(2011) 11 AHC CK 0001

In the Allahabad High Court

Case No : Writ Petition No''s. 3611, 3301 and 2647 (M/B) of 2011 (P.I.L.)

Sachchidanand (Sachchey) — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:
Constitution of India, 1950 — Article 226, 32

Citation : (2011) 10 ADJ 417

Hon'ble Judges : Ritu Raj Awasthi, J;Pradeep Kant, J

Bench : Division Bench

Advocate : Kamini Jaiswal, Akhlesh Kalra, Prince Lenin, Gaurav Mehrotra and Nadeem Murtaza, for the Appellant; S.K. Dholakia, Dr. L.P. Mishra, Sandeep Dixit and Dwijendra Mishra for the Interveners and J.N. Mathur, Dr. Ashok Nigam, Vivek Tankha, I.H. Farooqui, D.K. Upadhyaya, C.S.C., Bireshwar Nath, Neerav Chitravanshi and Vishal Verma, for the Respondent

Final Decision : Disposed Of

Judgement

Pradeep Kant, J.—These writ petitions in the nature of public interest litigation with common facts and similar prayer raise common questions of law and therefore are being decided finally by this Order. The third writ petition; namely, W.P. No. 2647 (MB) of 2011 is however specific to district Pilibhit with slightly different prayer. The matter concerns the implementation of the National Rural Health Mission (NRHM) in the State of Uttar Pradesh. Gross abuse and misappropriation of NRHM funds by the State functionaries in a planned and concerted manner is alleged. Inquiry by the Central Bureau of Investigation (CBI) has been prayed for in the affairs of the Department of Health & Family Welfare, Government of Uttar Pradesh. During the course of hearing it was urged that CBI be directed to conduct preliminary enquiry into the matter from the financial year 2005-06.

The Central Government has also specifically pleaded and pressed for CBI enquiry

2. Intervention of CBI to conduct an enquiry in the whole State cannot be

directed at the instance of bald allegations or public interest litigations or writ petitions preferred with private vendetta. The law in this regard has been succinctly put by the Apex Court in Vishwanath Chaturvedi Vs. Union of India (UOI) and Others, holding that the ultimate test for maintainability of such public interest litigations is whether the allegations have any substance even if made by a political opponent or a person with political differences. In their Lordship''s opinion, for such a petition to be maintainable, it is incumbent upon the petitioner to show failure of public duty. Thus, only where after grave consideration of the pleadings in light of the material on record, the Court is satisfied that prima facie case is made out can such a direction to CBI for holding enquiry be given. This conclusion of a prima facie case is a precondition before such a direction is given to CBI as has been settled by the Constitution Bench in the matter of State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, endorsing its earlier decision in Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, .

3. In light of the law settled by the Apex Court, we proceed to address the instant matter However, it will be useful to note the background of NRHM before we proceed to examine the allegations levelled.

The NRHM was launched on 12.4.2005 with a view to provide accessible, adequate, affordable, accountable and reliable health care to all persons particularly the vulnerable people residing in remote areas. A Memorandum of Understanding (MoU) was entered into between the Government of India and Government of Uttar Pradesh to this effect on 22.11.2006. This MoU governs the implementation of the Mission in the State. Consistent with its objectives it envisages decentralised system of administration fastening on the State the responsibility of administration of the Mission whereas substantial resources were to be provided by the Union Ministry of Health & Family Welfare (MoH & FW) in contribution with the State.

4. The implementation of NRHM in the State is to be under the overall guidance and supervision of the State Health Mission constituted as per G.O. dated 16.11.2006 with Chief Minister as its ex-officio Chairperson. The State Health Society registered under the Societies Registration Act was constituted by merging all existing state level health societies on 21.2.2007 to carry out functions of the Mission in an additional managerial capacity to the Department of Health & Family Welfare of the State Government. Since the Departments of Health & Family Welfare were two separate departments in Uttar Pradesh; they were therefore merged under the directives of the Central Government. Merger of the two departments was a precondition contingent to the execution of the MoU.

5. The Society''s primary responsibility, inter alia, is to receive, manage (including disbursement of funds to implementation agencies such as Directorate, District Societies, NGOs etc.) and account the funds received from

the MoH&FW. The Governing Body of the Society is vested with full control of the affairs of the Society whereas the Executive Committee, Programme Committees and such other committees constituted by the Governing Body serve as its implementation agency.

6. The Chief Secretary is the Chairman of the Governing Body. The body is vested with the power to monitor the financial position of the Society to ensure smooth income flow and review the annual audited accounts and is required to convene meeting at least once every six months. Besides considering the annual budget and annual action plan for the Mission, the Governing Body evaluates at its annual meeting (a) the income and expenditure account and the balance sheet for the past year, (b) annual report of the Society, (c) appointments for the executive committee and the various committees, and (d) other business brought forward with permission of the Chairman.

7. The Executive Committee is to act on behalf of the Governing Body and is empowered to take all decisions and exercise all powers vested in the Governing Body except those which the Governing Body may specifically exclude. The Principal Secretary, Family Welfare is the Chairperson of the Executive Committee while a full time Mission Director appointed by the State for NRHM is the Convenor of the Society. A Secretariat consisting of technical, financial and management professionals has been established in the Society to administer its daily affairs with State Mission Director as its head. The Mission Director is an officer of the rank of Commissioner.

8. The Secretariat known as State Programme Management Support Unit (SPMSU) is responsible for daily management of the Society''s activities as set out in Article 5 of the Memorandum of Association of the Society which includes disbursement of NRHM funds to implementation agencies and also acts as a Secretariat of State Health Mission.

9. According to sub-clause 1(B) of clause B of the bye-laws of the Society, all powers pertaining to release of funds for implementation of plans/allocations which have been approved by the Governing Body/Executive Committee have been vested in the Mission Director.

10. The bye-laws prescribe that funds are to be released on the basis of written authorization from the Executive Committee of the Society though all cheques to be signed by two authorized signatories of the Society Secretariat. If releases are made through e-banking procedures, the electronic authorization ought to be executed by the same two authorized signatories of the Society Secretariat on the basis of written authorization in this behalf.

11. So far as procurement of goods and articles for NRHM is concerned, clause A of the bye-laws provide that such procurement would be as per (1) rate contracts (R.C.) of the Director-General, Supply and Disposables (DGS & D) failing which, (2) rate contracts of other Government of India agencies failing which, (3) rate contract approved by the Government of U.P. failing which, (4) tender procedure

as recommended by the Government of India. Procurement of services is specified to be in accordance with procedure as recommended by the Government of India or Government of U.P.

12. On similar lines, the District Health Mission, District Health Society and Hospital Management Societies known as "Rogi Kalyan Samiti" were contemplated by series of Government Orders dated 16.11.2006 annexed to the MoU. The Minister-in-Charge of the District was the Chairperson of the District Health Mission. The District Magistrate served as Coordinator of the District Health Mission and Chairperson of the District Health Society. Whereas, the Chief Medical Officer of the District held the office of Member Secretary in the District Health Mission, Coordinator in the District Health Society and Chairperson in the "Rogi Kalyan Samiti".

13. The funds made available for the Mission were subject to audit of the State and District societies organised by the State within six months of the close of every financial year. Thereafter, the State Government would prepare and submit a consolidated statement of expenditure, including the interest that may have accrued. Also such funds routed vide the MoU were liable to statutory audit by the Comptroller and Auditor General of India (CAG).

Thus, it is within this institutional setup envisaged by the MoU that the NRHM in the State of U.P. was to be implemented. In light of this background of NRHM, let us now proceed to address the matter.

14. The petitioners while pressing for CBI inquiry have distinguished the instant matter into three parts i.e. (1) deliberate acts of omission and commission with culpable intention of State functionaries to abuse NRHM funds, (2) the irregularities in purchases of medicines, equipment and other material relating to NRHM, and (3) omission of the State to take prompt corrective measures even after being fully acquainted with the irregularities being committed in the utilization of NRHM funds. Briefly, the case of the petitioners is like this.

On 22.11.2006, the NRHM was introduced in the State of U.P. pursuant to the execution of the MoU. The erstwhile Departments of Medical & Health and Family Welfare were merged into single department of Health & Family Welfare under the directives of the Central Government in accordance with the MoU.

