that almost since the inception of the litigation before this Court, the Government of Maharashtra appearing through the Advocate General did not adopt an adversarial attitude in the proceedings. Far from there being any contest to the jurisdiction of the Court to entertain the petitions and to issue appropriate directions. Government stated that it would not hesitate to strengthen the SIT and to link the investigation of all cases with a view to getting to the root of the criminal activity. In its order dated 6th August 2003, the Court made a reference

to the serious allegations which were contained in the affidavit filed by Shri S.M. Mushrif (the Seventh Respondent) who was then the Additional Commissioner of Police (Crime), Fane and directed the State to file an affidavit dealing with those allegations. The Court noted that the Additional Chief Secretary had produced on the record a list of counterfeit stamp paper cases relating to Telgi and his gang. After the accused had been released on bail, he as well as one Gaikwad jumped the bail and absconded. They were declared as proclaimed offenders on 24th June 1998. Telgi was rearrested in November 2001 after considerable delay. The Court noted that on 15th November 1995 Telgi filed an Application for anticipatory bail before this Court which was rejected on 1st December 1995. There was a note in the remarks column that before the order was passed, Telgi slipped away from the Court Room and that this was brought to attention of the Court by the Government Pleader. The Division Bench, in the circumstances, directed the State Government to file an affidavit explaining what steps had been taken by the authorities after 1st December 1995 until November 2001 when Telgi was rearrested. The State, was directed to place on the record what actions were taken against the erring officers in relation to the escape of Telgi from the premises of this Court. M. C. Mutani, Additional Commissioner of Police was due to retire from service on 31st August 2003 and the attention of the Court was drawn to the fact that though there were recommendations to place him under suppression pending disciplinary proceedings, no action was taken. The Government was directed to file an affidavit dealing with all these circumstances. Thereafter, on 27th August 2003, a statement was made before the Court by the Advocate General that Mutani had been placed under suspension and that he would be charge sheeted before 31st August 2003 when he was due to retire. (The order of the Court then also recorded the statement of the Additional Solicitor General appearing on behalf of C.B.I., stating that he had received a Letter from the C. B I. Stating that the investigation should not be ordered to be conducted by C. B. I.) The order dated 27th August 2003 was then followed by further directions that were issued by this Court on 4th September 2003 and 24th September 2003.

13. The Advocate General in the course of his submissions before this Court stated with a characteristically high degree of responsibility that he had instructions right from the inception not to treat the litigation before the Court as an adversarial contest and to accept the suggestions made by the Court to ensure the proper investigation of all facets of the case that would lead to unearthing the details of and responsibility for the bogus stamps cases. The Advocate General stated that these instructions had emanated to him at the highest level.

(iii) The direction for supervision of investigation by Shri S.S. Puri:

14. The circumstances in which directions in regard to the appointment of Shri S.S. Puri, former Director General of Police for supervising the investigation came to be issued on 4th September 2003 have an important bearing on this case. The

SIT had been constituted by the Government under a resolution dated 2nd November 2002. The SIT was headed by Shri S.K. Jaiswal, Deputy Inspector General of Police. An affidavit was filed before this Court on 19th July 2003 by Shri U.K. Mukhopadhyay, Additional Chief Secretary in the Home Department in which a disclosure was made of the findings in the Jaiswal Report in respect of nine officers including A.C.P. Mulani and the Applicant. In so far as the Applicant is concerned, the Court was informed that the Jaiswal Report contained the following findings against him.

"A dedicated team of officers should have been formed separately to carry out investigations of this highly specialized case within the resource of Pune city. The crime could have also been handed over to Crime Branch, Pune City. Initial order dated 18-6-2002 was issued handing over the case to the EOW, but it continued to be with Bond Garden Police Station till filing of charge sheet. Failure to insist upon timely application of MCOC Act to the case by the CP, Pune was strategic error. It was incumbent upon CP to have insisted upon drafting a proper charge sheet and scrutiny of case papers inclusion of Shri Mulani in the investigation Team is inexplicable."

