
(1997) 10 AHC CK 0067

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2025 of 1996 with W.P. Nos. 21425 of 1995, Nos. 21425/95, 22262/96, 33031/95, 33071/95, 33195/95, 34488/95, 32743/95, 24486/95, 34489/95

Shivraj Singh, I.P. Tomar

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 14-10-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 159, 173(8)

Citation : (1997) 10 AHC CK 0067

Hon'ble Judges : Palok Basu, J and R.K. Mahajan, J

Final Decision : Dismissed

Judgement

Palok Basu, J.—Stonesknivesbullets by themselves ciq not kill any one, criminals plan their abuse to smash and tearapart innocents" heads with. Likewise, expendingpower with State"s administrativehighups by itself does not compel ignoring lawsrules for devouring Government funds; treacherous, anti National and corrupt officials degenerate to do so to quench their insatiable thirst of amassing wealth at the cost of innocent taxpayers. Their cunningly calculated conduct though succeeds in whisking away crores and crores of rupees, yet projects a mirage of bona fidefaithful discharge of duties, thus an enquiry if set up, gets enmeshed in procedural delays, managing misdirection"s in police investigations, if had begun perchance. At such critical juncture, it does require the genius of the trustworthy and credible Central Bureau of Investigation (C.B.I.) to unearth truth and expose publicly each and every culprit. This is how can be summarised the tragic theme of AyurvedicExesPaymentBunchCases (AyurvedScamAYURVED CHOTALA), the complete narration of which is likely to run into several episodes.

2. Civil Miscellaneous Writ Petition No. 21425 of 1996Dr. Indra Pal Singh Tomar State of Uttar Pradesh and others, came to be filled before this Court. The petitioner Dr. Tomar was posted as Regional Ayurvedic and Unani Officer

(R.A.U.O.) Muzaffar Nagar. An order of the State Government, dated 2851996 suspending the petitioner in disciplinary proceedings was challenged. It was mentioned that in the Lucknow Bench (L.B.) several interim orders have been passed in "similar matters" and that some orders have been passed by this Court also following L.B. orders. During arguments it transpired that the matters allegedly concerned big embezzlement in several Districts in the State of Uttar Pradesh. The learned Standing Counsel informed the Court that several matters are pending in L.B. and this Court also in which interim orders have been passed staying the suspension of the petitioners therein. It was also stated that arrest of several accused in several cases where First Information Reports (EI.Rs.) were lodged by different officials regarding Ayurved Scam have been stayed by L.B. and this Court also. It was noticed that the EI.Rs. with Civil Police or reports to Vigilance Departments were pending investigation by local Police or Economic Offences Wing (E.O.W.) of the State Police or by Vigilance Wing for the last several years. Though the matter related to the financial year 199394. No police report of chargesheet had gone to any court and further that under the action of the State the then Director, Dr. She Raj Singh (S.R. Singh) informant in some earlier cases, was himself made the principal accused. S.R. Singh and other officials connected with the Ayurved Scam have filed Writ Petitions of civil nature and Writ Petitions of criminal nature including applications under Section 482, Cr. P.C. for quashing suspension orders or F.I.R./Investigation respectively. The aforesaid Writ Petition No. 21425 of 1996 is, therefore, the leading case in this Court in which a running order sheet has been maintained.

3. Then came to light what has been described as the "blanketinterimorder" in favour of S.R. Singh in Writ Petition No. 2025 of 1996 in which application on behalf of the State was pending disposal by which it has been prayed that the said interim order be immediately vacated so that investigation may proceed on the right lines and S.R. Singh may be proceeded with according to law. That application also had not come up for orders before any court. S.R. Singh has himself prayed that investigations be done by C.B.I.

4. Incidentally it may be mentioned that S.R. Singh has been successful in obtaining interim orders from the L.B. from time to time and also from the learned Single Judge of this Court mentioned earlier. Each one of the orders in the respective petitions shall have to be dealt with independently, for, it has been argued that any and all actions of the State against S.R. Singh is the outcome of the orders he obtained from the L.B. It may also be mentioned that S.R. Singh's other criticism was that Shri Mohinder Singh, Principal Secretary in the State Government is biased and is instrumental in the manipulative actions against him. The allegations in the F.I.R s. prima facie indicate Ayurved Scam involving over Rs. 47,00,00,000 (Rupees Fortyseven Crores). S.R. Singh did lodged some. F.I.Rs. against some R.A.U.Os. and Medical Officers (M.Os.) alleging that those R. A.U.Os. and M.Os. were responsible for some withdrawals which" were more than allocated budget for their respective units of expenditure. In the subsequent F.I.R. of the State against S.R. Singh as mentioned above, S.R. Singh himself has

been described as the ChiefConspirator in facilitating the aforesaid Ayurved Scam.

5. Looking at the fact that several writ petitions of S. R. Singh were pending in the L.B. and some were pending in this Court and further that writ petitions of several R.A.U.Os. and M.Os. were pending either in L.B. or this Court, the State moved an application before the Hon''ble the Chief Justice for nominating a Bench for disposing of the matter simultaneously, whether it was pending in this Court or in the L.B. It may be mentioned that some of the matters have been noted as cognizable by Single Judges while some by Division Bench under the Rules of the Court. The Hon''ble the Chief Justice has passed an order under which this Court has been asked to hear the matters at their places of filing and decide them. This is how the matters have been heard by this Court here as well as in the Lucknow Bench (L.B.) in alternate weeks.

6. Looking at the fact that though the Ayurved Scam has become more than two years old. It looked strange that no police report nor chargesheet had been filed against any one by the Police. It was also apparent that while some F.I.Rs. came to be lodged at the instance of S.R. Singh, may be because the Government till then believed him, the subsequent lodging of F.I.R. by the State Government against S.R. Singh himself as the principal conspirator in the Ayurved Scam led this Court to exercise its jurisdiction under Article 226 of the Constitution of India in order to direct that the entire Ayurved Scam of 199394 be investigated by the C.B.I. Suitable directions were issued by this Court on 1071996, in pursuance whereof the Registrar forwarded a letter to the Director, C.B.I. As a followup measure the State Government also issued Notifications for referring the matter for investigation by the C.B.I. It may further be mentioned here that the C.B. I. has commenced investigation and its third report submitted in 2691996 has indicated collection of materials and has reported that vital links have been found concerning the conspiracy and there were materials to justify the allegations regarding which the investigations have been directed to be made by the C.B.I. On this report, two months further time has been allowed to the C.B.I, to complete the investigations because papers/documents seized by it are voluminous indeed. This direction to complete the investigations and submit its report to this Court was expressed in the following terms:

"Sri Jamwar states that the report of the C.B.I, shall be furnished before this Court within two months. Irrespective of the decisions in the writ petitions heard at Lucknow or at Allahabad which may or may not be delivered in the meantime, the C.B.I, is directed to submit its next report before this Court on 26111996 at Allahabad."

7. It was vehemently argued on behalf of S.R. Singh that viewed from any angle the writ petitions and other petitions filed by S.R. Singh either at Allahabad or at Lucknow concerning his latest suspension order, dated 3111995 are intrinsically connected with his earlier petitions and justice cannot be done to him unless the presently impugned orders are traced from the first suspension order that was passed against him by the State. It was repeatedly argued that even the Writ

Petition No. 2025/96 filed at Allahabad in which the so-called "blanket stay order" has been obtained by S.R. Singh can only be decided when the allegations of mala fide are gone into for which it is imperative that Writ Petition No. 536/96 filed by S.R. Singh in L.B. on 25/6/1996 and all other writ petitions filed by S.R. Singh challenging his suspension orders, from time to time, are also heard for a correct conclusion to be reached in Writ Petition No. 2025/96.

8. Sri S.C. Maheshwari, learned Senior Advocate assisted by Sri ML P. Sher of as well as Sri S.C. Pandey have been heard at length on behalf of S.R. Singh at Allahabad. Sri S.C. Pandey has filed his power (Vakalatnama) on behalf of S.R. Singh in all the writ petitions in which S.R. Singh is either a petitioner or an opposite party. In Lucknow Sri Umesh Chandra, learned Senior Advocate assisted by Sri S.C. Pandey in Writ Petition No. 536/96 in

which the challenge has been extended to the suspension order dated 31/1/1995 passed against the petitioner S.R. Singh has been heard. Though Sri Maheshwari concluded his arguments referring to the documents in the earlier writ petitions filed in Lucknow which he made part of the Writ Petition No. 2025/96 by filing a supplementary affidavit, the original writ petition in Lucknow has also been heard.

9. Since the said original writ petition of S.R. Singh was insisted to be heard along with the earlier writ petitions filed by him which are several in number, this Court allowed the learned Counsel for the petitioner S.R. Singh to provide the serial number of cases so that they may be also heard and decided together as prayed by his Counsel. It may be mentioned that learned Counsel for the petitioner as well as learned Addl. Advocate General Sri O.K. Mehrotra furnished a list of some old cases, which according to them, should be heard with the earlier writ petitions of S.R. Singh. However, during the course of arguments it transpired that some of the writ petitions, the serial numbers of which were given either by the petitioner's Counsel or by the Additional Advocate General, did not appear to be connected with the Ayurved Scam. Consequently, those matters, though listed before the Court for hearing, were delinked. It was good on the part of the learned Counsel for the petitioner to pray that this Court may decide those writ petitions also simultaneously because once they were delinked, they were not likely to be coming up together soon, it was thought necessary that since the jurisdiction of the Court as per the orders of Hon'ble the Chief Justice is confined to the Scam matters it was entitled to hear only those cases which are directly connected with the suspension of S.R. Singh and since it was prayed at Lucknow and Allahabad that S.R. Singh's other petitions need necessarily be heard and decided along with the Writ Petition No. 536 of 1996 and No. 2025 of 1996 only those matters have been heard together and are being disposed of by this judgment. Necessary directions about the delinked cases shall be issued at the conclusion of this judgment.

10. In this Ayurved Scam bunch cases the matters can be divided into the following broad categories:

(1) S.R. Singh's cases Civil and Criminal.

(2) R.A.U.Os. cases involved in Ayurved Scam both civil and criminal.

(3) M.Os." cases involved in Ayurved Scam both Civil and Criminal.

(4) Class III employees cases without having power of drawing and disbursing power.

(5) Liquid paraffin cases all of which relate only to class III employees without drawing and disbursing powers which is partly covered under the Ayurved Scam.

11. Since arguments were nearly common, to maintain continuity of thought, the Category Nos. 2 and 3 are to be discussed under one heading while Category Nos. 4 and 5 are to be taken up simultaneously under another heading.

Ayurvedic Directorate Set up and Budget Allocations.

12. Coming to the cases of either S.R. Singh or R.A.U.Os. or M.Os. or class III employees involved in the Ayurved Scam a gist of the entire set up and hierarchy of officials in the Ayurvedic & Unani Directorate concerned has to be mentioned so that their placements are known and it becomes easy for one to comprehend the various methods of budgeting, allocation of funds, placing orders, submitting bills and getting it passed through Treasuries' offices, making payments to suppliers and some of the allied matters in each and every item of which excess payment and embezzlement is alleged.

13. Ayurvedic and Unani (Directorate) has been created and established to work under the Medical and Health Ministry of the State of Uttar Pradesh. It is headed by a Director. There may be some Additional, Joint or Deputy Directors. The Director's office is situated in Lucknow. There are Regional Ayurvedic and Unani officers in some of the districts of Uttar Pradesh. All of them i.e., R.A.U.Os. have drawing and disbursing powers.

14. The Medical Officers generally head the hospitals which are established in urban and rural areas practically in all the districts in Uttar Pradesh. Some districts combine to make one region. The posts are sanctioned by the State of Uttar Pradesh and filled in by the Directorate in accordance with the Rules. There are three units in some of the districts where expenditure is to be met by allocation of funds. The first spending unit is the hospitals as noted above. The second is the factory/manufacturing unit and the third is the Ayurvedic/Unani Colleges which run under Medical Education Department. At some places R.A.U.Os. and M.Os. look after the drawing and disbursing powers of all or some of the three spending units mentioned above.

15. Suffice it to say that just as in other Government departments, a budget is sanctioned for expending at the spending units through the Directorate. In this regard the Court would not like to venture any comment for the time being because detailed arguments were advanced concerning whether in the period covered for the present Ayurved Scam there was or was not proper budgeting,

there was or was not proper allocation, there was or was not proper payments from the spending units by the R.A.U.Os. Detailed arguments were advanced from the provisions contained in the budget manual. While S.R. Singh relied upon some provisions to highlight his pleadings alleging all bona fide action on his part, the R.A.U.Os. and M.Os. relied upon those very or some additional provisions to point out their pleading that since the budget allocations, including supplementary budget allocations came from the Director S R. Singh, those R.A.U Os., M.Os. and class III employees were wholly innocent. As it is, the allegations of the State are that several crores of rupees have been embezzled in the garb of supplementary budget as a result of conspiracy between S.R. Singh, R.A.U.Os., M.Os. and members of the Staff in the Directorate and local offices.

Litigation history of S.R. Singh's petitions.

16. The limitative history of Dr. Shiv Raj Singh (S.R. Singh) must be stated at the outset so that when the discussion about the individual cases is taken up the continuity of thought is maintained. This is necessary for another reason also. In Crl. Mic. W.P. No. 2025/96 which was filed in this Court reference has been made to W.P. No. 4253 (S/B)/92 filed by S.R. Singh in Lucknow Bench (L.B.). The interim order dated 23/7/92 and the modified order of the learned Single Judge dated 8/9/92 have been made primarily the basis of attacking the subsequent actions of the respondents. The moment one goes into the W.P. No. 4253/92 (L.B.) reference about the earlier litigation pending in L/B. has to be understood because several averments in W.P. No. 4253/92 (L.B.) exist concerning the earlier litigation of S.R. Singh. Only this much may be added here that while detailing the cases of S.R. Singh other connected matters by some other R.A.U.Os. or M.Os., as the case may be, shall also be referred to with the substance of the points involved in those petitions.

W.P. No. 13/9023121989 : S.R. Singh was suspended by this order dated 23121989. It related to the year 198384 when S.R. Singh was working as Principal, Government Ayurved College Atarra, Banda. This was challenged in W.P. No. 13/90.

W.R No. 308/90: This writ petition was also filed by S.R. Singh challenging the same suspension order dated 23121989. However, an application was moved in W.P. No. 13/90 which was dismissed as withdrawn on 16/11/90.

12/190 On 12/11/90 A Division Bench of Hon"ble Senior Judge of Lucknow Bench and Hon"ble B. Kumar, JJ. stayed the operation of the suspension order dated 23121989.

W.R Nos. 3376/90, 4986/90, 1594/90,

7903/90 Similar suspension orders dated 23/12/89 against Uma Shanker Tripathi, D.S. Tripathi and B.S. Dixit became subject matter of their WP. Nos. 3776/90, 4986/90 and 1594/90 (all in L.B.), Uma Shanker Tripathi filed another W.P. No. 7903/90 for enforcing the stay order dated 18/4/90. These four writ

petitions were connected with W.P. No. 308/90 (L.B.).

W.P. No. 2536/90.S.R. Singh filed this writ petition saying that inspite of the stay order he had obtained on 12190 against the suspension order dated 231289, no charge was being given to him. A Division Bench of Hon"ble Rajeshwar Singh and Hon"ble S.H.A. Raza, JJ. finally disposed of the said petition on 16390 directing:

".....O.P. is hereby directed that petitioner shall be given office charge as on 221289 on the same day after service of copy of order."

W.R No. 2726/9023489.The petitioner took charge as Director. W.P. No. 2726/90 was filed by Dr. Ramanand Singh challenging appointment/charge of S.R. Singh: No stay order was passed.

26490.Ramanand Singh allegedly filed an application before the State along with copy of stay order allegedly dated 25490 said to have been passed by Hon"ble S.N. Sahai, J. which is supposed to have been in the following terms:

"Heard the learned Counsel for the parties. No case for stay is made out. Stay order dated 12190 is vacated."

It appears that Hon"ble S.N. Sahai, J. had not passed any such order on 25490. The stay order submitted before the Government may have been a forged copy of a forged order. The original record of W.P. No. 308/90 is not available in the record of the High Court. Some reconstituted papers have been treated to constitute the said file/record of W.P. No. 308/90.

30490.On 30490 S.R. Singh moved an application to vacate the forged order dated 25490. On this application Hon"ble S.N. Sahai, J. stayed the operation of the said forged order, dated 25490 by ordering that:

".....Until further orders the parties shall maintain status quo as on 25490."

S.L.P. No. 7808/90 was filed by Ramanand Singh before Hon"ble Supreme Court. Some interim order is said to have been passed on 2071990 whereby the order of Hon"ble S.N. Sahai, J. dated 30490 is said to have been stayed by Hon"ble Supreme Court. Ramanand Singh alleges that he had assumed charge of the Office of Director immediately after the Hon"ble Supreme Court had passed the said interim order dated 20790. This was disputed. However, Hon"ble Supreme Court ultimately passed a final order on 17890 whereby S.L.P. was dismissed but Hon"ble S.N. Sahai, J. was directed to decide the question of forgery. It was further directed that the original writ petition should be disposed of within three months.

W.P. No. 7229 (S/B) 28790 of 1990.Civil Misc. W.P. No.. 7229/90 was filed by Vishnu Shanker Awasthi for a writ of quo warrantor to show cause how S.R. Singh was holding Office of Director. It is interesting to mention that the socalled orders even in W.P. No. 308/90 as also in W.P. No. 2536/90 were all said to have

been forged orders. On the strength of those averments it was said that since there was no valid interim order in favour of even S.R. Singh, he has no right to continue as Director and he must show cause on what authority he is working as such.

It may be noted here that in W.P. No. 2536/90 the order of the Bench was passed on the very date it was moved disposing of the writ petition itself.

This Writ Petition No. 7229/90 was directed to be connected with W.P. No. 308/90 and the other writ petitions No. 2729/90 of R.S.Singh and W.P. No. 1594/90 of Badan Singh. That, however, never happened.

It has been pleaded that S.R. Singh was suspended by State Government Order No. 4144 said to have been passed by Sri S.R Arya the then Secretary, Medical Education in pursuance of the Hon"ble Supreme Court interim order dated 2071990. It is again pleaded that after the Supreme Court dismissed S.L.P. on 17890 the petitioner took charge afresh. The date of the alleged suspension order in pursuance of the Supreme Court's order and the date of assuming charge in pursuance of the ultimate dismissal of S.L.P. are completely obscure. On behalf of the State it has been denied that any such order No. 4144 was ever issued and it was further sided that these averments are false.

In the meantime Selection Rules were formulated.

18591.The Selection Committee selected the petitioner its Director.

17692.S.R. Singh was suspended on serious charges of making ILLEGAL APPOINTMENTS.

W.P. No. 4353/92 (L.B.).This writ petition was filed by S.R. Singh challenging the order, dated 17692 whereby he stood suspended because he was charged for having made various illegal appointments in ClassIII & ClassIV in the Directorate.

23792.Hon"ble K.C. Bhargava, J. stayed the suspension order dated 17692 but directed that respondents may complete the enquiry and they may or may not take work from the petitioner.

5892.The State Government appointed Dr. V B. Sahai to work as Director.

8992.Modification application moved by S.R. Singh was disposed of by Hon"ble K.C. Bhargava, J. saying:

".....in view of the decision in P.K. Chinna swami v. State of T.N., AIR 1988, S.C. 78, it is directed that in the last para of the interim order dated 23792 in the second line the following wordsand take work or not to take work from the petitioner" shall stand deleted and shall be substituted by the following words:

"The O.Ps. are directed to take work from the petitioner on the post on which he was suspended." With these directions the modification application is disposed of."

5892. On this date the respondents had appointed Dr. VB. Sahai to work as Director, as already noted above.

W.P. No. 5476/92. This writ petition filed by Rajkiya Ayurved Shikshak Sangh U.P. Lucknow through Sri S.C. Pandey, Advocate challenges the order dated 5892 passed by the State appointing Dr. V.B. Sahai as Director. A Division Bench, of Hon''ble Senior Judge, Lucknow Bench and Hon''ble Tilhari, J. passed the following interim order on 12892 whereby it was directed that the operation of the order dated 581992 shall remain stayed and Dr. V. B. Sahai was not to work as Director or look after the work of Director. It may be noted that by modified interim order dated 8992 the respondents were directed to take work from S.R. Singh and place him on the post on which he was suspended. By the other interim order dated 12892 Dr. YB. Sahai who was appointed to work as Director was restrained from working as such.

21192. By an order passed on 2111992 the State Government felt the necessity of creating a post of Director, Ayurved and Unani Sewa which was to continue till 2021993.

Crl. Case No. 3982/92 (Contempt) 131192. Criminal Case No. 3982/92 (Contempt) was filed by Rajkiya Ayurvedic Chikitsa Sewa Sangh in which it was directed on 131192 that the respondents should show cause why contempt proceedings be not taken.

Misc. Application No. 26829/92 was filed on 11292 purporting to be in W.P. No. 4353/92 which was moved before Hon''ble K.C. Bhargava, J. and his Lordship passed the following order:

"No. C.A. Filed. The O.Ps. are directed to enforce Court''s order within a week."

It may be mentioned that an objection was raised by the State that the matter was wrongly listed before Hon''ble K.C. Bhargava, J. while passing the interim order noted above, the said objection of the State counsel was repelled.

11092. The State filed a Special Appeal against the modification order dated 891992 which was admitted by a Division Bench which fixed 301092 as the date for final hearing along with record of W.P. No. 4353/92.

When the matter was listed on 301092, it was mentioned to stand out for the said day. Adjournment appears to have been granted. However, on 101292 this matter again went before Hon''ble K.C. Bhargava, J. who passed the following order:

"This is a Division Bench case and wrongly listed before this Bench. Put up before appropriate Bench."

As mentioned above Hon''ble K.C. Bhargava, J. passed the order in V/.P. No. 4353/92 directing it to go before a Division Bench. However, on the Misc. Application No. 26829/92, as noted above, directed enforcement of the earlier order.

W.P. No. 8062/92. This writ petition was filed by Rajkiya Ayurvedic & Unani Shikshak Sewa Sangh challenging the aforesaid order dated 21/1/92 whereby another post of Director was created.

18/1/92. The interim order was passed by Hon'ble Lucknow Bench of this Court and Hon'ble S. Dikshit, J. in the aforesaid Writ Petition No. 8062/92 as under:

"Meanwhile appointment on the post of Director created by Notification dated 2/1/92 shall not be made unless work is provided to Dr. S.R. Singh on the existing post of Director held by him."

9/12/92. 9/12/92 was the date fixed in the instant case. It was adjourned.

24/12/92. S.R. Singh was handed over charge of Director in pursuance of the detailed order passed showing compliance of Court's order. It may be mentioned that on behalf of the petitioner S.R. Singh, it was contended that even though the petitioner was handed over charge on 24/12/92, the suspension order, dated 17/6/92 was not recalled specifically and, therefore it operates. State challenges the correctness of this argument saying that once charge was handed over the suspension order ended.

24/12/92. The petitioner S.R. Singh assumes charge of Director and resumes working as such.

10/3/93. S.R. Singh appointed Sri G.S. Rajpoot, Dy. Director to enquire complaints of I.P. Bharti and S.C. Sharma, President, B.J. Party, Kanpur regarding bungling in Ayurved Department.

W.P. No. 7090/93. 31/8/93. S.R.

Singh filed this writ petition challenging Chandra Commission Report which had indicted S.R. Singh concerning death of several persons by consuming Ayurvedic drug named Karppor Asav. Many people had died in Delhi and Ghaziabad by consuming the said drug.

Quashing of the report of the Secretary Chandra Commission was under challenge. The writ petition is pending which was filed on 31/8/93. Some allegations have been made against the working in the Secretariat and the Directorate and it was alleged that S.R. Singh was wrongly being implicated.

5/8/93. S.R. Singh having written to R.A.U.Os. and M.Os. that no allopathy drug be purchased.

20/9/93. Sri G.S. Rajpoot submits report on which S.R. Singh writes to Govt. to take action.

12/10/92. P.K. Jha, Special Secretary submits report saying that there is large scale irregularity concerning purchase of a medicine described as "Liquid Paraffin." It is not an Ayurved drug but has been purchased in 47 districts.

6/11/93. The Government refers the matter of purchase of Liquid Paraffin to the

Vigilance Department for enquiry. S.R. Singh claims that it is on his report that Liquid Paraffin matters have been enquired into. Vigilance enquiry is said to have been ordered in all the 47 districts where it was purchased. In 20 districts enquiry is complete. In 12 districts prosecution has been recommended" out of which sanction has been obtained from the Government in 11 districts matters. About one district sanction was accorded but before the matter could be sent to court the matters came to be taken over by the C.B.I, in pursuance of Government Notification following this Court's directions. Suspension orders have been passed in the cause where vigilance enquiry is complete. But disciplinary proceedings have not commenced yet because the record of the cases is said to have been taken over by the C.B.I. This will be discussed in detail under the heading Liquid Paraffin matters.

91293.Petitioner S.R. Singh informed the Government that on forged stay orders on forged signatures of S.R. Singh wrong payments were being made.

241293.S.R. Singh informed the R.A.U. Os. and M.Os. that excess purchase be not made and budgeted amounts alone should be used for making purchases.

3394.S.R. Singh wrote to Treasury Officers specially of districts Basti and Banda that withdrawals on supplementary allocation or grant or additional budget may first be verified and then only bills be passed and unless the Directorate verifies, additional grant be not released.

7394, 13194, 13394, 15394.

Similar letters to Sidharth Nagar, Basti, Banda, Kanpur and Tehri Garhwal. The writing on receiving these letters & not admitted as there is no original of these letters in the Directorate, as per State Counsel.

22394.Similar letters to all the Principals of Ayurvedic Colleges, all M.Os., all R.A.UOs. and to all Superintendents of Ayurvedic Pharmacies (Factories/ Workshops).

24394.S.R. Singh indicated five persons as having made irregularities and State Government was requested to start disciplinary proceedings and suspend them.

Those five are

W. R No. 529/94 (L.B.).(1) Ram Niwas Tewari, R.A.U.O. Kanpur.

(2) Ram Krishna Katiyar, R.A.U.O. Sidharth NagarNo petition.

W.R No. 1246/94.(3) Bhanwar SinglvR.A.U.O. Basti.

(4) Janeshwar Nath Dubey, R.A.U.O. BastiNo petition.

W.R No. 899/94.(5) Ramesh Chandra Sharma, R. A.U.O., Banda.

23394.Letter of S.R. Singh to Finance Secretary alleging fraudulent withdrawals.

26394.Telex message was sent on behalf of the Government to all concerned

authorities, the Treasury Officers to "stop payment" of any bill which may have been submitted for payment.

31394.The Government directed action against five officials mentioned in the last but two paragraph and directed that F.I.R. be lodged against two misconducting officials of Basti and one each of Sidharthnagar, Banda and Kanpur.

15494.Internal Auditor Sri Shyama Prasad submitted his audit report.

15494.The Government received an undated complaint of one Iqbal Ahmad alleging grave irregularities in the various Treasury Offices of districts including the Directorate of Treasuries as well as the Staff of the Treasuries and Ayurved Directorate. It may be mentioned that several newsitems appeared in the local newspapers concerning Ayurved Scam.

2242004.Statement was made on behalf of the Government in Vidhan Sabha, i.e. Ayurved Scam.

25494.Statement was made in Vidhan ParishadScam.

26494.S.R. Singh alleges that Government issued an order through Sri Anoop Misra, Secretary Finance that the restrictions imposed on releasing payments dated 26394 stand partially relaxed concerning expenditure on different heads other than expenditure on item No. 25.

It may be mentioned that the State Government does not admit the issuance of this letter/order.

26694.S.R. Singh writes to the Government for taking steps to stop embezzlement which was being done on forged orders, allocation orders, supplementary demand, supplementary grant etc.

27694.The State Government" entrusted the matter for investigation" through Economic Offences Wing (E.O. W) concerning the allegations which stood made against many persons as noted above. It may be mentioned that on 1511994 the Vigilance department was already seized with this matter. Two Enquiry Commissions were set up by the Government, one was headed by Sri VB. Raju then Director General, Medical Education and the other was a Committee of which Sri Venkatramani was Chairman and Sri S.A.T. Rizvi, Principal Secretary, Finance and Smt. Sunita Kandpal, Principal Secretary, Medical & Health were the members.

28295.S.R. Singh's financial powers were taken way and he was prohibited from exercising any financial control as Director.

4395.The Medical Secretary was authorised to exercise financial powers as a result of which a direction was issued on 831995 to that effect in favour of Sri S.K. Khare, Special Secretary, Meucal & Health Department.

W.P. No. 549/9520795.S.R.

Singh challenged the aforesaid direction of the State Government divesting him of the Financial powers and directing Special Secretary, Medical & Health to exercise those powers.

A Division Bench of Hon''ble S.H.A. Raza and I.P. Vashisht, JJ. passed the following order:

"Standing Counsel prays for and is granted four weeks" time to file a response. List this writ petition in September, 1995. Meanwhile it is proved that the petitioner shall be allowed to perform all financial powers except making purchases and appointments."

24795.A correction/Modification application was filed on behalf of S.R. Singh.

4895.The aforesaid interim order dated 20795 was" modified. Relevant portion is quoted below:

".....We direct the Standing Counsel to file a response within a week. List this writ petition on 29895. On that date Sri S.K. Khare, Special Secretary.Medical Education will appear in person to explain the position.

29895.Sri S.K. Khare applied for exempjion on, the ground that he was to appear in a case in this Court at Allahabad.

31895.It is alleged that Special Secretary, Finances issued a note addressed to the Special Secretary, Medical & Health intimating that financial powers were being restored in favour of the Director Ayurved.

6995.a post was created known as director ayurved & unani (syllabus evaluat1onpathyakram mulyankan).

On that very day (6995) the petitioner S.R. Singh was transferred and posted at the newly created post.

7995.The petitioner took charge of the new post of Director, Ayurved (Syllabus evaluation).

12995.An application was moved on behalf of S.R. Singh against Sri Mohindra Singh, Principal Secretary in Medical Education, in the aforesaid writ petition. On 12995, a notice was issued to Mohindra Singh in the aforesaid Writ Petition No. 549/95. Fresh interim orders by Hon''ble K.C. Bhargava, J. in 4353/9226/27995

Both the orders dated 6995 were challenged by way of an application in pending W.P. No. 4353/92. 29995.These applications went before the learned Single Judge Hon''ble K.C. Bhargava, J. who passed the following order on 2991995 concerning the two orders dated 6995 in the aforesaid pending Writ Petition No. 4353/92:

".....It is directed that operation of the order dated 6995 contained in AnnexureR to the application and order dated 6995" contained in Annexure5 to the application shall remain stayed. The petitioner shall continue on the cadre

post of Director."

It may be mentioned that it was pointed out by the State Counsel that the petitioner did not mention that he had already joined on 7995 on the new post on which he was transferred.

30995. The petitioner joined at the old post of Director Ayurved and Unani services.

Spl. Appeal 221/9515/161195: A Division Bench of Hon"ble R.K. Gulati, J. and ffon"ble I.P. Vashisht, J. allowed the Special Appeal of the State (Special Appeal No. 221(95) which, was directed against the ord"er of Hon"ble K.C. Bhargava, J. dated 2991995. The said order of learned Single Judge was .set aside. This Special Appeal was against the "order of Hon"ble K.C. Bhargava, J. dated 29995. To refresh the memory. The other Special Appeal No. 318/92 was against the order of Hon"ble K.C. Bhargava, J. dated 8992 whereby he had modified his earlier stay order dated 20792 arising out of the suspension order against S.R. Singh dated 17692.

it may be mentioned that on behalf of the state it was mentioned that the petitioner did not take charge on the old post on 30995. the taking of charge is disputed strongly.

the original record of w.p. no. 4353/92 is missing. on what basis this file has been reconstituted is not apparent from the record, of whatever is said to be the reconstituted record.

121095 Sri Mohindra Singh filed his counteraffidavit in the writ oetition along with an aplication to value the stay order. He was directed to appear personally before the Hon"ble Court in (L.B.).

131095. Sri Mohindra Singh appeared in Court. He was granted time to reply and 31195 was fixed for his appearance again.

21195. The State Government passed a detailed order narrating the gist of various orders of L.B. and then directed reinstatement of the petitioner S.R. Singh. It is contended by the petitioner S.R. Singh that this order dated 21195 has been served on him on 31195. Further Sri S.K. Khare was also in the meantime transferred to some other department.

3.1195. The Writ Petition No. 4353/92 came up before a Bench of Hon"ble S.H.A. Raza, J. and Hon"ble I.P. Vashisht, J. It was directed by Hon"ble S.H.A. Raza, J. that his Lordship was not inclined to be a member of the Bench in this case, it may be listed before the appropriate Bench and this matter. was not to be linked with the earlier noted W.P. No. 549/95.

31195. An F.I.R. stood lodged at 3. 10 p.m. (F. I.R. No. 854/95) at P.&"Hazratganj, under Sections 409, 418, 420, 467, .468, 471 and 120B, I.P.C. against the petitioner S.R. Singh. This was lodged by Sri Yashwardhan Sinha, Deputy Secretary, Medical & Health and Family Welfare Department of the State

Government. It transpires that PS. Hazratganj was not having jurisdiction concerning this matter and thus it was forwarded to police station Hussainganj, Lucknow where it was registered against case Crime No. 494 of 1995. The substance of the allegation is that sum of about Rs. 35 crores has been misappropriated by the petitioner S.R. Singh as a result of his criminal misconduct and conspiracy.

31195. On this very day S.R. Singh was suspended by a fresh order passed by the State Government pending disciplinary proceedings against him.

W.P. No. 3319/95 121195.S.R.

Singh filed this writ petition for quashing of the F.I.R. lodged as case Crime No. 494 of 95, P.S. Hussainganj, Lucknow.

131195. The said W.P. No. 3319/95 happened to come up before a Division Bench of Hon"ble K.C. Bhargava and Hon"ble I.S. Mathur, JJ. Before this Bench a statement had been made by Sri O.K. Mehrotra Addl. Advocate General that the petitioner S.R. Singh will not be arrested till next date of listing. The order as passed may be quoted:

"Heard arguments. Learned Counsel for the State Sri G.K. Mehrotra prays for and is allowed five days" time for filing C. A. and placing on record relevant materials.

List/put up on 221195 as agreed by learned Counsel for the parties. Sri G.K. Mehrotra States that till that date the petitioner shall not be arrested."

The case was adjourned on 211 95 to 24111995.