15. The State Health Mission was constituted by order of the Government dated 16.11.2006. Implementation agencies, such as the State Health Society, the District Health Mission, the District Health Society, and the Rogi Kalyan Samiti were contemplated by series of Government Orders dated 16.11.2006. Meanwhile, fresh elections to the Assembly were held and the present Government came to power in the State on 13.5.2007. Subsequently, the Government annulled the merger of the aforesaid departments and restored the erstwhile bifurcated departments i.e. Department of Medical & Health and Department of Family Welfare. It did not reconstitute the State Health Mission nor nominated the public representatives, such as, Members of Parliament,

Members of Legislative Assemblies, Members of other local urban bodies and such other persons required to be nominated by the State Government. Hence it did not convene any meeting to supervise, monitor and guide the implementation of the Mission in the State which it was otherwise required to do i.e. to meet at least once every six months for this purpose. There is also nothing on record to show if any meetings took place even before the year 2007, though it has been said that the previous Government had constituted the State Health Mission.

On 18.7.2009, a separate Central Purchase Committee was constituted under the Chairmanship of Director General, Family Welfare by order of the Government without any reasonable basis. The Central Government on 28.7.2010 through its D.O. letter objected to the bifurcation of the Department of Health & Family Welfare stating the action of the State Government not to be in the interest of the Mission and requested the State Government to reconsider the aforesaid bifurcation. By the same letter, the State Government was also apprised of the fact that no full time Mission Director had been appointed which was detrimental to the implementation of the Mission in a big state as U.P.

16. From the period of inception of the program in the State of U.P., it is said that the Central Government has released to the State of U.P. grants amounting to Rs. 8579.38 crore but the Governing Body of the State Health Society has all this time met only twice i.e. on 25.1.2008 and 25.7.2008 until 15.5.2011. All decisions in its place, administrative or otherwise, were instead taken by the Executive Council of the State Health Society that did meet occasionally in the absence of a full-time Mission Director. No full time Mission Director was appointed for almost five years, since the inception of the NRHM until 22.4.2011 and thereafter on 9.9.2011, Sri Lokesh Kumar, Senior Manager was appointed as acting Mission Director by order of the Government. Meanwhile, the bifurcation of the Department of Health & Family Welfare was also cancelled in the year 2011 after the whole scam came to light through the media after the murders of the two Chief Medical Officers of Family Welfare Department, Dr. V.K. Arya and Dr. B.P. Singh and when petitions were instituted in this Court asking for CBI probe in their murders.

17. On 5.5.2010, District level post of District Project Officer and Deputy District Project Officer was created in Family Welfare Department by order of the Government. These medical officers of PMHS cadre in Family Welfare Directorate General were appointed on the joint approval of Minister, Medical & Health and Minister, Family Welfare. The posting of such officers was done with the approval of Minister, Family Welfare. Following which junior level-4 officers were handpicked and posted arbitrarily which compelled a co-ordinate bench of this Court at Allahabad to observe in its interim order dated 12.1.2011 in un-numbered paragraph 5 of Writ (A) No. 72397 of 2010 (Dr. Gangaram v. State of U.P.) that, "number of writ petitions are being filed in the Court, challenging the arbitrary action of the State Government to pick and choose Level-4 Medical Officers to man [the] post of Chief Medical Officers. Though the State

Government may give the important posts in the Medical and Health Department, to Level-4 Medical Officers, the issue of discrimination becomes apparent when [...] junior officers are appointed on these posts." Hence this Court directed that rule of seniority be strictly adhered to while making such appointments.

18. By another Government Order dated 20.8.2010, the responsibilities of Chief Medical Officer and District Project Officer/Deputy District Project Officer were demarcated. By virtue of the aforesaid order of the Government, the responsibility of keeping the accounts of expenditure related to NRHM was vested in District Project Officer alongwith the power to draw funds received for NRHM from Central Government according to budgetary heads of Family Welfare programme in accordance with the D.D.O. code. However, on 14.10.10, the State Government by an Order re-designated District Project Officer/Deputy District Project Officer as Chief Medical Officer/Deputy Chief Medical Officer (Family Welfare). Meanwhile, the MoH&FW vide Order dated 15.9.2011 directed the States to constitute District Vigilance and Monitoring Committee in each district to be headed by the local Member of Parliament and comprising members of local government and local representatives to monitor the program. A reminder was also sent to the State of U.P. vide D.O. letter dated 13.6.2011. However, nothing appears to have been done.

19. Pointing out the irregularities in purchasing the medical kits, medicines, equipment and other articles, the petitioners placed before us that all such work were routed through government corporations like U.P. Project Corporation Ltd. (U.P.P.C.L.), U.P. Processing & Construction Co-operative Federation Ltd. (PACCFED), Construction and Design Services (CDS), U.P. Jal Nigam, Uttar Pradesh Labour and Construction Cooperative Association Ltd. (LACCPED) and U.P. Small Scale Industries Corporation (U.P.S.I.C.) mainly to camouflage the irregularities being committed. It was argued that the Minister, Family Welfare allotted the work of purchase of medical kits and medicines to U.P.S.I.C. in order to benefit chosen few. Procurement of such items was done by aforesaid U.P.S.I.C. without observing any consistent procedure to the extent that medicines were purchased at highly inflated rates. For example, Rs. 270 was being paid for 500 ml of common iodine solution whereas the approved rate contract was Rs. 39 for 500ml. The sterilised surgical gloves which cost Rs. 8.50 as per the Director-General, Supplies and Disposables (DGS&D) were being procured at the rate of Rs. 34 per pair. The common liquid hand wash, for which the rate contract of the State Government is Rs. 104 for 1000 ml was being procured at the rate of Rs. 450 for 200ml. Another example is that of iron folic acid tablets that were being procured by other States and Union Health Ministry at the rate of Rs. 10-14 per 100 tablets while the State was paying Rs. 18 per 10 tablets. These instances were reported by the Times of India, Lucknow Edition on 13.1.2011 brought on record by the petitioners. Contracts running into crores of rupees for publicity, medical kits and medicines, modular OTs (by diverting budget for construction) was allotted to firms of one Sri Saurabh Jain, namely, M/

s. Siddhi Traders and M/s. Guru Kripa Enterprises. Complete advances were released but no work is alleged to have been done. Similarly, immunization cards were procured at the cost of Rs. 18/- per piece which could not have costed more than Rs. 2.00 per piece. The sample of immunization card is on record.

20. Capricious decisions were said to have been taken in Executive Committee meetings in choosing agencies to get the required work done. Referring to an instance, where in a meeting on 13.7.2010 it was decided to get work done by PACCFED. Whereas, in another meeting on 12.8.2010, it was decided to get the work done from U.P.P.C.L. The reason behind change of agency was that U.P.P.C.L.''s performance was then satisfactory; though this decision was again reversed on 13.10.2010 and the same work was again allotted to PACCFED, which was found earlier to be relatively unsatisfactory. Meanwhile, sum of Rs. 87.16 crore was remitted to U.P.P.C.L.

21. The Minister''s involvement in misappropriating funds for particular schemes was also canvassed before us referring to Blindness Control Programme and "Janani Suraksha Yojana". In the Blindness Control Programme spectacles were supposed to be distributed to children free of cost. But nowhere spectacles have been distributed though full payment has been made to the Minister''s close aide. Budgetary sanction of Rs. 400 crore was made for "Janani Suraksha Yojana" wherein payments were made to fictitious people. It was submitted that this fact came to light at the Red Cross Bal Mahila Chikitsalaya but nothing was done due to the involvement of the Minister. Also, none of the eight to ten women and children hospitals in Lucknow have been supplied with caesarean kits and related medical supply needed at the time of child birth.