15. The affidavit however, stated that no action was proposed against the Applicant for reasons which were set out in the affidavit. The reasons which were stated in the affidavit were that though the report had recommended action against the Applicant, the Director General of Police was of the view that the Applicant as Commissioner of Police, Pune, could not have been in the know of what had been written in the statements or case dairies on a daily basis. The Director General of Police was of the view that the Commissioner of Police could not be held responsible for individual acts of omission and commission on the part of the Investigating Officer and suggested that no action should be taken against the Applicant. The affidavit of Mr. Mukhopadhyay noted that after Mr. Jaiswal as Head of the SIT submitted his report, the Director General of Police had asked Mr. O.P. Bali who was then working as Additional Director General of Police in the office of the D.G.P. to examine the report. Mr. O.P. Bali thereupon examined the report, and made his comments after which the Director General furnished his own comments to the Home Department. The affidavit state that the comments which were made by Mr. O.P. Bali, the then Additional Director General were not made available to the State Government by the Director General of Police along with his letter dated 23rd July 2003. The Jaiswal Report along with the recommendations of the Home Department was then placed before the then Deputy Chief Minister who was also Home Minister, and he thereafter, placed it before the Chief Minister for approval. No action was proposed against the Applicant by the Director General in his proposal put up before the Government and this was accepted by the Government.

16. When the matter came up before this Court on 4th September 2003 (which was preceded by a hearing on the previous day), the Applicant herein, had serious reservations about allowing the investigation to be supervised by Mr. O.P.

Bali who had by then, been appointed as the Director General of Police. The grievance of the Applicant, it must be noted, was that the Jaiswal Report dated 5th April 2003 was leaked to the electronic and print media on 10th April, 2003. The Applicant contended that though according to the Government Resolution dated 2nd November 2002, the SIT had to report to MR. A.K. Agarwal, Additional Deputy General of Police, C.I.D., Pune, contrary to this the Jaiswal Report "landed into the hands of Mr. O.P. Bali, the then Additional Deputy Director General (Law and Order) who commented upon the report". The Applicant stated before the Court that cases relating to the fake stamps against Telgi had been registered in Mumbai and Mr. O.P. Bali was Joint Commissioner incharge Law and Order from May 1993 to January 1996. The working and supervision of the Police Station, it was urged, came under the Joint Commissioner of Police, Law and Order. For good measure, the Applicant also contended that Mr. O.P. Bali was due to retire on 31st October 2003. These submissions are contained in a written note of submissions tendered to the Court. There is, therefore, before us absolutely no dispute about the factual premise that it was the Applicant who seriously opposed the supervision of the investigation under the ultimate authority of Mr. O.P. Bali who was then the Director General of Police. In these circumstances, the order of the Court dated 4th September 2003 recorded that the State of Maharashtra would strengthen the SIT which would also enquire into all the other cases involving Telgi. Most importantly, the order recorded that "it is agreed by all the parties that such investigation may be conducted under the supervision of Mr. S.S. Puri, retired Director General of Police Clause (iv) of the order of the Court dated 4th September 2003, therefore, recorded that such investigation would be done under the supervision of Mr. S.S. Puri, retired Director General of Police in view of the consensus that had been arrived at between the parties.

(iv) The concerns of the Court:

17. We have emphasised the elements of agreement and consensus of all the contesting parties before the Court including the Applicant, not because the legitimacy of the assumption and exercise of jurisdiction by this Court under Article 226 of the Constitution depends upon such consensus or agreement. Plainly it does not. The High court is a Constitutional Court and its powers under Article 226 of the Constitution conditioned and circumscribed by constitutional mandate. The existence of those powers and the exercise of that jurisdiction does not depend upon the consent of or a willing acceptance by litigating parties. However, in the present case it has become necessary to elucidate upon the background in which Mr. S.S. Puri, was called upon to supervise the investigations.