141195. The W.P. No. 4353/92 ultimately came up before Hon"ble B. Kumar and Hon"ble A.S. Gill, JJ. The interim order was extended "till tomorrow" by the said Bench and it was directed to be listed again with Special Appeal No. 318/92.

151195. The aforesaid W.P. No. 4353/92 came up before a Division Bench of Hon"ble O.K. Trivedi and Hon"ble O.P. Pradhan, JJ. It was directed that the interim order in the said writ petition would extend till decision in the Special Appeal.

it was thus contended by additional advocate general that the special appeal no. 221/95 stood dismissed by division bench on 161195, therefore, stay order, if any, in w.p. no. 4353/92 ceased to operate after 161195 and there is no stay order surviving in that writ petition.

241195. A Division Bench of Hon"ble K. C. Bhargava, J. and Hon"ble Kundan Singh, JJ. passed the following order:

"Learned Counsel for the parties are present. At the request of the learned Counsel for the opposite parties put up on 281195. Learned Counsel for the opposite parties states that the petitioner is not cooperating with I.O. and in spite of notice he did not reach the Office of the Circle Officer, Hazratganj It has been agreed between the Counsel for the parties that the petitioner will make

himself available in the office of the Circle Officer, Hazratganj, Lucknow tomorrow i.e., 251195 at 11 a.m. The undertaking given by the learned Addl. Advocate General shall continue till the next date."

281195.This petition came up before a Division Bench of Hon''ble D.K. Trivedi and Hon''ble O.P. Pradhan, JJ. when the following order was passed:

"In this case a request has been made on behalf of Sri V Bhatia (learned Counsel for the petitioner S.R. Singh) that he is ill and, therefore, the case be adjourned. C.A. filed today be kept on the record. The undertaking given by Sri G.K. Mehrotra is withdrawn. Hence the same is discharged. No case for stay at this stage is made out. The petitioner's Counsel states that the present writ petition relates to the quashing of the F.I.R. and the other writ petition relates to suspension matter, hence both these writ petitions cannot be consolidated nor can be heard by one Bench. The matter be put up on Monday, the 4th December, 1995 to enable the petitioner's Counsel to file rejoinder affidavit. The matter be put up before the appropriate Bench."

In the meantime, however, the matters arising out of investigation through the F.I.R. dated 3111995 was handed over to the E.O.W. Kanpur Unit because the other five F.I.Rs. relating to Kanpur, Basti, Banda and Sidharth Nagar were already referred to the Kanpur Unit of E.O.W. Some raids were allegedly made by different police authorities and courts were approached for warrants, etc.

301195.An application was moved on behalf of S.R. Singh by his Advocate Sri S.C. Pandey for continuing the interim order dated 181195 even after 20895. It is said that its copy could not be served on 291195 on Sri G.K. Mehrotra as he could not be contacted. It was said that an urgency application was also moved (No. 6235/95) through which it was prayed that the matter may be listed before some other Judge and not Hon''ble D.K. Trivedi, J. The W.P. was listed before Hon''ble B. Kumar & Hon''ble K.C. Bhargava, JJ.

61295.By a detailed order the said Division Bench directed that keeping in view the urgency involved, the matter be placed before a Bench in Court No. 7. It was stated on behalf of the petitioner that the prayer for listing the matter before some Bench of which Hon''ble D.K. Trivedi, J. was not a Member, was not pressed and withdrawn unconditionally. Hence no further action about those objectionable applications was taken by the said Bench. The matter then went to the Division Bench of Hon''ble O.K. Trivedi, J. and Hon''ble Jagdish Bhalla, J. An adjournment was sought by the petitioner and it was directed to be listed or put up on 11121995 on the request of learned Counsel for the petitioner.

111295.The matter was listed before Hon''ble K.C. Bhargava, J. and Hon''ble I.S. Mathur, J. but it went to some other Courts on 151295, 181295 and 911996. Ultimately on 921996 the said Bench of Hon''ble K.C. Bhargava, J. directed that

"This case is released by this Bench. It may be listed before some other Bench. Let the file be put up before Hon''ble Senior Judge today during lunch hours for

passing appropriate orders."

The Senior Judge (L.B.) directed that the matter be listed in the next week. It appears that the matter was listed before the Bench of Hon"ble O.K. Trivedi, J. and Hon"ble A.N. Gupta, J. on 1421996, 2721996 and 731996 when it was directed to come up on 2241996. The matter was not listed, thereafter, before other Bench and has come up before this Court for final hearing alongwith connected matters.

17. One set of cases may be mentioned here again which arise out of three first information reports lodged against petitioner S.R. Singh. F.I.R. No. 264 of 1995 stands lodged by Dr. V.N. Misra, R.A.U.O. Lucknow on 8101995 at Police Station Gomati Nagar, Lucknow against petitioner S.R. Singh, Dr. V.N. Misra, however, was suspended by an order dated 6101995 which has been challenged by him in Writ Petition No. 159 of 1996 in L.B. The second matter in this set of cases is F.I.R. No. 791 of 1995 lodged by Dr. Ramesh Chandra Misra, R.A.U.O. Pratapgarh against petitioner S.R. Singh on 10101995 at P.S. Hazratganj, Lucknow and Dr. Ramesh Chandra Misra stood suspended by order dated 6101995 challenging which he has filed Writ Petition No. 63 of 1996 in L.B. Similarly, the third first information report in this connection is 801 of 1995 lodged by Dr. Awadhesh Narain Giri, M.O. I/C, State Ayurvedic

Hospital, Rae Bareli against the petitioner S.R. Singh on 15101995 at P.S. Hazratganj, Lucknow. During the course of arguments, it was pointed out that Dr. Awadhesh Narain Giri has also filed writ petition challenging his suspension order dated 6101995 but none of the parties furnished any detail to the Court. As it has been noted elsewhere in the judgment, the aforesaid writ petition Nos. 159 of 1996; 63 of 1996 and the one, which may have been filed by Dr. Awadhesh Narain Giri, have not been listed before this Court during the hearing of the bench matters. They shall be appropriately dealt with when listed for admission/ final hearing.

W.P. No. 3121/95271095.W.P.

No. 3121 of S.R. Singh challenging these F.I.Rs. goes before Hon"ble S.H.A. Raza & A.N. Gupta, JJ. Released by Hon"ble Raza,

5121995: It may also be relevant to mention that on 5121995 District Judge, Lucknow passed order issuing nonbailable warrant of arrest against S.R. Singh. An application was moved on behalf of S.R. Singh on that very day. Objection was raised on behalf of S.R. Singh through an application that since the investigation of the First Information Report lodged on 3111995 as also the earlier reports lodged by him stood transferred to the E.O.W. Kanpur, civil police as well Lucknow courts will have no jurisdiction. The District Judge, therefore, ordered that warrant of arrest shall not be executed.

241996. The State, therefore, proceeded to move an application in Kanpur Nagar an application was moved on 241996 for obtaining nonbailable warrant against

S.R. Singh which was issued by Kanpur Nagar Court. It appears that Sri N.C. Pandey, Advocate appearing for S.R. Singh, moved an application alongwith an affidavit before the Court of District Judge, Kanpur for recalling of the order of nonbailable warrant of arrest. No success could be achieved by S.R. Singh.

W.P. No. 700/96621996. This writ petition was filed in this Court with the prayer that further investigation in case crime No. 155/94, P.S. Kidwai Nagar, Kanpur be quashed.

621996A counteraffidavit was filed by Kartar Singh who was investigating the matter for the E.O.W. 2821996. A Division Bench of Hon"ble Giridhar Malviya and Hon"ble Kundan Singh, JJ., dismissed the writ petition because investigation was complete in this case.

Cr. M. App. No. 867/96173

1996.S.R. Singh prayed through this application filed under Section 482, Cr. P.C. that all cases filed against him may be consolidated and bail be granted to the petitioner in all cases. Hon"ble N.S. Gupta, J. dismissed this writ petition at Allahabad.

Cr. M. App. No. 1755/96541996.S.R. Singh filed another application under Section 482, Cr. P.C. before this Court with the prayer that the proceedings initiated under Sections 82/83, Cr. P.C. in case Crime No. 155/94 be quashed. The order of the Sessions Judge, Kanpur directing the steps as well as proclamation of Section 82/83, Cr. P.C. were challenged. On 2641996 Hon"ble O.P. Jain, J. disposed of the aforesaid application after making certain observations.

Cr. M. App. No. 1676/962851996.S.R. Singh filed this application before this Court praying that a date may be fixed by the High Court permitting surrender of the petitioner at Kanpur Nagar in connection with all cases registered against him pleading that all those cases arose out of same transaction. This matter is pending and has to come up before this Court along with bunch cases.

Cr. M. App. No. 1933/962851996. It was prayed by S.R. Singh through this application that the process issued against him by the Sessions Judge, Banda on 14596 be quashed. This application was disposed of by observing that S.R. Singh should appear on 561996 before Sessions Judge who shall be at liberty to issue a fresh warrant of arrest against him if he did not appear.

W.P. No. 2025/962051996. This writ petition under Article 226 of the Constitution of India has been filed by S.R. Singh with three prayers. The substance of which is that the orders issued against the petitioner be stayed in several cases

detailed in those prayers. Hon"ble N.S. Gupta, J. passed a detailed interim order the relevant part of which is quoted below:

"Meanwhile it is directed that the investigation against the petitioner shall proceed but he shall not be arrested in connection with case under Sections

409/418/420/467/471/120B, IPC read with Sections 7/13 of the Prevention of Corruption Act."

It is noticeable, as pointed out by learned State Counsel, that the order does not mention any crime number, nor does it mention police station nor any District.

18. Having noted all the criminal cases emerging out of the first information reports against petitioner S.R. Singh, reference about two service matter filed in L.B. have to be detailed here and .that should complete the litigative history of S.R. Singh petitions again because not only that S.R. Singh was suspended on 3111995, a chargesheet was also served upon him.

W.P. No. 396/961351996.S.R. Singh challenged the charge sheet served upon him through Sri Mridul Rakesh, Advocate. The prayer in the petition was that the respondents should be restrained from proceeding with the chargesheet dated 3111995 (which was served along with suspension order).

1751996.A Division Bench of Hon''ble B.K. Roy and Hon''ble K.L. Sharma, JJ. dismissed the said writ petition with speaking order.

W.P. No. 536/96 (LB)2561996.

S.R. Singh filed this writ petition with three reliefs:

(i) supplementary chargesheet dated 28596 in disciplinary proceedings against petitioner he quashed and an officer, senior to S.R. Singh, be made Inquiry Officer;

(ii) suspension order dated 3111995 be quashed; and

(iii) respondents be restrained from interfering with the petitioner's working as Director Ayurved.

This petition was filed by Miss S. Goswami, Advocate on behalf of petitioner Shiv Raj Singh.

2661996.Petition was directed to be listed in July along W.P. No.3319 of 1995

by Hon''ble I.M. Qudusi, J. who then substituted that order with a subsequent order that a supplementary affidavit may be filed. After some time, it appears that the case was again taken up when it was said that "supplementary affidavit filed today be kept on record.....orders will be passed at latter part of the day due to rush of work". After these three orders, a fourth order was also passed on the same day in that very writ petition. After taking note of petitioner's arguments and objection of Sri G.K. Mehrotra, it was directed that:

".....List this case in the week commencing 2271996. Till the next date of listing further operation of the impugned order of suspension shall remain stayed. However, this interim order shall stand automatically vacated before the next date of listing of the case in case the stay order granted on earlier suspension order is vacated."

3061996.Sri G.K. Mehrotra moved an application before Hon"ble I.M. Quddusi, J. pointing out that the Special Appeal of the State was allowed and, therefore, earlier stay order if any, of the suspension order passed earlier against S.R.Singh stands already vacated.

The learned State Counsel stated that Miss Sandhya Goswami was Counsel from Delhi in this writ petition. Therefore the copy would not be served on her. However, Hon"ble I.M. Quddusi, J. passed the following orders:

".....List this application on 371996 with the connected record before appropriate Bench. Till then the operation of interim order dated 26696 in C.M. App. No. 9990/W/1996 dated 2661996 shall remain stayed."

371996.The matter went before a Division Bench of Hon"ble Brijesh Kumar and Hon"ble J.P. Bhalla, JJ. The Bench passed the following orders:

".....Case called out.....None responds for the petitioner.....Sri G.K. Mehrotra appears for O.Ps.....In the meantime we extend the operation of interim order passed by learned vacation Judge himself on 3061996 as the application moved by AdvocateGeneral on 26696 by which the impugned Order of suspension of the petitioner was stayed."

19. Thereafter this writ petition went before several benches and has ultimately come to this Court alongwith bunch matters.

20. It may be now stated here that from the resume of litigative history of all the petitions filed by petitioner S.R. Singh, as shall be discussed in detail hereinafter, only five writ petitions now remain to be decided on merits. The numbers will be:

Discussion on S. R. Singh"s Petitions

(1)W.P. No. 3319/95 (Lucknow Bench)

(2) W.P. No. 536/96 (Lucknow Bench)

(3) W.P. No. 3121/95 (Lucknow Bench)

(4) W.P. No. 1676/96 (this Court at Allahabad)

(5) W.P. No. 2025/96 (this Court at Allahabad)

One of the matter which relates to petitioner Dr. Sheo Raj Singh is Writ Petition No. 308/90 filed a Lucknow Bench. When this matter was taken up, Shri Satish Chandra Pandey, learned Counsel for the petitioner argued the matter with consistent tenacity and his advocacy has been of immense help to this Court. While dealing with the facts concerning the said Writ Petition No. 308 of 1990 many other petitions had to be referred to, in order to know the subsequent facts and circumstances which have become relevant for the ultimate decision in the petitions filed by petitioner Dr. Sheo Raj Singh in the year 1995 concerning the Ayurvedic Scam.

21. While several individual cases shall have to be taken up and dealt with separately with specific reference to the materials existing in the record of that case, yet for birds eye view the details of the writ petitions filed by the petitioner must be mentioned here, some other writ petitions preferred by some others shall be adverted to casually here, of course to be discussed in detail when they are taken up for consideration. If any of those other cases has not to be dismissed as infructuous.

22. In Writ Petition No. 308/90 filed by Dr. Sheo Raj Singh there are three opposite parties:

(i) State of U.P.

(ii) Dr. Rama Nand Singh and

(iii) Dr. Satya Pal Gupta.

It contained the prayers that the suspension order dated 23121989 passed against the petitioner while he was working as Principal in Ayurvedic College, Banda may be quashed and further the petitioner's continuance may not be disturbed till regularly selected candidate by the Departmental Promotion Committee comes. This writ petition has been filed by Dr. Sheo Raj Singh through Shri Narendra Kumar Pandey, Advocate. On 1211990 the suspension order was stayed. It may be mentioned here that the allegations against the petitioner in that case were that while working as Principal, Government Ayurvedic College, Banda, the petitioner made unauthorised purchases and expenditure incurred was not authorised and consequently financial irregularities were committed by him. Annexure2 to the writ petition is a letter dated 2581988 by the then Director Dr. Satya Pal Gupta saying that many Colleges are committing financial irregularities. In this view of the matter action appears to have been taken against four persons each one of whom has filed separate writ petitions:

(i) Dr. Uma Shankar Tripathi has filed Writ Petition No. 3776 of 1990 in which he has challenged the suspension order dated 23121989 which has been stayed by the order dated 1841990 by a Division Bench. In this a counteraffidavit has been filed alongwith an application to vacate stay order.

(ii) Dr. Daya Shankar Pandey has filed Writ Petition No. 4980/90 challenging the suspension order dated 23121989 in which the stay order has been granted on 2451990 by a learned Single Judge. It has been directed that this writ petition should be connected with the writ petition of the petitioner No. 308/90 as also 1594/90 reference about which existing in the next line.

(iii) Dr. Badan Singh Dixit has filed Writ Petition No. 1594/90 challenging the suspension order dated 23121989 in which an stay order has been granted on 1621990. This has also been directed to be connected with Writ Petition No. 308/90. In this case counteraffidavit has been filed alongwith an application to vacate the stay order.

(iv) Dr. Uma Shankar Tripathi has filed Writ Petition No. 7903/90 for enforcing the stay order dated 1841990 passed in Writ Petition No. 3776/90 mentioned above at item No. (i).

This was also directed to be connected with Writ Petition No. 308/90.

(v) Dr. Servdeo Upadhyay was reported to have filed a similar petition because he too was similarly suspended. But its details have not been furnished by any side.

23. All these five petitions have become infructuous as one of them has died while the remaining three have retired from service.

24. A Writ Petition No. 2536/90 has been filed by the petitioner Dr. Sheo Raj Singh in which the only opposite party is the State of Uttar Pradesh. This was filed with the prayer that since the interim order passed in the petitioner's earlier Writ Petition No. 308/90 was not complied with, its compliance may be secured by another order. A Division Bench finally disposed of this writ petition by its detailed order dated 1631990 the substance of which in the words used in the order by Hon"ble R. Singh and Hon"ble S.H. A. Raza, JJ. is:

"The writ petition is finally disposed of. The petitioner was not given charge in spite of the interim order. Opposite party is hereby directed that the petitioner shall be given charge of the office as was held by him on 22121989 on the same day after service of copy of order."

25. It is stated by Shri S.C. Pandey, learned Counsel for the petitioner that he had issued a notice dated 2321990 asking the State to immediately give the charge of the office of Director to the petitioner and if not so done, contempt proceedings and other action shall be initiated.

26. On 2431990 the petitioner got charge of Director in the Ayurvedic Unani Directorate.

27. Dr. Ramanand Singh has however stated in Writ Petition No. 2726/90 filed by him that since he i.e. Dr. Ramanand Singh was already given charge after the petitioner was suspended by the order dated 23121989, the petitioner Dr. Sheo Raj Singh should not be given charge. That writ petition is pending and no interim order was passed. It appears that by an application the alleged order passed by a learned Single Judge in the Lucknow Bench of this Court on 2541990 has been challenged as a forged order and during the course of the arguments it was insisted that a finding should first be recorded as to who has committed the forgery if at all and then proceedings may be concluded after such a finding. It has been emphasised by the learned Counsel for the petitioner that in the absence of first recording a categorical finding as to who is the for gerer or which person or persons are behind the alleged forgery, real justice may not be possible in the petitioner's case.

28. This point, regarding the alleged order said to have been passed on 2541990

by Hon"ble Mr. Justice S.N. Sahai (since retired) is a forged order or not, has to be decided right now. In this process the argument that without deciding the person who has forged or who may be behind the forgery has to be definitely found out before proceeding to decide the case on merits, is taken up.

29. It has so happened that Dr. Ramanand Singh is said to have filed an application before the State Government on 26/4/1990. Along with that application he had filed an alleged certified copy of an order passed by Hon"ble S.N. Sahai, J. on 25/4/1990. The order read as under:

"Heard the learned Counsel for the parties.....No case for stay is made out. The stay

order dated 12/1/1990 is vacated."

(it may be recalled that the stay order dated 12/1/1990 is the one which has been obtained by Dr. Sheo Raj Singh petitioner in this writ petition no. 308/90).

30. On 30/4/1990 petitioner Dr. Sheo Raj Singh has made an application to vacate the alleged stay order dated 25/4/1990. It appears that Hon"ble S.N. Sahai, J. ultimately came to hear that application and by an order dated 30/4/1990 stayed the operation of the alleged stay order dated 25/4/1990. By His Lordship's order dated 30/4/1990 it was further directed that until further orders parties shall maintain status quo as on 25/4/1990.

31. It may further be mentioned here that this application, the earlier applications and the orders have been kept under seal cover by order of the Court passed on that date for facilitating further enquiry into the question of forgery in the alleged stay order dated 25/4/1990.

32. It may further be mentioned that according to the petitioner's case he applied for a certified copy of the order dated 30/4/1990 for which he furnished one folio and stamps for the certified copy. However, it is pointed out that against the same folio two other certified copies of the order dated 30/4/1990 were prepared by the office of this Court at Lucknow Bench. It is stated by the petitioner that this illegality in attempting to issue more certified copies than one against the one folio only which was submitted by the petitioner, was brought to the notice of the Hon"ble Senior Judge at Lucknow Bench.

33. Dr. Ramanand Singh filed S.L.P. No. 7808/90 against the aforesaid order of the learned Single Judge, dated 30/4/1990 by which he had stayed the alleged forged stay order dated 25/4/1990. The petitioner Dr. Sheo Raj Singh says that the Hon"ble Supreme Court has passed an interim order on 20/7/1990 by which the aforesaid interim order dated 30/4/1990 was stayed by the Hon"ble Supreme Court. The petitioner further says that Dr. Ramanand Singh's S.L.P. came to be finally decided by the Supreme Court on 17/8/1990 but before the final decision of the Hon"ble Supreme Court, the State Government passed an order No. 4144 dated 10/8/90. The Hon"ble Supreme Court's order, as understood by the State Government, was complied with by the said order No. 4144 passed by it on

1081990 through which it was directed that the suspension order against the petitioner which was passed in pursuance of the alleged forged order dated 25490 was recalled and in terms of the interim order of the Hon''ble Supreme Court dated 2071990 the petitioner was handed over charge on 1081990 itself. It may be mentioned here that during the course of the arguments the order of the State Government No. 4144, dated 1081990 was not admitted to the respondents' Counsel. Interestingly the petitioner has not pleaded on what date, if at all, he was suspended in pursuance of the alleged forged order dated 2541990 and on which date he allegedly took over again in pursuance of the so-called order No. 4144 dated 1081990 said to have been passed by the State Government. When asked Shri S.C. Pandey, learned Counsel for the petitioner could not inform the Court of these dates either.

34. It is not necessary at this stage to go into the issue as to whether the petitioner was divested of the charge of the office of Director in pursuance of the interim order passed by the Hon''ble Supreme Court or whether he was handed over charge again by the State Government through its order No. 4144 dated 1081990 as is contended by the petitioner Dr. Sheo Raj Singh. Suffice it to say that the Hon''ble Supreme Court decided the SLP by its final decision dated 1781990 whereby it was directed that the High Court should dispose of the writ petitions within three months and further that the controversy concerning the alleged forged stay order dated 2541990 should be resolved by Hon''ble Mr. Justice S.N. Sahai. As noted above, Hon''ble Mr. Justice S.N. Sahai has already retired long ago and these petitions have successfully remained pending for all these years in spite of the directions of the Hon''ble Supreme Court. It is unfortunate that the time frame fixed by the Hon''ble Supreme Court lapsed by share passage of time and the decision concerning the alleged forgery could not be given by Hon''ble S.N. Sahai, J. as directed by the Hon''ble Supreme Court. Keeping these facts in mind it has to be decided whether a finding by this Court on the controversy of the alleged forged stay order dated 2541990 is required or not. It will be answered shortly hereafter once the factual matrix of the entire pending litigations is laid in so far as petitioner S.R. Singh is concerned.

35. Having thus postponed the aforesaid argument concerning the need or necessity to record a finding about the alleged forgery the sequence of events have to be resumed from where it was left above.

36. A development took place which makes all litigation prior to 1851991 irrelevant and infructuous Admittedly regular selection for the post of the Director was made by the "SelectionCommittee" appointed in the year 1991. In this connection it was emphasised that under the U.P. State Medical Ayurvedic and Unani Services Rules, 1990 two feeding cadres have been provided from out of which promotion to the post of Director was to be made by the selection committee. The petitioner Dr. Shivraj Singh was selected as Director on 1851991.

37. The petitioner having assumed office as fullfledged Director on 1851991 invited some fresh Writ Petitions challenging his appointment. But S.R. Singh's

conduct as Director became again subjectmatter of departmental action because of the allegations that several illegal appointments were made by him in ClassIII and ClassIV services under the Directorate. Seeing the gravity of the irregularities Shiv Raj Singh was suspended on 17692. Thus, a spate of further litigation was to follow regarding the petitioner's appointment as Director in the year 1991 as also for this suspension order dated 17692.

38. At this very stage it has to be mentioned that the earlier writ petitions filed earlier concerning the earlier suspension order of the S.R. Singh in Writ Petition No. 308 of 1990 dies a natural death. While it may sound strange that a candidate who was proceeded with departmentally on charges of embezzlement etc., which enquiry was going on, was blessed with formal selection as fullfledged Director, the suspension order in the earlier departmental proceedings cannot survive. It was argued that Writ Petition No. 308/90 survives because as per Hon"ble Supreme Court directions a finding has to be arrived at regarding alleged forged stay order dated 25490. It was emphasized that the record of Writ Petition No. 308/90 was directed to be kept in "sealcover" by an earlier Division Bench but when the record was placed before this Court on the hearingdate, it was not in sealed cover. This is so. It was again said that the socalledoriginal stay order which also was kept in sealed cover was again not available on the record. This is also correct. With this factual background the contention on behalf of S.R. Singh was that there was a group working against him and the person responsible should be found out.

39. It has already been directed that the Additional Registrar, L.B. of this Court will conduct an enquiry regarding the elopement of the sealed cover and also regarding disturbing the sealed cover of the record and also how and when the entire original record of Writ Petition No. 308/90 has been misplaced or removed. It also requires a mention here that in another Writ Petition No. 2536/90 a Division Bench of Hon"ble Rajeshwar Singh and Hon"ble S.H.A. Raza, J. has, while taking note of the nonavailability of the original record of Writ Petition No. 308/90, observed

"Learned Counsel for the parties may reconstitute the record....."

40. While it is thus true that there is no judicially reconstituted record of Writ Petition No. 308/90 no reliance thus can be placed on whatever is said to be existing now as the reconstituted record of Writ Petition No. 308/90.

41. Moreover, so far as cause of action to maintain Writ Petition No. 308/90 is concerned, it has vanished as soon as Shiv Raj Singh has been blessed with fresh appointment as Director after recommendation by the Selection Committee. As noted above, Shiv Raj Singh as admitted to him, assumed office of Director as such on 1851991. Therefore, Writ Petition No. 308/90 (L.B.) has to be dismissed as infructuous in so far as it relates to the suspension of Shiv Raj Singh as mentioned therein are concerned. Simultaneously it has to be mentioned that the enquiry set up by this Court entrusted to Addl. Registrar, L.B., shall go on and be

completed expeditiously, preferably within three months and shall fix responsibility on the officials in the L.B. for elopement of the original record, nonavailability of full report before Hon''ble Judges so that reconstruction of file could be lawfully done, elopement of the sealedcover orders kept in the said record and unsealing of the sealedrecord. It may further be called that Hon''ble S.N. Sahai, J. has retired long ago, the original orders being not traceable along with the original record it is not practically possible to find out whether the alleged stay order dated 2541990 is/was forged or not. That matter has to close down wherever it is.

42. Let it be repeated that closing the said Chapter on "as is where is" basis has no effect whatsoever on Shiv Raj Singh. The reason is that if any one in the department hierarchy was prejudicial towards him or was acting malafide against S.R. Singh, the best thing to do would have been to refuse recommendation in his favour for being appointed full fledged Director. On the facts it has to be held that S.R. Singh was extremely fortunate, more than one can normally be expected to be, to have become Director in spite of departmental proceedings being pending on serious charges of embezzlement.

43. Before parting with this aspect it has to be mentioned that Sri O.K. Mehrotra, Additional Advocate General has said that the State Government does not admit the genuineness of the so called order No. 4144 reference about, which exists in the earlier paragraph. On the materials existing it is not possible to hold that the alleged order of State Government No. 4144 is a genuine order.

44. Similarly just as Writ Petition No. 308/90 has to be dismissed as infructuous, other writ petition Nos. 3776/90, 4986/90, 1594/90, 7903/90 filed by Dr. U.S. Tripathi, Dr. D.S. Pandey, Dr. B.S. Dixit, Dr. U.S. Tripathi and Dr. Sarvadeo Upadhyaya, if any pending, have also to be dismissed as infructuous. Likewise, writ petition No. 2536/90 by S.R. Singh with Writ Petition No. 2726/90, has also to be dismissed as infructuous.

45. Therefore, what is apparent from what has been stated above is that S.R. Singh was successful in obtaining several interim orders in his favour in order to secure him at the post of Ayurved Director. However, how and why none of the writ petitions could be taken up for filing adjudication is not clear to this Court. From the record it is not possible to interfere that counter affidavits in these matters were filed in time so that the urgency in disposing of those matters where interim orders of serious consequences were passed may have been focussed. Be that as it may many further litigations were to follow as will be seen in the subsequent pages.

46. Writ Petition No. 4353 of 1992 has been filed by the petitioner in the Lucknow Bench of this Court challenging the aforesaid suspension order dated 1761992. A detailed interim order was passed by a learned Single Judge on 2371992 (Hon''ble K.C. Bhargava) whereby the operation of the order dated 17692 relating to the petitioner was stayed w.e.f. that date (2171992) till further

orders of this Court. It was, however, left open for the respondents to proceed with the inquiry and to take work or not to take work from the petitioner.

47. The petitioner moved two modification applications requiring the learned Single Judge (Hon"ble K.C. Bhargava, J.) to modify his order dated 2371992. One of the applications was numbered 26829 in Writ Petition No. 4353 of 1992.

48. The learned single Judge allowed the modification application by his order dated 8992 by observing as follows:

".....It is directed that in the last para of

the interim order dated 23792 in the second line the following words "and take work or not to take work from the petitioner" shall stand deleted and shall be substituted by the following words "the opposite parties are directed to take work from the petitioner on the post on which he was suspended". With the above directions the modification application stood allowed."

49. In the meantime, however, the State Government had filed an appeal against the aforesaid interim order of Hon" K.C. Bhargava, J. dated 2371992. The said special appeal was pending.

50. It however, transpires that meanwhile the State Government by its order dated 581992 appointed one Dr. YB. Sahai to look after the work of the Director. This order of the State Government dated 581992 was challenged by an alleged association named Rajkiya Ayurvedic Shikshak Sangh, U.P. Lucknow through Shri S.C. Pandey, Advocate, who incidentally, happens to be the Advocate of Dr. Sheo Raj Singh in the present petition. This writ petition is numbered 5476 of 1992. A Division Bench in the Lucknow Bench passed the following order on 1281992:

".....In the meantime further operation of order dated 581992 is stayed.....The opposite party No. 2 (Dr. V.B. Sahai) is restrained from working as Director or looking after the work of Director....."

51. The State Government thus felt the need of creating a post known as Director, Ayurvedic and Unani Sewa for a temporary period ending on 28293. The aforesaid Rajkiya Ayurvedic Shikshak Sewa Sangh filed a criminal contempt case No. 3982 of 1992 and also another contempt petition alleging noncompliance of the orders passed by the learned single Judge modifying his stay order and also noncompliance of the Division Bench's order dated 1281992. In this contempt petition two opposite parties were arrayed(1) The State of U.P. through the Principal Secretary, Medical, Health and Family Welfare; and (2) The Secretary, Medical Education, State of U.P. The application No. 3982 of 1992 was treated by the Court as a petition under Article 215 of the Constitution of India and it was directed to be put up on 9121992 by which time the respondents were called upon to show cause why action against them be not taken for noncompliance of the orders referred to therein.

52. At this stage one of the miscellaneous applications No. 26829 in the

aforesaid Writ Petition No. 4353 of 1992 for enforcement of the order, dated 891992 was again listed before Hon''ble Mr. Justice K.C. Bhargava. On 1121992 the learned single Judge passed the following order:

".....No counteraffidavit or any reply filed. The opposite parties are directed to conform to the Court's order within one week."

53. It may be mentioned, howevet, that the special appeal was already pending which was admitted on 1101992 which was fixed for hearing on 30101992 alongwith the record of the Writ Petition No. 4353 of 1992. It appears that this special appeal was stand out before the Division Bench on 301092 and the learned single Judge had infact passed an order on 1121992 itself in the said writ petition that the matter is already pending before the Division Bench and therefore was wrongly listed in the learned single Judge's Court and therefore had further directed that the said writ petition should be listed before the appropriate Bench. However it is also true that in spite of the said order of sending the writ petition to the Division Bench, the learned Single judge proceeded to pass the order, dated 1121992 referred to above.

54. The creation of the additional post of Director by the order of the State Government dated 2111992 was challenged in Writ Petition No. 8062 of 1992 filed by Rajkiya Ayurvedic and Unani Sewa Sangh which came up for admission/orders before the Division Bench on 18111992. A restrained order was passed by the Division Bench which is quoted hereunder:

".....Meanwhile appointments on the post of Director created by the Government notification dated 2111992 shall not be made unless work is provided to Dr. Sheo Raj Singh on the existing post of Director held by him."

55. It is admitted to the parties that the petitioner Dr. Sheo Raj Singh was handed over charge of Director by a detailed order of the State Government passed on 24121992. It is admitted to the petitioner that from 24121992 he started functioning and discharging duties of the office of Director, Ayurvedic and Unani Services etc.

56. It may, however, be mentioned that on 2581992 one Shri Indra Pal Bhartiya describing himself to be Adhyaksha, Bhartiya Janta Party Anusuchit Morcha, Kanpur and Shri Satish Chandra Sharma as President of the Bhartiya Janta Party sent a detailed written complaint to the Chief Minister regarding corruption in the Ayurvedic and Unani Establishment in Kanpur District. In due process of time this application came for orders before the petitioner S.R. Singh. He appointed one Shri G.S. Rajput who was Deputy Director in the Ayurvedic Department to conduct an enquiry. Shri Rajput and allegedly gone for enquiry on 2493 and 341993 and submitted his report on 671993. The petitioner in his turn wrote a letter to the Government on 2891993 for suggesting that immediate action be taken, enpianation etc. was also called from the officers concerned. The complaint of the aforesaid persons from Kanpur, the letters of the petitioner have been filed as Annexures 6, 7 and 8 in Writ Petition No. 3121 of 1995 reference

about which will be made after a few paragraphs.

57. After the petitioner commenced working as Director, a serious incident happened in Delhi and Ghaziabad where several persons died on consuming an alleged Ayurvedic product. The heavy death toll compelled the Delhi Government to institute an inquiry into the whole episode and this resulted in appointment of a Commission known as Chandra Commission. The product was named "KAR POOR ASAW" which was banned later on.

58. There appears to be some adverse comments concerning the work of the Director and therefore the petitioner apprehended action against him in the followup measures which may have been taken by the State. The petitioner therefore filed a Writ Petition No. 7097 of 1993 on 3181993 in which he had prayed that the order of the Joint Secretary (Annexure 57 in the said writ petition) be quashed. It is alleged that in the said writ petition the petitioner has made several allegations concerning wrong and illegal activities in the Secretariate of the State of Uttar Pradesh concerning the Medical, Health and Family Welfare Department,

59. As to the developments arising out of the report/complaint of Indra Pal Bhartiya and Satish Chandra Sharma dated 2581992 it may be mentioned that according to the allegations it was found that various officers posted in various Districts .were making illegal purchase of some medicines including liquid paraffin. One Shri Prahlad Kumar Jha made an inspection in Kanpur also and found that the aforesaid drug Liquid Paraffin, which was not an Ayurvedic Drug, has been purchased in 47 districts in the State of Uttar Pradesh. Consequently, on the basis of this report of Shri Prahlad Kumar Jha, dated 12101990 the entire matter was referred to the Vigilance Department.