22. Substantiating their pleading that the Government had knowledge of the NRHM irregularities and misappropriation of funds but it omitted to act prudently, since its functionaries were party to the gross irregularities and misappropriation of funds, the petitioners placed before us bulky documents including the Press Release by the Chief Minister Information Centre dated 7.4.2011, various orders of the State Government relating to NRHM, copy of FIRs registered in Lucknow alleging financial irregularities committed by officers/officials at Department of Health and Department of Family Welfare, Visit Reports of the NRHM Finance Team involving spot inspection of the implementation of the Mission in districts and blocks and State Health Society, the Audit Report dated 4.7.2011 of the Director of Audit and Accounts, Government of U.P. conducted in the office of Director-General (Family Welfare), Report of Technical Committee appointed by Government of U.P. regarding Strengthening of Drug Control Organization in the State of Uttar Pradesh to Prevent the Manufacture & Sale of Spurious, Substandard and Misbranded Drugs. Some complaints made to the Chief Minister and the Chief Secretary preferred by them and one company Eicher Tractors levelling specific allegations of corruption against State functionaries including Minister, Family Welfare are also on record.

23. The Central Government also urging for CBI inquiry brought on record bulky

material including the reports of the annual statutory audit, the response to the audit reports of Government of India including directives issued to the State Government in this context and the reply of State Government to this effect including various reports of the Common Review Mission (CRM), Joint Review Missions (JRM), Report of Regional Evaluation Team, independent studies conducted in the implementation of NRHM in the State of U.P.

24. In addition, the petitioners submitted that murders of two Chief Medical Officers, namely, Dr. V.K. Arya, Dr. B.P. Singh and mysterious death of Dr. Y.S. Sachan in jail, admittedly relating to abuse of NRHM funds shows the gravity of the situation and the attitude of the State functionaries who conspired and took decisions at the highest level clearly to impress themselves with tangible benefits.

25. Further, the aforesaid facts coupled with instances where a person acted as the Chairperson, Co-Chairperson as well as Convenor of the Executive Committee of the State Health Society by virtue of him being a Principal Secretary of Health & Family Welfare and even operated the NRHM funds without any authorisation is nothing but a glaring example of arbitrariness of State action and deliberate designed approach towards public institutions and public money facilitating diversion/siphoning of NRHM funds. The aforesaid omission of not appointing the Mission Director, though obligatory under the MoU has been averred a deliberate act of the State Government so that funds could be misappropriated and misused for personal gains.

26. In nutshell, failure to reconstitute State Health Mission and gross irregularities in purchase of various items and failure on the part of the State Government to take effective measures to monitor the implementation of the NRHM so as to check the misappropriation of funds at various levels according to them makes out a clear case of enquiry by CBI. More so, when neither any FIR has been lodged nor the State undertook to take any action to identify the guilty persons until cognisance was taken by this Court in various writ petitions showing abuse and misuse of power by the State functionaries in the implementation of NRHM in the State of Uttar Pradesh.

27. Sri J.N. Mathur, learned Additional Advocate General assisted by Sri D.K. Upadhyaya, learned Chief Standing Counsel appearing for the State does not deny the fact that there have been large scale irregularities in the implementation of NRHM so far as the State of U.P. is concerned but according to him it cannot be termed as misappropriation of funds but it is a case of financial mismanagement. He states that corrective measures are being taken by the State to the extent that the affairs of the NRHM in Lucknow District where the murders of two Chief Medical Officers took place and the death of one Dy. CMO while in judicial custody is already being investigated by the CBI. CAG has been requested to conduct special State level audit in U.P. from the financial year 2009-2010 to 2010-2011 and further seven departmental enquiries have been ordered on 11.7.2011 to enquire into the affairs of NRHM wherein according to learned Additional Advocate General many of which are nearing completion and

two have submitted the report and have found irregularities in the affairs of the NRHM though the reports have not been placed before us. Also, acting on the basis of one of the enquiry report dated 19.7.2011 departmental action against erring officials have been initiated including initiation of departmental proceedings against the then Director-General, Family Welfare, the then Joint Director, Family Welfare Dr. Rajeev Banswal, Additional Director, Family Welfare Dr. Usha Narayan vide orders dated 29.7.2011 wherein charge-sheet has also been issued.

28. Submitting on behalf of the State, he prayed that pending CAG Report, there is no material on record to indicate prima facie commission of any cognisable offence thereof to entrust the matter at this stage to CBI which is an investigation agency to conduct a "roving enquiry" in the whole of the State merely on the basis of Visit Report of the Central Government and certain other material or newspaper reports. His plea is that the Court should consider entrusting the matter to CBI only after receipt of CAG Report. Placing reliance on Secretary, Minor Irrigation & Rural Engineering Services, U.P. (supra) he further stated in this regard, that pending CAG Report, it would be difficult for this Court to come to a "definite conclusion that there is a prima face case established to direct an inquiry" and accordingly draw terms of reference for the CBI to conduct an enquiry into the affairs of NRHM.

29. An objection has also been raised by the State against the prayer of the petitioners for CBI enquiry on the ground that the CBI does not have the jurisdiction to conduct an enquiry into a department of State Government. Further, it is stated that CBI being an investigation agency is entrusted with the task of investigating cognizable offences and therefore, an enquiry into the alleged irregularities in the functioning of a department of the State Government is outside CBI''s mandate and purview. Questioning the competence of CBI to conduct a preliminary enquiry in the matter, learned Additional Advocate General argued that Section 6-A of the Delhi Special Police Establishment Act, 1946 (CBI Act) is not the source of power for CBI to conduct an enquiry. In fact, inquiry is not defined either in the CBI Act or the Central Vigilance Commission Act, 2003 and therefore one can only abide by the expression as defined in the Criminal Procedure Code, 1973 (Cr.P.C.), precisely Section 2(g) according to which inquiry means every inquiry, other than a trial conducted under the Cr.P.C. by a Magistrate or a Court.

30. In response, leading the arguments Ms. Kamini Jaiswal, learned counsel for one of the petitioners, refuted the aforesaid contention. She submitted that Section 6-A of the CBI Act clearly empowers the CBI to conduct an inquiry. Explaining further she stated that Chapter - IX of the CBI Manual provides for preliminary enquiry to be conducted by CBI where paragraph 9.1 of the CBI Manual contemplates preliminary enquiry in such situations where adequate evidence to register a regular case is not available. Replying to the objection of the State she argued that the objection is not sustainable in light of the catena of

decisions wherein the Supreme Court and the High Courts acting under Article 32 and 226 respectively have directed enquiry or even preliminary enquiry by the CBI.

31. To substantiate her argument, she placed before us the decisions in the matter of State of West Bengal (supra) wherein the Supreme Court observed that High Court has jurisdiction to direct CBI inquiry in appropriate cases and even affirmed the order of Calcutta High Court directing CBI investigation into the matter; Secretary, Minor Irrigation & Rural Engineering Services (supra) wherein the Apex Court held that the High Court may direct CBI inquiry if material on record discloses a prima facie case; Noida Entrepreneurs Association Vs. NOIDA and Others, wherein based on the allegations regarding abuse of power in making public appointments, the matter was referred to CBI with direction to hold preliminary inquiry into the matter and register a regular case thereafter in case any cognizable offence is made out; (2003) 8 SCC 706 (Taj Heritage Corridor case) wherein after consideration of material on record, the Supreme Court directed enquiry by CBI and subsequently on the basis of the enquiry report directed inter alia investigation by CBI; and Centre for Environment and Food Security Vs. Union of India (UOI) and Others, where the Apex Court considering grave irregularities in the implementation of the MNREGA in State of Orissa directed complete investigation by CBI.

32. As regards, the competence of CBI to conduct a preliminary enquiry, Sri Akhilesh Kalra, learned counsel for the petitioner and Sri Vivek Tankha, learned Additional Solicitor General also relied on two decisions of the Apex Court in Shashikant Vs. Central Bureau of Investigation and Others, and Nirmal Singh Kahlon Vs. State of Punjab and Others, wherein it has been categorically observed that the CBI has the power to hold preliminary enquiry and thereafter to register FIR if prima facie case is made out.

33. Learned Additional Advocate General, in response argued that CBI Manual on which the petitioner relies does not have any statutory force and is not binding on the CBI and presented his concerns that if CBI is directed to conduct what he terms as a "roving inquiry" into the affairs of a department of the State Government, if would lead to chaos.