18. The first and foremost concern of the Court is in regard to the serious, and systemic ramifications of the bogus stamps papers case involving Telgi and his associates. Material was placed before the Court not only by the Petitioners who had moved the Court in the public interest, but on affidavit by the Government of

Maharashtra which revealed allegations about the involvement of Police Officers at various levels from the Investigating Officer to the Commissioner of Police himself. In the present case, there are allegations that activities of the criminals involved have been connived at by law enforcing authorities in the State. The Court in such circumstances, could not have been unmindful of the need for an effective and independent investigation of the truth were to be unravelled. Secondly, and in this back drop, was the objection of the Applicant himself to Mr. O.P. Bali, the Director General of Police to supervise the investigation. In these circumstances, it was agreed by all the parties before the Court, including the Applicant herein that the investigation should be conducted under the supervision of Mr. S.S. Puri, retired Director General of Police.

(v) The effect of the directions issued on 24th September 2003:

19. The order which was passed by the Court on 24th September 2003 furnishes additional directions to supplement those which had already been issued by the Court on 4th September 2003. The order records that in order to strengthen the SIT, Mr. S.S. Puri will exercise all powers exercisable by the Director General of Police as if he is in service. Clause (xiii) then stipulates that Mr. Puri and his team will carry out the investigation of offences "in respect of which the work has been entrusted to him" and shall file an appropriate progress report before the Court. The reference to "the work (which) has been entrusted to him" is clearly a reference to the previous order dated 4th September 2003. The directions that were issued on 24th September 2003 were necessary in order to achieve the salutary public interest in protecting the probity of the criminal justice administration.

20. Mr. S.S. Puri was appointed in order to supervise the investigation that was being carried out by the Special Investigation Team. Section 2(h) of the Code of Criminal Procedure 1973 defines the expression "investigation" to include all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. Section 2(o) defines the expression "officer in charge of a police station" to include, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present Chapter XII of the Code of Criminal Procedure, 1973 deals with Information to the Police and their powers to investigate. Section 154 provides that every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his directions, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Under Sub-section

(1) of Section 156, any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

21. In the present case, the State Government had in a Government Resolution dated 2nd November, 2002 constituted the Special Investigation Team. Before this Court, the State Government specifically took the position that there was a need to strengthen the SIT and that in fact the Government would not hesitate to do so in order to ensure that the investigation of the cases at hand who taken to its logical conclusion. The order that was passed by this Court on 24th September 2003 does not appoint Mr. S.S. Puri as the Director General of Police. The order does nothing of the kind. The order of the Court is in response to the felt necessity of strengthening the SIT by ensuring that the supervision of Mr. S.S. Puri which had been agreed upon by all the parties was effective Mr. Puri was appointed in order supervise the investigation. His appointment would serve little or no purpose if he were to remain a figurehead with no effective power of supervision. Therefore, the direction contained in Clause (xi) of the order dated 24th September 2003 was to ensure that for the purpose of the particular investigation at hand, Mr. Puri should exercise effective powers of supervision so that all the links involved in acts of criminal wrongdoing are unravelled.

The fallacy in the submissions:

22. There is a fundamental fallacy in the submissions which have been urged before the Court to the effect that the direction that Mr. Puri will exercise all powers exercisable by the Director General of Police "as if" he is in service would tantamount to the appointment of one more Director General of Police in the State of Maharashtra. The order of the Court does nothing of the kind. Therefore, there is absolutely no question of the court having passed or issued any directions in violation of the provisions of the All India Services Act, 1951, the I.P.S. (Cadre) Rules, 1954 or the I.P.S. (Fixation of Cadre Strength) Regulations, 1955. Counsel appearing on behalf of the Applicant has devoted a considerable degree of industry in placing before the Court judgments relating to the interpretation of a legislative fiction created by a deeming provision. To refer to all those cases would, to use an oft quoted phrase, be a parade of familiar learning. The classical formation of the effect of a legislative fiction is that of Lord Asquith in *East End Dwellings v. Finsbury*, (1951) 2 All ER 587 :

"If one is bidden to treat an imaginary state of affairs as real one must surely unless prohibited from doing, so, also imagine as real the consequences and incidence which, if putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it ... The statute says that one must imagine a certain state of affairs. It does not say that, having done so, one must cause or permit ones imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