60. In compliance with the result of enquiry" in 20 districts so far, the Vigilance Department has recommended that prosecution against concerned officials in 12 districts be made. The State Government has already sanctioned prosecution in 11 cases out of those 12 cases of 12 districts. It transpires that steps for sanction were taken even for the 12th district also but before anything could be finalised, the matters have been sent to C.B.I, in pursuance of the directions of this Court. Details discussion about this will take place when "Liquid Paraffin" matters are taken up. Suffice it to say that from those who stand indicated under the Vigilance Report it further appears that some of them lodged first information reports subsequently against the petitioner Dr..Sheo Raj Singh. For convenience sake these first information reports which are three in number shall be hereinafter referred to as the paraffin cases. Details of the first information reports and also corresponding numbers of petitions pending in this Court arising from those paraffin matters are quoted hereinafter:

(1) F.I.R. No. 264/95 has been lodged"by VN. Mishra, District Ayurved and Unani Officer, Gomti Nagar, Lucknow against the petitioner on 8101995. According to the petitioner the saidV.N. Mishra is an accused in one of the paraffine cases.

(2) F.I.R. No. 791/95 lodged by Ram Chandra Mishra, District Ayurvedic and Unani Officer Prayagrah against the petitioner on 10.01.1995 at police station Hazratganj, Lucknow. This informant Ram Chandra Mishra is also said to be accused in one of the paraffine matters.

(3) F.I.R. No. 801/95 has been lodged by Awadesh Narain Giri, Incharge, Medical Officer, Rajkiya Ayurvedic Chikitsalaya, Rai Bareilly against the petitioner on 15.10.1995 at police station Hazratganj, Lucknow.

61. The petitioner has challenged all the three F.I.Rs. and has prayed for their quashing in Writ Petition No. 3121/95. Copies of the aforesaid F.I.Rs. are Annexures 2A, 2B and 2C respectively of the said Writ Petition No. 3121/95.

62. It may simultaneously be mentioned that Civil Misc. Writ Petition No. 159/SB/96 has been filed by the aforesaid V N. Mishra informant in this case challenging his suspension order, dated 6.10.1995 which was passed against VN. Mishra. Similarly, Writ Petition No. 63/SB/96 has been filed by Ramesh Chandra Mishra challenging his suspension order, dated 6.10.1995 passed against him. Similarly, a Civil Misc. Writ Petition also has been filed by Awadesh Narain Giri for quashing suspension order dated 6.10.1995 passed against him. These two out of three matters shall be taken up at the appropriate

stage in this judgment. It may, however, be stated here that while the petitioner's contention has been that the three informants VN. Mishra, Ram Chandra Mishra and Awadesh Narain Giri stood indicated by him in his own reports, the stand of the respondents state is that those three viz. "VN. Mishra, Ram Chandra Mishra and Awadesh Narain Giri have been proceeded with departmentally because of the preliminary enquiry report submitted by Prabhat Kumar Jha (referred to above). Since one of these three matters has not been listed, hence could not be heard presently.

63. The merits of the petition 3121/95 filed by the petitioner shall also be taken up appropriately in this judgment.

64. Coming back to the chronological events emanating from the allegations made in Writ Petition No. 4353/92 the petitioner's contention is that though two enquiries were conducted one by Mr. VB. Raje, Director General of Education and another was conducted by a committee of which Shri Venkata Rama"ni was the Chairman having Shri S.AT"Rizvi, Principal Secretary, Finance and Smt. Sunita Kandpal, Principal Secretary, Medical Health and Family Welfare were the members, the petitioner's Counsel asserted that the result of either of these two committees enquiries is not known and this Court should ask as to what has happened to the enquiry and their reports, if any. He however, emphasised that in neither of the reports submitted has any comment been made against the petitioner. He, therefore, insisted that the learned Advocate General should inform the Court about the report of the committee.

65. To renew the chronological events it may be recalled that the fax message of

the Principal Secretary, Finance the payments in pursuance whereof payment orders made by the petitioner were stayed. The fax message was sent on 2361994. It is said that on 661994 there was a notification issued under the signature of Shri Anoop Mishra, Secretary to the Government that except expenditure concerning Head No. 25, the Director, Ayurvedic and Unani shall have the power to expend. The petitioner consequently was using the financial powers after 661994.

A copy of this notification dated 661994 has been filed as Annexure10 in Writ Petition No. 549/95 which has also been filed by the petitioner Dr. Sheo Raj Singh reference about which will be made in a short while hereinafter. The State has not admitted this averment of S.R. Singh.

66. By an order dated 2821995 the Governor passed a fresh order divesting the petitioner of the financial powers. The said order directed simultaneously that those powers will be exercised by the Principal Secretary, Medical Education. It is contended on behalf of the petitioner that by yet another order dated 431995 the Special Secretary as nominated by the Principal Secretary was authorised to use those powers and by the subsequent order dated 831995 Shri S.K. Khare, Special Secretary, Medical & Health was nominated by name to exercise those powers. By the order dated 2621995, the Principal Secretary had called all the files concerning illegal appointments made by the petitioner in ClassIII and "ClassIV under the Director concerned.

67. In this connection Shri S.C. Pandey, learned Counsel for the petitioner vehemently argued that the entire machinery of working in the State of Uttar Pradesh in the Ayurvedic and Unani Hospitals and Colleges came to a stand still because the said Shri S.K. Khare did not sanction any payment and refrained from exercising financial powers. In this view of the matter the petitioner filed Writ Petition No. 549 of 1995 on 2071995.

68. Shri O.K. Mehrotra, learned Additional Advocate General however, refuted the contention of the petitioner's Counsel. He said that since the petitioner again successfully obtained an interim order from the Lucknow Bench the insinuation made on behalf of the petitioner is not only incredible but false and wrong.

69. Writ Petition No. 549/95 was thus filed by the petitioner Dr. Sivo Raj Singh in the Lucknow Bench on 2071995 in which an interim order was passed by Hon"ble S.H.A. Raza and Hon"ble I.P. Vasishth, JJ. The substance of which was that meanwhile it is provided that the petitioner shall be allowed to perform all financial powers except making purchases and appointments.

70. The main relief in this writ petition was that the order dated 2821995 (Annexure10 to the writ petition) whereby financial powers were withdrawn from the petitioner should be quashed.

71. An application for modification was moved by the petitioner's Counsel Shri Amit Bose in this Writ Petition No. 549 of 1995 which again came up before the

said Division Bench on 481995 and then by its order dated 2281995 the aforesaid order of the Bench dated 2071995 was modified the relevant part of which is as under:

".....We direct the learned standing Counsel to file a response within a week. List this petition on 29895. On that date Shri S.K. Khare, Special Secretary, Medical Education will appear in person to explain the position....."

72. Shri S.K. Khare appears to have" sought an exemption on 2981995 from personal appearance. In the meanwhile the special secretary, Finance issued a note addressed to the Special Secretary, Medical, Health & Family Welfare where"under it was mentioned that the financial powers of the Director, Ayurvedic were hereby consented to be restored as before. This much having been done, a fresh order was passed on 691995 whereby another post of Director, Ayurvedic and Unani (Syllabus Evaluation) was created and the petitioner Dr. Sheo Raj Singh by a separate order dated 6995 was transferred to the newly created post of Director (Syllabus Evaluation). It may be mentioned here that an application was moved by the petitioner for proceeding against the respondents under Article 215 of the Constitution of India. The aforesaid orders dated 3181995 and both orders of 691995 form part of that application as its annexures. Moreover, it is admitted to the petitioner that he took over on the newly appointed post on 791995.

73. This time a unique method was adopted by the petitioner for challenging the aforesaid two orders dated 691995 whereby additional post was created and the petitioner was transferred to said post. The challenge to these orders was made through a miscellaneous application moved in the Writ Petition No. 4353/92, reference of which has already been made above. For ready reference it may be mentioned that the aforesaid Writ Petition No. 4353/92 was filed by the petitioner challenging the suspension order, dated 1761992 which was passed on the allegations that the petitioner had made innumerable illegal appointments in Class III and Class IV posts in which Hon"ble Mr. Justice K.C. Bhargava had passed the stay order on 2371992. Further, it may again be repeated here that this order of Hon"ble K.C. Bhargava, J. came to be challenged by the respondents in Special Appeal No. 318/92. The said special appeal has not been decided as yet and has been listed for hearing in this Bench cases.

74. However, this miscellaneous application did go before the learned single Judge on 2991995 on which date a detailed order was passed by the learned single Judge the extract of which would be as under:

".....It is directed that the operation of the orders dated 6 91995 contained in Annexure "R" to the application and the order dated 691995 contained in Annexure "S" to the application shall remain stayed. The petitioner shall continue on the cadre post of Director...."

75. It may be mentioned here that the fact that the petitioner had already joined on the new post in pursuance of the aforesaid order though specifically stated in

the application was either not placed or argued by the Counsel for the petitioner or noticed by the learned Single Judge.

76. Having thus been armed with the learned Single Judge's order dated 29/11/1995 quoted above the petitioner joined the old post (Director, Ayurvedic etc.). This order of the learned Single Judge (Hon'ble K.C. Bhargava, J.) was challenged by the State in Special Appeal No. 221/95. By various orders passed in the said special appeal which was passing between one Bench and another, it was directed to be listed alongwith the earlier Special appeal No. 318/92 for final disposal. It is remarkable if not strange that Special Appeal No. 221/95 did come up before a Division Bench of Hon'ble Mr. Justice R.K. Gulati and Hon'ble Mr. Justice I.P. Vasishth who allowed the same by a detailed order passed on 16/11/1995, but the other Special Appeal No. 318/92 did not come up on that date before the said Bench. It has been listed now before this Court in the bunch cases.

77. To recapitulate one's memory it may be again mentioned here that in effect the order of Hon'ble K.C. Bhargava, J. dated 20/7/1992 and the modified order dated 8/9/1992 passed in the aforesaid Writ Petition No. 4353/92 became the subjectmatter of the special appeal No. 318/92 whereas the order of Hon'ble K.C. Bhargava, J., dated 29/11/1995 became the subjectmatter of special appeal No. 221/95 which was an order on the modification application challenging orders passed on 6/9/1995 in the writ petition which was filed in the year 1992 without making any amendment in the writ petition, without making any amendment in the grounds of the prayers in the said writ petition, without adhering to the normal procedure laid down for challenging a subsequent order in a pending matter before a court of law.

78. In this connection relevant observations made by Hon'ble Mr. Justice R.K. Gulati and Hon'ble Mr. Justice I.P. Vasishth in their Lordships' order dated 16/11/1995 allowing the special appeal of the State (No. 221/95) have been referred to by Shri O.K. Mehrotra.

79. But what appears stunning is that the manipulating parties were not content with forged order here and there. They not only tampered with official record of Lucknow Bench of this Court, they have succeeded in removing another record from the office of Lucknow Bench.

80. At this stage it may be mentioned here that Shri O.K. Mehrotra, learned Additional Advocate General has pointed out that original record of Writ Petition No. 4353/92 is missing from the record of this Court. This fact has not been denied by the learned Counsel for the petitioner Shri S.C. Pandey. Office report in this regard has been called which also indicates that the original record of Writ Petition No. 4353/92 is missing and is not available to the Court. This too has, therefore, been reconstituted with the help of the copies supplied by the learned Counsel for the parties.

81. Shri G.K. Mehrotra further informed the Court that even the record of this

Writ Petition No. 4353/92 in his office (i.e. in the Advocate General's Office) is also missing and in spite of best efforts the said record could not be found out.

82. On 3091995 the petitioner alleges to have resumed working at the old post as already noted above. This allegation is, however, strongly disputed by Shri Mehrotra on behalf of the State. It may, however be mentioned here that before the matter could come up before the learned Single Judge (Hon''ble K.C. Bhargava, J.) an application was moved by the petitioner Dr. Sheo Raj Singh in the said writ petition on 1291995 that all this action was taken at the instance of Shri Mohindar Singh, Principal Secretary in Medical Education. On 1291995 notice was issued to Shri Mohindar Singh Shri Yashwardhan, Dy. Secy, filed a reply affidavit on 12101995 in Writ Petition No. 549/95 which was filed by the petitioner challenging the withdrawal of financial powers from him. Opposite parties had also filed an application to vacate the stay order passed by the Division Bench on 2071995 as modified from time to time.

83. On 13101995 Shri Mohindar Singh had appeared personally in the Court who was granted time to file personal affidavit and the case was fixed for 31195.

84. The order for reinstatement of the petitioner was passed. The petitioner alleges that this order dated 2111995 was served on him on 3111995. It is further said that Shri S.K.. Khare, Special Secretary who was then incharge of the financial matters was also transferred to some other department.

85. The petitioner, therefore, alleges that he took over charge on 3111995 in the forenoon. The writ petition, however, was taken up by the Division Bench of Hon''ble S.H.A. Raza and Hon''ble I.P. Vasissth, JJ. on 31195. On this date Hon''ble S.H.A. Raza, J. said that he would not be a member in that matter and it should be listed before a Bench of which he is not a member. On 3111995 a first information report (F.I.R. No. 854/95 with no crime No. perhaps the matter related to another police station) was lodged by Shri Yashwardhan Singh, Deputy Secretary, Medical, Health & Family Welfare at police station Hazratganj under Sections 409,418,420,467,468,471 and 120B, IPC against the petitioner Dr. Sheo Raj Singh. It is alleged that the petitioner has misappropriated about Rs. 35 crores. It was pointed out during the course of arguments that the informant of the said case Shri Yashwardhan Singh did not mention in the F.I.R. that he has been authorised by the appointing authority to lodge the said F.I.R.

86. On 3111995 therefore a fresh suspension order has been passed against the petitioner. According to the petitioner he received information about this suspension order when its copy was pasted at his residence.

87. Some further developments then happened. The petitioner wants to emphasise that continuity of the stay order passed in Writ Petition No. 4353/92 was maintained as it should be maintained. It was, therefore, argued on behalf of the petitioner that since the suspension order in the aforesaid Writ Petition No. 4353/92 was operating, the suspension order passed on 31195 should be held to be ineffective inasmuch as no second suspension order could be passed so long

as the first suspension order was in vogue.

88. In this view of the matter the petitioner filed Writ Petition No. 396 (S/B) of 1996 challenging the chargesheet which was served against him, a copy of which has been filed as Annexure1 to the writ petition. It may be mentioned here that this time Shri Mridul Rakesh was the petitioner's Counsel in this writ petition in which though there was an averment to the effect that the petitioner has been suspended on 3111995 but no relief concerning suspension was sought. This writ petition has been dismissed by a Division Bench consisting of Hon"ble B.K. Roy and Hon"ble K.L.Sharma,JJ. on 1751996.

89. Another Writ Petition No. 536 of 1996 was preferred by Dr. Sheo Raj Singh petitioner through Miss S. Goswami, Advocate. In this petition the petitioner made further prayers concerning the quashing of the suspension order dated 3111995 and also the order directing reenquiry against him vide order dated 1911996 details about which will be furnished while dealing with this writ petition independently a little later in this judgment. Shri Umesh Chandra, learned senior Advocate assisted by Shri S.C. Pandey, Advocate has been heard in support of this writ, petition which is up for admission. At no point of time has any counteraffidavit been called in this case by any Bench. However, Shri O.K. Mehrotra has put in appearance saying that he has instructions to oppose even at the admission stage of this writ petition. Consequently he has been heard in opposition.

90. In so far as the F.I.R. dated 3111995 lodged by Yashwardhan Sinha at police station Hazratganj at 3.10 p.m. on 3111995 is concerned, the petitioner has filed Writ Petition No. 3319 of 1995. It may be mentioned here that since the matter related to Police Station Hussainganj, no crime number was allotted by police station Hazratganj and when the matter had reached police station Hussainganj, Lucknow it has been registered as case crime No. 434/95. The sole accused in this case is the petitioner Dr. Sheo Raj Singh. To repeat, in substance the allegations are that the petitioner committed various irregularities in sale, purchase, allocation of funds, appointments, postings etc. in the various units of the Ayurvedic and Unani Department of which he was the Director which was roughly estimated to be around Rs. 35 crores (Rs. Thirtyfive crores) as revealed through special audit reports.

91. At this stage it has become relevant to travel back a little and to recapitulate that the petitioner alleged that there was some bungling going on in Ayurvedic Departments and consequently, the Government should initiate suitable action at the appropriate level. During the course of argument it so transpire that the learned Counsel for the petitioner viz. Shri S.C. Pandey has himself filed writ petition in this Court which has been numbered as Writ Petition No. 1981 (M/B) of 1995. This petition, however, was dismissed.

92. The petitioner thereafter alleges that because the investigation of the aforesaid case was transferred to the Economic Offences Wing at Kanpur, the

Lucknow police station or for that matter the civil police of Lucknow or any other district of Uttar Pradesh had no jurisdiction to investigate the matters against the petitioner in any of the matters in which he was made an accused, in particular concerning case crime No. 434/95, Hussainganj, Lucknow.

93. There appears to have been an effort on the part of the civil police to arrest the petitioner inasmuch as on 512

1995 the Hazratganj police had applied for nonbailable warrant of arrest against the petitioner which was granted to them on 5121995.

94. It appears that the District Judge passed another order after having issued the nonbailable warrant. His subsequent order reads as under:

"Heard the S.P.O. and learned Counsel for the applicant. Warrant is recalled. S.P.O. assures that the warrant will not be executed. Put up on 61295 and the applicant may file an affidavit and show hearing investigation has been transferred."

95. Till this date nothing further has been done in the Court of the District Judge, Lucknow and the order passed by him staying the warrant issued by him in the earlier part of the same date (51295) is still operative.

96. On 2411996 the opposite parties filed an application before the District Judge, Kanpur Nagar for nonbailable warrants. Sheo Raj Singh, petitioner challenged the execution of the warrant including its issuance, before the District Judge himself by moving an application on 12 1996 through Shri S.C. Pandey, Advocate. Having not met with any success, the petitioner filed Writ Petition No. 700 of 1996 in the High Court of Judicature at Allahabad which was dismissed by a Division Bench consisting of Hon"ble Giridhar Malaviya and Hon"ble Kundan Singh, JJ. It may be mentioned here that investigation in case crime No. 155/94 police station Kanpur Nagar was sought to be quashed in this writ petition. The observation of the Bench was that since investigation was practically complete the petition had become infructuous.

97. Petitioner then filed Criminal Misc. Application No. 867 of 1996 in the High Court of Judicature at Allahabad in which the prayer was that all cases against him may be consolidated and bail may be granted in all cases against him. This application was dismissed by Hon"ble N.S. Gupta, J. on 1831996.

98. Thereafter the petitioner filed criminal miscellaneous application No. 1355 of 1996 in the High Court of Judicature at Allahabad through Shri Rajendra Jaiswal, Advocate praying that process under Sections 82 and 83, Cr. RC. issued by the District Judge, Kanpur Nagar vide his order dated 541996 be quashed. This application has been disposed of by Hon"ble Mr. Justice O.P. Jain on 2641996.

99. Petitioner then moved another criminal miscellaneous application No. 1676 of 1996 in the High Court of Judicature at Allahabad on 2851996 praying that a direction be issued permitting him to surrender in Kanpur Nagar in all the cases

being investigated by various opposite parties who were the Dy. S.Ps. concerned being incharge of the various investigations against the petitioner. At the outset it may be noticed that the petitioner S.R. Singh made a prayer which is remarkable in itself. Through this application he wanted that lawfull process issued against him in whatever District on the basis of whatever F.I.R., should be interfered with by this Court. Two things, therefore, are obvious. S.R. Singh had full knowledge of all the cases that have been filed against him and also that process of Court has issued requiring his appearance in the various courts of law. It is, therefore, obvious that the effort on the part of S.R. Singh was to starve off the said lawful process by making cumulative prayers in one application the type of which is not permissible under the law.

100. Though the aforesaid application No. 1676 of 1996 was moved under Section 482, Cr. P.C. showing extreme urgency as a fresh case, it was not argued by the Counsel for the petitioner. It also appears that an application was moved in that petition praying that the matter should be taken up though filed as a fresh petition because there was extreme urgency. It appears that in spite of all this, the case was not argued or not sincerely pursued. It was thus kept pending as if in the cold storage, as if waiting for an auspicious occasion. Ultimately because the petitioner succeeded in obtaining certain orders through other applications, this application was conveniently allowed to be kept pending. This is how this Misc. Application under Section 482, Cr. P.C. has come up for hearing before this Court in the bunch cases.

101. The Sessions Judge, Banda has, however, in the meantime proceeded to order on 1451996 that process under Sections 82 and 83, Cr. P.C. should be initiated against S.R. Singh and nonbailable warrants were also issued thereunder. The petitioner approached this Court straightway again under Section 432, Cr. P.C. His prayer that the order of the Sessions Judge, Banda dated 1451996 issuing process under Section 82, Cr. P.C. and also issuing of nonbailable warrant be quashed. This matter has been finally disposed of by Hon"ble J.C. Gupta, J. on 2851996 on the finding that while passing this order dated 1451996, the Sessions Judge did not record his satisfaction that S.R. Singh was an absconder. Consequently it was directed that S.R. Singh may appear before the Sessions Judge, Banda on or before 561996 and it was further directed that if S.R. Singh failed to do so, the Sessions Judge, Banda will be at liberty to issue fresh warrants. This is how the aforesaid application No. 1933 of 1996 stood finally disposed of.

102. Civil Misc. Writ Petition No. 2025 of 1996 has been filed by S.R. Singh with practically the same type of prayers as the prayers contained in the above referred application No. km 76 of 1996. This time the petitioner was filed by Sri Vineet Saran and Sri M.P. Shroff. It is this petition which has been argued before this Court by Sri S.C. Maheshwari, learned Senior Advocate at length.

103. In this Writ Petition No. 2025 of 1.995 the prayers are as under:

"(A) issue a writ, order or direction in the nature of *ceniorari* quashing all the F.I.Rs. lodged by respondent No. 2 against the petitioner under Sections 409, 120B, 418, 420, 467, 468 and 471, I.P.C. read with Section 7/13, Prevention of Corruption Act (vide Annexure 20) filed collectively at Ghaziabad, Muzaffarnagar, Denradun, Aligarh or anywhere else in the State of U.P. during the year 1996.

(Note by the Court It may be mentioned that quashing of Annexures 20 and 21 was also prayed by adding it by hand in the prayer but has been cut off by a straight line under some initial),

(B) issue.....*certiorari* quashing the investigation made by C.B.C.I.D. (E.W.O.) in all the F.I.Rs. lodged by the petitioners including case Crime No. 36 of 1994, P.S. Iatri Bazar, Siddarth Nagar, Crime Nos. 207 and 208 of 1994 P.S. Kotwali, Basti, Crime No. 515 of 1994, P.S. Kotwali, Banda under Sections 467, 468, 409, 419, 420 and 471, I.P.C. (vide Annexures 3 to 6 of the Writ Petition) and the F.I.Rs. lodged at P.S.....District Basti, Gorakhpur, Deoria,

Moradabad and Hamirpur and handover investigation of all cases against the petitioner to C.B.I.

(C) issue.....*mandamus* directing the respondents 1 to 9 not to arrest the petitioner in connection with any F.I.R. lodged against him by an Inspector (E.O.W.), Kanpur Dharam Singh or in any case arising out of all the F.I.Rs. lodged by the petitioner himself and which are under investigation by C.B.C.I.D. (E.O.W), U.P., Lucknow, under Sections 409, 418, 420, 467, 468, 471 and 120B, I.P.C. read with Section 7/13 of Prevention of Corruption Act, 1958.

(D) issue any other writ, order or direction which is deemed fit etc."

104. Having noted the prayers in the said writ petition three specific sets of facts emerging from the pleadings in the said petition of S.R. Singh have to be mentioned here specifically for, they are important for the discussion that has to follow:

(1) In para 50 the petitioner has pleaded that the grievance of the petitioner is thus three fold. Firstly, the Investigating Officer is prejudiced and biased and, therefore, the investigation of the cases should be done by an agency from outside the State of U.P. namely, Central Bureau of Investigation. Secondly, all the F.I.Rs. lodged after registration of case crime No. 454 of 1995 on 31/11/1995 at P.S. Hussainganj, Lucknow by respondent No. 2 be quashed and the petitioner may not be arrested in cases registered at the instance of the petitioner himself being case crime No. 36 of 1994 P.S. Tatri Bazar, District Siddarth Nagar; case crime No. 200 of 1994 P.S. Kotwali, District Basti; case crime No. 208 of 1994 P.S. Kotwali, District Dehradun and case crime No. 515 of 1994 P.S. Kotwali, District Banda as well as in other cases arising out of all the F.I.Rs. lodged under the consent/permission of the respondent No. 1 at Basti, Gorakhpur, Moradabad, Rampur and Deoria and subsequently at several other places wherever offence was committed by the disbursing officer/Treasury in the respective district

headquarters.

(2) This petition has in all 54 paragraphs. Last one being numbered as 53A which incorporates the grounds. In para 5 it has been stated that the State Government through its letter dated 3131994 asked S.R. Singh to lodge the F.I.R. against those who were making "fictitious withdrawal on the instance of the petitioner's forged signatures etc." Upon this the petitioner lodged five F.I.Rs., two in Basti and one each in Siddharth Nagar, Banda and Kanpur. In para 7 it is pleaded that "atleast in the matters relating to District Kanpur and Siddharth Nagar it has been found during the investigation that fictitious withdrawals were made on the strength of forged signatures of the petitioner."

Para 8 also makes an averment which is important. It says "the withdrawals made in the aforesaid manner by forging petitioner's signatures and by adopting forged and coercive manners and amount of approximately Rs. 31 crores and considering all these withdrawals and other matters the State Government had, therefore, made a statement in the State Legislative Council on 2541994 clearly eliminating the petitioner's involvement in the matter in question and the State Government also informed the House that investigation into the whole affair was already prepared to be entrusted to and conducted by "AARTIIK APR ADI 1 ANUSANDHAN BHAG" (E.O.W.)." In para 12 there is reference of Writ Petition No. 4253 (SB) of 1992 alleging that suspension order dated 1761992 was stayed in that petition by the order of L.B. dated 2371992. Para 15 refers to Writ Petition No. 549 of 1995 in L.B. and the stay order dated 2071995 was obtained by S.R. Singh whereby the order of the State Government dated 821995 divesting him of financial powers was stayed. In para 22 there is reference of contempt proceedings initiated against Sri Mohinder Singh and there is also reference of the other contempt application moved in Writ Petition No. 548 of 1995 L.B. In para 28 there is reference of Writ Petition No. 3319 of 1995 in the following manner : "the petitioner obviously again took shelter of the law and the court and filed Writ Petition No. 3319 of 1995 for quashing of the F.I.R. of case Crime No. 454 of 1995 and the said writ petition is still pending." In paras 33 and 34 there is reference of two Doctors, one in Basti and the other in Gorakhpur filing writ petition Nos. 822 of 1995 and 890 of 1995 in this Court for staying their arrest and also to the orders of this Court dated 1591995 and 2791995 whereby the counteraffidavits were called and the arrest of those were stayed for the time being without stopping the investigation. In para 46 the petitioner has made reference to Writ Petition No. 700 of 1996 for quashing of investigation in F.I.R. dated 1241994 giving rise to case crime No. 155 of 1994, PS. Kotwali, District Kanpur. Further saying therein that though the said petition was dismissed as infructuous because investigation has already been completed but till date no chargesheet had been filed in the Court at Kanpur. In this para there is reference of some other writ petitions without disclosing their details. In para 48 there is reference of application of S.R. Singh under Section 482, Cr. P.C. and it has been averred that this Court refused to interfere in the investigation in exercise of powers under Section 482, Cr. P.C. and a copy of the order dated

1931996 has been appended as Annexure No. 22. The number of the application has not been quoted. In para 49 reference exist about the order of the learned Single Judge tiaiied 2551996 whereby proclamation/process of Sessions Judge, Banda was quashed. However, it has not been averred in the paragraph that the petitioner was to appear on or before 571996 wherever fresh process was directed to be issued.

(3) In this writ petition No. 2025 of 1996 the opposite party No. 1 is the State of U.P., No. 2 is Shri Dharam Singh, Inspector (E.O.W.), Kanpur. Opposite party Nos. 3, 4, 5,6, 8 and 9 are police personnel. Opposite party No. 7 is Sri Mohinder Singh, Principal Secretary, Home, Government of U.P., Lucknow and Opposite Party No. 10 is Union of India through Secretary Home.

105. The aforesaid writ petition appears to have been moved before Hon"ble N.S. Gupta, J. on 3151996 i.e. during vacations. The following interim order was passed:

"Heard. Admit and connect with Writ Petition No. 822 of 1995 in re: Dr. A. K. Verma v. State and others.

Issue notice to the opposite parties to show cause as to why subsequent F.I.Rs. lodged by the respondent No. 2 be not quashed.

It was argued on behalf of the petitioner that the petitioner has been made accused in various cases including those cases in which he was complainant and Member was prosecution witness at the behest and instance of opposite party No. 7, Sri Mohinder Singh, Principal Secretary Home, State of U.P. who was nourishing ill will, malice and grudge against him.

It was further averred in para 38 of the petition that the opposite party No. 7 had declared that he would get atleast one F.I.R. lodged against the petitioner in every District and would make the petitioner to run from one District to another and ruin the petitioner and his family. That being so, it is directed that the opposite parties should file counteraffidavit within three weeks and the petition be listed for hearing and orders on 2271996.

Meanwhile it is directed that the investigation against the petitioner shall proceed on but he shall not be arrested in connection with offences under Sections 409, 418, 420, 467, 468, 471, 120B, IPC read with Section 7/13 of the Prevention of Corruption Act, 1988."

106. For the time being suffice it to note here specifically that very important and necessary averments which ought to have been made have not been averred inasmuch as reference about some of the petitions have been so casually made as intending to avoid being noticed by the Court.

107. At this very stage it should be noticed that so far as Sri Mohinder Singh being impleaded as opposite party No. 7 in this writ petition is concerned, the said Sri Mohinder Singh is not a party in Writ Petition No. 3121 of 1995 L.B. as

well as Writ Petition No. 3319 of 1995 L.B. It may be recalled that Writ Petition No. 3121 of 1995 was filed by S.R. Singh challenging three F.I.Rs. lodged by Dr. S.R. Mishra and another. Similarly Writ Petition No. 3319 of 1995 was the petition challenging the F.I.R. dated 3111995 which was filed by Sri Yashwardhan Sinha. Similarly Sri Mohinder Singh is not a party in writ petition Nos. 1967 of 1996 L.B., 1355 of 1996 and 1933 of 1996 all of which have been filed in this Court. Only in three matters Sri Mohinder Singh is a party which are detailed below for ready reference:

Writ Petition No. 700 of 1996 which has been dismissed by this Court on 2821996 and Writ Petition No. 1776 of 1996 which also has been dismissed on 951996. In the present Writ Petition No. 2025 of 1996 and the other one being Misc. Application No. 16796 of 1996 under Section 482, Cr. P.C. in which Sri Mohinder Singh is a party.

108. The principal argument advanced on behalf of the petitioner S.R. Singh may now be noted and dealt with individually. Presently the impugned suspension, order dated 3111995 has been characterised as the second suspension order and is criticised as being in the teeth of the earlier interim stay orders passed by the L.B. inasmuch as it is contended that so long as the earlier suspension order was in abeyance S.R. Singh could not have been put under suspension for the second time by passing the said interim stay order. This contention has to be examined in detail by reference to the various orders which have already been adverted to hereinbefore.

109. The argument proceeds that by virtue of the order of learned Single Judge (Hon"ble K.C. Bhargava, J.) dated 2071992 as modified on 891992 the petitioner was continuing as the Director. It is strongly contended that even if it is held that Special Appeal against the aforesaid order of the learned Single Judge dated 2071992 was allowed on 16111995, the impugned suspension order dated 3111995 could not have been passed on 3111995 because till atleast that date (3111995) the stay order of Hon"ble K.C. Bhargava, J. was operating. In this connection it was further contended that Special Appeal No. 221 of 1995 could not have been decided singly because it ought to have been decided along with Special Appeal No. 318 of 1992.

110. For very many reasons this argument is bereft of any force whatsoever. The application before learned Single Judge for modification of his earlier order was unwarranted by facts and law. Once the petitioner himself contends that he was reinstated on 2111995 by specific order there is no question of continuity of the earlier stay order. If it is held that S.R. Singh was not incharge of the office of the Director for the intervening period and upto 211 1995 on which date he sits on the chair of the Director, no stay order has to continue after he assumes office on 2111995. Admittedly the present suspension order is dated 3111995. Once it is stated by the employerState that the order, dated 3111995 is based upon materials which were not in existence when the earlier suspension order of the year 1992 was passed, all requires to be examined is whether the suspension

order dated 3111995 is based on the satisfaction of the Governor and whether there was some material for passing the said order or not.

111. It has already been discussed above that while it is true that Mahindra Singh had appeared personally in L.B. on 13101995 he was to file a counteraffidavit, it has been said that in the affidavit of Sri Mahindra Singh filed in Writ Petition No. 549 (S/B) of 1995 though has been sworn on 3111995, no swearing time has been noted by the Oath Commissioner. It is further stated that neither the affidavit filed by Y.N. Sinha nor by Sri Mohendra Singh sworn on 3111995 has any reference been made to the fact that the petitioner is or has been directed to be put under suspension. It has also not been stated therein that any material misted for taking fresh action ag"ainst S.R. Singh and to put him under suspension.

112. In this connection it was also made a subjectmatter of criticism that whatever charges were framed against the petitioner for initiating disciplinary proceedings, findings should have been recorded by completing disciplinary proceedings as to the validity or otherwise of the charges framed. Emphasis was laid that by relevant provisions such an enquiry is expected to be completed within six months" period and while the matter remained pending since 1992 there was no ostensible reason for completing the enquiry.

113. In this connection counsel adverted to Annexure16 of Writ Petition No. 536 of 1995 saying that the report of Dr. VB. Sahai did not find petitioner S.R. Singh as having misconducted concerning the charges. It was replied that the Government has not accepted the report of Dr. Sahai inasmuch as the proceedings have been directed to be continued by Mr. S.N. Shukla who is Principal Secretary, Irrigation who has been appointed as an Enquiry Officer. Chargesheet has been served on S.R. Singh, which was challenged in a petition which stands dismissed.