34. In fact, we have noticed throughout the hearing of the matter that the State is curiously apprehensive about CBI. Learned Additional Advocate General has throughout the hearing of the matter urged only two things. First, that the State Government is doing all it can to instill the public confidence and punish the guilty. Second, the State does not want its functionaries to suffer the rigor of CBI which would otherwise be detrimental to its subjects.

35. There is no reason why the State should be so apprehensive about CBI''s conduct. CBI is an independent and autonomous investigation agency. It was for the purpose of maintaining its autonomy to conduct enquiry and investigations in a fair, transparent and competent manner that the Apex Court in Vineet Narain

and Others Vs. Union of India (UOI) and Another, insulated this institution by issuing comprehensive directions so that it functions in a strong and competent manner without executive interference. Distinction was drawn so far as the expression "superintendence and administration of special police establishment" used in Section 4 of the CBI Act is concerned in as much as it was held that executive instructions cannot at any point of time fetter actual investigations being carried out by the CBI which is governed by applicable general law. Their Lordships particularly emphasised in Vineet Narain (supra) that once the CBI is entrusted to investigate/enquire into a matter, it is imperative upon it to scrupulously adhere to the CBI Manual in relation to its investigative functions like raids, seizure and arrests. The CBI being a statutory body is supposed to act in fair, transparent and competent manner while discharging its statutory functions.

36. The argument of learned Additional Advocate General that CBI is not statutorily empowered to hold enquiries cannot be appreciated in view of the provisions of Section 6-A of the CBI Act, para 9.1 of the CBI Manual and particularly in the light of the precedents cited above where CBI has held enquiries/preliminary enquiries at the instance of the Supreme Court or the High Courts. The objection is therefore dismissed.

37. At this stage, we deem it appropriate to clarify that the meaning attached to the expression "inquiry" in the Cr.P.C. is only contextual to Cr.P.C. and not universal. In appropriate cases, the police not only have the power to hold inquiry but also a duty to conduct inquiry or even preliminary inquiry. There are several decisions of the Apex Court in this respect. Reference for example may be made to Rajinder Singh Katoch Vs. Chandigarh Administration and Others, .

38. Dwelling further, three impleadment applications were moved. First by one Sri B.K. Singh Parmar, Advocate alleging dose link of one of the petitioner with another political party and for such reason he terms the prayer of the aforesaid petitioner to have been cleverly made so as to exclude the period covered under the regime of the previous Government. He therefore submits that the direction for enquiry be issued from the year 2005-06 instead of the year 2007-08 since funds to the tune of Rs. 873.30 crores and Rs. 985.34 crores were, in fact, sanctioned by the Central Government in the year 2005-06 as is apparent from paragraph 14 of the counter-affidavit filed by the Mission Director in another writ petition No. 769 (S/B) of 2011.

39. Sri Sandeep Dixit, learned counsel appearing for Sri B.K. Singh Parmar thus prayed that inquiry be directed from the year 2005-06 instead of 2007-08. Similar application was moved by Sri Sudhir Kumar, Advocate through Dr. L.P. Mishra, learned counsel appearing for the applicant. The third application was moved by Sri Saurabh Jain, the sole proprietor of M/s. Guru Kripa Enterprises and M/s. Siddhi Traders whose firms are named in the writ petition.

40. Sri S.K. Dholakia, learned senior counsel assisted by Sri Dwijendra Mishra,

appearing for Sri Saurabh Jain strenuously argued that false and baseless allegations have been made against them in the writ petition. Learned counsel submitted that, in fact, U.P.S.I.C., awarded contract of Rs. 4,74,82,500 crore to M/s. Guru Kripa Enterprises and Rs. 13.69 crore to M/s. Siddhi Traders for different work which includes the task of fixing hoardings and not contracts worth Rs. 119 crore as averred in one of the writ petitions.

41. Sri S.K. Dholakia urged that CBI must not be ordered to hold an enquiry based on the averments of the instant writ petition which in his view are vague, bald, and baseless and if such an order is to be made, it ought to be made after giving him due opportunity to put his defence since it is his client and his firms against whom averments have primarily been made. Learned senior counsel placed reliance on Lalita Kumari v. Government of Uttar Pradesh and others, (2008) 14 SCC 337 and Secretary, Minor Irrigation & Rural Engineering Services, U.P. and others (supra).

42. Sri Vishal Verma, learned counsel on behalf of U.P.S.I.C. opposite party No. 3 herein, denying the averments made against U.P.S.I.C. argued that consistent procedure was followed by O.P. No. 3 in awarding contracts. Notice inviting tenders were duly published in leading newspapers pursuant to the offer of Family Welfare Department following which lowest three bids were forwarded to the aforesaid Department After the aforesaid Department approved the bids, the contracts were awarded Clarifying further, it was submitted that so far supply of spectacles is concerned, notice inviting tenders was duly published but funds only to the extent of Rs. 54.25 lakhs out of Rs. 2.842 crores could be utilized since lists against which supplies were to be made could not be received from various Chief Medical Officers.

43. We have given each party a patient and considerate hearing and considered the material placed on record. We did not find expedient to grant impleadment to the aforesaid applicants though we have heard them as interveners. So far as Sri Saurabh Jain is concerned, we have already given him due hearing and proceed to consider the matter in accordance with the averments made by him in regard to the amount of the contracts given to him as it would be expedient here to clarify that the actual amount for which the contracts were given to these firms is not very material at this stage but it is the manner and procedure which was adopted in doing so and also their execution, which is the subject matter of consideration.

44. The reports placed before us including the observations in the reports extracted below, as they are, highlight two aspects so far as implementation of NRHM in the State is concerned; first, the general administration by the State functionaries and second, the financial administration and utilization of NRHM funds.

To elaborate on the first part: Common Review Missions have been held yearly to monitor the progress and performance of NRHM in the State. The main issues

reported in the reports are extracted below as they are:

(i) November 16-18, 2007, districts Rai Bareilly and Jhansi:

Improvement required in drugs and supplies logistics,

Restrictive clauses on nurse and ANM recruitment excludes qualified nurses and ANMs substantially and thus requires changes.

Miscommunications and misunderstandings are immediate bottlenecks which should be overcomed.

Electricity supply gaps in all sub-centres and additional PHCs to be closed.

(ii) November 25 to December 5, 2008. districts Unnao & Bahraich:

Post-delivery stay in the facilities is very short - needs monitoring.

Bio medical waste management needs attention.

Mobile medical units not operationalized.

Shortage of human resources at all levels. Acute shortage of multipurpose worker (male).

Integrated vector control measures and surveillance of diseases is weak.

Poor availability of MTP/MVA (medical termination of pregnancy) services.

PRIs not uniformly involved for VHSC which are recently instituted but not active.

(iii) November 3 to December 13, 2009, districts Allahabad and Kanpur city:

In most facilities one or more requirements for providing FRU (First Referral Units) services were not available.

The State does not have an emergency transport system and ambulances were mostly used for transport of drugs and supplies.

The State PIP did not have any special plan or budget for reaching vulnerable or tribal groups. No incentives seen in the districts visited.

MTP services and Maternal Death Audits are not carried out at the facilities visited.

(iv) December 15-23, 2010, districts Lakhimpur Kheeri and Sonbhadra:

Sub-centres require to be strengthened through provision of regular power and running water supply. Drugs to manage obstetric emergencies should be made available at subcentres.

Time bound completion of civil works need to be ensured.

FRUs need to be operationalized as per guidelines at the earliest with special emphasis on blood storage availability.

Maintenance of infrastructure and equipment need to be improved.

Sustainable long term policy for human resource planning needs to be developed including transfer and recruitment policies.

Emergency referral transport systems must be put in place at the earliest.

Biometrical waste disposal systems to be put in place particularly at FRUs.

Maternal death audits needs to be initiated.

Village Health Sanitation Committee need to be strengthened.

The State should implement the customised version of Tally ERP 9 at the state and district level within the prescribed timeline.

Regular uploading of financial data on HMIS portal should be done.

Urgent steps required for filling up positions of district and block level account managers and annual training programme of finance personnel should he made.

45. The Reports of the Joint Review Missions undertaken yearly to review the Reproductive and Child Health (RCH) component of NRHM have been brought on record. Key recommendations are below:

(i) First JRM - February 14 to March 1, 2006:

Recruitment process of professionals required to be activated.