This formulation has been followed in several judgments of the Supreme Court including : Industrial Supplies Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, ; Builders Association of India and Others Vs. Union of India (UOI) and Others, ; State of Tamil Nadu Vs. M/s. Arooran Sugars Ltd., and Dipak Chandra Ruhidas Vs. Chandan Kumar Sarkar, . In the judgment in Arooran Sugar (supra), the Supreme Court noted that when a statute creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the Court has to examine and ascertain the purpose for which and between what persons such a statutory fiction is to be resorted to. In the present case, the reliance which has been placed by the Applicant on cases relating to legislative fictions is inapposite. Neither is there a legislative fiction in the present case, nor indeed did the Court by its order dated 24th September 2003 appoint Mr. S.S. Puri as Director General of Police. Judgments of Courts are not to be read as statutes. The meaning of an isolated phrase cannot be torn out of context. Thoughts and phrases in judgments cannot be unravelled by a treatise on statutory interpretation. In this context, it would in our view be necessary to have regard to what the Supreme Court recently observed about the guiding principles relating to the reading of judgments and orders of the court in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, . Mr. Justice Arijit Pasayat speaking for a Bench of three Learned Judges of the Supreme Court consisting of the Learned Chief Justice Mr. Justice B.N. Kirpal, Mr. Justice K.G. Balakrishnan and His Lordship observed thus:

"Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases of provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes."

23. Section 2(11) of the Bombay Police Act, 1951 defines the expression "Police Officer" to mean any member of the Police Force appointed or deemed to be appointed under the Act, and includes a special or an additional Police officer appointed u/s 21 or 22. Section 4 provides that the superintendence of the Police Force throughout the State of Maharashtra vests in and is exercisable by the State Government and subject to such superintendence, the Secretary to the State Government in the Home Department whether designated as Secretary, Home Secretary, Special Secretary, Additional Chief Secretary or otherwise, in charge of the Law and Order Division of the Home Department shall exercise control, direction and supervision over the Police Force. Sub-section (1) of Section 6 provides that subject to the provisions of Section 4 for the direction and supervision of the Police Force, the State Government shall appoint a Director General and Inspector General of Police who shall exercise such powers and perform such function and duties and have such responsibilities and such

authority as may be provided by or under the Act or orders made by the State Government. Section 21 provides for the appointment of Special Police Officers to assist the Police Force on any occasion when there is reason to apprehend the occurrence of any riot or grave disturbance of the peace and the ordinary Police Force is not sufficient for the protection of the inhabitants and for the security of property. Section 22 provides for appointment of Additional Police Officers. In the present case, it would also be necessary to advert to the provisions of the Maharashtra Control of Organised Crime Act, 1999. Section 23(1)(b) of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no investigation of an offence under the provisions of the Act shall be carried out by a Police Officer below the rank of Deputy Superintendent of Police. In the present case, it would be necessary to advert to the provisions of the Maharashtra Control of Organised Crime Act, 1999. Section 23(1)(b) of the act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no investigation of an offence under the provisions of the Act shall be carried out by a police officer below the rank of Deputy Superintendent of Police. Since the provisions of the Act have been made applicable the Investigating Officer who has been designated as such in the conduct of the investigation is a Deputy Superintendent of Police, Mr. Wakade. The orders passed by this court do not in any manner supplant the provisions of the Code of Criminal Procedure, 1973 or displace the machinery for investigation that has been designed under the Code.

24. In sum and substance, the orders passed by the Court since July 2003 and particularly the orders dated 4th September 2003 and 24th September 2003 must be considered in the background of some of the striking features of the present case. Firstly, there have been serious allegations and a strident criticism of gross inaction on the part of the investigating machinery in the Bombay case since the year 1995. Secondly, in 1995, Telgi had reportedly slipped away from the Court in the course of the hearing of his application for anticipatory bail. The Division Bench in these circumstances recorded a direction requiring the State Government to explain what action had been taken against the erring Police officer. Thirdly, though Telgi had been declared as a proclaimed offender, no effective steps were taken by the State to apprehend him and the Division Bench considered it necessary to direct the State to explain why there was inaction on the part of the State. Fourthly, the material which had been placed on the record in relation to ACP Mulani led the Division Bench to require the Government to place on the record a status report in that regard. Fifthly, the Government of Maharashtra stated before the Court that it sought to strengthen the SIT by bringing all cases under one investigating team. Sixthly, an important facet of the case related to Mushrif's allegation about the role of the Applicant as the then Commissioner of Police, Pune.