114. The other point emphasised in this connection was that the petitioner himself had brought to the notice of the Government several irregularities in payments at the District Treasury Offices. While no action was taken by the Government has come up for serious criticism by way of argument of the learned Counsel for the petitioner S.R. Singh.

115. It was also contended strongly that if there was any illegality in the conduct of the petitioner or had he been a party to the wrong withdrawals, he cannot have himself wrote letters to the Government complaining forged signatures as well as complaining wrong withdrawals.

116. As already noted above the main criticism was directed towards Sri Mohinder Singh. It was emphasised that the said Sri Mohinder Singh was instrumental in getting false F.I.R. lodged against the petitioner.

Discussion on General Orguments in all petitions.

117. While deciding the contention of the learned Counsel for the petitioners,

particularly of S.R. Singh in so far as the action of the respondents in starting disciplinary proceedings and the First Information Report is concerned, it is necessary to give some startling facts which came up during arguments in the hearing and which throw light on the aforesaid controversy.

118. In the Directorate, there are around 60 R.A.U.Os. working in the various regional offices, all of them having drawing and disbursing powers with them. From out of those 60, only 40 R.A.U.Os. are being proceeded with concerning allegation of being involved in Ayurvedic Scam. Likewise, there are 2050 Ayurvedic M.Os. and 220 Unani M.Os. Therefore, total strength of M.Os. comes around 2270. From out of those, 250 M.Os. are working in hospitals of 15 beds or more and the remaining in other hospitals. From these M.Os. only 29 M.Os. are being proceeded with regarding Ayurvedic Scam. From these 29 M.Os. action against 25 M.Os. has already been taken, some of whom are petitioners in one or other writ petitions in this bunch of cases. Action against remaining 4 is being contemplated.

119. The aforesaid facts and figures did not find support in the arguments that all the actions of the respondents are bad, motivated and mala fide. There has not been any arbitrary pick and choose and full application of mind for initiating proceedings for their alleged involvement in the Scam may safely be presumed. It further be mentioned here that in four districts additional grant without budget allocation was reported in Jhansi, Lalilpur, Nainital, Khiri. No officer of these districts and no employee of those district hospitals has been proceeded with. This factual statement has been made by Advocate General during the arguments and has not been disputed by the learned Counsel for the petitioners either in civil or in criminal cases.

120. It was further clear from the statement of facts, during the course of arguments, that from out of various principals working in Ayurvedic colleges only one principal has been proceeded with regarding Ayurvedic Scam. It may be mentioned that Dr. Thakral, who became acting director having been posted as principal in the Ayurvedic College, Banda, has been served with the chargesheet. The matter concerning Dr. Thakral has been referred to at another place in the judgment.

121. Regarding the petitioners, who were made accused in the First Information Report by S.R. Singh, it has to be emphasised here that it is the allegation in the report which is material and not maker thereof. While it is true that during investigation, it shall be examined as to who is informant and how far allegations are correctly made in the First Information Report, the lone fact of S.R. Singh being informant will not absolve those accused of the charges levelled against them through this First Information Report.

122. In criminal cases "incidents" are reported primarily. It has been found a number of times that though factual allegations are correct but the alleged manner of its happening is incorrect. On number of occasions it has been found

by the Courts that the real criminal has lodged the First Information Report which contains results of the offence but also simultaneous events culminating in that offence. For example, a husband having committed murder of his wife lodged the First Information Report alleging some one else having committed this murder. He remains informant unless the Investigating Agency finds that the maker of the First Information Report himself is accused. Similarly in embezzlement, such actions are often resorted to by whitecollared criminals, if they indulge in embezzlement, also having experience of law and of courts, they would be prone to taking such defensive action from before committing the embezzlement as would make it possible for them to save their skin on being apprehended.

123. There is also force in the argument of the learned Counsel for the petitioners in similar criminal cases, that it may be that some R.A.U.Os. and M.Os. may succeed in saying that there was a genuine allocation orders which may be believed to be true and correct. It goes without saying that once such a conclusion is reached, Investigating Agency is to obviously absolved such R.A.U.Os. and M.Os. or class III employees. Unless the investigation is over and material and circumstances are collected by the Investigating Agency, such conclusion cannot be arrived at during the pendency of the investigation by exercising powers under Article 226 of the Constitution of India and by taking note of some documents filed with the writ petition as annexures.

124. It is to be noted here specifically that in respect of some letters in the shape of documents annexed in one writ petition or the other, the State says that in the Secretariat, the origin of the letter of S.R. Singh, which has been filed by either S.R. Singh or by any of the petitioners in the writ petition or in the affidavit, is not available in the original records so far. The authenticity and reliability of such documents itself is far from conclusive, conclusion about which has to wait the result of investigation by the C.B.I.

125. It may be that in connection with a case where truth or existence of the documents are not controverted by the State or informant or Investigating Agency, some relief may be claimed by those who may be entitled to the benefit of the material existing on record while deciding the writ petition under Article 226 of the Constitution of India but in the instant case such conclusion is not only impossible but it is impermissible also in the aforesaid circumstances. The fact that S.R. Singh is himself as accused alongwith R.A.U.Os. and M.Os. or Class III employees, does not entitle them to get any advantage or benefit whatsoever. It is to be noted that unless the result comes out after investigation nothing can be presumed true or untrue, correct or incorrect, possible or impossible by this Court under Article 226 of the Constitution of India or under Section 482, Cr.P.C.

126. In this connection it may also be pointed out that from out of the suspended officers or officials 8 have already retired by now during the pendency of the disciplinary proceedings. Some of them have filed writ petitions and some

have not yet challenged the disciplinary proceedings. It was emphasised during the course of arguments that even to those who have approached Lucknow Bench or this Court and have obtained interim stay orders respondents are not paying their salary or even their subsistence allowance to those who have not been able to secure any interim stay order regarding their subsistence allowance. In reply statement has been made to the effect that the respondents have absolutely no intention to deny salary or subsistence allowances as the case may be. For one who has obtained interim stay order from this Court or otherwise entitled to such relief, it has been assured by the AdvocateGeneral that all steps will be taken by the respondents to release salary or subsistence allowance which are legally payable to the employees concerned.

127. While dealing with this aspect of the matter reference has to be made to one of the cases i.e. Writ Petition No. 2374 of 1995, Dr. S.K. Tripathi v. State and others, Dr. Tripathi was suspended on 1781995 on the complaint of S.R. Singh. It is admitted case of the parties that on 2581995, first information report stood lodged against Dr. S.K. Tripathi by Dr. S.R. Singh. It has been argued that Investigating Agency has filed final report. It is also argued by Sri TP. Singh assisted by Sri A.K. Srivastava learned Counsel for the petitioner S.K. Tripathi, that once there was final report dated 2581995 of the alleged occurrence, there was no material to proceed against Dr. Tripathi. For the aforesaid reasons, the, investigation as well as departmental proceedings were challenged.

128. It was replied that chargesheet has also been submitted against Dr. Tripathi, who was working as medical officer in charge in the State Ayurvedic Hospital Maharajganj. It has been pointed out that Court has not accepted the final report and it was canvassed that mere filing of a final report would not absolve Dr. Tripathi there of the criminal charge or disciplinary proceedings initiated against him.

129. It may be mentioned here that law is well settled that no final report can be accepted without issuing notice to the informant, giving him an opportunity of hearing, as has been held in A.I.R. 1995 S.C. 175, BhagwanDeenv. State.

130. It may be relevant to mention here that in a case where final report is filed by the Investigating Agency that fact itself will not debar investigation in the case by C.B.I.

131. It may be repeated here that those officials who were prosecuted or departmentally proceeded with on the report of S.R. Singh, have been served with chargesheets wherein it is alleged that the actions were outcome of criminal conspiracy of S.R. Singh. It was strongly criticised that the SPECIAL AUDIT REPORT itself has been made basis for levelling charges against petitioners as the narration contained in the chargesheet served upon the petitioners. It is not denied that wherever the charges referred to the alleged purchase of medicines, equipments and other materials either at the hospitals or at the institutes or at the manufacturing units, the special audit report has been mentioned as the

basis for levelling the charge in the chargesheet.

Discussion on General Arguments for all Petitioners.

Re : Special Audit Report & other Materials.

132. It was contended by the "learned Counsel for the petitioners that it is impossible to treat the special audit report as

a material which could have satisfied the authority concerned to pass suspension order forthwith because admittedly the special audit report did not refer to any individual officer or employee by name and all that the special audit report indicates is that it alleges absence of grant or budget for the spending units mentioning simultaneously the amount drawn or admitted to be drawn from the local treasury and then allegedly spent or about to be spent by purchase of material medicines etc.

133. It is further contended that special audit report may have been prepared after looking into various documents and materials made available to the special audit authority. Therefore, the argument proceeded that unless those documents and materials were first examined by the authority concerned, it was neither open nor permissible for the said authority to use the special audit report itself as the basis against the petitioners' disciplinary proceedings. It has thus contended seriously that the authority has not applied its mind at all and has mechanically proceeded to pass the suspension orders at the first instance and then issue the chargesheets at the second through the enquiry officer.

134. The aforesaid arguments have been refuted at various levels. It was contended that once normal things have stopped happening in the department and the conspiratorial axis has come into existence starting from the top of the Directorate percolating to the lowest in the hierarchy of employees, it is the documents which had to be examined by the authority himself or by the auditors appointed by the authority. It is argued that so long as the disciplinary proceedings referred to the special audit report it means that the authority is fully conscious of material in existence which has formed the basis for the said special audit report.

135. In the facts and on the circumstances of the present case from the materials existing on the record it is more than apparent that the spending units concerned i.e. Regional Office or Primary Health Centre or Ayurvedic Hospital or an Institute or a manufacturing Unit, they suddenly start receiving additional allocation for purchase of materials medicines etc. None of these units except two concerning which two separate allocations were made, none refunded the excess grant to the Government, none enquired as to whether the grants were genuine or not, none probed at his level or at the Directorate level or even at the treasury level as to the reason why the said grant has come to the said spending unit, are circumstances enough to indicate that all those officers or employees who received those amounts were prima facie in the know of the things that

there is no genuine despatch of the money from the Directorate level to their spending units.

136. It is next to impossible to think of a situation where a drawing disbursing officer, at whatsoever level posted, goes on drawing lacs and lacs and even crores of rupees within a couple of days, or in some case attempts to draw the said amount but fails to withdraw it for one reason or the other, having specific knowledge of the fact that there is no allocation of funds. Once therefore, the actual spending or actual attempt to spend out the entire additional amounts thus received or about to be received, is admitted to the officers/employees, those documents when noted in the special audit report, *prima facie* are the best evidence in order to come to the conclusion that the spending has been made contrary to budget allocations therefore, contrary to the regulations contained in the Financial Handbook inasmuch as purchases having been made or attempted to be made contrary to the rules and regulations, thereby bringing about the charge of misconduct against the petitioner. Such a report of special auditors based upon the documents of the spending unit is enough evidence to initiate departmental proceedings and frame charge against concerned officers and employees of the unit.

137. It may be mentioned that any delinquent officer/employee who has a grievance against the chargesheet alleging vagueness in the charges, or, special audit report is challenged on some other ground, shall be always at liberty to examine the papers on the basis of which the special audit report has been prepared. It goes without saying that the special audit report itself is based on those documents and materials and therefore every petitioner will get full opportunity to look to the actual documents during the disciplinary proceedings, if necessary.

138. The second argument advanced in this connection was that once the Director, Dr. Sheo Raj Singh, himself had issued the orders concerning the additional budget allocation, it does not lie in the mouth of the State Government to challenge the petitioners other than Dr. Sheo Raj Singh for getting excess budget allocation wrongly utilised and thereby charge them for misconduct. The argument proceeds that though Dr. Sheo Raj Singh had admittedly alleged that he had not signed the original orders concerning additional allocation of budget for the spending units, the Government itself has obtained the report of hand writing expert which indicates that 227 out of 350 signatures of such allocation orders are the genuine signatures of Dr. Sheo Raj Singh. The argument further proceeds that once the Director is compelled to admit by attending circumstances the allocation of additional budget, the petitioners other than Dr. Sheo Raj Singh are fully protected and cannot be charged for misconduct. Apparently there is no basis for the Government to think that once the Directorate had itself issued the additional budget allocation, any of the petitioners would be guilty of the charge of misconduct when there is no other evidence or circumstances to indicate that the other petitioners were in league

with Dr. Sheo Raj Singh.

139. In reply, the aforesaid arguments have been repelled. It was contended that since the petitioners knew that there was no additional grant allowed, the receiving of the order of the withdrawal of the additional grant and its utilisation by the petitioners is enough proof of their conspiracy. In this connection it may be mentioned here that the petitioners did not submit any application for additional budget allocation. In none of the writ petitions is there any averment (as stated, except in two) that goes to suggest sudden spurt in patients or sudden rise of ailments due to unforeseen circumstances such as epidemic etc., additional budget was required and therefore was claimed from the respondents. No such demand exist.

140. It is further clear that none of the petitioners enquired from the Directorate about the receiving of the additional grant. No officer posted at the spending units having rights of drawing and disbursing officer could be a silent spectator to the voluntary pouring in a huge allocation of amount without there being any demand.

141. Simultaneously it has to be noted here that there are officers who were charged with purchasing materials/medicines through purchase committee have to follow that law. It is absolutely necessary that public money should be spent in the lawful manner. None of the petitioners were entitled to take the additional grant amount as a bounty from benevolent heaven. It was money coming from public exchequer and each one of them is answerable and accountable to the extent of money and amount received and unlawfully spent or are answerable for the attempts to spend or attempts to withdraw the same from the Treasury having received the additional grant order in their respective offices.

142. The third argument in this connection relates to the submission of chargesheets being illegal. It was said that once a chargesheet was submitted by the authority after suspending the petitioner, it could not submit an amended chargesheet. This by itself indicates nonapplication of mind on the part of the authority in as much as the substantial change in the second chargesheet would render the suspension order on the strength of the first chargesheet or just before it was issued, renders the chargesheet itself wholly unacceptable and the suspension orders must be quashed in every case where second chargesheet has been submitted by the authority.

143. The argument proceeds that the later allegation that the petitioners have conspired with Dr. Sheo Raj Singh is a complete falsehood apart from being an accusation in order to justify the original actions against the petitioners. It was seriously contended on behalf of the petitioners that belated attempt on the part of the respondents to allege conspiracy with Dr. Sheo Raj Singh visavis petitioners, is only an attempt to justify the suspension orders and initiation of the disciplinary proceedings which should, therefore, be confined only to Dr. Sheo Raj Singh and none else.

144. It was contended further that if and when at the initial stage the action recommended at the instance of Dr. Sheo Raj Singh himself was accepted and some of the petitioners were proceeded with departmentally in view of the recommendation of Dr. Sheo Raj Singh, the State Government must drop the departmental proceedings forthwith concerning those officers and the respondents should not be permitted to paint a sudden volteface.

145. In reply it was contended that till the stage the State Government was having faith on one of its highest ranking officer viz., Dr. Sheoraj Singh, it was bound to proceed on the recommendations of the said officer. Once it came to light that he had hatched a conspiracy with the petitioners then the Government had to change the charges to that extent concerning all petitioners because of material and circumstances which have come to light during the special audit report and also subsequent thereto. In this connection it was argued that the petitioners are themselves blowing hot and cold in the sense that while on the one hand they claim to be acting bonafide in withdrawing the excess amount or attempting to withdraw the same, each and every one of them has not bothered to follow the law, rules and regulations concerning its spending on purchasing materials and medicines. It was thus argued on behalf of the respondents that the petitioners' argument has no force and it was open to the State Government to submit the second chargesheet to the petitioners on materials existing which again according to the learned Counsel for the respondents speaks of genuine application of mind by the authority to the entire facts of the case.

146. While considering this point in issue let it be noted here that in several writ petitions the original suspension order alone was under challenge. Likewise, in some petitions the first or the original chargesheet was under challenge alongwith suspension order. In some the second/the supplementary chargesheet has been treated alongwith the first as well as suspension order. In the first two cases amendment applications were made for amending the grounds and incorporating the prayer for quashing of the chargesheets, or the second/supplementary chargesheet as the case may be. Since it is not in dispute that in those cases the first or the second chargesheets were submitted during the period intervening between the suspension order and the petitions maturing for final hearing, those amendment applications have been allowed and the petitioners have been permitted to add the necessary grounds and also amend the relief seeking quashing of the first and second chargesheet alongwith suspension order as the case may be.

147. It may be stated here as a matter of law that the employer has an absolute right of amending a chargesheet in a departmental proceedings. What is termed as a second chargesheet by the learned Counsel for the petitioners should more appropriately be called as supplementary chargesheet. In any case, a charge of conspiracy with Dr. Sheo Raj Singh has been added or substituted, as may be the case concerning the individual officer/employee. Thus the aforesaid allegation is not contrary to the first chargesheet or to be more appropriately referred as the

original chargesheet. Whether or not the amended chargesheet/supplementary chargesheet is to be justified on the facts, may have to be examined in the departmental proceedings.

148. The next argument advanced was that since in most of the matters in issue first information reports have been lodged with various police stations, vigilance enquiry have been instituted concerning many cases, special audit having been, fact finding committees have been appointed headed by respectable senior officers, the disciplinary proceedings if not quashed, should remain stayed until those matters are finalised. In this connection it was emphasised that since this Court has directed the C.B.I, to investigate the matters, all proceedings should remain stayed in as much as the suspension orders must not be permitted to be operative so long as the C.B.I, enquiry is going on and it does not submit its report or inform this Court of the action taken by it.

149. It may be mentioned here that it is not in dispute that the State Government had constituted a committee known as "Ghotala Samiti" (translated into english may mean "Scam Committee"). It has three members:

- (1) Chairman, Board of Revenue.
- (2) Principal Secretary, Finance.
- (3) Member Secretary, Medical & Health Services.

150. It was intimated that this Committee has once Sadhu Saran Singh as its Secretary and that the said Secretary is posted as the Director, Treasury, Uttar Pradesh.

151. It is also not in dispute that when this matter of excess budgetary allocation was raised in the legislative assembly, it also constituted a Committee from out of its members headed by Shri R.C. Srivastava then a Member of the Legislative Council and a Senior Advocate of this Court.

152. On the ground that these two committees has been constituted, the learned Counsel for the petitioners submitted that necessary fact finding was absolutely essential before any disciplinary proceeding or suspension order would have been initiated or passed against the petitioners. It was insisted in right earnest that for ulterior motives these two committees have not been allowed to complete the job entrusted and to short circuit those enquiries, the instant disciplinary proceedings against the petitioners have been started.

153. It was strongly replied by the learned Counsel for the respondents that the insinuation attempted to be made are absolutely baseless for two reasons. First, that the enormity of the matter and the unusually huge sum of money involved compelled the Government to refer the matters for departmental proceedings and also to the police department by lodging first information reports, the committee headed by Chairman, Board of Revenue become nonfunctional. Two, the other Committee headed by Shri R.C. Srivastava the then Member of

Legislative Council was in internal affair of the council and the Government had no hand in it. Since Shri R.C. Srivastava has ceased to be Member of Legislative Council, the said Committee also woundup automatically.

154. It goes without saying that the seriousness of the allegations which were reported to the police and if during investigation it is found that some of the Officers or employees have acted unlawfully and have misconducted in order to obtain wrongful for themselves or caused unwrongful loss to the state exchequer, they may have to be proceeded with for Trial in accordance with law and if found guilty they also deserve punishment if the charge is proved. Consequently, the Committee headed by Board of Revenue was no more required to simultaneously oppose the opinion when the matter was already being investigated by the Police. Similarly once Committee of Shri R.C. Srivastava has come to an end there was nothing for the Legislative Council to enquire about unless a certain committee was constituted if so desired by the Council/Assembly. The Government has no hand in it. In view of the aforesaid two reasons the existence of the two Committees having come to an end the Police investigation had to proceed in accordance with law.

155. It has been held in a number of judicial pronouncement including the Apex Court that whether the Government or the employer wants to proceed with any officer or employee departmentally also even though a criminal case has been registered for investigation by the police, depends upon the nature of the charge and misconduct. On the facts and circumstances of the case there is nothing wrong in the State in the respondents in proceeding against the petitioners departmentally also apart from having lodged the First Information Report against some of them.

156. Serious criticism was raised concerning the lodging of F.I.R. by Dr. Thakral and incharging the said criticism it was argued that since the charge against some of the petitioners is based upon the lodging of the F.I.R. of Dr. Thakral, the charges should be quashed.

157. The argument proceeded that Dr. Thakral is himself indulged in the present scam. It is contended that a press report has been filed as Annexure 11 to the writ petition No. 4355(S/S), 1996 in the Lucknow Bench the substance of which would be that some important documents concerning Dr. Thakral's own involvement in the embezzlement/misappropriation concerning, Ayurvedic College in District Banda where he was posted, has been lost in transit between Banda and Lucknow. It was argued on the basis of some other applicant that there have been some allegations against Dr. Thakral and therefore, it was not permissible for the Government to rely upon the F.I.R. of the said Dr. Thakral. In this connection it was emphasised that just as the Government first relied upon the F.I.R. lodged by Dr. Sheo Raj Singh and has to subsequently does the allegations in those F.I.Rs. as they stand, may be that the Government may have to discard the F.I.R. of Dr. Thakral also in due course of time.

158. It may be mentioned here that presently Dr. Thakral is posted as the officiating Director in Ayurvedic Directorate. The F.I.R. lodged by Dr. Thakral does not concern the posting or working of Dr. Thakral. The F.I.R. lodged by Dr. Thakral relates to the happening in the financial year 1993-94, not touching at all the involvement of Dr. Thakral in any manner whatsoever. Consequently, the comparison attempted to be drawn between the F.I.R. lodged by Dr. Sheo Raj Singh and those F.I.Rs. which have been lodged by Dr. Thakral is wholly misplaced. Therefore, it follows that the F.I.R. lodged by Dr. Thakral need not be discarded for being utilised by the respondents. The argument, therefore, has to be rejected.

159. Having thus noted that the argument that the F.I.Rs. lodged by S.R. Singh should be equated with the F.I.R. lodged by Dr. Thakral is wholly misplaced and not acceptable, it may be relevant to mention here that Sri G.K. Mehrotra, Additional Advocate General made a mention during the closing days of the arguments that the Government has proceeded departmentally against Dr. Thakral also. A chargesheet has been served on Dr. Thakral. He also informed that since by 31st October,

" Sri Thakral is to retire from service no suspension order has been passed. The Additional Advocate General, however, did not rule out the possibility of passing suspension order also. Should the Government feel the necessity in the meantime. The result of this new development would be that the allegations against the employees who are being proceeded with through the F.I.Rs. or reports or chargesheets signed or initiated or issued by Dr. Thakral shall have to challenge the material or the evidence sought to be used against them. This Court cannot in exercise of jurisdiction under Article 226 of the Constitution of India go into the merits of the matter. While on the one hand the order of proceeding departmentally against Dr. Thakral may indicate that the Government is taking suitable action concerning all the persons against whom there is least clout in official dealings, on the other hand it further denotes that the employees who are challenging those actions of Dr. Thakral could be at liberty to lead such evidence in defence as they may be advised regarding failure of any of the charges sought to be proved. It has to be mentioned that when the chargesheets have been issued against those employees or F.I.Rs. have been lodged, there are in existence sufficient material. So long, therefore, as those material exists the only fact of Dr. Thakral being also proceeded with departmentally later on would not absolve those employees from all the charges or investigation. .

160. Before parting with this point two factors have to be specifically mentioned. First is that some of the officers/employees have retired after they were suspended or chargesheeted before petitions matured for hearing. Some learned Counsel who had challenged the suspension order only did not press the writ petitions for want of instructions as well as because those petitions had become infructuous on account of the retirement of those petitioners. Some Counsel have persisted with those petitions on the ground that the chargesheets have been

filed and departmental proceedings may go on because of the service of the chargesheet on those petitioners before retirement. They have said that those petitioners are entitled to claim full salary and a writ to that effect should issue. In view of the final orders that are proposed to be passed this aspect of the matter shall be taken up in the end.

161. The second factor to be noted here is that Writ Petition No. 2193/96 filed by Sajal Kumar, a Junior Clerk in the Ayurved Directorate at Lucknow was already dismissed at the preliminary hearing. It, however, transpires that the said order was challenged before a Division Bench in special appeal and the said dismissal order was set aside. Consequently, this writ petition was remitted to the Court of a learned Single Judge. It came up before the learned Single Judge, he appears to have quoted some interim orders in similar matters and consequently called for a counteraffidavit and granted interim order. This is how the writ petition of Sajal Kumar achieved its rebirth.

Cases of Class III Employees

162. Having thus examined the general arguments concerning of officers/employees, it maybe mentioned that while the cases of those petitioners who were having drawing and disbursing powers prima facie stand on different footings than those Class III employees who have been only expected to be acting under those officers, their individual cases will have to be examined from overall administrative point of view keeping in the forefront their official subordination to the officers who enjoyed the drawing and disbursing powers. Therefore, let the case of those employees be taken up who were not having drawing and disbursing powers.

163. Coming to the class III employees they again have to be categorised into two sets. One who are entrusted with managerial duties and the other only to do the clerical job. While it will be true that the Superintendents in the Directorate may not be having drawing and disbursing powers but they are expectedly having close proximity with the Director Dr. S.R. Singh and nothing could have been done by S.R. Singh without active cooperation, participation and connivance of those Superintendents. Therefore, the cases of Superintendents in the Directorate will have to be separated from class III officials who are not having direct access or reach upto the Director S.R. Singh. Likewise in the Districts where R.A.U.Os. or M.Os. are having the drawing and disbursing powers the class III employees in themselves do not have any such power. Prima facie those R.A.U.Os. and M.Os. being the drawing and disbursing officers have to be attributed the knowledge of the allocation, allotment of funds, the purchase prices, the disbursement of payment etc. All the class III employees need not be at this stage saddled with any additional liability other than negligence or dereliction in official duty. This part of the discussion is not at all on the merit of the case of individual class III employees but is directed only towards finding merit in the argument of learned Counsel for class III employees that those who were not having drawing and disbursing power and were not having supervisory

or managerial jurisdiction in the spending units and the Directorate, can be separated and since their suspension orders have been stayed, looking at their financial capacities, those suspension orders need not be revived while disciplinary proceedings may be directed to go on and completed soon. For the reasons stated above those class III employees who were not having supervisory powers i.e. were not Superintendents or the like in the Directorate and the spending units in districts or were not having drawing disbursing powers in themselves shall be proceeded within the departmental proceedings in accordance with law but their suspension orders shall stand stayed and need not be given effect to till completion of their enquiries.

164. There is additional reason why such a distinction must be made in the cases of lowly paid class III employees on the one hand and the Superintendents in the Directorate and spending units on the other. It is the Directorate in Lucknow which arranges the allocation of funds for various R.A.U.Os. and M.Os. as has already been noted in the beginning of this discussion in this judgment. Rules and regulations in the Directorate are obviously known to the Superintendents. The despatch of the allocation bills prima facie are made through the Directorate office. S.R. Singh admits that signatures were forged in some of the additional grant letter. Prima facie, therefore, the Superintendents are in the knowledge of those grant orders. All class HI employees in the Directorate need not have known the factum of those letters being bogus or in excess of budget grant order being issued with criminal intention. The writ petitions of class III employees excepting Superintendents or supervisory staff in the Directorate at Lucknow, have to be partly allowed to this extent. In view of this discussion the following writ petitions have to be dismissed:

- (1) Writ Petition No. 2417 of 1996 of C.B. Singh, who is Office Superintendent in the Directorate, Lucknow.
- (2) Writ Petition No. 2418 of 1996 of Akhilesh Bajpai, who was Senior Clerk in the office of the Directorate, Lucknow.
- (3) Writ Petition No. 2419 of 1996 of Ram Kishan Jaiswal, Office Superintendent in the Directorate, Lucknow.
- (4) Writ Petition No. 2588 of 1996 of Shubhkaran Prasad Mishra, who is the Senior Administrative Officer in the Directorate, Lucknow.
- (5) Writ Petition No. 2589 of 1996 of S.P. Agnihotri Senior Assistant in the Directorate, Lucknow.
- (6) Writ Petition No. 3077 of 1996 of Kanhaiya Lal Sharma, Senior Clerk, Bulandshahr who was working as Cashier.
- (7) Writ Petition No. 4712 of 1996 of Ramesh Prasad Gaur, Senior Assistant, R.A.U.O., Moradabad.
- (8) Writ Petition No. .5457 of 1996 of Brijpal Singh, Senior Assistant, R.A.U.O.,

Muzaffarnagar.

(9) Writ Petition No. 3892 of 1996 of R.K. Shukla, Senior Assistant, R.A.U.O., Hardoi.

(10) Writ Petition No. 3116 of 1996 of Ravmdra Nath Mishra, Senior Clerk, R. A.U.O., Pratapgarh.

(11) Writ Petition No. 4705 of 1996 of Jagannath Prasad Srivastava, Senior Assistant, Farrukhabad.

(12) Writ Petition No. 3118 of 1996 of Dev Nath Yadav, Senior Assistant, Ballia.

(13) Writ Petition No. 3167 of 1996 of Rajesh Gautam, Senior Clerk, R.A.U.P., Hamirpur.

165. The aforesaid thirteen officials either in the Directorate or in the District Offices were having administrative control expectedly dealing with grant matters and payments arising out of alleged purchases. Consequently they do not deserve any interference hence the dismissal of these Class III employees has been passed.

166. However, the following class III officials prima facie do not appear to have been having administrative control and at least for the time being, so long as their responsibility is not fixed, further because they have obtained stay orders, need not be suspended during the pendency of the departmental proceedings against them. Therefore, the following fourteen petitions have to be partly allowed:

(1) Writ Petition No. 2645 of 1996 of Kashmira Singh, Senior Assistant, R.A.U.O.. Bulandshahr.

(2) Writ Petition No. 2646 of 1996 of Ramesh Chand Tomar, Junior Clerk, R.A.U.O., Bulandshahr.

(3) Writ Petition No. 2913 of 1996 of Sajal Kumar, Junior Clerk in Directorate, Lucknow.

(4) Writ Petition No. 3177 of 1966 of Virendra Mai, Junior Clerk, R.A.U.O., Deoria.

(5) Writ Petition No. 3166 of 1996 of R.C. Tiwari, Junior Clerk in Directorate, Lucknow.

(6) Writ Petition No. 4713 of 1996 Sudarshan Kumar Sharma, Senior Clerk, R.A.U.O.,

Moradabad.

(7) Writ Petition No. 4813 of 1996 of S.K. Kapil. Junior Clerk, R. A.U.O., Uttarkashi.

(8) Writ Petition No. 4945 of 1996 of Rakesh Kumar Gupta, Junior Clerk, R.A.U.O.,

Moradabad.

(9) Writ Petition No. 4921 of 1996 of Rishi Pal Singh, Senior Clerk, R.A.U.O., Muzaffar

Nagar.

(10) Writ Petition No. 4574 of 1996 of Rakesh Chandra, Junior Clerk, R.A.U.O., Basti.

(11) Writ Petition No. 4241 of 1996 of Sunil Kumar, Mishra, Junior Clerk, R.A.U.O., Sitapur.

(12) Writ Petition No. 3168 of 1996 of Ram Krishna Tripathi, Senior Assistant, Banda.

(13) Writ Petition No. 3119 of 1996 of Sat Narayan Gupta, Senior Clerk, Ballia.

(14) Writ Petition No. 4595 of 1996 of Mathura Prasad, Junior Clerk, R.A.U.O., Sitapur.

Liquid Paraffin Matter:

167. As has been referred to above these cases are ground under the aforesaid heading Liquid Paraffin Matter for three primary reasons. Admittedly, S.R. Singh had issued some directions that liquid paraffin is not an Ayurvedic medicine and, therefore, purchases of this commodity/medicine shall not be made by R.A.U.Os. and M.Os. or any other spending unit. Secondly, it is again admitted to the parties that purchases of liquid paraffin went on uncontrolled in the regime and tenure of the then Director S.R. Singh. And, thirdly some of the purchases do relate to the Ayurvedic Scam period 1993-94 whereas there may be other cases which do not relate to the scam period.

168. During the course of arguments it transpires that this commodity liquid paraffin was being purchased by spending units in various Districts at exorbitant rates. While its price was say Rs. 10/ per bottle the price paid for one bottle used to be the price of one gross. It is unbelievably criminal on the part of those who were making such purchases.

169. However, it was pointed out that these purchase matters were handed over to the Vigilance and as noted above the Vigilance has recommended that in some cases disciplinary proceedings should be taken, in some cases it was recommended that censor entries should be given and in some cases it was recommended that criminal cases should be initiated, with or without disciplinary proceedings in some cases or the other.

170. It was mentioned during the course of arguments that disciplinary proceedings could not begin except that suspension orders were passed against some class III employees for the reason that the documents were seized by the C.B.I, in pursuance of the taking over of investigation by it. It was thus argued that as soon as the documents were returned to the Directorate/the Government

necessary action shall be taken keeping in view of the recommendations of the vigilance Department. Taking note of this argument a detailed order was passed on 26/9/1994 to the effect that only those liquid paraffin matters which come within the scam period i.e. 1993/94 they will be proceeded with by the C.B.I and in other matters the recommendations of the Vigilance Department regarding action prior to the scam period shall be abided by the Government.

171. It may be mentioned here that there is no force in the argument of the learned Counsel for the petitioner that all the cases under the liquid paraffin matter should come to an end here and now and the petition should be allowed because no criminal cases have been initiated against those petitioners inasmuch as the R.A.U.Os. and M.Os. and those officers have not been proceeded as yet either departmentally or through any F. I.R.

172. It may be mentioned here that the reason for not initiating proceedings against R.A.U.Os. or M.Os. was apparent. The Vigilance inquiry was already complete in more than 20 cases as noted above inasmuch as prosecution was already sanctioned in some of the matters while it was pending sanction with the Government in some other matters. Consequently it cannot be said that necessary steps were not taken by the Government concerning liquid paraffin matters.

173. Before parting with this argument it has to be mentioned that whatever was happening in the Directorate under the calculated actions of S.R. Singh some delay in such financial irregularities was obviously to occur. Therefore, the said criticism is of no meaning at all.