State level society mechanism still being predominantly used for maintaining bank account outside the government system.

States need to utilize the cap of 6% of approved PIP for Programme Management costs.

With regard to financial reporting the States need to ensure a system of monthly reporting of expenditure from District to State.

(ii) Second JRM

Urgently place and train SPMU/DPMU staff included in NRHM PIP 2006-07 and expedite signing of MoU.

(iii) Third JRM - January 16-20, 2007

Appointment of full time Mission Director in accordance with Government of India guidelines.

Establishment of the Programme Management Unit structure at the State, division, district and block level.

Completion of the mapping of human resources and physical structures (including equipment) and reallocate staff for optimal utilization of resources;

Ensure that staff at district level and below as well as NGOs and Panchayati Raj

institutions are aware of all available guidelines and sanctions.

Sub-optimal utilization of existing resources. The existing specialists were not utilized appropriately as some of the supporting equipment and skills were absence. For example, the Gynaecologist, Anaesthetist and Surgeon at Gola PHC could not function as no anaesthesia or surgical equipment was in place.

The FRUs are not fully functional according to the Government of India guidelines. The staff was not fully aware on the details of operationalization and management of these facilities.

The coverage of key RCH services is inadequate; the quality of RCH services also requires improvement. Poor case management of malnourished children was observed; proper care of new-born was not seen at any level and guidelines for anaesthesia were not followed - ether was being used for anaesthesia.

The labour rooms in the 24 x 7 PHCs do not have adequate infrastructure. There is lack of clean toilet, running water, receiving station, etc.

Major area of concern is seemingly total lack of infection prevention and waste management. No segregation of waste was seen, poor storage and disposal of sharps and placenta and lack of mechanism for disposal at alt levels.

The district plans do not reflect local needs and the ownership of the plan among stakeholders is variable and is compounded by frequent transfer of personnel.

(iv) Fifth JRM - January 16-19, 2008

The State and District Programme Management Units is not in place as yet.

No district FRU currently has functional blood storage facilities and hence does not fulfill all the criteria laid down by Government of India for a functional FRU.

The state is facing acute shortage of ANMs.

The guidelines issued in December 2006 on financial, accounting, auditing, funds flow and banking arrangement at State and district yet to be implemented.

Financial management indicators were not being compiled regularly.

Financial staff is not trained.

(v) Sixth JRM - May 25-29, 2009

In general doctors and paramedics were keen on providing services to beneficiaries; however output was not satisfactory.

At some of the facilities it was found that, though new equipment are in place, they are not being used in absence of trained personnel.

Basic equipment for assisted delivery at District Hospital, CHC and 24 x 7 PHCs and even at Medical College Hospital were very out-dated and not in working condition.

Some labour rooms did not have new-born corner with resuscitation facilities, moreover, available equipment had not been kept inside the labour room.

There appears to be lack of centralised equipment maintenance and management system.

Referral services were mostly not available in the State; moreover, referral had not been seen as key priority.

Ambulances were available at few CHCs, however not frequently used.

District Accounts Managers have been recruited in all 71 districts; 823 posts for block level accountants have been approved.

No proper system of reporting FMRs and books of account to the State by the Districts initiated.

Reportedly the State has been able to get the concurrent audit initiated in 69 out of 71 districts. A few concurrent audit reports received from Sitapur, Balrampur, Kannauj, Lakhimpur, Kushinagar and Gorakhpur during 2008-09 were reviewed and it was noted that some important internal control observations pertaining to advances, fixed assets, bearer cheques being issued, bank reconciliation, etc. There has however not been any follow up on these observations from the state and the auditor has also not reported on the compliance of the observations in the audit report for next month (except Balrampur). It is also noted that concurrent audit at the state level is not being done after June 2008.

Detailed Guidelines for accounting system and reporting of expenditure by Blocks to Districts should be prepared alongwith the specified format for reporting of expenditure.

Identify the institution for providing training to Block level Accountants/Clerks.

Proper Guidelines for utilization of funds should be sent alongwith the funds release letter to Block.

One CA should be appointed at State Level for monitoring the Concurrent Audit Report and sending action taken report to Government of India.

Customised tally software must be looked after by the in-charge of Blocks, Districts and State.

As a part of social audit and a part of BCC/IEC also, as other details of physical progress are given in chart at Block/District Level, it is suggested that details of Expenditures incurred on various heads under RCH Flexible pool, NRHM Additionalities and Immunisation may also be provided for each month alongwith accumulated expenditures.

46. Turning to the second part i.e. financial administration and utilization of NRHM funds, our attention was invited to the reports of the NRHM Finance Team visit in the State in December 2010 and May 2011. In the first visit held on

06-11.12.2010, the Finance teams visited the State headquarters and eight districts, namely, Kanpur Dehat, Unnao, Barabanki, Gonda, Sitapur, Rae Bareilly, Agra and Sultanpur. The major observations of the team were as follows:

State Health Society (SHS): The Position of Director (Finance & Accounts) remains vacant.

District Health Society (DHS): 50 District Accounts Managers (DAM) out of 71 DHS have been positioned and 21 remains vacant. Almost 30% of the DAM''s posts at Districts remain vacant.

Block Level: The State Finance Division needs to monitor and fill up the vacancies of the block accountants on a regular basis through a concerted effort. Block Accountant positions were vacant in 390 out of total 820 blocks, (nearly 50%).

No Governing Body meeting has been held during the Financial Years 2009-10 and 2010-11.

Irregularity noticed in payments made for Civil contracts: As per the MoU ith U.P. Processing & Construction Co-operative Federation Ltd., U.P.C.L., it was been mentioned in the agreement papers that the release of funds would be as per the terms that 75% of the cost of the standard estimate would be released after agreement and remaining 25% of the standard estimate only after receipt of UCs [Utilisation Certificates] for 50% of the work completed and details of work wise estimate. However, 100% of the amount was released before completion of the work. The State DG (FW) office was not monitoring fund utilisation.

No documents could be shown wherein the lacunae in the inspection reports [...] to the construction agencies and accountability fixed.

Merely purchasing through a state government PSU does not satisfy the norms of propriety in fund utilisation.

A procurement of kits from the UP Civil Supplies Corporation had been made at double the amounts specified in the PIP and the same had been signed off on by the DG without any tendering or comparison with other agencies being attempted.

Emergency Referral Transport Services: [...] 273 vehicles had been received from Tata Motors (vendor) against 104 vehicles were distributed to the districts. However the vehicles were not operational and till December, 2010 operator selection, procedure for GPRS system linkages etc. had not been implemented. The vehicles have been idle for a long period of time may become non functional. Only mere procurement is not sufficient condition, proper utilisation a/so needs to be looked into to ensure propriety of expenditure.

The Executive Council {headed by the MD, NRHM) had taken a decision in 2009-10 to place funds for procurement, civil works, IEC and some HQ expenses at the disposal of the DG, Family Welfare.

The Mission Director and Principal Secretary, UP does hot monitor the utilisation of these funds or call for utilisation reports.

The Principal Secretary approves the same [fund disbursement]. During the team''s visit Principal Secretary & MD, NRHM were held by the same person.

The Executive Council decisions on individual procurement/civil works and IEC cases are used as a basis for spending funds through the DG-FW for these purposes.

Few inspection or monitoring or field visits being undertaken regarding reports and information pertaining to the fund position at district and block level for all 71 districts in the State.

At the district level the joint signatory related to disbursement of funds are the District Family Welfare Officer and the Dy. District Family Welfare Officer.

The concurrent auditors'' reports for the districts indicate issues regarding maintenance of books of accounts and fixed assets registers. The statutory auditor''s reports for 2009-10 indicated that the State Health Society would withdraw/lift funds from the districts periodically, which practice should be discontinued and an understanding has been given by Mission Director, NRHM accordingly in the State''s reply to the Management letter.

The State is releasing funds to all revenue villages for untied funds. There are VHSCs where the numbers of revenue villages associated are five or more. This in effect has meant that funds of Rs. 50,000 (Rs. 10,000 x 5) are now available as untied funds with some VHSCs annually. This substantial sum coupled with slow utilisation means that large funds are available at village level without sufficient monitoring of their utilisation.