25. In successive hearing before the Court, issues relating to the culpability of Senior Police Officers were dealt with. On its part, the State Government candidly accepted the position through the Advocate General that in a matter such as the

present where the involvement of high ranking Police officers of the rank of Commissioner of Police had to be investigated into, the matter could not be entirely left to the investigation of Mr. S.R. Jaiswal who held a rank lower than that of the Commissioner of Police. Even after the order that was passed by this Court on 24th September 2003, the batch of petitions came up for hearing on 15th October 2003, 3rd November 2003, 12th November 2003 and 27th November 2003. Criminal Application 91 of 2004 seeking a recalling of the order dated 24th September 2003 was instituted before this court on 8th January 2004. On behalf of the petitioners as well as on behalf of the State, it has been urged that the applicant appeared to have had absolutely no objection to Mr. Puri supervising the investigation or for that matter with the subsequent directions issued by the Court on 24th September 2003 until the applicant was placed under arrest on 2nd December 2003. On 15th October 2003, the attention of the Court had been drawn to the fact that the applicant was due to retire as Commissioner of Police on 30th November 2003. This Court directed that Mr. Puri shall in the meantime, enquire into the involvement of the Applicant considering the fact that he was due to retire shortly thereafter. On 12th November 2003 the Advocate General placed on the record a report prepared by Mr. Puri under the caption "Involvement of Shri R.S. Sharma" which was perused by the Court. On the request of the Advocate General who submitted that the report should be placed before the Chief Minister, this Court observed that it would be appropriate if the Chief Minister considered the report of Mr. Puri and took a decision thereon. On 27th November 2003, the Advocate General stated before the Court that the findings of the SIT against the Applicant were very serious. The Advocate General stated that proceedings would be initiated against the Applicant for the imposition of a major penalty in accordance with law and that departmental proceedings would be initiated immediately, since the Applicant was to retire shortly. It was thereafter, that steps were taken against the Applicant both under the service rules and by placing him under arrest on 2nd December 2003. The Criminal Application was filed in this Court in January 2004 after the applicant was placed under arrest.

The Jurisdiction under Article 226:

26. The jurisdiction of the High court under Article 226 is plenary in nature. Thirty eight years ago in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, Mr. Justice K. Subba Rao speaking for a Bench of three Learned Judge of the Supreme Court held that Article 226 had been couched in language of width and amplitude in order to enable the High Court to reach injustice wherever it is found:

"This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in

England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Court can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels."

The jurisdiction of the High Court under Article 226 is of constitutional origin and is, therefore, circumscribed by the limitations on the exercise of judicial power that are implicit in the Constitution. In the exercise of that jurisdiction, High Courts possess not merely constitutional power, but we dare say, have a constitutional obligation to ensure the realisation of rights recognised by the Constitution and by law.

27. Good governance in a civil society is inextricably woven with the fabric of ordered liberty. Enforcement of law, the investigation of crimes and the prosecution of offenders constitute important components of a system which is guided by the ideals of the Rule of Law. Ideals in the distant horizon they seem to be when the conscience of a society is aroused by wrongdoing which is of a systemic nature. The evolution of a society from market control to market reform is an important milestone in development. The dominance of market forces furnishes new avenues for the generation of wealth. On the other hand, the sanctity of the economic system and its stability can be destroyed by systemic franks of the kind that contemporary economics have had to confront. Effective investigation and prosecution are the hallmarks of a legal system committed to the protection of human rights as they are of a legal regime that protects legitimate forms of economic activity. Courts must and do have a healthy respect for the demarcation of powers between the executive, the legislature and the judiciary. Equally, nothing can be as destructive of the rule of law as the lack of independence and impartiality of the investigation and prosecutorial processes. When systemic issues of the kind involved here arise before the Court, the obligation of the court as expounder of constitutional precept warrants flexible and effective remedies. The evolution of legal doctrine is not stratified in a frozen dialogue. Courts must and do respond to felt necessities of the time ensuring that in the process they do not offend the constitutional distribution of powers or statutory prohibitions. Doctrinal immutability should not stultify a democratic society in its effort to find effective measures for unheralded wrongs.