174. It has already been held above that class III employees need not be suspended again who have obtained stay orders and likewise those who have not been able to obtain any stay order should get it till the completion of the departmental proceedings. In view of the aforesaid discussion the following writ petitions shall have to be partly allowed:

- (1) Writ Petition No. 3075 of 1996 of Aniruddh Sharma, Junior Clerk, R.A.U.O., Shahjahanpur.
- (2) Writ Petition No. 3076 of 1996 of Surjit Kumar Thakur, Senior Clerk, R.A.U.O., Shahjahanpur.
- (3) Writ Petition No. 4417 of 1996 of Rakesh Srivastava, L.D.C., Bundelkhand Ayurvedic College, Jhansi.
- (4) Writ Petition No. 3685 of 1996 of Ram Kumar, Senior Clerk, R.A.U.O., Aligarh.
- (5) Writ Petition No. 3802 of 1996 of Rama Shankar Mishra, Senior Clerk, R.A.U.O., Aligarh.
- (6) Writ Petition No. 3886 of 1996 of Rameshwar Dayal, Senior Clerk, R.A.U.O., Aligarh.

(7) Writ Petition No. 4245 of 1996 of Raj Kumar, Junior Clerk, R.A.U.O., Pratapgarh.

(8) Writ Petition No. 4353 of 1996 of Krishna Mohan Misra, Senior Assistant, Siddharth Nagar.

(9) Writ Petition No. 4354 of 1996 of Jitendra Kumar, Jha, Junior Clerk, R.A.U.O., Siddharth Nagar.

(10) Writ Petition No. 4355 of 1996 of Yogendra Singh, Senior Clerk, R.A.U.O., Sitapur.

(11) Writ Petition No. 4356 of 1996 of Surya Prakash, Senior Assistant, R.A.U.O., Sitapur.

(12) Writ Petition No. 4357 of 1996 of Prabhat Kumar, Junior Clerk, R.A.U.O., Sitapur.

WP. No. 9070/96S. N. Shukla v. State At this very place it will be convenient to deal with the case of Surendra Narain Shukla, petitioner who had filed Writ Petition No. 5970 of 1996 in L.B. It was sent by another Bench because it seemed to be a bunch matter. Counter and rejoinder affidavits were filed during the course of hearing. In this case it was vehemently argued by Sri Ashok Kumar Pandey on behalf of the petitioner that though there were additional allegation against the petitioner Surendra Narayan Shukla that he had physically assaulted R.A.U.O., Meerut. There is no force in the said allegation because in the F.I.R. that was lodged by R.A.U.O., a final report has been filed by the police after the investigation and, therefore, it was argued that the matter should be taken as only a Bunch case and the "Marpit" part should be deleted as it has become nonexistent because of the final report. Shri O.K. Mehrotra, Additional Advocate General argued that the mere lodging of the final report by the police does not end the case. The Court has to issue notice to the informant before accepting the final report. It was thus argued that the petitioner is an insolent employee and does not deserve any sympathy.

175. It is true that the petitioner who was said to have manhandled and beaten the R.A.U.O., Meerut such employee prima facie does not deserve any indulgence. Apart from that charge there were allegations against the petitioner of participating in Ayurved Scam. Consequently, this petition is dismissed.

176. In Lucknow Bench, three matters came to be argued which were filed by suppliers who had alleged that their lawful payment is not being released. In Writ Petition Nos. 1381, Jain Ayurvedic; 2450 of 1996, M/s. New India Pharmaceutical and 2499 of 1996, M/s. New India Pharmaceutical claimed to have supplied medicines and substantial amount were being claimed by them for the alleged supply made to various places including far off district like Pilibhit.

177. Likewise, in Allahabad three writ petitions of similar nature came up for hearing. In Writ Petition Nos. 25076 of 1994, Vivek Kumar v. State; 25169 of

1994, K.K. Singh and 2421 of 1994, Rohtash Mitlal v. State, it is alleged that they have also supplied various medicines to different offices/hospitals and their payments are wrongly withheld.

178. Counteraffidavits have been filed in all the cases disputing the actual delivery. It has been mentioned in the counteraffidavits in each case that the matter is being investigated by C.B.I and unless after the investigation, the actual supply is proved, the making of payment is not possible.

179. There was an insistence on the part of the petitioner's Counsel in this Court as well as in Lucknow Bench that since some receipts etc. were filed along with the writ petitions, the respondents should make payments and such a mandamus should go from this Court.

180. In two matters, notices under Section 80, Code of Civil Procedure has been issued on behalf of the suppliers to the Government claiming payments. Normally, therefore, civil suits may be filed by those who feel affected by the decision of the Government not to release the payment so long investigation is being made by C.B.I.

181. While it is true that wherever liability to pay emerging out of some contract, is admitted to the State or some statutory liability is created, the State may be commanded by a writ to release the payment. Such is not the case here in any of the petitions. When actual supply is disputed and, in fact, the whole controversy partly rests on whether the actually supply have been made or not, the jurisdiction under Article 226 of the Constitution of India cannot be invoked for commanding the respondents to make payments.

182. In view of the aforesaid discussion, these six writ petitions stand dismissed at this stage with a direction that the petitioners in each case may make representation to the Government through the Director of Ayurvedic & Unani Officer, Lucknow who may consider it after the investigation by C.B.I, is over and pass necessary orders, preferably speaking one Legal arguments and rulings.

183. The factual analysis made above in fact does not leave any question of law to be decided. Of course, if the facts are held to be existing as sought to be argued then those questions of course will arise. Therefore, side by side with the factual arguments, the questions of the law as framed and argued and the rulings for and against may be conveniently taken up here concerning all the petitioners including S.R. Singh.

184. It is argued that since he had himself got some auditing done and reported the matter to some of the authorities, he cannot be put in a column of accused in a F.I.R. of Yashwardhan Sinha referred to above.

185. It has already been noted above that the allegations of wrong withdrawal on forged documents or forged allotment orders of forged signatures of S.R. Singh is admitted to S.R. Singh. Once this is so and there are materials prima facie to indicate S.R. Singh's own complicity in the entire Ayurved Scam, the State has"

absolute authority to get the matter investigated by lodging F.I.R. against S.R. Singh because prima facie he is charged for having himself embezzled crores and crores of rupees. In this connection it was said that since Shri Mohinder Singh was inimical disposed towards Shri S.R. Singh, he being biased against S.R. Singh, got the F.I.R. lodged against him and has also started the disciplinary proceedings. It has already noted above that Sri Mohinder Singh was in a position and authority to take steps against S.R. Singh and as Principal Secretary it was his duty to act according to law. S.R. Singh's own report, believed for sometime to have been correctly reported and lodged, turned out to be factually incorrect and, therefore, he is being proceeded with. Here is, therefore, no bias or mala fide in the action of Sri Mohinder Singh.

186. However, reliance was placed on the authority of Hon'ble Supreme Court reported in *Tilak Chand v. Kamla Prasad*, 1995 Supp.(1) SCC 21. A Principal having bias against a teacher and yet became the member of the enquiry committee was so rightly decried by the Hon'ble Supreme Court in the said case. On the facts it has no application here. Reliance was also placed on *Ratan Lal Sharma v. Managing Committee* reported in (1993) 4 SCC 10. There also it was held that a member of the inquiry committee should not have continued as such and record a finding against the Principal because at the very beginning the Principal had raised an objection about that member's participation in the inquiry committee. This case also, therefore, has no application here.

187. Reliance then was placed on *Suite of Bihar* \\, *PP Sharma*, AIR 1995 SC 1260. Reference was also made to the case of *R.D. She.etty v. International Airport Authority*, reported in 1979 (3) SCC 489.

188. Shri O.K. Mehrotra has, however, drawn attention of the Court to the three latest decisions of Hon'ble Supreme Court i.e. *State of Orissa v. Bimal K. Mohanty*, 1994 (4) SCC 126; *Transport Commissioner, Madras v. A. Radha Krishna. Moorthy*, (1995) 1 SCC 332 and *Secretary to Government v. L. Srinivasan*, (1996) 3 SCC 157; 1996(2) LBESR 262(SC). To be fair to Sri O.K. Mehrotra it should be referred here that he also cited *Union of India v. Upendra Singh*, (1994) 3 SCC 357 and *U.P.Rajya K. U.M. Parishadv. Sanjiv Rajan*, 1993 Supp (3) S.C.C. 483.

189. It may be mentioned here that in the case of *Secretary to Government* (supra) it has been emphasized that:

".....In the nature of the charges, it would take a long time to detect embezzlement and fabrication of false records which should be done in secrecy. In quashing the suspension and the charges on the ground of delay in initiation of the disciplinary proceedings, the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal has exercised power as if he were an appellate forum de hors the limitations of judicial review. He has exceeded his power of judicial review in quashing the suspension order and charges even at the threshold."

190. In Bimal Kumar Mohanty (supra) it has been held by the Apex Court that where vigilance investigation found disproportionate assets with an employee and a criminal case was registered wherein investigations were going on and the employee was suspended, interference with such proceedings by the Administrative Tribunal was bad and wholly illegal. Very relevant observations have been made in this case regarding what is the effect of suspension and what is the effect of investigation in serious charges. The two relevant paragraphs are reiterated hereunder:

".....Normally when an appointing authority or the disciplinary authority seeks to suspend an employee pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of commission or commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct" sought to be inquired into or and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keeping an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disability an employee to discharge the duties of office or post held by him. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.

Normally the Supreme Court would not interdict the exercise of the power to pass interim orders by the Courts or tribunals, obviously, with the expectation that they exercise the discretionary power with circumspection after weighing pros and cons to sub serve the ultimate result of the pending adjudication. However, on the facts of this case since serious allegations of misconduct have been alleged against the respondent, the Tribunal was quite unjustified in interfering with the orders of suspension of the respondent pending inquiry. The Tribunal appears to have proceeded in haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority. The contention of the respondent, therefore, that the discretion exercised by the Tribunal should not be interfered with and that the Supreme Court would be loath to interfere with the exercise of such discretionary power cannot be given acceptance."

191. Where a chargesheet stand served and an employee comes to know of the allegations against him should the Tribunal have gone into merits of the matter

was one of the questions dealt with by the Hon''ble Supreme in Ashok Kacker (supra). Relevant paragraph may be quoted here for ready reference:

"The respondent has the full opportunity to reply to the chargesheet and to raise all the points available to him including those which are now urged on his behalf. This was not the stage at which the Tribunal ought to have entertained such an application for quashing the chargesheet and the appropriate course for the respondent to adopt is to file his reply to the chargesheet and invite the decision of the disciplinary authority thereon."

192. In the case of Upendra Singh (supra) equating the powers of the Administrative Tribunal with the powers of this Court under Article 226 of the Constitution it was, held by the Hon''ble Supreme Court that:

".....In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like *certiorari*, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view."

193. Having thus seen the relevant authorities on the aforesaid question the remaining argument that since criminal cases have been initiated against S.R. Singh as well as against some of the R.AU.Os., M. Os. or class III employees, disciplinary proceedings against them should remain stayed. Both the parties \\ relied upon the decision of *Kusheshwar Dubey v. Mis. Bharat Cooking Coal Lid.,* (1988) 4 SCC 319. The relevant observations exist in paras 7 and 8 of the said judgment which are reproduced here:

".....While there can be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it

would be open to the delinquent employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. It is neither possible nor advisable to evolve a hard and fast, straitjacket formula valid for all cases and of general application without regard to the particularities of the individual situation. In the instant case, the criminal action and the disciplinary proceedings were pounded upon the same set of facts. The disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal."

194. As per the law laid down by Hon"ble Supreme Court there can never be any hard and fast rule regarding stay of disciplinary proceedings only on the ground that against the employee concerned a criminal case is being investigated or is going on. As mentioned above in the instant case the additional budgetary grant having not been sanctioned by the Government it was not open prima facie for anyone, be the Director, R.A.U.Os. or M.Os. to receive money from the Treasury or attempt to receive the same by preparing bills. Therefore, none of the petitioners are entitled to get the disciplinary proceedings stayed only because of the investigation by the C.B.I, being in force.

195. On behalf of one of the petitioner Sri Prabhat Kumar learned Counsel relied upon the case of Shoorvir Singh v. Lt. Governor, Delhi, 1988 (7) Adm. Tribunal Cases 535. It has been held by the Administrative Tribunal that departmental enquiry was held even though the Government had set up a committee to find out officers who were prima facie guilty of negligence concerning the tragic assassination of former Prime Minister Smt. Indira Gandhi. It has been held that singling out of Shoorvir Singh without waiting for outcome of the report of the committee was a hostile discrimination.

196. In the instant case aforesaid ruling has no application whatsoever. The petitioner therein was the lone man proceeded with when the inquiry committee was going on with its investigations. It has already been noted above that in the instant case no enquiry is going on and the matter is being investigated by the C.B.I This ruling, therefore, is clearly distinguishable.

197. A learned Single Judge took the view in the case of Hashmat Ullah v. U.P.S.R.T.C., reported in 1994 Lucknow Civil Decisions 601, that allegations made against an employee should be so serious that in the event of being established it will warrant major punishment and only then suspension can be resorted to. It may be mentioned that the learned Single Judge was dealing with certain regulations framed under an enactment and the language used therein was being examined. However, there cannot be any dispute with the proposition that suspension should be resorted to only in serious matters. None of the Counsel, however, said that the present Ayurved Scam is not a serious matter. This ruling

is, therefore, distinguishable and does not help the petitioner.

198. Sri S.K. Kalia, however, cited 1994 Supp (3) SCC 711, *R. C. Sood v. High Court of Rajasthan*, wherein the Hon'ble Supreme Court interfered with the High Court's order of suspension against an officer in the subordinate judiciary. It has been held in the aforesaid case that:

".....Entrustment of the "control" of the subordinate judiciary to the High Courts by enactment of the relevant provisions in the Constitution of India, particularly Article 235 therein is for the purpose of ensuring their independence and protection from executive interference. At a time when fairness and nonarbitrariness are the essential requirements of every administrative State action, it is more so for any administrative act of the Judges. It is necessary that members of the subordinate judiciary get no occasion to think otherwise."

199. While the observations of the Hon'ble Supreme Court provide several guidelines for this Court to act in administrative matters, neither on facts nor in law has the aforesaid case law any applicability to the petitions at hand.

200. Reliance was placed by Sri Kalia on the ruling *Dileep Singh Rana v. State of Uttar Pradesh and others*, 1993 Lucknow Civil Decisions 363. A Division Bench has held therein that audit report cannot be used as substantive evidence of genuineness or bonafide nature of the transactions referred to in the actions. It may be mentioned here that the aforesaid ruling was delivered concerning a petition wherein a final order after completion of disciplinary proceedings was under challenge. It may further be mentioned that Sri G.K. Mehrotra said that while the observations made in the judgment concerning audit reports may require a reconsideration, on the facts of the present case the said authority has no application. As mentioned above the audit report by itself is one of the circumstances which may be used by the respondents in the disciplinary proceedings and trials against those who are accused. It may be mentioned here that in that ruling itself it was directed that a fresh enquiry should be held in accordance with the provisions contained in Article 311 of the Constitution. It was in fact some illegality in the holding of the enquiry under Article 311(2) which came up for criticism during which the aforesaid observation about audit reports utility was made. This case, therefore, also does not lay down that special audit report, as in the instant case, cannot be made basis for leveling charges against employees particularly when it will be supported by the documents on record. Consequently this ruling also does not help the petitioner.

201. Before closing with the rulings on the service matters both the parties relied upon the observations made in *U.P. Rajya K:U.M. Parishad* (supra). The relevant portion of the judgment of the Apex Court throw enough light on the correct proposition of law in such matters as is at hand in these writ petitions. For ready reference the relevant observation including the latter part of the head note is quoted below:

".....Ordinarily when there is an accusation of defalcation of monies the

delinquent employees have to be kept away from the establishment till the charges are finally disposed of. Whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question and hence it is always advisable to allow disciplinary proceedings to continue unhindered.

From the chargesheet it is clear that the allegations against the first respondent are given inasmuch as they indicate that the amounts mentioned therein are not deposited in the bank and forged entries have been made in the passbook and the amounts are shown as having been deposited. In the circumstances, the High Court should not have interfered with the order of suspension passed by the authorities. In matters of this kind, it is advisable that the concerned employees are kept out of the mischief's range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension.

Service Law Suspension Revocation Prolongation of suspension due to delay in filing chargesheet Such delay will not justify revocation of suspension order Remedy lies in calling for an explanation for the delay and if found unsatisfactory, to direct the authorities to complete the inquiry within a stipulated period and to increase the subsistence allowance adequately.

Service Law Suspension Judicial review Court should not ordinarily interfere with suspension orders, unless passed mala fide and without there being even a prima facie evidence connecting the delinquent with the misconduct in question."

202. Coming to the authorities on the criminal side it may be mentioned here that PP. Sharma's case (supra) has direct applicability in so far as the rights of Investigating Agency are concerned. In the cited case the matter came up before the C.B.I, for investigation and high officials were involved. A different picture of the incident and happenings was described which later on was doubted as being the correct version. It has been held by the Apex Court that investigation should not be interfered with ordinarily by the High Court in exercise of the powers under Article 226 of the Constitution of India. In this connection the leading case must be the one reported in *State of Bihar v. J.A.C. Saldanha*, 1980 (1) SCC 554. Significant declaration of law exists in the said ruling concerning the mala fides alleged against informants, scope of further investigation as well as subsequent investigation under Sections 156(3) and 173(3) of Cr. PC. It also deals with the powers of the I.G. Vigilance visavis civil police. This ruling is also a proposition for how Section 173(8), Cr. RC. shall have to be interpreted where a matter may have gone to a Court and cognizance may have been taken. It may be recalled that in the earlier part of this judgment a reference has been made to liquid paraffin cases wherein some matters have gone to the Courts. The investigation if necessary can and should always be done keeping in view the provisions of Section 173(8), Cr. RC. and the C.B.I, or any other Investigating Agency or the Vigilance do not become ineffective just because filing of police papers before a Court. In view of the declaration of law made in this ruling none of the

arguments advanced by any of the learned Counsel for the parties have y force whatsoever.

203. Before parting with the rulings relating to the principle of Criminal Law involved in these petitions cited at the Bar, some more decisions should be aptly noted here because the observations therein have direct impact on the facts of the present petitions.

204. In *Union of India v. W.N. Chaddha*, AIR 1993 SC 1082, dealing with the question of mala fides in lodging of the E.I.R. it was observe that when the entire latter is only at a preliminary stage and when the investigation has yet to go a long way to gather the requisite evidence, the Court cannot come to a conclusion one way or the other on the plea of mala fide at such a stage.

205. It has been held in *Investigating Officer v. State of Orissa*, AIR 1992 SC 1579, that every suggestion made by the defence after recording of F.I.R. that a suspicion was entertained about the accused's participation, if not supported by any material, need not be gone into by the Investigating Officer. This ruling deals with the situation where an accused may try to lay the Investigating Agency but caution has to be exercised by the Investigating Officer.

206. In *Sampat Singh v. State of Haryana*, 1993 (1) SCC 561, it has been held that a Court of competent jurisdiction is obliged to decide on proper application of mind whether to accept or reject a final report if submitted by the police.

207. In *Kishan Singh v. State of Bihar*, 1993 (2) SCC 16, it has been held that time out of number that court takes cognizance of the offence and not the offender. Similarly Investigating Officer is required to investigate an offence. It is immaterial who is the informant and what are his credentials. Once there is material to indicate that cognizable offence is disclosed the police has no alternative but to proceed in accordance with the Cr. RC., arrest the offender, produce him before the Court where after his remand will depend upon the decision of the Court as provided under Section 167, Cr. RC.

208. In *State of Haryana v. Bhajan Lal*, 1992 Cr. L. J. 527, detailed discussion on the contents of the F.I.R., manner of investigation and how and when High Court may be approached has been laid down. The dicta of the Hon'ble Supreme Court is by now well known and does not require reiteration.

209. In *Ganesh Lal v. State of Maharashtra*, 1992 Cr. L. J. 1545, the Supreme Court has gone into the issue as to how far Section 8 of the Evidence Act is attracted when an accused himself is the conveyor of the information which constitutes the offence.

210. In *Shivnandan Paswan v. State of Bihar*, 1987 (1) SCC 287, it has been held that question of mala fides on the part of informant cannot be determined when investigation is going on.

211. In *State of Bihar v. P.P. Sharma*, 1992 Supp (1) SCC 222, it was so

accurately emphasised by the Apex Court which for ready reference is quoted hereunder:

".....The Investigating Officer is the arm of the law and plays pivotal role in the dispensation of criminal justice and maintenance of law and order. The police investigation is, therefore, the foundationstone on which the whole edifice of criminal trial rests.....The duty of the Investigating Officer, therefore, is to ascertain facts, to extract truth from halftruth or garbled version, connecting the chain of events. Investigation is a tardy and tedious process. Enough power, therefore, has been given to the police in the area of investigatory process, granting him or her great latitude to exercise his discretionary power to make a successful investigation.....Often crimes are committed in secrecy with dexterity and at high places. The Investigating Officer may have to obtain information from sources disclosed or undisclosed and there is no set procedure to conduct investigation to connect every step in the chain case by collecting the evidence except to the extent expressly prohibited by the Code or the Evidence Act or the Constitution.....It is duty to ferret out the truth.....The function of the judiciary in the course of investigation by the police should be complementary and full freedom should be accorded to the investigator to collect the evidence connection the chain of events leading to the discovery of the truth, viz., the proof of the commission of the crime. Often individual liberty of a witness or an accused person are involved and inconvenience is inescapable and unavoidable."

212. Having noticed the relevant case law on the general proposition, two decisions require special mention on the arguments raised on behalf of S.R. Singh that he having been an informant once cannot be turned into an accused later on just because F.I.R. of Yashwardhan Sinha has been lodged. It may be noticed here that to become an informant can be an easy choice for an accused in order that he is not apprehended or prosecuted for the offence he may have committed. This type of criminal mentality exists in human being perhaps from time in memorial. In one of the earliest cases on this point Dal Singh v. King Emperor, 44 Indian Appeals 137, it was noticed that the accused Dal Singh himself lodged a F.I.R. with the police laying charge against one Mohan and Jhunni saying that Dal Singh was assaulted on his way from Hardua to Jabalpur. What transpired later on made Dal Singh himself the principal accused having caused injuries on the other side. The report lodged by him was used by the Judge during trial as admissible evidence against Dal Singh. It has been observed by the Privy Council as under:

".....It is important to compare the story told by Dal Singh when making his statement at the trial with that what he said in the report he made to the police in the document which he signed, a document which is sufficiently authenticated. The report is clearly admissible. It was in no sense a confession. As appears from its terms, it was rather in the nature of an information or charge laid against Mohan and Jhunni in respect of the assault alleged to have been made on Dal Singh on his way from Hardua to Jabalpur. As such the statement is proper

evidence against him....."

213. In fact the aforesaid observation of the Privy Council is so much in line with the type of argument advanced in the instant case from either side. The F.I.R. lodged by S.R. Singh can be used against him even in trial what to speak of investigation alone.

214. Asimilar question arose in Faddi v. State of Madhya Pradesh, AIR 1964 SC 1850. It has been held that a F.I.R. being neither a confession nor a statement made to a police officer during the course of investigation, its admissibility is not barred by Section 25 of the Evidence Act or by Section 162, Cr. PC. It has been observed that where the person who lodged the first information report regarding the occurrence of a murder is himself subsequently accused of the offence and tried and the report lodged by him is not a confessional first information report but is an admission by him of certain facts which have a bearing on the question to be determined by the Court, viz., how and by whom the murder was committed or whether the statements of the accused in the Court denying the correctness of certain statements of the prosecution witnesses is correct or not, the first information report is admissible to prove against him his admissions which are relevant under Section 21 of the Evidence Act.

215. It may be mentioned here that initially S.R. Singh lodged several F.I.Rs. as has already been detailed above. Later on three F.I.Rs. stood lodged against S.R. Singh by three different Doctors. This was followed by several F.I.Rs. by Dharam Singh at various police stations in various districts. Having noticed that there was some legal impediment in different reports being lodged in different Districts by Dharam Singh, one consolidated F.I.R. was lodged on 31/11/1995 against S.R. Singh at Police Station Hussaingani, Lucknow at case Crime No. 494 of 1995. Consequently, the F.I.Rs. lodged by S.R. Singh can be valuable piece of evidence not only during investigation but also during trial if ultimately a chargesheet is filed against S.R. Singh by C.B.I.

216. In view of the aforesaid decisions none of the writ petitions or applications under Section 482, Cr.P.C. require interference by this Court when the investigation is going on.

217. However, it has already been noticed elsewhere that directions have been issued to the C.B.I, to complete the investigation as early possible and submit report about having done so by 26th November, 1996. In this connection it may be mentioned here that all that this Court has done is to refer the matter to the C.B.I, for investigation and it was so done without even knowing that the principal accused Dr. S.R. Singh had himself made such a prayer in his Writ Petition No. 2025 of 1996. Whether the order of this Court was just a providence or per chance happened to be prophetic one does not know. It may be mentioned that during the course of the arguments an application was moved by the learned Counsel for S.R. Singh that C.B.I, maybe imp leaded in this Writ Petition No. 2025 of 1996 as an opposite party. There is absolutely no reason

why when the arguments have to be concluded, such an application is to be entertained. That application has to be and is hereby rejected.

218. Before parting with the case it may be mentioned that Shri Madhukar Agarwal argued the matter of Dr. Shyam Lal at L.B. and also at Allahabad with ability. He filed a fresh writ petition in L.B. which was heard and orders were reserved. Through that petition it was prayed that the State Notification directing investigation by the C.B. I. be quashed. It does not lie with in the purview of an accused to choose the Investigating Agency. Let the law be made clearly known to all that when matters were kept pending for years together even though F.I.Rs. came to be lodged and further that the principal accused himself prayed that the investigation should be done through the C.B.I. and this Court has directed the matter to be investigated through C.B.I., which has been rightly accepted by the State of Uttar Pradesh by issuing relevant Notification, there is absolutely no force in the said writ petition filed by Dr. Shyam Lal at L.B. Therefore, Writ Petition No. 2911 of 1996 filed by Dr. Shyam Lal is also hereby dismissed.

219. Having noticed the entire factual and legal arguments, the Court has reached the stage when ultimate decision is to be recorded.

220. But before doing so, in view of the special facts and circumstances noted in the preceding pages a few observations have occurred to the Court which deserve special mention.

Some thoughts for Hon''ble C.J. and learned C.A.G. of India.

221. It has been, therefore, suggested to the Registrar to send a copy of this judgment to the Hon''ble the Chief Justice of this Court and the learned Comptroller and Auditor General of India.

222. This Court is overburdened with pending petitions; this is an undeniable fact. Efforts are being made to clear off the arrears. But that does not mean that even any matter which cannot be delayed, the cases will be permitted to be piledup concerning same person or the same department or the same issue. The litigative history of the petitions filed before this Court indicates that all matters filed by S.R. Singh, either by himself or in the name of one or the other association (Sangh) by which he went on challenging one or the other order of the State, went into the racks of the office never to come out. As soon as some interim order was obtained by him, the petitions never saw the light of the day. While it is true that prima facie case must have been found before interim orders were passed by this court, that is astounding is that except on one occasion when opposition came through the State Counsel Sri O.K. Mehrotra, on no earlier occasion there seems to have been any interest on the part of the State or the State Counsel to oppose the interim orders and plead that all the facts shall be placed in a couple of days and, therefore, the matters to be heard on merits. If the basis of one interim order is existence of the alleged earlier interim order, it hardly needs to be emphasised that the need, justification or validity of the

earlier interim order must be decided before the subsequent one is passed. Had the State Counsel approached the Court to decide the earlier matters first and then entertain the prayer for subsequent interim order, it is impossible to think that the Court may not have done that.

223. This Court as well as Lucknow Bench of this Court exist only for imparting justice to the litigants. Every litigation has at least two parties. The scale of justice would fall on which of the two parties cannot be known from before in every *ex parte* motion. Shortage of Judges is obviously one of the reasons of continuance of interim orders after interim orders even though the first one was for different cause of action than the second one. Therefore, it must be respectfully suggested that as has always been done previously, some regularity in sending Judges from this Court to the Lucknow Bench in order to avoid accumulation of work atleast concerning interim matters, requires adherence unless paucity of Judges makes it impossible. Likewise, the Hon''ble Judges of She Lucknow Bench may interchangeably preside over Court in this Court. The mounting arrears cannot be permitted to shake the faith of the litigants or the general public at large. The matters which require immediate attention, have to be given that attention. There is then no alternative to this. A concerted effort by all the Hon''ble Judges of this Court and the Hon''ble Lucknow Bench under the leadership of Hon''ble Chief Justice with the active help and cooperation of the learned members of the Bar of this Court and of Lucknow Bench as well as with the assistance of the Registry of this Court and Lucknow Bench, the problem can be solved by prompt disposal of cases.

224. The Court would be failing in its duty if it is not pointed out that there appears to be some serious shortcoming in the manner of accounting and auditing in many offices in general and Ayurved Unani Department in particular. It transpires that the mere "internal auditing" is not proving effective. The check and balance which used to be admirably noticeable in earlier audit and account exercises appear to have slackened. It was in the year 1983-84 that the learned Comptroller and Auditor General of India separated the Audit Wing from the Accounts Wing. The validity of the order was upheld by this Court "in the case of *Sudhish Chandra v. C.A.G.*, 1986 Lab IIInd Cases 529. In practical working what steps are necessary requires serious thinking. Any action which may be taken by the learned C.A.G. of India, whose position in the Constitution is unique, shall be welcome if it can check the disturbing trend of "scams" here and there.

225. With the hope that these few pages may provide some material for pondering over the two twin problems, its copy be sent to Hon''ble the Chief Justice, High Court of Judicature at Allahabad and the learned Comptroller and Auditor General of India. The Registrar may do so within a fortnight.

226. Before recording the ultimate outcome concerning every individual case, the Court records its appreciation for the help and assistance and absolute cooperation which it received unequivocally from the Counsel for the parties. In Lucknow, Sri Umesh Chand, Senior Advocate, Sarvsri S.C. Pandey, R.B. Pandey,

Kami Deo, Manik Sinha, Abhai Kumar, R.K. Singh, S.K. Srivastava, Prabhat Kumar, S.K. Chaubey, J.N. Mathur, Ajai Misra, K. A. Khan, R.S. Pandey, Rana M.P. Singh, Rakesh Gupta, S. Nigam, S.L. Srivastava, S.C. Kashish, Rakesh Kumar, Y.K. Misra, Satya Prakash, VR. Singh, M.A. Siddiqui, K.K. Singh, Z. Jilani, V.R. Singh and S.K. Kalia have been heard at extensive length and the Court is happy with all of them on preparing the cases thoroughly and were of great assistance. In Allahabad Sri K.N. Tripathi, Senior Advocate, Sarvasri C.P. Gupta, Rajendra Dobhal, B.R. Tripathi, A.K. Verma, TP. Singh, A.K. Srivastava, S.N. Srivastava, S.P. Pandey, Arun Prakash, S.K. Chaubey and ShashiNandan have been heard at length in civil matters in this Court. Sri S.C. Maheshwari, Senior Advocate, Sarvsri Satish Trivedi, M.K. Tewari, M.D. Singh, V.Singh, VK. Singh and S.K. Misra have been heard at great length in criminal matter. Sri S.C. Pandey has, of course argued on behalf S.R. Singh in whichever matters he is the petitioner or impleaded as an opposite party.

FINAL CONCLUSIONS IN

Bunch cases of this Court Civil matters:

The following writ petitions are dismissed:

2U25/96Dr. IP. Singh v. State. 22262/96Dr. B.M. Pandey v. State. 33031/95Dr.A.K. Vermav.State. 33071/95 Dr. A. K. Misra State. 33196/95 Dr. R.K. Misra v. State. 34488/95Dr. V.K. Gangwarv. State. 32743/95Dr. S.K. TJipathiv. State. 34486/95 Dr. N.C. Dixitv. Director. 34489/95 Dr. R.A. Gupta v. Director. 34499/95 Dr. Mohan v. State. I3356/96Dr. R. C. Singh v. State.

16103/96 Dr. Harihar Upadhy v. State.

24016/96 Dr. Om Prakash v. State. 20091/9., T.B.Singhv.State.

The stay orders passed in the aforesaid writ petitions are vacated.

Criminal Writ Petitions of this Court: S22/95Dr.A.K. Vermav.State. 719/95 Dr. A. Kumarv. State. 1274/95 Dr. Shyam Lal v. State. 1275/95 Dr. Shy am Lalv. State. 718/95 Dr. O.P.Raiv.State. 1710/96Dr. VS. Tripathi\\\.State. 1360/95 UdaiBhan Singh v. State. 1504/95Dr. V.R. Tripaihiv. Slate. 146/95 B.D. Sharmav. State. 889/95 B. Singh v. State. 890/95 Dr. R.K. Misra v. State. 891/95 Dr.A.S.K. Misrav.State. 991/95 M. S. Rawat v. State. 1045/95 7. Vermav.State, 721/95Dr. M. Ramv.State. 17732/95 DK/.C. Misrav.State. 5/96S.PSinghv. State. 1325/96Dr. C.B. Singhv. State. 1603/96C. Srivastavav. V.C.. I5S4/96Dr.A. Hasanv.State.

The aforesaid petitions are dismissed. The interim stay orders are vacated.

LUCKNOW CASES

The following writ petitions are thus partly allowed:

- (1) 2645/96 of Kashmira Singh, Senior Assistant, R.A.U.O. Bulandshahr.
- (2) 2646/96 of Ramesh Chand Tomar, Junior Clerk, R.A.U.O. Bulandshahr.

- (3) 2913/96 of Sajal Kumar, Junior Clerk in Directorate Lucknow.
- (4) 3177/96 of Virendra Mai, Junior Clerk, "R.A.U.O., Deoria.
- (5) 3166/96 of R.C. Tewari, Junior Clerk in Directorate Lucknow.
- (6) 4713/96 Sudarshan Kumar Sharma, Senior Clerk, R.A.U.O., Moradabad.
- (7) 4813/96 of S.K. Kapil, Junior Clerk, R.A.U.O., Uttarkashi.
- (8) 4945/96 of Rakesh Kumar Gupta, Junior clerk, R.A.U.O., Moradabad.
- (9) 4921/96 of Rishi Pal Singh, Senior Clerk, R.A.U.O. Muzaffar Nagar.
- (10) 4574/96 of Rakesh Chandra, Junior Clerk, R.A.U.O. Basti.
- (11) 4241/96 of Sunil Kumar Mishra, Junior Clerk, R.A.U.O. Sitapur.
- (12) 3168/96 Ram Krishna Tripathi, Sr. Assistant, Banda.
- (13) 3119/96 of Sat Narayan Gupta, Senior Clerk, Ballia.
- (14) 4595/96 of Mathura Prasad, Junior Clerk, R.A.U.O., Sitapur.