Numerous instances of cash books, ledgers, advance registers, fixed assets registers, bank reconciliation statements not being maintained or updated have been noticed during the visit to districts, blocks and sub-centres/villages.

Internal controls governing release of funds, preservation of vouchers and bills there against, and to prevent diversion of funds needs to be strengthened.

47. In the second visit of the Finance Team during 10-15.5.2011, the inspection was carried out in State Headquarters and districts, namely, Faizabad, Rai Bareilly, Unnao, Hardoi, Mirzapur, Chandouli, Sonbhadra, Sitapur, Kanpur Dehat, Barabanki, Sultanpur and Lucknow. Few observations are as below:

Procurements: In 2009-11, Rs. 334.62 crore was available with DG(FW) office for various procurement activities. However, expenditure for Rs. 178.65 crore (53%) only had been reported till 12.5.2011 and advances of Rs. 93.62 crore were lying with implementation agencies comprising of state agencies of Uttar Pradesh and outside parties as on 12.5.2011, resulting in an estimated loss of interest on amount given to different implementation agencies of Rs. 1,57 crore. Irregularities in procedure were noticed during award of contracts for Mobile

Medical Units, Hospital Waste Management, Hospital Cleaning and Gardening, Safe Drinking Water (R.O. System) etc.

Civil Construction Works: Analysis of civil works under NRHM during 2009-11 revealed that the DG(FW)''s office merely transferred funds for civil works to Project Implementation Agencies (state government agencies viz. U.P. Processing & Construction Co-operative Federation Ltd. (PACCFED), Uttar Pradesh Projects Corporation Ltd. (UPPCL), Construction and Design Services (CDS), UP, Jal Nigam, Uttar Pradesh Labour and Construction Cooperative Association Ltd. (LACCPED) as earmarked in Executive Committee meeting decisions with no open tender system being followed to ensure competitive cost effective bidding. Full payments amounting to Rs. 244.26 crore were made to the Project Implementation Agencies without entering into any formal agreement. Poor monitoring of progress of civil construction and absence of penal action against defaulting firms for delays in completion of works were noticed. Defects in construction noted in District Inspection Reports of Junior Engineers/CNIs were not acted on.

Emergency Medical Transport Services (EMTS): For operationalization of the EMTS, the state procured 779 ambulances from Tata Motors at a cost of Rs. 56.36 crore. Of these, 620 ambulances remained stored at the Tata Warehouse (Regional Supply Office, Lucknow) as the state was unable to take delivery, 159 EMTS vehicles have been stationed in the districts. Moreover, most of the 159 EMTS vehicles were lying idle in the districts. The State should have chalked out a time bound plan in advance, prior to procuring the vehicles under the EMTS.

RKS Funds: The RKS funds were being used to pay mobility advances etc. Funds meant for training, diesel fuels etc. were being credited to the RKS accounts which was an incorrect practice.

48. In this regard, the Report of the Director of Audit & Account, Government of U.P. dated 4.7.2011 conducted in the office of Director-General, Family Welfare was also placed by Ms. Kamini Jaiswal before us. His findings are as below:

Funds amounting to Rs. 1,25,75,78,910.00 were found unutilized;

Advances amounting to Rs. 81,04,41,000.00 being disbursed for supply of medicines and other material without assessing the capacity of the firms to supply the required material which were in fact not supplied;

Financial approval of Rs. 353.71 crore was not given and therefore State could not fulfill its commitment of State share in the Mission.

Utilization certificate of amount of Rs. 25,81,07,380.00 could not be obtained from the districts;

advances of Rs. 2,79,75,95.223 were not adjusted;

Firm was endowed to do work was changed inadvertently without assigning any cogent reason after payment of advances to the tune of Rs. 89 crore.

Contract for supply of furniture and equipment to the tune of Rs. 8.10 crore was given to a firm without inviting tenders which resulted in loss to the State exchequer of the lowest supply rates against which contract could have been floated.

Hoarding work of Rs. 9.75 crore done without floating tender, the State incurred a loss of Rs. 6.16 lakhs;

988 ambulances were ordered for Emergency Medical Transport Services above the R.C. rate (rate contract) and therefore State incurred loss of Rs. 99.73 (unit) lakhs;

The concerned firm that supplied M.B.A.N.S.V. kit for the Mission at Rs. 4,42,04,250.00 was over and above the R.C. rate which incurred loss to the Mission;

Rs. 86,995 spent on irregular purchases;

Without taking into account the estimates, the firm was advanced Rs. 4537.26 lakhs and Rs. 8900.00 lakhs all at once.

49. The Financial Monitoring Reports of State of U.P. or in other words, statutory audit reports for the financial year 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 indicate proper books of accounts, ledgers have not been maintained. The main findings are highlighted below:

(i) Year 2005-06:

Maintenance of Accounts: Maintenance of books of accounts at districts, Unit and Head Office is not fully satisfactory.

Concurrent/internal Audit: No system of Concurrent/Internal Audit to assess/ verify the adherence to the laid down system of internal control system commensurate with size and nature of the business exists in the project.

Heavy Bank Balance: As per balance sheet of Empowered Committee, a sum of Rs. 181.75 crores is lying as bank balance which is substantially high in commensurate with the aggregate project expenditure of Rs. 225.58 crore.

Maintenance of sub Centres: Unit cost of maintenance of each sub-centre was taken as Rs. 10500000/- instead of Rs. 105000/- which is not in accordance with provision of PIP and hence amount of deviation.

IEC: The procedure adopted for procurement of parties for printing of prescription slips for Rs. 1.85 crores, is not commensurate with size and nature of the job/supply in as much as the tender documents, contained restrictive clause which discourage competition and also leads to obtain higher price.

(ii) Year 2006-07

Maintenance of Accounts: Maintenance of books of accounts at districts, Unit and

Head Office is not fully satisfactory.

Concurrent/Internal Audit: No system of Concurrent/Internal Audit to assess/ verify the adherence to the laid down system of internal control system commenurate with size and nature of the business exists in the project.

Internal Control Procedure: The system of internal control procedures in respect of transfer of funds, issuance of guidelines for utilisation of funds by H.O., payments of advances and its adjustments at the districts, submission of timely SOEs by the districts, monitoring of outstanding advances and periodical reconciliation etc. are not in commensurate with size and nature of the business of the organization and needs to be strengthened for effective monitoring and control.

Management Letter: Frequent change in DDO is made due to transfer of CMO and Dy. CMO (RCH). Charge is handed over and taken over only on cash book, meaning thereby charge of assets viz. stores, furniture etc. are not handed over to the new comer.

Procurement: Procurement of furniture, equipment, books consumables have done generally by obtaining quotations from at least three suppliers and preparing comparative chart of the solicited quotations.

(iii) Year 2007-08

Minutes books of purchase committee not maintained properly.

Payment through Cheque--JSY: In case of payments of incentives for Janani Suraksha Yojna, there was an instruction from State Project Management Unit to make payment of incentives through bearer cheques but in some cases Primary Health Centres and Community Health Centers payment made in cash. This should be avoided.

Purchase Procedure: A laxity is noted in case of providing purchase order for supply/services. This should be viewed seriously and purchase rules should be followed.

(iv) Year 2008-09

Pulse Polio-Utilisation Certificate: Funds for IPPI being given in the personal name of the officers and UC''s are not received on a timely basis increasing risk of misuse. Parallel fund released from Family Welfare Department is creating confusion.

Difference in balance of Advance: There is a difference of Rs. 226,42,83,225 between advances as on 31.3.2008 (as per audit report 2007-08) and as on 1.4.2008 (as per audit report 2008-09).

Advance given to UNOPS: An advance of Rs. 75 crores was given to UNOPS in October-November, 2008 for supplies of medicines/equipments. Out of this, Rs. 3.43 crore were utilized till the year and supplies of medicines/equipment against

remaining amount is yet to be done.

(v) Year 2009-10

Advance given to UNOPS: Advance given to UNOPS: An advance of Rs. 75 crores was given to UNOPS in October-November, 2008 for supplies of medicines/ equipments. Out of this, Rs. 3.43 crore were utilized till the year and supplies of medicines/equipment against remaining amount is yet to be done.