28. In *M.C. Mehta and another Vs. Union of India and others*, , Chief Justice P.N. Bhagwati while elaborating upon the jurisdiction of the Supreme Court under Article 32 of the Constitution held thus:

"It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights." (emphasis supplied).

In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, , the Supreme Court laid down the underlying rationale for the appointment of Commissions for the purpose of gathering facts and data when there is a complaint relating to a breach of fundamental rights:

"The Supreme Court has evolved the practice of appointing Commissions for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental rights made on behalf of the weaker sections of the society. The report of the Commissioner would furnish prima facie evidence of the facts and data gathered by the Commissioner and that is why the Supreme Court is careful to appoint a responsible person as Commissioner to make an enquiry or investigation into the facts relating to the complaint. It is interesting to note that in the past the Supreme Court has appointed sometimes a district magistrate, sometimes a district Judge, sometimes a professor of law, sometimes a journalist, sometimes an officer of the Court and sometimes an advocate practising in the Court, for the purpose of carrying out an enquiry or investigation and making report to the Court because the commissioner appointed by the Court must be a responsible person who enjoys the confidence of the Court and who is expected to carry out his assignment objectively and impartially without any predilection or prejudice."

Instances where the Supreme Court has appointed fact finding and monitoring Committees include those for protection of the inmates of Mental Homes regulated by the provisions of the Mental Health Act, 1987, *Rakesh Chandra Narayan v. State of Bihar*, 1989 Supp (1) SCC 644. In *Navkiran Singh and Others Vs. State of Punjab through Chief Secretary and Another*, where allegations were levelled of unlawful conduct on the part of the Punjab Police, the Supreme court held that it was necessary to have further investigation carried out by an independent agency which was not under the influence of the Police and other authorities responsible for law and order in the State.

29. The doctrine of a continuing mandamus has been evolved by the Supreme Court in circumstances which bear some resemblance to the present. In *Vineet Narain and Others Vs. Union of India (UOI) and Another*, , the Supreme Court held that having regard to the political personalities and the persons who were to

be investigated in the Jain Diaries case and the time which had already been lost in commencing the investigation, it was advantageous not to hear the matter through and issue a writ of mandamus, leaving it to the authorities to comply with it, but to keep the matter pending while the investigations were being carried on, ensuring that this was done by monitoring them from time to time and issuing orders in this behalf. Several orders were passed by the Supreme Court, the substance whereof was explained thus in paragraph 8 of the judgment:

"The sum and substance of these orders is that the CBI and other governmental agencies had not carried out their public duty to investigate the offences disclosed; that none stands above the law so that an alleged offence by him is not required to be investigated; that we would monitor the investigations, in the sense that we would do what we permissibly could to see that the investigations progressed while yet ensuring that we did not direct or channel those investigations or in any other manner prejudice the right of those who might be accused to a full and fair trial. We made it clear that the task of the monitoring court would end the moment a charge-sheet was filed in respect of a particular investigation and that the ordinary processes of the law would then take over. Having regard to the direction in which the investigations were leading, we found it necessary to direct the CBI not to report the progress of the investigations to the person occupying the highest office in the political executive; this was done to eliminate any impression of bias or lack of fairness or objectivity and to maintain the credibility of the investigations. In short, the procedure adopted was of "continuing mandamus". (emphasis supplied).