227. The disciplinary proceedings against the employees must go on. Suspension orders which have already been stayed by this Court's orders need not be revived and they need not be suspended during the pendency of the enquiry/ proceedings against them. Disciplinary proceedings be completed within six months.

228. All other writ petitions of Regional Ayurved & Unani Officers, Medical Officers and Class III employees are dismissed. The interim orders passed in their cases are vacated. The three writ petitions relating to claim of payment for supplying medicines stands dismissed and disposed of as indicated above and no relief can be granted to them at this stage under Article 226 of the Constitution of India.

229. Special Appeal No. 318/92 is dismissed as infructuous. The following four writ petitions have also become infructuous.

3776/90

4986/90 1594/90 7903/90

230. The aforesaid four writ petitions are dismissed as infructuous.

231. The following writ petitions are delinked and are directed to be listed within a month before appropriate Court for decision on merits:

67/91

06/92

7981/92

4570/93

4571/93

4789/93

4876/93

5088/93

4406/90 and

4097/98

232. The following writ petitions and petitions under Section 482, Cr. P.C. have already been disposed of. No. fresh order needs to be passed by this Court. However, with regard to the matter of Dr. R.C. Misra, it was pointed out that Hon'ble S.H. A. Raza, J. dismissed the said 482 petition on 18696 but in the order directed that the petitioner Dr. R.C. Misra be granted bail on the same day. Objection was raised by Sri O.K. Mehrotra that there is no such power under Section 482, Cr. P.C. to direct grant of bail. This may be so. However, it was open to the State to challenge the said order appropriately which has not been done. This Court is not sitting in appeal over the said order. Hence the following two writ petitions to do not require any further orders:

327/96Dr. R. C. Misra v. State. 339/96 Durgesh Saxena v. State.

Similarly, Writ Petition No. 1981/95, S.C. Pandey v. State, has already been decided by a Division Bench on 2591995. No orders are required to be passed in this cases also.

233. The following petitions have already been dismissed as infructuous:

8062/92A.U.C. Sangh v. State.

79/96 G.P. Kukretiv. State alongwith 159/96

234. The following matters stand already disposed of and dismissed by separate orders:

2693/95 Mis. Lucknow Jari Booti v. State.

5819/96PramodK. Singhv. State. 5907/96 Surya Narain Shukla v. State.

235. For the reasons stated in the body of writ petition, the Misc. Application No. 5228/96 as well as No. 2911/96 filed by Dr. Shyam Lal with the prayer to quash the notification dated 28796 of the State Government remitting the matter to the C.B.I, for investigation, is dismissed. It may be mentioned that the Amendment application moved therein was dismissed as not pressed by the learned Counsel for the petitioner vide order of the Court dated 25996.

236. The following writ petitions relating to liquid paraffin matters for the reasons stated above are partly allowed with the direction that their suspension orders

shall not be given effect to and proceedings shall be completed within six months:

3076/94B.K. Thakurv. State. 3685/96Ram Kumarv. State. 3686/96 RameshwarDayal State. 3S02/96Rama Shankerv. State. 445/96RajKumarv. State. 4353/96Krishna Mohan v. State. 4354/96Jitendra Kr. v. State. 4355/96 Jogendra Singh v. State. 4356/96 Surya Prakash v. State. 4351191 Prubhat Kr. \ \.State.

Dr. Shiv Raj Singh's Matters Civil & Criminal At Lucknow and at Allahabad

237. Before passing orders on the writ petitions, Civil or Criminal whether at Lucknow or at Allahabad by Dr. Shiv Raj Singh, it may be mentioned that his conduct has not been above board in filing writ petitions. The learned Addl. AdvocateGeneral vehemently argued that a case for special costs has been made out. To say the least, as is more than apparent from the discussions in the body of the judgment, Dr. Shivraj Singh has not placed always all the true facts as also relevant averments have been omitted. He has changed his stand from stage to stage. When the arguments had started it was contended that his signatures were forged by several officials. In fact that is what his earlier F.I.R. indicated. By the time the arguments were coming to close, Court stunningly heard learned Counsel arguing that Dr. Shivraj Singh never complained about forged signatures but insisted that there were valid allocation orders. Both the original records relating to Writ Petition No. 308/90 as well as No. 4353/92 are missing in the office of the Lucknow Bench of this Court. According to the statement of Sri O.K. Mehrotra, learned Addl. AdvocateGeneral, the original record, original allocation orders, correspondence and instructions are missing from the Directorate in Lucknow. The petitioner successfully avoided his interrogation as well as arrest by methods which are certainly not straight. The whole Government machinery has been put to dance (sic) attendance at the various actions of Dr. Shiv Raj Singh. In view of the details mentioned in the body of the judgment it is but necessary that a few lacs must be imposed as special cost on the petitioner Dr. Shiv Raj Singh. However, this Court is conscious that moderation is said to be a valuable asset with a Judge in dispensation of justice.

238. In view of the aforesaid discussion Writ Petition No. 3121/95, 3319/95, 549/95 and 536/96, of Lucknow Bench are dismissed. All Contempt applications are also dismissed".

239. All the interim orders, if any, subsisting, are vacated. Writ Petition No. 2025/96 in this Court and Criminal Misc. Application No. 1676/96 under Section 482, Cr. P.C. are. dismissed. The interim orders passed in these petitions are hereby vacated.

240. After due considerations of all the attending facts and circumstances a sum of Rs. 50,000 is imposed as the cumulative cost that petitioner Dr. Shiv Raj Singh shall pay to the State within a month from today.

241. The investigation by the Central Bureau of Investigation shall be completed

as expeditiously as possible. It will be free to take all steps under the Criminal Procedure Code for interrogating any accused in accordance with law as also against the petitioners. Courts expectation has already been stated in this Court's order dated 26/9/1996 passed in Lucknow Bench which for ready reference is referred to here again:

"None needs to be reminded that in such heavy and serious matters investigation has to proceed cautiously, also keeping in view the possibility of efforts to get one self excluded from the ultimate result of the investigation, if any adverse result may follow. Any Officer or official in the Ministry concerned or the Secretariat or the Treasury Department if sufficient material exists against him, may also be proceeded with in accordance with law. It may be done irrespective of the height held or holding, to carry out statutory duties.....Sri Jamuar states that report of the C.B.I, shall be furnished before this Court within two months...." In this connection this Court happily places on record its appreciation for the help rendered by Sri Girdhar Nath, Standing Counsel for C.B.I, at Allahabad and Sri U.K. Dhawan, Standing Counsel for Union of India in Lucknow Bench. The Court would be failing in its duty if it does not record its appreciation for the assistance rendered by Sri R.S. Jamuar, Addl. Legal Advisor C.B.I."

The Additional Registrar, Lucknow Bench had already been directed to complete the enquiry regarding missing record and missing sealed cover, etc. in Writ Petition No. 308/90. A similar enquiry is hereby ordered to be done concerning the missing record of Writ Petition No. 4353/92. The report of the Additional Registrar should fix responsibility on the persons found negligent so that disciplinary proceedings are finalised soon against the guilty officials. Report concerning both records must come within a month from today.

Mahatma Gandhi and Swami Vivekanand speak:

242. Before parting the Court is unable to check its temptation to refer to the famous quotation of Father of the Nation Mahatma Gandhi which he wrote in Sarvodaya much before independence of India:

"Our Swaraj must be real Swaraj, which cannot be attained by either violence or industrialisation India was once a golden land, because Indians then had hearts of gold. The land is still the same but it is a desert because we are corrupt. It can become a land of gold again only if the base metal of our present national character is transmuted into gold. The philosopher's stone which can effect this transformation is a little word of two syllables Satya (Truth)."

243. Swami Vivekanand has reiterated time and again the necessity of characterbuilding. Our Nation can illafford to lye low without paying immediate attention towards this imperative need for betterment of our otherwise enchanting motherland. Swamiji goads:

"This is the motherland of philosophy, of spirituality and of ethics, of sweetness,

gentleness and love. These still exist and my experience of the world leads me to stand on firm ground and make the bold statement that India is still the first and foremost of all the nations of the world in these respects.....It is the same India which has withstood the shocks of centuries, of hundreds of foreign invasions, of hundreds of upheavals of manners and customs. It is the same land which stands firmer than any rock in the world, with its undying vigour, indestructible life. Its life is of the same nature as the soul, without beginning and without end, immortal; and we are the children of such a country."

244. This Court ends with humbly reminding all concerned "let the law take its course". The majesty of law lies in its strict adherence by all concerned.

R. K. Mahajan, J.I have perused the judgment of Justice Palok Basu and it was indeed a pleasure to read it. I got more delighted by way of enrichment in experience. My brother has expressed thoughts in a very coherent and logical manner and it is full of sound reasonings but I want to write my separate opinion in the nature of the case while fully accepting the views of learned brother Judge and the conclusions arrived at by him.

246. This Court passed an order on 10/7/1996 in Civil Misc. Writ Petition No. 21425 of 1996, Dr. Indra Pal Singh v. State of U.P. and referred the entire scam matter to the Central Bureau of Investigation (C.B.I.) for investigation and later on the Hon'ble the Chief Justice entrusted the entire bunch to this Bench to dispose of the cases in accordance with law after hearing the cases at Allahabad and at Lucknow Bench of this Court and this is how we are seized of this matter and we held sittings at Lucknow Bench for three weeks and at Allahabad for some time and given more than detailed hearing to the counsel for the parties.

247. This order will cover all the writ petitions filed at Allahabad and at Lucknow Bench of this Court regarding quashing of F.I.R. (first information report) prayer for stay of arrest and suspension orders with respect to Dr. Shiv Raj Singh, Director, Ayurvedic and Unani Services U.P., Lucknow, Regional Officers of Ayurvedic and Unani Centres and Doctors Incharge at the District Centres for Ayurvedic and Unani and their subordinate employees i.e. Clerks, Junior Clerks and other officials. All the writ petitions, details of which are given below, arise out of the alleged scam of about Rs. 47 crores, which was not duly sanctioned and the details of all the facts figure in the judgment. Since these writ petitions arise out of the scam of about Rs. 47 crores and all the petitioners involved are alleged to be connected with the scam for which suspension orders/charge sheets were issued and enquiry has been constituted in the jurisdiction of Lucknow Bench of this Court as well as Allahabad so the petitioners choose to file writ petitions at Allahabad and its Bench at Lucknow and they are being disposed of together by this judgment.

248. Writ Petitions against the suspension order of Dr. Shiv Raj Singh as well as suspension of Dr. Indra Pal Singh are also being disposed of by this judgment. The facts of those petitions are briefly detailed as it is not possible to detail the

facts of each and every writ petition. The grounds of suspension/charge sheets are common as mentioned in the judgment.

249. This order will also cover the Writ Petition No. 1381 (MB) of 1996, Jain Ayurvedics Sadatganj, Lucknow v. Principal Secretary, Finance, Government of U.P. Lucknow and others and Writ Petition

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No. 2450 (MB) of 1996, Mis. New India Pharmaceuticals, Haridwar. State of U.P. and 19. 822 of 1995 Dr. A.K. Verma v. State

others, filed by the firms who had supplied the medicines, regarding recovery of 20. 719 of 1995 Dr. A. Kumar v. State

money order. which will be also dealt in this 21. 1274 of 1995 Dr. Shyam Lal v. State

250. The details of writ petitions filed at Allahabad : 22. 1275 of 1995 Dr. Shyam Lal v. State

S.No. Writ Petition Parties Name 23. 718 of 1995 Dr. O.P. Raiv. State

1. No. 21425 of 1996 Dr. I. P. Singh v. 24. 1710 of 1996 Dr. V. S. Tripathi v. State

2. 22262 of 1996 State Dr. B.M. Panday v. 25. 1360 of 1995 Udai Bhan Singh v. State

3. 33013 of 1995 State Dr. A.K. Verma v. 26. 1504 of 1995 V. R. Tripathi v. State

4. 33071 of 1995 State Dr. A.K. Misra v. 27. 746 of 1995 B.D. Sharma v. State

5. 33195 of 1995 State Dr. R.K. Misra v. State 28. 29. 889 of 1995 890 of 1995 B. Singh v. State Dr. R.K. Misra v. State

6. 34488 of 1995 Dr. V.K. Gangwar v. State 30 891 of 1995 M.S. Rawat v. State

7. 32743 of 1995 Dr. S.K. Tripathi v. State 31. 1045 of 1995 T.D. Verma v. State

8. 34486 of 1995 Dr. N.C. Dixit v. 32. 721 of 1995 Dr. M Ram v. State

Director of Ayur 33. 18832 of 1995 Dr. J.C. Misra v."

vedic & Unani Ser State

vices 34. 5 of 1996 S.P. Singh v. State

9. 34489 of 1995 Dr. R.A. Gupta v. 35 1325 of 1996 C. B. Singh v. State

Director of Ayur 36. 1407 of 1996 A.K. Naik v. State

vedic & Unani Ser 37. 1603 of 1996 C. Srivastava v.

vices. State

10 34499 of 1995 Dr. Mohan Lal v. 38. 1740 of 1996 A.K. Naikv. State
 Director of Ayurvedic & Unani Services. 39. 1584 of 1996 Dr. A. Hasan v. State
 11. 1355 of 1996 Dr. R.C. Singh v. State 40. 1365 of 1996 Dr. Ramesh Chandra
 v. State
 12. 13. 16013 of 1996 25,169 of 1996 Dr. Harihar Upadhyayv. State Dr. K.K.
 Singh v. State 41. 1676 of 1996 Criminal Misc. Petition under Section, 482 Cr.
 PC. Dr. S.R. Singh v.
 State
 14. 2421 of 1995 Rohtash Mittal v. State 42. 26090 of 1996 R.K. Chaubey v.
 State
 15 25076 of 1994 Vivek Kumar v. State 43. 25 140 of 1996 D. Kumar v. State
 16. 24016 of 1996 Dr. Om Prakash v. 44. 27616 of 1996 N. Alam v. Director of
 Ayurvedic &
 tjiuie Unani and others.
 17. 20091 of 1995 U.B. Singh v. State CriminalWrits 45. 27690 of 1996 Dr. J.P.
 Gupta v. State
 18 1776 of 1996 Dr. S.R. Singh v.
 State
 288 JUDICIAL INTERPRETATION ON CRIMES [19 (2)
 46. 27923 of 1996 Zfc A.K. Trivedi v. 21. 438 of 1996 Dr. N.K. Dixit v.
 State State
 47. 28023 of 1996 Dr. S. Misra v. State S.No. Writ Petition Parties name
 48. 28660 of 1996 Dr. S.B. Sharma v. No.
 State 22. 462 of 1996 Dr. Jrilochan Singh
 251. The details of the writ petitions v. State
 filed at Lucknow Bench of this Court are as 23. 490 of 1996 Dr. M.S. Rawat v.
 under State
 S.No. Writ Petition Parties name 24. 492 of 1996 Dr. Dileep Singh
 No. v. State
 1. 4353 of 1992 Dr. S.R. Singh v. 25. 496 of 1996 Dr. Shree Ram v.
 State State
 2. 1 246 of 1 994 Dr. Bhanwar Singh 26. 536 of 1996 Dr. S.R. Singh v.

v. State State

3. 503 of 1995 Dr. T.D. Verma v. 27. 573 of 1996 Dr. H.D. Agarwal

State v. State

4. 609 of 1995 Dr. G.S. Verma v. 28. 597 of 1996 Dr. Mala Prasad v.

State State

5. 1017 of 1995 Dr. G.P. Kukreti v. 29. 790 of 1996 Dr. S.C. Bhatt v.

State State

6. 1037 of 1995 Dr. S.C. Misra v. 30. 2417 of 1996 B. Singh v. State

State 31. 2418 of 1996 Akhilesh Bajpai v.

7. 3121 of 1995 Dr. S.R. Singh v. State

State 32. 2419 of 1996 R.K. Jaiswal v.

8. 3319 of 1995 Dr. S.R. Singh v. State

State 33. 2588 of 1996 S.K. Misra v. State

9. 73 of 1996 Dr. Khalda Rahman v. State 34. 2589 of 1996 S.B. Agnihotri v.
State

10. 159 of 1996 Dr. Vishwa Nath v. State 35. 2645 of 1996 Kashmira Singh v.
State

11. 63 of 1996 Dr. Ramesh Chandra v. State 36. 2913 of 1996 Sajal Kumar v.
State

12. 174 of 1996 Dr. Mangala 37. 3077 of 1996 K.L. Sharma v.

Prasadv. State State

13. 206 of 1996 Dr. Awadhesh 38. 31 16 of 1996 R.N.Misrav. State

Kumar Singh v. State 39. 3117 of 1996 Virendra Mall v. State

14. 341 of 1996 Dr. PC. Srivastava v. State 40. 3118 of 1996 D.N. Yadav v. State

15. 270 of 1996 Dr. S.C. Gupta v. State 41. 3 119 of 1996 S.N.Gupta\\, State

16. 343 of 1996 Dr. Munshi Ram 42. 3 166 of 1996 R.C. Tiwariv. State

v. State 43. 3 167 of 1996 RakeshGautamv.

17. 363 of 1996 Dr. L.B. Yadav v. State

State 44. 3168 of 1996 R.K. Tripathi v.

18. 370 of 1996 Dr. Indra Pal State

Singh v. State 45. 3892 of 1996 R.K. Shukla v.

19 384 of 1990 Dr. Shamim State

Ahmadv. State 46. 4241 of 1996 S.K. Misrav. State

20. 406 of 1996 Dr. S.K. Dwivedi v. 47. 4705 of 1996 J.P. Srivastava v.

State State

rather sad to dispose of this writ petitions how the process of unearthing the scam of more than Rs. 47 crores and of odd figure is not ascertainable, has not been come to an end after a lapse of more than two years. The scam related to overspending by Directorate, Ayurvedic and Unani beyond the budgetary allotment in the year 1993-94 and the allegation is that there was no sanction in the budget. There was only sanction of two crores and odd lacs and the amount was drawn beyond 47 crores, may be more by issuing letter/letters of allotment by the Directorate of Ayurvedic and Unani. Signatures of Dr. Shiv Raj Singh, who then Director are forged and lot of purchases were made by Regional Ayurvedic Centres at different stations of Uttar Pradesh State. There are allegations that the amount was withdrawn against irregular sanction from the treasury by the Regional Ayurvedic Centres, reference of which would be made later on and at district level, purchases of medicines and allied products continued till fax message dated 26/3/94 from the Government was sent to the Treasuries and the District Magistrates had stopped the payment.

254. The unfortunate part of this controversy is that Dr. Shiv Raj Singh has filed writ petitions in the personal capacity in the High Court of Allahabad or its Bench at Lucknow. The doctors and the officers in charge Regional Centres have also filed writ petitions against suspension and stay of arrest as Dr. Shiv Raj Singh. The total number of writ petitions filed by Dr. Shiv Raj Singh and other officers is more than 175. Dr. Shiv Raj Singh has filed writ petition against his suspension in 1989, 1992 and also quashing the first information reports and even when he was posted as Director Valuation. By filing of so many writs, Dr. Shiv Raj Singh got his status of Director, Ayurvedic and Unani restored till there was final suspension after 3rd November, 1993. On the intervention of this Court (Lucknow Bench), the order of suspension as well as the arrest of the petitioner was stayed. Even the State did not object his arrest after the matter was registered at Police Station Husainganj, Lucknow on 3rd November, 1993. The State gave an undertaking not to arrest for few days till counter is filed. Even Dr. Shiv Raj Singh filed writ petition regarding handing over investigation to the Economic Offences Wing and even challenged the issuance of warrants and processes under Section 81/82, Cr. P.C. He got orders of stay from the High Court. He filed writ petition praying that time be fixed for his release and surrender. He also filed writ petition in May, 1996 regarding the stay of arrest in Kanpur matter and the arrest was stayed that he has inimical terms with the Home Secretary Mohinder Singh. He even challenged the splitting first information report in different districts of Uttar Pradesh. Later on, the Government realised the technical mistake and the crime registered at P.S. Husainganj, Lucknow was treated as

principal crime. The suspension matter of Dr. Indra Pal Singh CDnie into this Court in 1996 and this Court passed an order regarding handing over the investigation to the C.B.I.

255. It is impossible for any Judge or any human being to dispose of all minute details in 175 matters relating to the scam specifically, the simple principle according to my judicial light and experience is whether the High Court under Article 226 of the Constitution of India in exercise of its extraordinary jurisdiction can go into these sort of parallel enquiry regarding the scam which pertains to the realm of expert and administrative authorities. The High Court function in writ jurisdiction under Article 226 of the Constitution is of supervisor) nature over maladministration and to check the accuse of process of law so that it is corrected. in the context of present crisis of society when the public money is being frittered away and its role as a parent or sentinel to check the abuse of powers and also maladministration as and is it possible by way of affidavits and counter affidavits to decide the matter. It is not always possible for the High Court to decide the question of disputed facts by affidavit and counter affidavit. .

256. The Supreme Court has overseeing the investigation in Hawala case. The Delhi High Court is overseeing investigation in Jharkhand Mukti Morcha Bribe case and Patna High Court in fodder scandal. It is only overseeing investigation so that it reaches a right conclusion and investigating agencies performed their duties in accordance with law. The High Court and the Supreme Court have to intervene if the different organs of the State have failed to perform their duties within the allocated spheres allotted in the Indian Constitution. In this case also Balram Yadav, at the time of Mulayam Singh Yadav's Ministry, which is available on record, made statement that the matter has been entrusted to the Economic Offences Wing. The legislative Council has also appointed some committee to go into this matter and headed by Sri R.C. Srivastava, who is former Judge of High Court and a senior Advocate of High Court, Allahabad and member of legislative council of U.P. The Government also appointed "Ghotala" committee headed by some senior officers. The Government also appointed financial committee to submit its report and after taking into consideration this report, the Government came in action and suspended so many employees Regional Officers and Doctors and other ministerial staff at the Regional Centres and districts.

257. It is interesting to see that Dr. Shiv Raj Singh has filed so many petitions alleging that he was the first man to raise the hue and cry against the forgery committed in issuance of the allotment letters/budget and informed the Government and he later on was made sacrificial goat. He further says that he was the first man to get First Information Reports registered at Banda, Basti, Kanpur, Siddharthnagar etc. and later on it was found that the signatures were not of his but of the doctor at Kanpur who remained in jail for few days and then released. It was further pleaded by Dr. Shiv Raj Singh that these persons have manufactured his signatures. Less commented, better it is, the matter in forgery is still under investigation. We are not commenting upon the merits and demerits

of the investigation of the case. We feel helpless to observe that all the things are going in a very bad way. The public exchequer is being looted. It just like "Pandaras" used to loot the property of bypassers. Even a private property cannot be looted in such a manner.

258. Now before dealing the allegations in this writ petition and the affidavits filed by the State. It is interesting to untie the knot as it would be revealed in the later part of the judgment. It appears that Dr. Shiv Raj Singh kept the entire judicial process busy perhaps to impart justice to him.

259. Now I would come to the large aspect of the case. Usually the budget is passed in the Legislative Assembly and every department is given funds after appropriate bill is passed. The Finance Department has full control in the matter of allocation of funds and utilization of the same. (Kindly refer provision of Article 202 of Constitution of India regarding preparation of annual financial statement; Article 203 regarding procedures in legislature with respect to estimates; Article 204 regarding appropriation of bills; Article 205 regarding supplementary or additional expenditure and Article 207 regarding special provision as to financial bills).

260. Budget is allotted to every department but concurrence of the finance was to be obtained from the Finance Secretary for release in order to avoid over drafting as the Reserve Bank regulates supply of money. There may be mentioning of allotment of money in paper i.e. budget book but order for the release would be passed only if there is green signal by Finance Department, may be in the shape of over drafting or in other form, from (the Reserve Bank of India. It is very strange and incomprehensible to understand that how this huge money has been released and the treasuries have passed bills. Again, there is a rule that if rubric money is needed by way of grant, it is released with concurrence of the Government and the department is asked to show expenditure in supplementary demand. It is not in dispute that regarding Financial procedure judicial notice can be taken. The letters are then issued to the Treasuries, Accountant General and Head of Department. The Head of Department cannot release the amount unless there is clear signal from the Government. The Finance Secretary and the Secretaries of the concerned departments are just like watchman to look into spending and they are responsible for overseeing, so far the material available in so many writ petitions filed it appears that no thorough audit by Accountant General to know the excess allocation and its proper expenditure in this case was made. It is a serious lapse on the functionaries of the Government. State should have requested the Accountant General for this purpose.

261. The criminal investigation was also proceeded after the registration of the case at P.S. Hussainganj very tardily may be on account of stay orders of High Court or other reasons. Economic Wing also did not proceed with quick despatch and expedition as it should have been, may be on account of the reasons beyond control.

262. There is yet another interesting fact of this entire drama of this writ petition. It may be pointed out that Dr. Shiv Raj Singh has not effectively been interrogated and has not even spent a single day in the judicial lockup, may be on account of his liberty was being jeopardised and he was successful in getting the stay orders. The investigation proceeded and reasonable time was not given for interrogation. It was all dilly and dallying. Dr. Shiv Raj Singh has mentioned grudge in so many writ petitions, vizaviz Shri Mohinder Singh. It is alleged that Sri Mohinder Singh was the Principal Secretary Health when he was the Director. Later on, he became the Principal Home Secretary and on 3rd November, 1993, when he was acting as Home Secretary, he got the F.I.R. registered against him at P.S. Hussainganj under so many sections of I.P.C. through one Deputy Secretary Home Sri Yashwant Singv.. There is also interesting fact, which is relevant from the statement of Dr. Shiv Raj Singh as well as from the allegation in so many writ petitions that since he was not attending the court in some contempt petition regarding his reversion from the Director, Ayurvedic and Unani and when in the contempt petition, a notice was issued his personal appearance was required, the Government appointed him Director and got registered a case against him and later on suspended. This speaks volumes of facts which led to the suspension of Dr. Shiv Raj Singh. So his main grievance is that Sri Mohinder Singh was kingpin in getting the case registered against him and to wreak vengeance against him. This matter would be examined later on from the facts available.

263. Attempt would be made not to give finding on merits except to make such reference of the allegations on which this case is based. The Court would also give finding that how far the suspension is justified in other connected writ petitions. In this huge scams, the Court should not usurp the discretion of the Government to revoke the suspension order and quashing of the F.I.R. (i.e. first information reports) or in some cases, the prayer is only regarding the stay of suspension and the enquiry may be proceeded. These cases pertain to the High Court, Allahabad and Lucknow Bench.

264. It is argued that the suspension of the officers is unwarranted and so the enquiry. Usually, the charge against him/them is that they spent more amount than what was allocated and the amount allocated was to such an extent without having sent any letter of request or asking for funds and they went on spending unless there was stop letter from the higher authorities.

265. The writ petition of Dr. Shiv Raj Singh at Lucknow relates to some interesting facts regarding the allegation of forgery in the order of Hon"ble Mr. Justice S.N. Sahai and this matter went to the Supreme Court in connection with some other connected case. The Hon"ble Supreme Court observed that it is for the Judge to decide and the Judge has retired.

266. There is also an argument of Sri Maheshwari, a learned Senior Advocate of Supreme Court that in view of the C.B.I, case referred to this Court, all the F.I.Rs. be quashed. Sri G.K. Mehrotra, learned Additional AdvocateGeneral, says

that it is not so even the matter has been referred to the investigation. The Additional Advocate General prays that the stay order of arrest passed by Allahabad High Court dated 31/5/1996 be vacated for doing the fair investigation.

267. Analysing the whole controversy involved in the writ petitions, I may observe that the facts have been made so confusing though they are simple. This happened so when more than 175 petitions had been filed. It is an interesting aspect that how the abuse of judicial process has taken place. It is not abuse of judicial process from the point of accused as according to him there is due process of law and he was entitled to the reliefs under Article 226 of the Indian Constitution in the ends of justice under extraordinary jurisdiction. From the society point of view, it may be abuse of process of law. The concept is perhaps misunderstood. The Court is to reconcile and balance the interest of the petitioner individual and the society and ultimately social security, law and order. The question is that society interest would be paramount or individual. Obviously answer is society.

268. The petitioner Dr. Shiv Raj Singh has, as mentioned earlier, filed so many writ petitions including the present one being Writ Petition No. 2025 of 1996. This writ petition has come up before us for disposal when the order was passed on 10th July, 1996 in Writ Petition No. 21425 of 1996 of Dr. Indra Pal and later on Hon'ble the Chief Justice constituted the Social Justice Commission in the High Court Allahabad and Lucknow Bench. In this petition which was filed at Allahabad, the petitioner prays the following relief:

(a) issue a writ or direction in the nature of certiorari quashing all the F.I.Rs lodged by respondent No. 2 against the petitioner under Sections 409/120B/418/420/467/468/471, I.P.C. read with Section 7/13, Prevention of Corruption Act (vide Annexures 20/21 collectively at Ghaziabad, Muzaffarnagar, Dehradun, Aligarh or anywhere else in the State of Uttar Pradesh during the year 1996;

(b) issue a writ, order or direction in the nature of certiorari quashing the investigation made by CB CID, Economic Offences Wing, in all the FIRs lodged by the petitioner including Case Crime No. 36/94 PS. Tatari Bazar, Siddharthnagar; 207 and 208 of 1994, PS. Kotwali Basti; 515 of 1994 PS. Kotwali, Banda under Sections 467, 468, 409, 419, 420, 471, I.P.C. (vide Annexures 3 to 6 to the writ petition) and the FIRs lodged at Khalilabad, district Basti, Gorakhpur, Deoria, Moradabad and Hamirpur and handover investigation of all cases against the petitioner to CBI.

(c) issue a writ, order or direction in the nature of mandamus directing the respondents 1 to 9 not to arrest the petitioner in connection with any FIR lodged against him by Inspector Economic Offences Wing, CID, Lucknow, Dharam Singh or in any case arising out of all the FIRs lodged by the petitioner himself and which are under investigation by CB CID, Economic Offences Wing, U.P. Lucknow,

under Sections 409, 418, 420, 467, 468, 471, 120B I.P.C. read with Section 7/13 of Prevention of Corruption Act, 1988.

269. In fact, the substance of the prayers is that all the criminal proceedings launched against the petitioner pending anywhere in the State of Uttar Pradesh may be quashed. The petitioner seeks unusual blanket order of not arresting him and quashing all criminal investigations. In my view such order is unknown to criminal jurisprudence. The brief facts, which led the petitioner to file the writ petitions and rejoinder affidavits, are very interesting and it gives a picture how the battle of litigation is fought when the machinery at the State level is moving at slow speed and the petitioner is succeeding in getting the stay orders.

270. The petitioner's case as revealed in this petition is that in March, 1994, the petitioner was the Director, Ayurvedic and Unani Services, U.P. Govt. It came to his notice that the Regional Officers of Ayurvedic and Unani Services at Kanpur, Banda, Basti and Siddharth Nagar either had withdrawn or were withdrawing the more amount of money from the Treasuries by forging the signatures of the petitioner and by forging the documents etc. than to what had been allocated to their regions through State Government's Budget. The petitioners wrote letters to the Treasury Officers of the regions asking them not to withdraw the money except for the purposes of provident fund, rent amount of the building, admissible travelling allowance and salary. He says that he also sent circular to all the Principals of Ayurvedic and Unani Medical Colleges and all Regional Ayurvedic and Unani Officers putting a check on the fictitious withdrawal etc. vide Annexure1 to the petition. He also wrote to the State Government and brought the facts regarding the complaints of fictitious withdrawal on the strength of petitioner's forged signatures etc. to the notice and knowledge of the State Government vide Annexure2 to the writ petition. It is revealed that the State Government after the receipt of the information from the petitioner, wrote letter Annexure2 asking him to lodge the first information reports against the concerned officers/officials. Thereafter the petitioner lodged five first information reports at Kanpur, Banda, Basti and Siddharthnagar against different persons. On the basis of the same, the F.I.Rs were registered as case Crime Nos. 36/94 dated 541994 under Sections 467,468,419,420, 471, 409, IPC at P.S. Tatari Bazar, Siddharth Nagar; 207/94 dated 541994 under Sections 467,468,409,419,120,471 IPC at P.S. Kotwali, Basti; 208/94 dated 541994 under Sections 467,468,409,419, 120,471, I.P.C., P.S. Kotwali, Basti; 515/94 dated 1441994 under Sections 467, 468, 471,419,420,409, IPC P.S. Kotwali Nagar, Banda. The F.I.Rs. have been filed as Annexures3,4,5 and6 to the writ petition.

271. It is alleged by the petitioner that the matters relating to district Basti and Crime No. 36/94, relating to P.S. Tatari Bazar, district Siddharth Nagar, it was found during the investigation that fictitious withdrawals were made on the strength of forged signatures of the petitioner. In paragraph 8 of the petition, it is mentioned that the withdrawal was made by forging the signatures and by adopting forged and fraudulent means to the extent of Rs. 31 crores and when

this fact came to the notice of the Government, statement by Sri Balram Yadav was made in the State Legislative Assembly on 25th April, 1994 absolving the petitioner's involvement, as stated by the petitioner and the State Government also informed the House that investigation into the whole affairs had been already ordered to be entrusted to and conducted by the Economic Offences Wing (Aarthic Apradh Anusandhan Vibhag). It was further revealed that in the statement before the House, an enquiry had been also ordered to be instituted to find out as to whether the petitioner was involved in the matter or not. Copy of the said statement has been annexed as Annexure7 to the writ petition. The enquiry was conducted by Shree B.P. Raju, Director General, Medical Education and Training U.P. who found according to the petition that the petitioner has been slack in maintaining inspection and observation vide Annexure8 to the petition

272. Now the real grievance of the petitioner started, according to the affidavit of petitioner, with Shri Mohinder Singh, the Principal Secretary, Medical Education, Govt. of Uttar Pradesh. He was not well disposed to him and was entertaining bad faith qua him. It appears that on 31/8/1989, the State Government entrusted the work of discharging the duties as Director, Ayurvedic and Unani Services to the petitioner and thereafter in May, 1991 the petitioner was regularised and was confirmed as Director, Ayurvedic and Unani Services. On 17/6/1992, the petitioner was placed under suspension by the State Government and he challenged the suspension order before the Lucknow Bench by way of filing Writ Petition No. 4353(S/B) of 1992 and the said suspension order was stayed under the orders of the Court dated July 23, 1992 vide Annexure9, with a liberty to take work or not but later on the High Court modified his order on 8/9/1992 vide Annexure to the effect that the State Government was directed to take the work. Later on, on 28/2/1995, it appears that the financial powers were withdrawn as Director and the same were enjoyed by the Principal Secretary, Medical Education but they were delegated again to the Special Secretary, Medical Education. As usual the petitioner was hurt and he filed Writ Petition No. 549(S/B) of 1995 and later on the intervention of the High Court Lucknow Bench vide order dated 20/7/1995 vide Annexure11 his financial powers were restored except the powers of purchases and appointments. The petitioner felt that the respondent did not like the restoration of powers. The order of the High Court was served on 20/7/1995 as contained in Annexure11. However, the petitioner felt some difficulties in the implementation of the same and he moved the Hon'ble High Court at Lucknow Bench regarding noncompliance of the direction with respect to the restoration of financial powers. The State was asked to file reply and the case was listed on 29/8/1995. It was also directed vide order dated 22/8/1995 vide Annexure12 by the High Court that the Special Secretary, Medical Education should appear in person to explain the position for noncompliance. It appears that the Special Secretary, Medical Education did not choose to appear before the Court and in order to frustrate the compliance of the order (Annexure12), filed an application that since he had to go to Allahabad on 29/8/1995, he may be excused and the case could not be listed on 29/8/1995. According to the petitioner, it is the deliberate

device and trick devised to frustrate the order of the High Court.