Bank Reconciliation: Bank reconciliation statements of various schemes in Districts shows number of pending entries which needs to be given effect in the books of accounts or necessary correction to be done.

The Government of India commenting on the statutory audit report for 2009-10 vide D.O. Letter dated 31.1.2011 indicated the audit report to be not satisfactory in as much as it was not clear if auditor visited all the Districts and 40% of the blocks as required. Further, diversion of funds was reported. The State was also appraised that it was yet to discharge its obligation of State share of 15% towards NRHM.

50. Regional Evaluation Teams from the Regional Directorate of the Ministry visited various districts of Utter Pradesh regularly in 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11. The Reports are annexed as Annexure R-3 to the aforesaid supplementary counter-affidavit of Union of India. The main findings in the report of the year 2009-10 are quoted below:

Report of districts--Unnao, Bijnaur, Kannauj, Sultanpur, Auraiya, Ghazipur, Jalaun, Balrampur, Aligarh and Kanpur Nagar:

Human Resources: Post of multipurpose worker (male) vacant at most of the SCs in Aligarh, Balrampur, Kanpur Nagar districts. Specialists at CHC Chhibramau in Kannauj district. Regular driver at PHC Balrampur district.

RKS & VHSC: Guidance required for smooth functioning of RKS at PHC level in 4 out of 10 visited districts. No VHSC meeting organised after June 2008. Meeting of RKS held irregularly at DH in Ghajipur and was non-functional at CHCs and PHCs.

Untied Funds: ANM in Ghazipur not properly guided for utilization of untied funds. No expenditure reported by CHCs/PHCs/SCs in time in Jalaun & Aligarh districts. Funds not utilized in a few of the SCs in Aligarh & Kanpur Nagar. Due to non-submission of utilization certificates for last two years, the centres in Ghajipur districts were not given fund in 2008-09. In Jalaun district, 55% of the allocated fund utilized till December 2008.

Report of districts--Etawah, Etah, Ghaziabad, Allahabad, Pratapgarh, Jhansi, Lalitpur, Pilibhit, Mahoba, Shahjahanpur and Kushinagar:

Human Resource: Staff position was less than the sanctioned posts in visited SCs, PHCs/CHCs and in many districts. Vacancies existed in the sanctioned

strength of medical & paramedical staff in all the districts.

RKS & VHSC: Scope to improve RKS functioning in Etawah and Etah districts and in Pratapgarh district by taking follow up action of earlier meeting. Less representation of PRI in executive committee observed, VHSC meetings not held regularly in all the districts.

Untied funds: Meeting proceedings at CHC/PHC level were not properly recorded in Shahjahanpur. Joint account of Pradhan and ANMs opened at SC level but lack of cooperation among them in Etawah district. Various districts were utilizing the funds but statement of expenditure was not maintained.

General observations:

Human Resource: Multipurpose health worker (male) posts are vacant at most of the sub-centres visited.

Untied funds: Various districts are utilizing the funds but statement of expenditure was not maintained. Proper guidance is required for utilization of untied funds amongst ANMs and Pradhans.

Infrastructure and drugs: Sub-centres are lacking essential equipment and drugs. Items like Blood storage unit, resuscitation and anaesthesia equipment, incinerator and vehicle/ambulances were not available at some of the Community Health Centres. Electricity and labour room not available in many sub-centres. AYUSH Medical officer posted but no medicines available in some of the centres visited.

Maintenance of record and registers: Cash book regarding untied fund expenditure was not maintained and passbooks were not updated. No record maintained for number of deliveries conducted in the night in most of the 24 x 7 facilities.

51. The reports aforesaid, though, do not require any categorical opinion from us primarily because it is not the domain of this Court under Article 226 to investigate into facts and consequently it ought to be left to the fact finding body; yet they do indicate that gross irregularities and discrepancies have been committed, both, in the matter of general administration and financial administration in the implementation of NRHM including utilisation of NRHM funds.

The facts reported aforesaid are also supported by the State''s own Press Release issued by Chief Minister Information Centre, Information and Public Relations Department, Uttar Pradesh dated 7.4.2011 placed before us by the petitioners. The relevant portion is quoted below:

52. None of the parties including the State dispute that siphoning of funds and irregularities have been committed in the implementation of NRHM in Uttar Pradesh. Though the learned Additional Advocate General puts it as financial mismanagement; but he did not throw any light on the context and use of the

expression in the present set of facts and circumstances. It is also not disputed that State Health Mission was not reconstituted nor the fact that the Executive Committee took all the decisions concerning implementation of the Mission without any approval being accorded to such decisions by the Governing Body and that no full time Mission Director had been appointed during all such period and that the Principal Secretary and certain other officers/officials acted as the Mission Director and disbursed and operated the NRHM funds from time to time without any due authorisation. It is also not on record whether any meeting of State Health Mission was ever held, even if it was constituted under the aegis of the previous Government.

53. Learned Additional Advocate General reiterating that this Court must consider the prayer of the petitioners in the light of the CAG Report argued that State has little role to play in the implementation of NRHM as the State Health Mission was only to guide the implementation of the Mission. Even the grants by the Central Government were sent directly to the State Health Society. He urged that State functionaries of the level of Ministers and above had no role to play in the implementation of the Mission. Accordingly, he says the State Health Mission was constituted in terms of Para. 8.1 of the MoU; but the need to hold any meeting was not felt.

54. With regard to procurements of goods and articles through U.P.S.I.C., the State clarified that the decision to route supply for articles and goods for NRHM through U.P.S.I.C. was taken in view of the G.O. dated 1.7.2000 read with 26.3.2004 and the aforesaid government orders were in vogue when such items were procured. It was a policy decision to promote small scale industries. Consequently, those items for which rate contract by the industries department was not available including the reserved items were procured through U.P.S.I.C.

55. So far as reports on record are concerned, learned Additional Advocate General sifted the report of the Second Finance Team classifying it a "hasty report". He submitted that the report overlooked certain material facts and pointed out few clerical mistakes. He termed it a contradictory report where reporting districts were not visited at all and therefore stated that such a report is not an appropriate material before this Court. But the anomalies pointed out, the irregularities and the discrepancies found in the various reports referred to above will not loose their significance because of the aforesaid policy decision.

56. Learned Additional Solicitor General strongly denied the above submission of learned Additional Advocate General and stated that the visit report is only a sample survey based on the record provided to the Team in the State headquarter and of course during the visit at various districts, blocks and villages. According to him, certain clerical mistakes, even if there are, cannot denounce the status of the report as an important material before this Court to decipher the irregularities and anomalies that have been committed in utilisation of the NRHM funds and implementation of the Mission.

57. We do not find it necessary to enter into the niceties of the visit report aforesaid considering that it is a report on sample survey and also in view of the material brought on record otherwise.

58. Learned Additional Solicitor General also drew our attention to para. 11.1 of the MoU which underlines the State Government''s commitments. The clause is quoted below:

11.1 The State Government commits to ensure that the funds made available to support the agreed State Sector PIP under this MoU are:

(a) used for financing the agreed State Sector PIP in accordance with general financing schedule and not used to substitute routine expenditures which is the responsibility of the State Government.

(b) kept intact and not diverted for meeting ways and means crisis.

59. Relying on the above-quoted clause from the MoU, learned Additional Solicitor General stated that (1) the MoU has been entered into between the Government of India and Government of Uttar Pradesh and not the State Health Society or such other entity envisaged in the MoU; (2) the MoU envisages the primary responsibility on the State Government to monitor the funds routed through the MoU which are used for financing the State Sector PIP and are kept intact and not diverted. Clarifying further, Ms. Kamini Jaiswal submitted that the argument of learned Additional Advocate General that state functionaries of the level of Minister and above had no role to play in the implementation of NRHM in the State must be appreciated in light of the fact that the two Ministers resigned taking moral responsibility of the gross irregularities being committed in the implementation of NRHM and also that State has been consistently involved in the affairs of NRHM which can be duly inferred from the fact that several government orders concerning NRHM have been issued from time to time, and also for the facts, referred to in the earlier part of this order.