In view of the complaint of inaction against the investigating agencies, the Court directed the agencies to complete investigation expeditiously keeping the Court informed from time to time of the progress of the investigation so that the Court retained seisin of the matter till the investigation was completed and the charge-sheets were filed. The judgment of the Supreme Court in Vineet Narain expounded upon the doctrine of continuing mandamus and of the role and function of the Court. Chief Justice J.S. Verma speaking for a Bench of three Learned Judges made a reference to the intrinsic relationship between the rule of law and the conduct of proper investigation in criminal matters:

"Unless a proper investigation is made and it is followed by an equally proper prosecution, the effort made would not bear fruition. The recent experience in the field of prosecution is also discouraging. To emphasise this point, some reference has to be made to a large number of prosecutions launched as a result of monitoring by the Court in this matter which have resulted in discharge of the accused at the threshold. It took several years for the CBI to commence investigation and that too as a result of the monitoring by this Court. It is not as if the CBI, on conclusion of the investigation, formed the opinion that no case was made out for prosecution so that the earlier inaction may have been justified. The CBI did file numerous charge-sheets which indicated that in its view a prima facie case for prosecution had been made out. This alone is sufficient to

indicate that the earlier inaction was unjustified. However, discharge of the accused on filing of the charge-sheet indicates, irrespective of the ultimate outcome of the matters pending in the higher courts, that the trial court at least was not satisfied that a prima facie case was made out by the investigation. These facts are sufficient to indicate that either the investigation or the prosecution or both were lacking."

The Court noted that when there is inaction by the executive, the judiciary must step in, in the discharge of its constitutional obligations till such time as the legislature acts to perform its role.

30. The judgment of the Supreme Court in Vineet Narain emphasises the need for ensuring independent investigations and competent prosecutions. There is a real and undeniable relationship between the maintenance of the rule of law and the administration of criminal justice. No society can pride itself on the maintenance of the rule of law if crime continues to be investigated poorly and prosecuted insufficiently. Constitutional Courts are confronted with cases that shake the foundation of the rule of law and thereafter the legitimacy of a system founded on its observance. The High Court, upon being confronted with such problem cannot throw its hands in despair at the breakdown of the administration of criminal justice. Nor can the Court be sanguine in the hope that all is indeed well when facts which are brought to its attention warrant scrutiny. The Court is under a constitutional obligation to design and create remedies that deal with such situations in a manner that would not be inconsistent with the provisions of law.

31. Every conferment of constitutional jurisdiction even in terms which are seemingly wide is subject to restraint. There are limitations on the exercise of jurisdiction under Article 226. The Supreme Court has emphasised the restraints, in recent judgments relating to the exercise of its power under Article 142 of the Constitution. The Constitution does not confer upon the High Court a power analogous to Article 142 of the Constitution. The power under Article 142 is conferred exclusively on the Supreme Court. In several judgments, the Supreme Court has emphasised the restraints which must be observed in the exercise of the constitutional jurisdiction by an adjudicating Court. In A.R. Antulay Vs. R.S. Nayak and Another, , the Supreme Court held that a decision per incuriam is that which is given in ignorance of an inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong. In that case, the Supreme Court directed on 16th February 1984 that the criminal case against the Appellant be disposed of by the High Court. In its subsequent judgment, the Supreme Court held that in view of the provision of Section 7(2) of the Criminal Law Amendment Act, 1952 and Articles 14 and 21 of the Constitution, those directions were wrong. The Appellant had been treated differently from other (offenders) accused of similar offences and in view of the provisions of the Act of 1952, the High Court was not