Later on a new post of Director, Ayurvedie and Unani (Syllabus Evaluation) was created on 691995 and the petitioner was posted to that newly created post. The petitioner considered this move as oblique motive and full of malice.

273. The petitioner's further grievance is that the petitioner brought the mala fides to the notice of the Court (Lucknow Bench on 2991995, obviously by filing application i.e. contempt petition and stay order was obtained on 2991995 that till the next date of listing the operation of the order impugned, i.e. filling the newly created post, would remain stayed and the petitioner would continue on the cadre post of Director, Ayurvedie and Unani Services on which he was working by order dated 891992. The petitioner again apprehended that this order infuriated Shri Mohinder Singh. Shri Mohinder Singh despite the service of the order on him on 1101995 practically refused point blank to comply with the order contained in Annexure13. The petitioner again moved contempt application and thereupon the order contained in Annexure13 was complied on 2111995 and he was made the Director, Ayurvedie and Unani Services vide Annexure10. So the petitioner is fighting the battle by way of stay orders and getting his position restored. Ultimately, Shri Mohinder Singh appeared in Court on 13101995 and time to file affidavit was given with respect to the contempt notice received on 2101995 for nonimplementation of order. It is alleged that no counteraffidavit was filed by the State on 13101995. The petitioner again apprehended that there was some purpose for not filing the counteraffidavit. Again on 3111995, a first information report was registered against the petitioner at P.S. Husainganj, Lucknow through the Deputy Secretary at the instance of Principal Secretary, Medical Education vide Annexure14 and it was done to nullify the order of High Court regarding restoration of his position as the Director. The petitioner again filed Writ Petition No. 3319 (M/B) of 1995 for quashing the F.I.R. being Crime No. 454 of 1995 (Annexure15) and the said petition is still pending. Shri Mohinder Singh in course of time, became the Principal Secretary, Home. He got added Section 7/13 of the

Prevention of Corruption Act in all the impugned first information reports (Annexures3 to 6) which were originally registered under Sections 420, 467, 468, 471. 409, IPC at the instance of the petitioner. It is alleged that addition of Sections 120B and 7/13 of the Prevention of Corruption Act were made with ill motive to drag the petitioner in protracted battle of litigation. It is alleged that one Dr. Ashok Kumar Verma, an accused in Case Crime No. 277 of 1995, which was registered at the instance of the petitioner at" Khalilabad, Basti, filed a writ petition No. 822 of 1995 and this High Court had been pleased to pass orders dated 1391995 and 2791995 staying his arrest. Similarly, Dr. Ravindra Kumar Misra, an accused of Case Crime No. 1120 of 1995 relating to district Gorakhpur also filed Writ Petition No. 890 of 1995.and got his arrest stayed on 1591995 and 2791995. The writ petitions are still pending. The petitioner further alleged that regarding the first information report lodged by the petitioner at Moradabad

against the Drawing and Disbursing Officer for making fictitious withdrawal of money under the forged signatures of the petitioner and other forged documents, a departmental chargesheet has also been given to that Drawing and Disbursing Officer Sri Satya Pal Singh Pundir.

274. After taking charge by Mohinder Singh, according to the petitioner, he became more active and diagonal drift took place for the investigation of the case. As previously the petitioner was the witness and now he was declared accused, the police started conducting raidj. On the other hand, the petitioner grievance is that all it happened at the instance of Mohinder Singh. It is alleged that since he was incharge of the Home affairs of Uttar Pradesh State, he saw that the case is registered against him in every district. It appears that later on, as alleged by the petitioner, instruction was given by respondent No. 5 Shri Dharam Singh, Inspector, Economic Offences Wing to lodge verbatim report in almost of the remaining districts of Uttar Pradesh vide Annexure15. The only difference made was that the amount mentioned has been" bifurcated districtwise but later on this mistake was rectified by the State Govern ment and one F.I.R. was treated as principal F.I.R. which was earlier lodged at Husainganj, Lucknow. According to the petitioner, the second F.I.R. was lodged after a period of six months from the previous F.I.R. Case Crime No. 494 of 1995, P.S. Husainganj, Lucknow and as such the investigation is bad in law.

275. It is alleged that the offence was committed at Lucknow and no F.I.R. can be lodged at any district headquarter. It appears that lateron the investigation was transferred to Economic Offences Wing, CID, U.P. which was also under the control of the Home Secretary and as such he fears that the investigation done at the behest of respondent No. 7 would not be carried out independently and impartially.

276. It is also alleged by the petitioner that the falsehood of the investigating agency can be seen from the fact that earlier the petitioner had filed Writ Petition No. 700 of 1996 for quashing the investigation pertaining to F.I.R. dated 1241994 being Crime No. 155 of 1994 P.S. Kotwali, Kanpur wherein it was stated by the Government that the investigation had been completed and as such the writ petition has become in fructuous but surprisingly till date no chargesheet was given. The petitioner again filed writ petition for quashing the proceedings of case Crime No. 155 of 1994 as earlier statement has falsely been made regarding the completion of investigation. The said petition is still pending before this Court. Even the petitioner moved petition under Section 482, Cr. PC. in which an order dated 1931996 was passed by this Court vide Annexure22. It is alleged that the District and Sessions Judge, Banda has issued a proclamation under Section 82, Cr. PC. on 1451996 in case Crime No. 515 of 1994. However, the said proclamation has been quashed vide order dated 2851996. The petitioner further alleged that he has only one year to retire and has unblemished record of service and no purpose would be served in arresting him and he is a law abiding citizen. The petitioner again moved another Criminal

Misc. Petition No. 1676 of 1996 under Section 482, Cr. PC. for fixing the place of surrender and bail at Katipur of the petitioner in all the cases being investigated by the CB CID, Economic Offences Wing which could not

be taken up by this Hon''ble Court for hearing on 24th May, 1996 and the same are pending. The petitioner on these allegations invokes the jurisdiction of the High Court as he says that the action is violative of Articles 19, 20 and 21 of the Constitution of India and the proceedings are liable to be quashed. He further says that more than one and a half year lapsed, nothing has been done regarding the F.I.Rs filed by the petitioner and no chargesheet has been filed. He says that Sri Mohinder Singh is nursing illwill, malice, grudge and enmity against the petitioner especially right since the time when he had to appear personally in Lucknow Bench on the contempt petition filed against him by the petitioner.

277. The State has filed the affidavit on behalf of the opposite party No. 1 in support of stay vacation application order dated 3151996 by virtue of which the arrest of the petitioner has been stayed and the dismissal of the writ petition. The affidavit is selfexplanatory. It has traced the history sheet of different writ petitions filed by the petitioner in Lucknow Bench coming before the Hon''ble Benches comprising various Judges. It will make more confusing to mention in detail the entire averments. The respondent has denied intoto the allegation of the petitioner. The case of the State is that in compliance of the order of the Hon''ble High Court the petitioner was allowed to join as Director Ayurvedic and Unani Services U.P., Lucknow. The chargesheet has been served to him and the investigation is still in progress. The State has also revealed an interesting fact at page 12 of the counteraffidavit that one Shri Vishnu Shankar Awasthi preferred a Writ Petition No. 7229 of 1990 seeking a writ of quo warrant to against the petitioner Dr. Shiv Raj Singh. The plea of the State is that the petitioner has manufactured the interim order of stay, dated 1281990 passed in Writ Petition No. 308 of 1990 and the record was summoned as mentioned at page 12 of the counteraffidavit and on the perusal of the record the Court directed that the record be kept under the sealed custody of the Additional Registrar of the High Court Lucknow Bench, Lucknow. In other words, the petitioner was successful according to the State after manufacturing this order to join as Director, Ayurvedic and Unani Services, as stated above. The State has frankly conceded that Dr. Shiv Raj Singh was subsequently selected and appointed as Director, Ayurvedic and Unani Services U.P. on 1851991 and the same was challanged by Dr. R.N.Singh and the matter issubjudiced. It is also admitted by the State that Dr. Shiv Raj Singh was suspended second time on 1761992 under a contemplated disciplinary proceedings for committing grave irregularities in making appointments as there were no posts sanctioned. He made a number of appointments of Class IV employees on daily wages and the number exceeded around 400 and the matter is under enquiry. In other words, the State''s plea is that there was no sanctioned budget and the appointments were made. Dr. Shiv Raj Singh again challenged the suspension and the Hon''ble High Court stayed the order of suspension on 2371992. The State Government did not decide to

take work from the petitioner as the High Court had directed that it is for the State to take work or not to take work vide Annexure No.II to the writ petition and which is Annexure No.2 to the counteraffidavit. Later on this order was modified as has been already discussed in the facts of the case by the order of the Hon''ble High Court and the petitioner was allowed to be given work as a Director. In short, there is no need to refer all the litigation and stay orders of the Hon''ble High Court as mentioned in the counteraffidavit and the net result is that the petitioner was successful in occupying post of Director, Ayurvedic and Unani till the first information report is registered on 3111995 and later on he was suspended when the case was registered at Hussainganj police station.

278. Few interesting facts have been also mentioned in counteraffidavit in ParaE1 at pages 16and 17 of the counteraffidavit. Dr. Shiv Raj Singh has intimated to the Government that certain Doctors at Divisional level have manufactured an order of allocation of the budget and have utilised them and the said order of allocation does not bear his signatures. The Government believed this report to be true and placed the Doctors under suspension. Even the chargesheets were forwarded to the Government for approval.

Dr. Shiv Raj Singh became the informant in these first information reports. The matter was entrusted for investigation to the Economic offences Wing (for short E.O.W.) at Kanpur on 22111995. During the investigation, the Investigating Officer of case crime No. 155 of 1994 under Sections 420/409/467/468/471, IPC, Police Station Kotwali Nagar, District Kanpur obtained the allocation order bearing the signatures of Dr. Shiv Raj Singh besides the signature of the concerned Doctor and his staff members and sent them for expert examination. According to the report of the expert examination the signatures were of Dr. Shiv Raj Singh and not of the Doctor and the staff as alleged by Dr. Shiv Raj Singh. Similarly, the same opinion is with respect to case crime No. 576 of 1994 registered at Banda under Sections 467/468/471/420/409, IPC in which Dr. Shiv Raj Singh became informant and some Doctors were involved and it was opined that allocation orders have been signed by Dr. Shiv Raj Singh and not by the Doctors and the staff. It is mentioned at page 18 of the counteraffidavit that the expert's report in another case is awaited.

279. Few Doctors have suo moto obtained the expert opinion in respect of signatures of Dr. Shiv Raj Singh regarding signatures on allocation orders against whom Dr. Shiv Raj Singh has levelled allegations that the Doctors have forged the orders and it was found according to the expert opinion that the signatures of Dr. Shiv Raj Singh find place on the allocation orders. The investigation is still in progress.

280. The State Government appointed a Special Audit Team to carry out the audit at the Directorate of the Ayurvedic and Unani Services, Lucknow, which has submitted a voluminous report and thereafter the Government made decision to lodge the first information report against Dr. Shiv Raj Singh, petitioner through Shri Yashvardhan Sinha at P.S. Hazaratganj vide chik F.I.R. No. 854 of 1995, a

copy of which has been annexed as Annexure No. 11 to the writ petition, the investigation is still under progress. There is grievance of the State as levelled in this counteraffidavit that Dr. Shiv Raj Singh did not cooperate with the investigation and was not available when called. The search of the house was affected in the absence of Dr. Shiv Raj Singh. Dr. ShivRaj Singh was successful according to the State in getting even stayed warrant process under Section 82/83, Cr. P.C. in respect of crime No. 576 of 1994 pending at District Banda and other places. Why the State did not file S.L.P. in Hon''ble Supreme Court. Why the litigation was not properly contested? He has been getting the stay orders from the High Court by filing successive petitions which has been mentioned in the counteraffidavit and the court has been interfering and till today he has not been arrested and arrest has been stayed on 31 596 by this Court. In case we repeat the order and allegations there would be repetition and it will occupy the space of thousands of pages.

281. Learned counsel for the petitioner Shri Maheshwari has advanced the following submissions:

Firstly, Shri Maheshwari submitted that there is a strong bias and mala fides on the part of Shri Mohinder Singh, who got the K.I.R. registered against Dr. Shiv Raj Singh in view of the work of Director entrusted on account of judicial process.

Secondly, he submitted that Dr. Shiv Raj Singh was harassed by the respondent No. 7 in getting lodged 48 first information reports against him at different places.

Thirdly, Shri Maheshwari submitted that since the first information reports have been registered at different places and later on, in the year 1994 at Hussainganj fresh F.I.R. could not be registered in the year 1995 by C.B.C.I.D. and the F.I.Rs. could not have been merged into main crime registered at Hussainganj. In other words, all the F.I.Rs. registered at various places/districts including F.I.R. of E.O.W. at Kanpur etc. at the instance of Shri Dharam Singh were merged in main crime No. 434 of 1995 P.S. Hussainganj, district Lucknow and they are now part of the main crime No. 434 of 1995 P.S. Hussainganj, District Lucknow and they stand consolidated with that F.I.R. Now investigation is being conducted by Kartar Singh, Deputy Superintendent of Police, C.I.D. (E.O.W), Kanpur.

He further submitted that why the Government took one and half year for lodging the F.I.R. at Hussainganj, District Lucknow when the matter had come into notice of the Government earlier.

Fourthly, another grievance has been raised that a very junior officer was appointed to conducted the enquiry against Dr. Shiv Raj Singh. He further submitted that Dr. Shiv Raj Singh himself brought all the facts to the notice of the Government regarding circulation of forged allotments and withdrawal of the money by Doctors and Regional Officers after forging the signatures of Dr. Shiv Raj Singh and his conduct shows that he was not at fault in the whole alleged scam.

Lastly he submitted that so many committees were appointed by the Government and statement was made by the Minister for health in the house in April 1994 regarding the investigation of the matter but nothing happened. The learned counsel for the petitioner's argument is that in the extraordinary circumstances only remedy of the petitioner is to save himself from suspension and registration of cases.

282. He further submitted that since the case has been handed over by this Court to C.B.I and as such all the F.I.Rs. have come to an end no sanction can be granted for any offence by the Government against Dr. Shiv Raj Singh and his grievance has been fulfilled.

283. Shri Maheshwari further submitted that civil police under U.P. Police Act cannot investigate the any crime against Dr. Shiv Raj Singh in view of the handing over the matter to C.B. I.

284. Learned Additional AdvocateGeneral Shri G.K. Mehrotra appearing for the State of U.P. has also welcomed the order handing over the entire matter to C.B.I. and extended full cooperation from the State in investigation. He further submits that the order of arrest be vacated so that the probe can go on fairly.

285. Shri Mehrotra has informed the court that there was a mistake on the part of the Government that in fact one F.I.R. should have been registered and not so many F.I.Rs. as lodged in District Headquarters and Government realised this mistake and it was decided to merge all the F.I.Rs. into one F.I.R. It was a technical mistake on the part of the investigation agency who thought that since so called forged allocations orders have been drawn at different districts where the Ayurvedic Centres were situated and as such different lodging of F.I.Rs. required.

286. Now the question for consideration is regarding the vacation of stay of arrest and status of collection of material facts so far collected by the police agencies. It has also been brought to the notice that that would be the status of some of the cases regarding which sanction has been obtained and they has been sent to the court for taking cognizance, cases regarding which sanction is pending and which are under process at the highest level. Shri Mehrotra, Additional Advocate General mentioned that five F.I.Rs. regarding these matters have been handed over to the E.O.W.

287. Now I have to discuss the scope of F.I.Rs scope of quashing of the F.I.Rs., scope of High Court under Article 226 of the Constitution in interfering in the investigation and stay of arrest and I cannot restrain myself in passing few observations against all the wings of the Government. Finding has to be given regarding bias of the Principal Secretary, as it is very material.

288. First of all the reference for discussion regarding bias would be made. The query is posed that, is a Secretary who is Incharge of the Home Department is debarred to implement the policy decision of registration of a case especially

scam of like this nature. Is it not his duty to ask Shri Yashwardhan Singha to get the F.I.R. registered? The Administrative Secretary in the Home Department acts on behalf of the Government. In other way he acts on behalf of the society to bring into the motion the criminal law for investigation of an offence with respect to the offenders known or unknown. Is he debarred to take interest in his duty for which the society pays him to regulate the investigation of a case or to supervise it being Incharge of. the Home Department? In case he does not do or any public functionary does not do, he will be failing in his duty and will be liable under the doctrine of public accountability and he can be liable to pay the compensation to the society for the misfeasance of the duties.

289. After all what is bias? The bias has to be adjudged from reasonable man's view and not the proclivities or sensitiveness or hyper reactions of the affected person but standard is what a reasonable man in the street would think

of the fairness of the action. The theory of bias does not apply in administrative decision making action.

290. I would like to quote from Garner's Administrative Law, Publication London Butterworths, 1985 Edition page 138 on bias:

"Turning our attention to the substance of the rule relating to bias, the first point to emphasise is that it is not necessary to prove actual bias. If, in fact, actual bias can be shown the decision in question may be challenged on grounds already considered such as "irrelevant considerations" or "improper purpose". The natural justice "bias" rule looks to external appearances rather than to prove of actual improper exercise of power. If the reasonable observer would have the requisite degree of suspicion of bias in the decisionmaker then that decision can be challenged. It is matter of the courts ensuring that "justice is seen to be done". Since successful challenge is based on appearances it is natural that the types of matter to which the rule applies is somewhat confined. As we shall see it clearly applies to judicial and disciplinary functions but not, generally, more widely to administrative decisionmaking and actions."

291. This principle is applicable only in disciplinary or quasi judicial proceedings generally otherwise the administration would be brought to a halt.

292. Again from the same book it is worthwhile to quote from page No. 138:

"What degree of suspicion of bias is required? Various formulae have been put forward over the years. In some cases the test has been stated to be "reasonable suspicion" of bias; in others a "real likelihood" of bias, "the practical difference between the two tests may not, in fact, be very great. In any case it is now more usual to formulaic the applicable test by reference to Lord Denning MR's judgment in Metropolitan Properties Co. (I) Ltd. v. Lannon, in which an approach was suggested which neatly combined the above two tests. The case involved a decision of a rent assessment committee. The chairman of the committee, a solicitor, lived with his father who was a tenant of a flat the

landlords of which were an associate company of the landlords involved in the tribunal case. In addition the solicitor had acted in the past for tenants against his father's landlords on matters similar to those in question in the present case. The decision of the Committee was quashed, Lord Denning MR explaining:

In considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the (ii) her. The Court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if rightminded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit."

293. The normal rule of bias would not apply or would be displaced in circumstances where the individual whose impartiality is called in question is the only person empowered to act. This is called doctrine of necessity and it has been discussed at page 238 in Administrative Law by P. P. Craig. How it can be applied where in implementing administrative decision unless there is an extreme interference and unreasonableness in the action taken. The concept of bias is again a subjectmatter of discussion by Prof. Wade at page 370 in Administrative Law by C.K. Thakker (Wade's Administrative Law 1988 page 402):

"However, Wade rightly states that "the doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision". In other words, the court should not substitute its opinion for the opinion of the authority. To put it differently, an action of the authority cannot be held to be unreasonable. As Warrington, L.J. states, "with the question whether a particular policy is wise or foolish the court is not concerned; it can only interfere if to peruse it is beyond the powers of the authority". Lord Hailsham has rightly said that two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable. The Court cannot sit in appeal over the decision of the administrative authority. It can interfere only if the decision is so unreasonable that no reasonable man could have ever come to it, or is "perverse" or there is "no evidence" to justify the conclusion. As Lord Diplock states: "It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it", or that the decision is so absurd that one is satisfied that the decisionmaker "must have taken leave of his senses."

294. In other words lodging of F.I.R. by the Administrative Secretary or at the instance of his junior i.e. Deputy Secretary cannot be held to be unfair and unreasonable action. However, the petitioner has been harping the unfairness. Is State debarred to collect the facts regarding the scam, obviously not as it would

be failing in its duty.

295. Again definition of mala fide is quoted below from Administrative Law by C.K. Thakker:

"The concept of bad faith eludes precise definition. In its popular sense, mala fides means illwill, dishonest intention or corrupt motive. De Smith states that in relation to the exercise of statutory powers it may be said to comprise dishonesty (or fraud) and malice. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred." De Smith : Judicial Review of Administrative Action, 1980 pp. 33536; see also Express Newspapers (P) Ltd. v. Union of India, (1986) 1 SCC 133 (21920): AIR 1986 SC 872 (926).

296. The petitioner happened to file spate of writ petitions and the entire machinery was busy in defending. The accused even lodged a F.I.R. against the Doctors/Regional Officers alleging that the Doctors have forged the signatures and ultimately the signatures were found to be of Dr. Shiv Raj Singh.

297. Now the question arises that whether there is violation of fundamental right of Article 21 of the Indian Constitution. The language of Article 21 of the Constitution of India is mentioned below:

"21. Protection of life and personal liberty.No person shall be deprived of his life or personal liberty except according to procedure established by law."

298. The concept of fair procedure is sine qua nan feature under Articles 21 and 14 of the Constitution of India. The accused has a right of liberty and fairness on the part of the State action and the State has to act fairly and in not depriving liberty of the person except in accordance with law. If there are allegations of big scam of this gigantic nature, the society through State has a right that the evidence be brought to the Court and let the law take its normal course. The society through its wing i.e. State has a right of investigation and the process as mentioned under law has to be followed to reach to a logical conclusion but in this case investigation could not reach to a logical conclusion at there was a preemptive stay on every action of the police. It is not to make any comment as judicial propriety does not require to make comment on the stay orders but the justice is not cloistered virtue and is open to public criticism and reasonable comment. It is for the transparent society to judge the entire spectrum.

299. This is a world of scams. There was Harshad Mehta Scam, there was Before Scam, there was Scam of Fodder in Bihar, Telecommunication Scam, Housing Scam, Urea Scam and Jain Dairy Scam which is called as Hawala Scam. The courts are supervising the investigation in the scams as it owes duty to the society that the investigation is performed in accordance with law to safeguard

the public property. Morality in public life is at the lowest ebb nexus between the criminalization of politics and crime is growing. The courts can only preach the morality. They have no arms or army except public opinion. They are to see also that citizen also observe fundamental duties added in Part IVA of the Constitution of India by Fortysecond Amendment in 1976. The High Court is not debarred by interpreting fundamental rights of the citizens under Article 21 and other rights under Chapter III to interpret those rights in the light of fundamental duties. Every citizen under Article 31 A (i) is to safeguard public property and to strive towards excellence in life and its activities. The Hon"ble Supreme Court has embarked upon mission to see that excellence in the nation is achieved when the society is in crisis.

300. Recently in Vineet Narain and others v. Union of India and another in Writ Petition (Criminal) No. 340343 of 1993 the Hon"ble Supreme Court observed that C.B.I and other Government agencies have failed to fully investigate the matter and take it to the logical end point of the trail and prosecute all the persons who have committed any crime, that this being so with the provision to protect the crime it was further observed that in order to prevent the assassination of the Rule of law and the democracy in the country, requires that the Government agencies be compelled to duly perform the legal obligation and proceed in accordance with law against each and every person irrespective of height at which he is placed in the power. It was further observed that, be you ever so high the law is above you. This is imperative to retain public confidence in the impartial working of the Government agencies. The country knows that how after delivery of judgment the investigations have proceeded and the confidence of the public has been restored in the rule of law.

301. Merely leveling of personal allegation without any foundation would not tantamount to mala fides. It would be befooling the law if this kind of interpretation is put up. In this case law has been befooled beyond its limits and the process denseness to be now stopped to unearth the scam. Enough is enough. Let there be no more befooling of the process of law. I express no opinion on merits. Let C.B.I, be given chance to investigate irrespective Of the personalities involved bearing in mind constantly the concept of equality enshrined in the Constitution of India and the basic tenet of rule of law. "Be you ever so high, the law is above you." There is a famous sayinglaw is king of kings and kings are under law. It is hoped that C.B.I, would prove to its reliability and credibility and effectiveness as it is the only premier investigation agency now left to deal with sensitive matters.

302. The High Court cannot convert into criminal court and conduct trial and for this purpose different court under Criminal Procedure Code is provided. The concept of Article 226 of the Constitution of India is that it is not to go in such type of investigation and grant prearrest bail and demand counteraffidavit and decide criminal cases on affidavits bypassing Criminal Procedure Code. In State of U.P. provisions of anticipatory bail under Section 438, Cr. P.C. are not

applicable by State amendment in Criminal Procedure Code. How it can rewrite the statute Can a case of this nature be called rarest of rare in invoking provision of Article 226 of the Constitution of India when so many writ petitions have been admitted. From ordinary prudent man standard it cannot be so and I am also of the same view.

303. The Hon''ble Supreme Court in a very celebrated judgment in AIR 1991 SC 1260, *State of Bihar v. P.P. Sharma and another*, observed that mere allegation of mala fide against the informant and investigating officer cannot be basis for quashing proceedings. The fact that while acting bona fide rules out certain documents as irrelevant not a ground to assume that he acted mala fide. It has been further observed that filing of F.I.R. and charge sheet against the accused do not violate constitutional mandate under Article 21 and the High Court cannot ordinarily put an end to investigation trial provided under the law unless very exceptional circumstances are made out. In this judgment the law has been traced out right from 1945 \V: in famous *Khawaja Nazir Ahmad* case i.e. in *KingEmperor v. Khawaja Nazir Ahmad*, 1945 Privy Council 218, to the Apex Court judgment, this High Court in Criminal Misc. Writ Petition No. 768 of 1996 while deciding the prearrest bail and. quashing of first information report also relied upon the following cases :

State of Maharashtra v. Ishwar Piraji Kalpatri and others, (1996) 1 SCC542.

Mrs. Rupan Deol Bajai and another Kanwal Pal Singh Gill and another, JT 1995 (7)SC299.

State of Tamil Nadu v. Thirukkural Perumal, JT 1995 (3) SC 166.

Joginder Kumar v. State of U.P. and Kartar Singh v. State of Punjab, JT 1994(2)SC423.

304. It was observed in the aforesaid cases that provision of prearrest under Article 226 of the Constitution of India and quashing of F.I.R. are to be used in rarest of rare cases and not in a routine manner and deprecated a practice of quashing of the P.I.R and also granting prearrest bail to make the investigation by way of killing still born child. What happens that the accused is granted bail in serious cases like embezzlement and murder en and investigation is scotch ed.

305. Following this ratio of the Hon''ble Supreme Court how the filing of the F.I.R. by the Home Secretary or Deputy Secretary Home to whom the Government has authorised has violated the Article 21 of the Constitution of India? It would be practically be negation of due judicial process of law and in this case collection of facts would be impossible if prosecution is not given a fair chance to investigate by every agency of the State.

306. In the name of doctrine of mala fides and Article 21 of the Indian Constitution, the question would arise whether the society has a right of fair investigation. There is a famous doctrine of law that justice must not be done but it appears to have been done is also applicable, to administrative agency or

functionary acting on behalf of the society regarding fair investigation. It is not explicable that why so much lip sympathy to suspected persons involved in such huge scam by halting ordinary process of law and ignoring the current phrase prevalent now a days "let the law takes its own course".

307. Learned Counsel for the petitioner Shri S.C Maheshwari has cited 1995 Supp (1) 21, Tilak Chand Magatram Obhan v. Kamla Prasad Shukla and others and (1993) 4 SCC 10, Roshan Lal Sharma v. Managing Committee, Dr. Hari Ram (CoEducation) Higher Secondary School. These cases are not applicable in the facts and circumstances of the present case as in the first case there was a strong and hostile bias of a member of the enquiry committee against the delinquent is a serious lapse which vitiated the enquiry proceedings and cannot be cured by a fair appeal. In the other case one of the members of the enquiry committee also deposing as a witness in support of one of the charges against the appellant despite appellant's objection entire disciplinary proceeding vitiated by bias.

308. These cases have no applicability as Shri Mohinder Singh acted in his official duty and whenever he had come to act by himself or through somebody by way of initiating the process of law into action. In fact administrative decision cannot be compared to disciplinary proceedings and on the facts the application of the said rulings is ruled out.

309. So I am of the considered view that the submission of bias is not made on facts and law.

310. The next question is that what will be the fate of the cases which are pending for investigation or regarding which sanction has been obtained and which has been sent to the Court for trial and cognizance has not been taken or which are under process for sanction, as stated by the Additional Advocate General. These cases relate, as already stated above, to the investigation by E.O.W. Since this High Court has handed over the investigation to the C.B.I, by using its constitutional powers under Article 226 of the Constitution of India after seeing the extraordinary circumstances in the larger interest of the public to unearth the scam and the entire offence is now to be investigated by the C.B.I. The State of U.P has extended jurisdiction with respect to these cases by special notification and the C.B.I, has agreed to investigate and the investigation is under progress.

311. The C.B.I is collecting the F.I.Rs. and other documents and evidence for the purpose of investigation, as informed.

312.1 would like to mention Section 156(3), Cr. PC. and Section 173(8), Cr. P.C. under Section 173(8) the Magistrate has a power for ordering further investigation of the case even after submission of final report by the Investigating Officer. This power is independent power and has no conflict with the power of the police officer for investigation under Section 173(8), Cr. P.C. which power may be exercised on receipt of further investigation or clause.

313. Section 156(3), Cr. P.C. is reproduced below:

"Any Magistrate empowered under Section 190 may order such an investigation as mentioned above."

314. After investigation of the case there is stage of Section 173, Cr. P.C. i.e. report is sent to the Magistrate to the police officer after completion of the investigation to take cognizance. The legislature has not debarred even further investigation under Section 173(8), Cr. P.C. Section 173(8) is reproduced hereunder:

"173(8)Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under subsection (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of subsection (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under subsection (2)."

315. So the scheme of the Act is that after the first information report is registered police machinery is set in motion the report is sent to the Magistrate or the court concerned for taking cognizance. In view of the present recurrences of scams and crisis in society on account of falling of character and moral values the court's duty has become more onerous and Fathers of Indian Constitution left a sufficient scope under Article 226 for issuing direction to investigate crimes of serious nature and directing the investigation in fair and satisfactory manner to investigation agencies to instill the confidence in the public. There is no bar to do reinvestigation and also then is no bar to utilize the material i.e. documents etc. taken by other wings of the investigation. Since cognizance has not been taken, as informed and the trial has not started and there is no discharge or acquittal of the accused, the C.B.I., can put fresh challans (reports) under "Section 173, Cr. P.C. after investigating the matter in accordance with law. The competent court will take cognizance under Section 173, Cr. P.C. only when the report under Section 173, Cr. P.C. is submitted by the Central Bureau of Investigation and mind is applied for taking steps for trial or otherwise in accordance with law. This reinvestigation has been ordered by the High Court under Article 226 of the Constitution of India. Even the Magistrate can order the reinvestigation under the provisions of Section 159, Criminal Procedure Code.

316. In the facts and circumstances of the case, I am of the considered view that first information reports lodged against Dr. Shiv Raj Singh by the State agencies of Uttar Pradesh or first information reports lodged by Dr. Shiv Raj Singh against his officials by him or at his initiation and which are subjectmatter of writ petitions have not been automatically cancelled as the matter is under reinvestigation and the truth has to be found till the final report under Section 173, Cr. P.C. is submitted by the C.B.I. They would remain under a state of

animation and the C.B.I, is fully entitled to use the material collected.

317. Now onwards I would like to deal with the matter of suspension of employees. These petitions dealing with suspension, including the quashing of the F.I.Rs. and chargesheet at High Court Allahabad/Lucknow would be disposed of in the context of facts already indicated while dealing the case of Dr. Shiv Raj Singh for quashing the F.I.Rs. and the nature of scam. Suffice it to say that all these employees, who have been suspended, are the Regional Ayurvedic and Unani Officers/Doctors, Senior Assistants and Junior Assistants etc. Dr. Sheo Raj Singh, Director of Ayurvedic and Unani Services, has also been suspended.

318. The common allegations in all the petitions on which the suspension had been made, are that, there is no application of mind by the disciplinary authority and there was no proper material and preliminary enquiry. The stand of the Government is that there was excess withdrawal of 47 crores and odd in the Directorate of Ayurvedic and Unani Services in 1993-94 Budget Year without any proper sanction of the authority. The Government's stand is that forged allotment letters of additional demand were issued by Dr. Sheo Raj Singh in collusion with the Regional Officer/Doctors and payments were made in crores till the fax message was sent on 26/3/1994 by the Government to the District Magistrates/Treasury Officers concerned for stopping the payments. The bills have been prepared by these officers and they had been to the treasuries but the amount could not be withdrawn in some cases and some cases the amount was withdrawn. The allegation against senior assistances and junior clerks is that they were also privy to this scandal. There was knowledge on their part of the factual position and they knew all the affairs. The junior despatch clerks did not maintain the register showing that the letters of allotment have been properly issued. There is also allegation against some Regional Officers/Doctors that the purchases of medicines etc. have been made in haste from the firms without following the financial norms, purchase rules or without taking into confidence the purchase committee. Some of the firms have filed writ petitions for realisation of the money. The Government's stand is that they are all paper transactions and actually no medicines were supplied.

319. We have given lengthy hearing to all the petitions of the writ petitions filed in High Court, Allahabad as well as in Lucknow Bench of this Court. For disposal of all the writ petitions, this Bench is especially nominated by Hon'ble Chief Justice.