60. In this context, Sri Akhilesh Kalra stated that the fact that State Health Mission was constituted as submitted by the State is not correct. Learned counsel stated that State Health Mission was constituted by the earlier Government on 16.11.2006. However, the new Government came to power on 13.5.2007. Thus, the State Health Mission constituted under the regime of previous Government could not be deemed to have continued as it required fresh constitution since various public representatives, such as, Members of Parliament, Members of Legislative Assembly, public representatives of such other local bodies previously nominated by the State Government to hold the office of members of the State Health Mission could not have continued on account of conclusion of fresh elections both at the Centre and State.

61. There is force in the submissions advanced by the learned Additional Solicitor General and the learned counsel for the petitioners. The State has not been able to give any explanation, much less, any satisfactory explanation, as to why the

State Health Mission was not reconstituted; why review meetings to monitor the implementation of NRHM in the State and utilisation of funds were not held; why the Departments were bifurcated; and also why full time Mission Director was net appointed.

62. The argument of learned Additional Advocate General that State had limited role to play can be partially appreciated in the light of the decentralised administration envisaged in the MoU. However, it cannot be lost sight of, that the MoU which governs the implementation of NRHM in the State was entered into with the State and not with the State Health Society or any other body which is only an implantation agency of the whole Mission. The Chief Minister was designated the ex-officio Chairperson whereas Minister, Health & Family Welfare was the ex-officio Co-Chairperson of the State Health Mission only to ensure that the whole system remains under his/her vision and check, so that the objectives sought to be achieved by the introduction of NRHM is not lost due to administrative turbulence. Undoubtedly, paragraph 11.1 puts the duty on the state to monitor the utilization of funds and progress of the Mission in the State. The involvement of the State in the implementation of the Mission so far as the State itself is concerned cannot be ousted. The Reports on record including those extracted above and the Press Release of the State highlight the irregularities and the manner in which affairs of NRHM have been dealt with which has led the two Ministers tender their resignation. The resignation of the Ministers underlines the adverse state of affairs in the implementation of NRHM of which fact the Ministers were conscious.

63. Despite detection of the financial irregularities in the affairs of NRHM which is evident from the documents aforesaid, till date no FIR has been lodged against any person on behalf of the State but for the NRHM affairs of Lucknow, nor any effort has been made to bring the persons guilty to trial. The enquiries that they have setup were setup only when the cognizance was taken up by the Court and curiously only on one and the same day i.e. 11.7.2011 seven enquiries were constituted. In other words, till the Court took cognisance no effort was made by the State Government to take any action either departmentally or criminal against erring persons, which shows their complete reluctance to identify the erring persons/officers/officials.

64. We fail to appreciate that when so many reports were coming forward and one Press Release was issued by the State of U.P. itself taking cognisance of the matter then why effective steps were not taken till date for dealing with such gross irregularities. The State has not been able to explain its aforesaid inaction. The inaction of the State and omission to take necessary steps has not only resulted in committing financial irregularities which the learned Additional Advocate General terms as financial mismanagement but also has deprived the beneficiaries of the laudable scheme which was sought to be implemented for providing medical facilities

65. Learned Additional Advocate General, at this juncture stated that if Lucknow

district is removed from the picture then there is nothing compelling on record to show gross anomaly in the implementation of NRHM in other districts.

66. We fail to follow his submission. Few reports quoted above and other material on record, including the press release, the statutory audit reports, independent studies in the implementation of NRHM in the State of U.P. indicate gross irregularities in the implementation of NRHM including the award of contracts and procurement of goods, articles and others; besides poor monitoring or so to say no monitoring by the State Health Mission or the State Government or the departments concerned of the State Government.

67. The State has also provided a chart outlining all officers who discharged functions of Mission Director, however it admitted that such persons were never appointed as Mission Directors nor such persons could have been appointed. Letting an officer operate NRHM funds which he was not otherwise authorised speaks volumes about the manner in which NRHM was sought to be implemented in the State which establishes that the funds were allowed to be dealt with by unauthorised persons.

68. More so, Sri Jagdish Narain Shukla, petitioner appearing in person in one of the writ petitions submitted that though the State is pressing that CAG Report be obtained before entrusting the matter to CBI but it has not been able even to protect the record relating to NRHM. He brought to our notice instance at Agra where NRHM records were burnt and then again theft of some articles occurred at Godown of Department of Health at Lucknow against which FIR was also registered though we had requested the Chief Secretary in the meanwhile to issue necessary instructions to protect the records.

69. Considering the facts and circumstances of the present case, it is painful to see that a scheme meant for providing quality health services has taken the lives of three CMOs, the affairs of which prima facie appear to have been handled in such a manner which suffers from gross inaction and omissions wherein public money has been seemingly misutilised by the public functionaries apparently in collusion with the private stakeholders.

70. The consequence and effect of such inaction and omission on the part of the State have necessarily to be found out for which an independent enquiry by an independent agency as CBI is necessary. This would also be in consonance with the provision of Section 6-A of the CBI Act and para 9.1 of the CBI Manual that provides that where sufficient evidence is not available to register a regular case, preliminary enquiry may be conducted.

71. We are prima facie convinced that gross irregularities - financial and administrative appear to have been committed in the execution and implementation of NRHM including the matter of award of contracts, procurement of goods, articles and etc. at various levels.

In the facts and circumstances of the instant matter, we are not inclined to grant

the plea of learned Additional Advocate General that we should wait for the CAG Report before considering to entrust the matter to CBI in light of the fact that CAG is conducting a special state level audit more so when statutory audits by CAG were not got conducted when para. 12.3 of the MoU obliged statutory audits by CAG of the funds routed through the MoU. None of the opposite parties have attempted to explain this inaction. Further, the special audit which has been ordered is only with respect to 24 districts for the financial year 2009-10 and 2010-11.

72. Learned Additional Solicitor General has also rightly pointed out that it is not necessary for this Court to wait for CAG Report as the scope of CAG and CBI being completely different and with the kind of irregularities appear to have been committed in the instant matter coupled with the fact that attempt was made to wash of some evidence, the exigencies of time require that immediate steps be taken to bring to light the persons guilty.

73. Learned Additional Advocate General has also not been able to explain as to why the State would have waited for the outcome of the CAG Report when it was itself competent to take necessary action. His argument that pending CAG Report, there is no material before this Court is untenable. We also take notice of the fact that the murders of two CMOs (Family Welfare), Dr. V.K. Arya and Dr. B.P. Singh, death of Dr. Y.S. Sachan while in judicial custody (Jail) and financial irregularities committed in the office of CMO, Lucknow all in relation to irregularities in NRHM are already being investigated by the CBI pursuant to the orders of this Court with the consent of the State Government.

74. The facts and circumstances, aforesaid make out a case for reference to CBI for making a preliminary enquiry in the affairs of NRHM in the entire State of U.P. right from the very inception of the NRHM. We, therefore, direct the Director, CBI to conduct a preliminary enquiry in the matter of execution and implementation of the NRHM and utilization of funds at various levels during such implementation in the entire State of U.P. and register regular case in respect of persons against whom prima facie cognizable offence is made out and proceed in accordance with law. The preliminary enquiry shall be conducted from the period commencing year 2005-06 till date. It is directed that the inquiry be completed within four months. The State Government is directed to hand over and make available all the records as may be required by the CBI and render full support and cooperation to CBI. The Central Government is also directed to render full support as may be asked by the CBI.

We may make it clear that the allegations levelled in the instant petitions have been examined only on prima facie scale and therefore CBI may proceed to conduct preliminary enquiry independent of our observations in accordance with law.

Before parting, we deem it necessary to mention that the specific prayer of direction to the State for merging the erstwhile departments of health and family

welfare has been made in writ petition No. 2647 (M/B) of 2011. The departments have already been merged during the pendency of the instant petitions. No direction is therefore needed.

Also, the credentials of Sri Jagdish Narain Shukla were questioned by the State and also U.P.S.I.C. It is not necessary for us to enter into the said issue since we have already entrusted the instant matter to CBI while dealing with other writ petitions.

Petitions accordingly stand disposed. No costs.