a Court competent to try the offence. In such a case, it was held that the Court was not powerless to correct its error. In *Supreme Court Bar Association Vs. Union of India and Another*, , the Supreme Court held that Article 142 being curative in nature cannot be construed as a power which authorises the Court to ignore substantive rights of a litigant while dealing with a cause pending before it. The Supreme Court held that Article 142 cannot be used to supplant substantive law applicable to the case or cause under consideration of the Court. The Constitution Bench observed that ordinarily it would not disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of litigating parties by ironing out the creases in a cause or matter before it. In *Common Cause, A Registered Society Vs. Union of India and Others*, , the Supreme Court held that the powers of the Supreme Court under Article 32 and of the High Court under Article 226 are plenary in nature and are not fettered by any legal constraints. If the Court, in exercise of these powers has committed a mistake, it has the plenary power to correct its own mistake by recalling its own order. In *Narmada Bachao Andolan Vs. Union of India and Others*, , the Supreme Court emphasised that while exercising jurisdiction in cases involving public interest litigation, the Court cannot forsake its function of dispensing justice in accordance with law. No directions could be issued by the Court which are in conflict with legal provisions and it is only when there has been a failure on the part of the authorities in acting according to law or any failure to act or in acting in violation of the law that the Court has to step in. In *P. Ramachandra Rao Vs. State of Karnataka*, , the Supreme Court held that prescribing periods of limitation at the end of which the Trial Judge would be obliged to terminate criminal proceedings and necessarily acquit or discharge the accused and making such directions applicable to all cases in the present and for the future was an exercise in legislation, which was not the function of the Court. *Dwarka Das and Others Vs. State of Haryana*, , was a case where the High Court while exercising its Criminal Appellate jurisdiction had directed the State Government to file an appeal against accused who had been acquitted by the Trial Court. The Supreme Court held that such an exercise of advisory jurisdiction had not been vested in the High Court and directions to file an appeal would constitute an excessive use of jurisdiction. In *M.C. Abraham and Another, A.K. Dhote and J.F. Salve and Another Vs. State of Maharashtra and Others*, , the Supreme Court set aside directions issued by the High Court to the State Government to cause certain accused persons to be arrested and produced before the Court and to file a chargesheet. The Supreme Court held that while it was open to the High Court, in appropriate cases, to give directions for prompt investigation etc., the High Court cannot direct the investigating agency to submit a report that is in accord with its views since that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the investigating agency.

32. In *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, , the Supreme Court summarised the principles which govern the

exercise of the jurisdiction under Articles 32 and 226 of the Constitution. The Supreme Court held in that case that the directions issued by the High Court in relation to the administration of the affairs of a temple had the effect of supplanting or bypassing the statute and were, therefore, unsustainable. The Supreme Court held that a Court steps in by mandamus when the State fails to perform its duty; or in case in which direction was exercised but not legally and validly; and by judicial review over orders passed. When the administration of a temple was within the control of the State which exercises powers under the statute, it was expected that normally the State itself would probe into alleged irregularities. The High Court and the Supreme Court would not ordinarily issue a writ of mandamus directing the State to carry out its statutory functions in a particular manner. Normally, Courts would ask the State to perform its statutory functions, if necessary, within a time frame and as and when an order is passed by the State in exercise of its statutory powers, the Court would examine the legality of the order by judicial review.

33. We have carefully borne in mind these principles which have been laid down by the Supreme Court. Neither the order dated 4th September 2003, nor for that matter the order dated 24th September 2003 provides a mandate for conducting the investigation otherwise than in accordance with law. Neither of the two orders requires the investigating authorities to submit a report of a particular nature. The only concern of the Court has been to ensure that a thorough and effective investigation is carried out. In the present batch of cases there had been serious inaction in the past on the part of the investigative arm of the State in the discharge of its statutory obligations. There are allegations in regard to the involvement of high ranking Police Officers. There are allegations that Senior Police Officers some at the upper echelons connived with the prime accused A.K.L. Telgi. The Report of the SIT set up by the State has commented upon several acts of commission and omission. It was in these circumstances, that this Court has been concerned with the serious prospect that investigation was liable to be derailed if it was not independently monitored and supervised. The State Government has through the Advocate General whole-heartedly supported the steps taken by the Court to ensure that the investigation is supervised fairly and impartially through the appointment of Shri S.S. Puri. The Court must also record that the Additional Solicitor General appearing for the Union of India adopted the same line of argument and submitted that the order passed on 24th September 2003 is constitutional and legal. The Investigating Officer appointed in pursuance of the provisions of the Maharashtra Control of Organised Crime Act, 1999 has not been supplanted. The Court, we wish to emphasise, has not in any manner deviated from the procedure laid down for investigation under the provisions of the Code of Criminal Procedure, 1973. The directions which were issued by the Court were with a view to ensuring that the investigation in a matter as important as the present which has shaken the foundations of the system is thorough and that the investigating machinery should not be stymied. The directions are not per incuriam.

34. Finally, before concluding, the Court must make a reference to the fact that the orders of the Court dated 4th September 2003 and 24th September 2003 have been acted upon and investigation has proceeded.

35. In the circumstances, we do not find any merit in the application which accordingly shall stand dismissed.