320. Before advertng to the submissions of the learned counsel for the parties, it may be pointed out that the matter came up before us in Dr. Indra Pal Singh's Writ Petition No. 21425 of 1996 and to maintain judicial discipline between the orders of different benches, this Bench presided by Hon'ble Mr. Justice Palok Basu, of which I am a member, is constituted, this Bench also granted limited stay orders. In the writ petition of Dr. Indra Pal Singh, an order was passed on 10th July, 1996 when the entire Ayurvedic scam was handed over to the CBI for investigation and CBI accepted the responsibility and the State as well as Dr.

Sheo Raj Singh also welcomed the probe by the CBI.

321. It may be mentioned that different Benches at Allahabad and Lucknow Bench have passed orders to take work or not to take work from the suspended employees which had created a problem in disbursement of salary. A submission was made that the employees were not being paid salary in spite of the orders of the Court and stay of suspension.

322. The learned counsel for the petitioners in all the cases starting from Dr. Indra Pal Singh cases, made submissions for consideration and the following broad feature of the submissions have emerged out. The facts of this case is being given just for illustration sake.

323. It was firstly submitted that the financial audit report of the Government, which has been made the basis of the suspension by the Government, is not material at all in the legal sense and it could not have been utilized. Consequently, it was submitted that there were criminal as well as departmental disciplinary proceedings going on and in view of such situation the departmental proceedings cannot proceed. It was further submitted that there is vigilance enquiry of liquid paraffin matters and as such the cases covered by the liquid paraffin matters cannot be made subjectmatter to the departmental disciplinary enquiry. It was further submitted that since the matter have been referred to the CBI and as such the departmental action cannot proceed and so the writ petitions have become infructuous, as argued in some of the petitions. It was, however, conceded by Sri K.N. Tripathi, Senior Advocate as well as some other counsels fairly conceded that the departmental disciplinary proceedings may go on but the suspension orders be stayed. It was also submitted by almost all the counsels for the petitioners that there was no proper application of mind while initiating the proceedings and as such the action of the disciplinary authority is liable to be quashed.

324. Sri O.K. Mehrotra, learned Additional AdvocateGeneral, addressed the arguments on behalf of the State and submitted that there is no massscale suspension of the staff of Directorate of Ayurvedic and Unani Services. He submitted that there are twelve Principals in the entire State and only disciplinary action against one Principal was initiated and fact finding was fully satisfied regarding the role of Dr. Thakral and no action was taken regarding the suspension etc. The Government has served a notice during the hearing of this petition for acts and commission while he was at Banda and he has been divested of his officiating Director of Ayurvedic and Unani and in his place P.C.S. Officer has been appointed on 17.9.1996 which finds mention in supplementary affidavit. The explanation of Dr. Thakral was accepted regarding the loss of documents. He further submitted that the suspension was not done mechanically. Even the orders were not passed on one date but on different dates. He further informed the Court during the course of submissions that there are 57 Regional Officers and only forty have been suspended. There are 2250 Medical Officers on Ayurvedic side and 220 on Unani side. Out of 2250 Ayurvedic Medical Officers,

only 150 Medical Officers having 1520 beds capacity in their hospitals and who have been drawing and disbursing powers and out of said 150, only twenty five were suspended and chargesheeted and with respect to Unani Medical Officers, only four were suspended. He further informed that in four districts i.e. Jhansi, Lalitput, Kheri any Nainital, the Doctors did not purchase and medicine and no action was taken. So the pith and substance of the submission is that the Government has fully applied its mind after perusing the report of the finance committee which was in the nature of preliminary enquiry and then passed the suspension orders. He further submitted that the reasons for suspension are not one and the same and the chargesheet is not stereotype. In some cases, there is violation of purchase rules. He further submitted that in the cases there is pick and choose and every case was properly scrutinised. He has further submitted that eight employees have retired during the process of suspension. Regarding the payment of salary, it was submitted that payment to some of the employees have been made after the stay of suspension and have not attended the office and the report is awaited and as soon as the fact finding is given, their salary will be paid according to the rules. He further submitted that the enquiry officers have been appointed. Even some of the employees have sent reply.

325. Sri G.K. Mehrotra, learned Additional AdvocateGeneral, has filed a supplementary counteraffidavit on behalf of the State in Writ Petition No. 462 (SB) of 1996 highlighting the materials which he happened to highlight by way of arguments as stated above. According to this supplementary counteraffidavit, the enquiry of two medical officers relating to the department, namely, Dr. Lal Bihari Yadav and Dr. A.N. Giriposted at Azamgarh and Rai Bareli has been completed. It is also stated in the affidavit that the Government has asked the enquiry officers to inform the stage of the enquiry, the time likely to be consumed and the letters have been issued by the any airy officers off and on for expediting the enquiry. He has submitted that in case the State makes an order to the enquiry officer to expedite the inquiry then there would be allegation that the State is pressurising them and there would not be fair enquiry. It is also in the affidavit that Dr. K.K. Thakral, who was officiating Director of Ayurvedic and Unani department and one time Principal, Ayurvedic Medical College, Attara, Banda, was served with the notice calling explanation from Dr. K.K. Thakural in respect of his acts of commission and omission while he was serving at that college. In order to spell this doubt, that the Government is not acting fairly and in his place a P.C.S. Officer has been entrusted to lookafter the department. Dr. Thakural has not been given posting and his posting has been kept in abeyance. It is also in the affidavit that the Government has framed the suspension/served charge sheets at difference times and they were not stereotype and vague at all and the charges are not similar as they vary from each other. He has also submitted that the vigilance report has been received with respect to 22 districts and it is awaited with respect to 19 districts. The vigilance department did not find anything with respect to districts Faizabad and Ghazipur any criminal case against the employees and only recommended minor punishment to senior

Clerks, namely, Sri Ram Chandra Pandey and Paras Nath Yadav and also in respect of Dr. Jagdish Prasad Tripathi, the then Regional Ayurvedic and Unani Officer and, in respect of the other 20 districts, the vigilance has recommended prosecution, departmental action, minor punishment as well withholding of integrity as per Annexure SCA1 to the supplementary counteraffidavit.

326. It has already come in the earlier part of the judgment that five cases were registered on the basis of the F.I.Rs. lodged by Dr. Sheo Raj Singh which were entrusted to Economic Offences Wing CID for investigation and after that, the matter has been referred to CBI. The Government has now taken a decision to wind up the Enquiry Committee presided over by the Chairman, Board of Revenue in principle and also the committee headed by Sri R.C. Srivastava, Senior Advocate of High Court and also Member of Upper House has resigned.

327. The vigilance matter relates to liquid paraffin matter. Sri G.K. Mehrotra, Additional Advocate General further submitted that one committee was appointed by Dr. Sheo Raj Singh to go into the financial irregularities as he lodged 29 F.I.Rs. against the Doctors, Regional Officers regarding forged allotment letters and excess withdrawal of budget and on his recommendation, some officers were suspended for financial irregularities and violation of purchase orders. The matter is also under enquiry. The stand of Dr. Sheo Raj Singh is that he informed about the irregularities, as mentioned above. Later on, the Government appointed its own audit team and noticed excess withdrawal after perusing the report along with the documents and started action against the officers including Dr. Sheo Raj Singh for the issue of fake allotment orders. Sri G.K. Mehrotra further submitted that had Dr. Sheo Raj Singh taken precautions of sending the expenditure reports etc. and shown vigilance, the scam would not have occurred. He further submitted that the Class III employees, who were dealing with the maintaining the registers of stock, have kept the register blank whereas the purchases had been made to be shown. He has emphatically argued that how one can receive thing without entering the material having been received in the register. In other words such type of conduct according to Shri G.K. Mehrotra's submission shows that they were in conspiracy with Dr. Shiv Raj Singh and other officers. He also submitted that in case this enquiry is not allowed to hold departmentally and if the suspension orders are not vacated or suspension orders passed, it would not be possible to unearth the scam and to complete the enquiry and in that event it would have a bad effect. He further submitted that in case suspension orders are not vacated it would not be possible to hold the enquiry and to complete within reasonable time and to unearth scam. It would have bad effect on the public. Regarding Dr. Shiv Raj Singh, Sri G.K. Mehrotra, Additional Advocate General, submitted that he was suspended just after the registration of case on 31/11/1995 and a very senior officer of the rank of Secretary was appointed to conduct the enquiry. Chargesheet was submitted but he did not bother to appear. There was a publication in the newspapers and then he came and requested for documents which were given and even now he is not cooperating with the enquiry. He succeeded in getting the suspension stayed temporarily but later on, the order

was modified regarding the stay of suspension. He further submitted that the officers, who were suspended at the instance of Dr. Sheo Raj Singh, they were served with supplement any chargesheet later on. Sri G.K. Mehrotra further submitted that there was enough material on the part of the Government after the report of the Finance Committee to suspend the employees.

328. Sri O.K. Mehrotra, Additional AdvocateGeneral has relied upon various decisions of the Supreme Court to rebut the arguments of the learned counsel for the petitioners that criminal/vigilance and departmental proceedings can go side by side. He has relied upon (1988) 4 SCC 319, Kusheshwar Dubey v. Mis. Bharat Coking Coal Ltd. and others wherein it was observed that no general rule can be laid down regarding the stay of departmental proceedings when criminal proceedings are lying and it has to be decided in the five circumstances of a particular case in Mehrotra has also taken us through (1994) 3 SCC 357, Union of India and others v. Upendra Singh, regarding the judicial review of charges as in come of the cases, the petitioners want for quashing of the chargesheet. The Hon"ble Supreme Court happened to observe that the Tribunal cannot take over the function of the disciplinary authority. It has to be rejudged in a disciplinary proceedings. Similarly the High Court cannot do so in the given facts and circumstances of the case. In other case (1995) 1 SCC 332, Transport Commissioner Madras⁵ v. A. Radha Krishna Mouthy, it was observed that even after the conclusion of the departmental enquiry, the scope of judicial review is restricted to charges based on no evidence. In my view also, it would be putting cart before the horse if the facts are not allowed to be inquired into by the inquiry officer and at the very initial stage, charge or suspension is to be quashed unless the allegations are such which are so absurd or foolish and no reasonable man would

believe. This is based on Wendnes bury Principle quoted in Associated Provincial Pictures Houses Limited v. Wendnes bury Corporation, (1947) 2 All E.R. 680. The aforesaid principle is attracted where it is shown, that an authority exercising the discretion has taken a decision which is devoid of any plausible justification and any authority having reasonable persons could not have taken the said decision.

329. Sri G.K. Mehrotra, Addl. AdvocateGeneral has further relied upon (1994) 4 SCC 126, State of Orissa through its Principal Secretary, Home Deptt. v. Bimal Kumar Mohanty, on the fact that the suspension order on the serious allegations of misconduct is not to be interfered on judicial side. Para 13 of the judgment is relevant and the same is quoted with the advantage as under:

"It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind

by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

There is another case 1993 Supp (3) SCC 483, UP Rajya Krishi Utpadan Mandi Parishad and others v. Sanjiv Rajan, regarding the charge of defalcation of monies or embezzlement of funds and the Supreme Court reversed the order of the High Court who had stayed the suspension order and the embezzlement involves in lacs. It was a case from Uttar Pradesh. The other relied upon is (1996) 3 SCC 157, Secretary to Government Prohibition and Excise Department v. L. Srinivasan. This case also related to the suspension pending enquiry into charges of fabrication of record. The Supreme Court deprecated the quashing of suspension by Tribunal in the exercise of judicial review and set aside the order. Sri G.K. Mehrotra, learned Additional Advocate General, has also submitted that the charges are not vague and each of the employee has been assigned different role.

330. Before arriving the conclusion, I would like to refer the authorities cited by the learned counsel for the petitioners in all fairness. Sri S.K. Kalia has harped upon that the action of the State Government not fair and the report of the Finance Committee cannot be called in evidence. In support of this assertion, he cited (1979) 3 SCC 489 Ramana Dayaram Shetty v. International Airport Authority of India and others regarding fair action of the State in the light of Article 14 of the Constitution of India. This ruling is not directly applicable as it relates to tenders but any how the State action is subject to judicial review and

its fairness can be judged. There is no dispute. The learned counsel has cited 1994 Supp. (3) SCC 1UR.C. Sood v. High Com: of Rajasthan, regarding the quashing of charge. The charges were quashed in the facts and circumstances of the case and there was no material on record to show that the forgery was committed by the petitioner. The facts of this case are quite different from the present case.

331. Much stress has been laid down by Sri Prabhat Kumar and Sri S.C. Pandey as well as other counsel that no preliminary enquiry has been conducted and as such the proceedings cannot be allowed to proceed. In fact, in my view the Government after getting the report of the Finance committee started action and there was no need to go into detail enquiry as the petitioners would get full chance to meet out the charges in an enquiry against them. Sri S.K. Kalia's submission that it is not a material has no substance as it is a fact to be proved in the regular enquiry and its report was based on documents submitted by it.

332. There is no need of giving back ground of the scam which has already been dealt with in the earlier part of the judgment. Dr. Indra Pal Singh Tamar filed Civil Misc. Writ Petition No. 21425 of 1996 in the Allahabad High Court praying that a suitable writ, order or direction in the nature of certiorari quashing the impugned order dated 2851996 (Annexure3) passed by respondent No. 2, suspending the petitioner from the post of officiating Divisional Ayurvedic and Unani Officer. The petitioner has also sought a writ, order or direction in the nature of mandamus restraining the respondents from interfering in the peaceful working of the petitioner as officiating Divisional Ayurvedic Evam Unani Officer, Muzaffarnagar.

333. The short facts from this petition arises are these for illustration sake. The petitioner was appointed on 26.2.1994 as Divisional Ayurvedic Evam Unani Officer at Muzaffarnagar and he took over charge on 2821994. The petitioner formed a purchase committee to purchase medicines as detailed in para 6 of the writ petition with respect to the budget of 199394. It is alleged that there was no material available in the office of the petitioner to show as to how much budget was sanctioned in 199394 and whatever the amount he received by way of budget allocation from Dr. Shiv Raj Singh, the then Director, he utilized the same under the approval of the committee. He was suspended for overspending the amount in excess of the allotted budget. He also violated the purchase rules etc. He described the order as illegal and passed in routine manner without application of mind. It has also been described as arbitrary and based on no material. It was further alleged that he worked only for 31 days and during this period whatever purchases have been made by the petitioner, were made on the approval/recommendation of the regularly constituted purchase committee in accordance with rules and on the receipt of budget allocations received under the signatures of Dr. Shiv Raj Singh. It was further pleaded that in fact if there was any irregularity, it must have been committed by his predecessor Dr. Lalita Singh.

334. The usual charges against petitioner Dr. Indra Pal Singh is that the budget sanction was less but it was spent more without financial grant and in this way,

there was loss of exchequer to the public, as mentioned above.

335. The reasons given in the judgment of the writ petition of Dr. Shiv Raj Singh regarding suspension etc. also will resolve the controversy in all the petitions as the responsibility is being shifted by everybody on Dr. Shiv Raj Singh. The Regional Officers state that they received the budget from the Directorate. The doctors state that they received budget from the regional officers/directorate while the clerks and other staff state that they are bound to obey the superiors. In case if I discuss the individual cases of the petitioners in verbatim, which contains affidavits, general counteraffidavit, specific counteraffidavit, supplementary counteraffidavit and rejoinder supplementary affidavit etc. and each file has so many pages, this would mean that the High Court becomes an enquiry officer and expert to adjudicate the matter. In my considered view, Article 226 of the Constitution of India confers the power to exercise of jurisdiction in the case of breach of fundamental rights or there is abuse of process of law. The petitions have been filed just to create an impediment in the process of enquiry or to arrive at the truth.

In my view it may be pointed out that even the High Court in exercise of jurisdiction under Article 226 of the Constitution should be very cautious in granting stay order when there is spending of more amount beyond the sanctioned budget and where there are allegations and allegations and there are issuance of fictitious/forged letters of allotment. Dr. Shiv Raj Singh has filed general and specific counteraffidavit alleging that he is a victim of group of persons who did not want him to prosper in the department when he joined as officiating Director some time in 198889 after doing the job of Principal successfully in Ayurvedic College. He detected irregularities in purchase of medicines and has been reporting the matter to the Government but no concrete action was taken against the firm. In the general counteraffidavit, it is alleged that there was group of persons in the Directorate who were corrupt persons and he wanted to reform the department and expose those elements and when he took steps, he became their victim. He further alleged that bureaucracy was supporting that group and did not pay any heed to his complaints made in his letters and also did not allow him to improve the inefficiency in the working of Ayurvedic and Unani Services. He further alleged that there was shortage of funds and he wanted to improve the supply of medicines and has been demanding the money etc. On these allegations, Sri. S.C. Pandey, learned counsel for Dr. Shiv Raj Singh has specifically argued that it is not a case of criminal inaction if any administrative lapse has been occurred, the department did not give him any opportunity to explain. He further submitted that he was writing to the Minister concerned and also demanding money from contingency funds to prove the Ayurvedic system. Sri S.C. Pandey, learned counsel, has taken us through voluminous record to show that he has not done any over budgeting and he has never sanctioned the amounts. Again, I fail to understand how the High Court can give a finding in writ jurisdiction when the matters pertains to the act finding and the enquiry is being made by the enquiry officer. In writ Petition

No. 536 of 1996 filed by Dr. Shiv Raj regarding suspension and challenge on the mala fide grounds and the suspension has not been stayed.

336. I have considered the arguments of learned counsel for the parties regarding suspension in the light of the principles laid down by the Supreme Court and taking into consideration the nature of scam amount involved; role of Director, Regional officers, doctors, senior Assistants and junior clerks and other lower grade officers mentioned in the charge sheet which have been submitted cannot be primefide ruled out. Judicial review of suspension is permissible only if the allegations are not accepted to be true on the face of it. The judicial review is the basic feature of the Constitution of India and the employees have right to invoke Article 226 of the Constitution in case there is arbitrariness on the part of the State in taking action against them. There are allegations; charge sheets have been served; enquiry officers have been appointed; reply has been filed; investigation of the entire scam has been handed over to CBI. In some of cases, the enquiry officers have submitted report and the Government directed the enquiry officers to expedite the same. From the arguments concluded, I have gathered impression that in most of the cases, the employees came to High Court straight way immediately under Article 226 of the Constitution of India for stay of suspension. A question was posed to the Additional Advocate General who informed that in most of the cases, the period of four months" had not passed and the employees got a stay orders regarding the stay of suspension from the High Court and the department was directed to take work or not. The employees will get chance to file a reply to the chargesheets and to meet out the charges. They have right to inspect the documents and right to cross examine the witnesses and also to produce their defence. The enquiry officer is supposed to furnish a copy of the enquiry report to the employee to comply with the principles of natural justice and to make a representation regarding the findings. Kindly see J. T. 1990 (4) S.C. 456 Union of India and others v. Mohd. Ramzan Khan. This ruling has been applied prospectively i.e. after the decision dated 20111990 in case of Managing Director, ECIL, Hyderabad v. B. Karunakar, JT1993 (6) SC 1. Enquiry report is to be supplied even if the statutory rules do not permit or they are silent. However, in later ruling i.e. Managing Director, ECIL, Hyderabad v. B. Karunakar, distinction was made that where the enquiring officer is not a disciplinary authority he as a matter of fact has a right to receive the enquiry report notwithstanding the nature of punishment.

337. Then there is a right given to the employees to file appeal against suspension. Even a right has been given to file an application for revocation of suspension. These remedies have not been resorted at all and straightway the writs have been filed which is not justified. The employee has a right of fair hearing and fair procedure under Article 14 read with Article 21 of the Constitution of India and the fair procedure of enquiry envisages two basic rights of the employees.

338. The Apex Court has interfered in long suspension on i.e. six years, eight

years, nineteen years and so on and even quashed the suspension but the Court should not generally interfere with the suspension in such scams which have become the order of the day as it would have a deterrent effect to prevent the recurrence of the scams.

339. How a suspension can be described as arbitrary and irrational when the enquiry has not started. The suspension is desirable in corruption, embezzlement or misappropriation of Government money possession of disproportionate assets, misuse of official powers for personal gain; serious negligence and dereliction of duty resulting in considerable loss to the Government.

340. The society also expects in such a scam matter that if the things are found to be true on enquiry, the delinquent persons may be punished and to achieve cleansing in public administration, suspension should be done so that truth may come out.

341. "Suspension" according to the Oxford Dictionary means

"the action of suspending or condition of being suspended; the action of debarring or state of being debarred, especially for a time, from a function or privilege; temporary deprivation of one's office or post. It is not punishment."

342. The argument that there is no application of mind and there was a stereotype order and the senior assistants and junior clerks have been roped in, is also of no force as who knows before the enquiry completed that what role they played. It is also a matter of enquiry which is to be conducted by the enquiry officer and not by High Court as already observed. The High Court cannot conduct roving enquiry by way of taking affidavits, counteraffidavits, supplementary counteraffidavits etc. unless some extreme case of mala fide is visible to the naked eye which is not a case here. However, in the facts and circumstances the clerks posted at District Headquarters and at Ayurvedic Directorate/71 may not be having overt part to play in the conspiracy as they were not controlling funds and did not possess drawing and disbursing power and were small flies. Their case stand on different footing but the Superintendents posted in the Directorate would not be treated equal to the Clerks etc. as they control office. The petitions filed by clerks/officials except the superintendents posted in the Directorate has to be partly allowed only to the extent that enquiry against them shall continue but the suspension orders against them need not to be restored. The Government is directed to complete the enquiries against all the officials/officers preferably within six months unless impossible.

343. It is astonishing and surprising that a large number of writ petitions have been filed and the practice is that once an interim order is obtained in one case, then it is shown in other cases arising out of the same matter and on the basis of the same, the stay orders are passed. Passing of stay orders in such huge scam is not conducive to the public interest as more irreparable injury is likely to cause to the society and there is likelihood of tampering with the evidence and ultimately exoneration from the charges. In this case what happened is that Dr.

Shiv Raj Singh is Director and some officers of the same department have been appointed as enquiry officers and they may proceed at slow speed and later on a plea would be taken that there is delay in enquiry which would ultimately achieve no purpose. I have noticed the conduct of Dr. Shiv Raj Singh regarding not cooperating with the enquiry and at this pace enquiry may not be completed. However, I find no force in the submission of the learned counsel for the petitioners.

344. Considering all the facts and circumstances of the entire case, the Writ Petition No. 4353 of 1992 filed by Dr. Shiv Raj Singh against the suspension order is dismissed. Prayer regarding quashing of the F.I.R. by Doctors/Regional Officers as well as of Dr. Shiv Raj Singh is not accepted in view of the reasons mentioned above and the same are liable to be dismissed. Prayer for stay of arrest is also refused.

345. It has been submitted that the petitioners who got stay orders, have not been paid salaries and some of the petitioners already retired. They are facing agony and difficulty as they may not get pension immediately. Sri G.K. Mehrotra, learned Additional Advocate General has, during the course of argument assured that he has taken the matter with the Government that the Court's order regarding the payment of salary be obeyed. I thus issue a direction that the Government to pay salary regarding the stay orders period obtained by the petitioners with respect to the period regarding suspension has been stayed and regarding the retired persons, I have already made orders to safeguard their interest; complete the enquiry within six months and their grievance will be met. I, however, direct that the Government may fix provisional pension after considering the gravity of the offences etc. within reasonable time.

346. I am also of the view that there is no bar of proceeding with the departmental proceedings and criminal case after considering the nature of the scam and I reject the submission of the learned counsel for the petitioners.

347. It would be very tedious and repetitive job to refer each and every of Regional Officers and other officers likewise. Suffice it to say that the Lucknow Bench of this Court and similarly at Allahabad, the petitioners have challenged suspension orders/charge sheets as and when they were given. During the hearing of the writ petitions it was revealed that the chargesheets were given and the necessary amendments have been made to quash the charge sheets.

348.1 would like to refer to the allegations made in one petition which are repetitive with some modifications in others.

349. In writ petition No. 790 of 1996, Dr. S.C. Bhatt v. State of U.P. filed by Sri S.K. Kalia, Advocate, the following points are involved.

350. A prayer has been made to issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 31/7/1996 with respect to the petitioner's suspension by respondent No. 1 and also the impugned chargesheet.

Further prayer has been made to issue a writ, or direction in the nature of mandamus not to give effect to the impugned order of suspension dated 31/7/1996 contained in Annexure No. 1 to the writ petition. The petitioner was posted as Acting Divisional Ayurvedic Unani Officer, Pitthoragarh at the relevant time i.e. on 25/7/1992. It is alleged by him that allegation regarding misconduct relating to financial irregularities i.e. over budgeting or additional budgeting are unjustified and illegal as they are not definite. He further alleged that the entire scam matter is subjectmatter of vigilance enquiry, so many committees are formed by the Government and unless there is finding by these committees the suspension should not have been made. It is also alleged by him that the petitioner could not be placed under suspension regarding overbudgeting allegation for the year 1993/94 when Dr. Shiv Raj Singh was Director. It is also alleged that it is still to be determined whether it is Dr. Shiv Raj Singh who has committed the irregularity or the petitioner by way of enquiry or by other investigating agencies. Under these circumstances, it is alleged that the action against the petitioner is not justified as there is no application of mind and the allegations are also vague as he believed the allocation letter to be true and utilised the same before the fax message was received to check the payment.

351. The State Government submitted reply by way of affidavit through Deputy Secretary (Health) Shri Bharati Ram inter alia pleading that the petitioner cannot claim immunity regarding the violation of service rules with respect to financial irregularities resulting into squandering of crores of rupees or loot of public exchequer of crores of rupees. It is also alleged that the Government has started action all the persons involved with respect to their status i.e. whether they were Senior Assistants, Clerks, Director or Assistant Directors and action by way of disciplinary proceedings or of criminal nature. The petitioner cannot claim immunity in the garb of obeying order of superior. The Government has also challenged that whether High Court has jurisdiction to come into these disputed facts when the enquiry officer or competent authority has to give its finding regarding the alleged forged orders regarding budget or additional allocation of budget for the year 1993.

352. All the Regional Officers have challenged their impugned suspensions with respect to the allegation of spending amount which was not allocated to them by way of forged letters or they were in collusion with Dr. Shiv Raj Singh till they were stopped by fax message. It is also alleged in the suspension orders that originally the amount sanctioned was less but byway of the alleged forged allocation order more grant was shown and the bills of medicines were prepared and the medicines were shown to have been purchased in complete violation of norms of purchase committee or store purchase rules. The payments were withdrawn and payments of some of the bills could not be cashed as the telex message was sent by the Government to stop the payment when it came to the notice of the Government that the letter alleged to have been signed by Dr. Shiv Raj Singh and the Government has not given any sanction for the allotment of the budget. This is apparent in all the writ petitions. The suspension order/

charge sheet has been also challenged on the ground that there is no proper application of mind, there is no material to make charge for suspension and issuing charge sheet and the matter is still under enquiry and who is the culprit whether Dr. Shiv Raj or the Regional Officers. It would be repetitive that if this Court repeats allegation which will cover thousands of pages and suffice it to say that they are also involved in financial scam of more than rupees fortyseven crores which is subjectmatter of enquiry and the Government has appointed enquiry officer alongwith chargesheet.

353. Class III employees have also challenged their suspension orders as also the charge sheets. It is difficult to narrate the fact of each writ petition as it may cover again thousands of pages, which is not possible. Suffice it to say that these persons were also posted as Clerks, Junior Assistants Superintendents, Senior Assistants, Despatcher and the stand of the Government is that they were also in league with the higher authorities and they did not maintain the register properly. They did not enter the things in the register and the registers were kept blank. There was nothing on the file regarding the budget or allocation of the budget letters or despatch of the said letters. These persons were posted at Regional Offices as well as in Directorates etc. and they have been chargesheeted and the enquiry officers have been appointed. The case of the petitioners is that there is no material against them and the suspension orders or chargesheets are baseless and it is also alleged that there is no proper application of mind when the suspension order is passed.

354. Now coming over the liquid paraffin matter. This bunch of cases would be decided by a common judgment as it is inter linked matter and against Dr, Shiv Raj Singh including other officers disciplinary/criminal action has been proposed. Against Dr. Shiv Raj Singh only departmental action has been proposed under vigilance enquiry constituted by the Government.

355. The genesis of this scam is that liquid paraffin is not used at all in Ayurvedic Hospitals and the purchases were made prior to 199394. Most of the payments were made by the department during the year 199394 budget out of which the big scam has arisen.

356. In Writ Petition No. 3075 (SS) of 1996 at Lucknow Bench, Shri Anirudh Sharma has challenged the suspension order of the Government dated 1351996 (Annexure No. 1) and has prayed that the same be not given effect and he be allowed to function as Senior Clerk in the office of Divisional Ayurvedic and Unani Officer, Lakhimpur Kheri. It is revealed that the charge against him is that he committed financial irregularities during the period 141990 to 2481993 in the matter of purchase of paraffin adhesive plaster and other medicines and they were purchased from the firms at more cost than actual cost and causing loss to the Government. The order has been challenged on the ground that there is no application of mind. There is no material against him and departmental and vigilance enquiry cannot proceed simultaneously.

357. Other officers/officials of lower rank have also challenged their suspension orders and other disciplinary proceedings arising out of financial irregularities, acts of omission and commission, having nexus with duties.

358. The State has filed counteraffidavit and alleged that there was colossal of crores of rupees loss to the Government in the purchase of medicines and the Government thought fit to handover the matter to the vigilance establishment and the matter has been investigated. In paras 9, 10, 12 and 13 of the counteraffidavit alongwith chart submitted by Shri G.K. Mehrotra, Additional AdvocateGeneral, which is very comprehensive, showing that the prosecution has been recommended against some persons and the courts have taken cognizance and in some cases sanction has not been received and in some cases investigation is not complete and in other cases departmental action has been proposed.

359. In para 9 of the counteraffidavit it has been mentioned that investigation has been completed in 42 Districts and it was found by Vigilance Department that criminal offences were committed in 38 Districts and recommended prosecution against the officers/officials in those Districts and there is no prosecution recommended for four Districts. The firms who had supplied the material i.e. liquid paraffin and which were also in league with the officers and are being prosecuted also under the Drugs and Cosmetics Act. Against certain officials investigations reveal that no criminal offence has been committed, as informed and only departmental action has been recommended. The split up data has been mentioned in detail in paras 12, 13 and 10 of the counteraffidavit and also in chart and there is no use to repeat all the allegations.

360. I have heard the counsel for the parties at length. Shri S.K. Kalia and other counsel representing the petitioners have submitted that the officials were not at fault and no case has been made out against them as there is no material and seeks quashing of the suspension other proceedings.

361. I have also heard Sri G.K. Mehrotra, Additional AdvocateGeneral. In view of the recommendation of the departmental proceedings and launching of the prosecution and investigation still going on in some cases, it is not desirable in the interest of justice to invoke the jurisdiction under Article 226 in such like cases. The petitioners against whom departmental action has been taken and if the Government agrees with the action proposed to be taken and if they still feel aggrieved they can, if advised, avail of appropriate remedy and the officials/officers who are petitioners in these cases and who are facing and are likely to face criminal prosecution. The High Court under Article 226 of the Constitution of India cannot assume the role of trial court of Inquiry Officer and cannot also substitute the discretion of the disciplinary authority in dealing matters of criminal nature and disciplinary proceedings to take appropriate action which pertain to their sphere. However, since their cases for departmental punishment and criminal action has been forwarded to different channel it would not be desirable to keep them under suspension in the facts and circumstances of the

case. I do agree with the views of my learned brother regarding giving relief to Class III employees except the Superintendents who were Incharges of the office regarding suspension and allow their writ petitions partly to that extent.

362. I am also of the considered view that it is not a fit case to exercise the discretion under Article 226 of the Constitution to grant relief and no case for interference is made out on merits also. In view of the aforesaid reason and line of reasoning mentioned in the other cases, writ petitions relating liquid paraffin matter are dismissed accordingly.

363. Writ Petition No. 1381 (MB) of 1996 Jain Ayurvedics, Sadatganj, Lucknow v. Principal Secretary,, Finance Dept. Govt. of U.P. Lucknow and others and Writ Petition No. 2450 (MB) of 1996 Mis. New India Pharmaceuticals, Sadar Bazar,

Hardoi v. State of U.P and others, relate to the supply of medicines and recovery of the amount from the respondents. Since the points involved in both the writ petitions are identical and similar, they are being disposed by this common order too.

364. There is interesting question in Writ Petition No. 1381 (MB) of 1996 and we would like to deal with it with respect of prayer clause No. 2.

365. These writ petitions arise out of allocation of budget for the years 1993-94 which is the matters of Ayurvedic scam. In Writ Petition No. 1381 (MB) of 1996, the following two main prayers have been made:

"(i) To issue a writ, order or direction in the nature of certiorari for quashing the order of the Finance Department of U.P. Government, through which the heads of the Ayurved Department has been seized and the payment of the petitioner is not being made;

(ii) to issue a writ, order or direction in the nature of mandamus commanding and directing the opposite party Nos. 1 and 2 to allot the Budget to the Opp. party Nos. 3 and 4 for making the payment of Rs. 10,01,700 plus interest forthwith to the petitioner."

366. It appears that the petitioner supplied drugs in Rajkiya Ayurvedic College, Nirmanshala, Pilibhit as per orders dated 26/3/1994 and they were duly dispatched. The contention of the Government in the affidavit is that since the matter has been referred to CBI and the medicine has not been received at all. It was a paper transaction. Notice under Section 80, C.P.C. has been also given as figured during the course of arguments.

367. In Writ Petition No. 2450 (MB) of 1996, the following two main prayers have been made:

"A. A writ, order or direction in the nature of mandamus commanding the respondents to make payment of the petitioner Firm amounting to Rs. 8,25,300 against the Invoice No. 858, dated 27/3/1994.

B. A writ, order or direction in the nature of Mandamus commanding the opposite parties to supply Form 3D under the provisions of Trade Tax Act, 1948 under which the deliveries were made by the petitioner Firm."

368. The allegation of the petitioner is that the petitioner is recognised Small Scale Unit dealing registration under the procedure issued by the Directorate of Industries and its medicines have been efficaciously tried. A certificate of efficaciousness has been issued by the Government on 18121995 and the medicines were supplied vide order dated 2631994. However, the Government has denied the receipt of the medicines and according to the counteraffidavit of the Government, it is a paper transaction.

36". Sri G.K. Mehrotra, learned Additional Advocate General submits that this matter is also covered with the report of the C.B.I.

370. We have heard the learned counsel for the parties and have also gone through the pleadings of the parties.

371. At the very outset, it may be mentioned that Article 226 of the Constitution is not meant for settling the dispute of the parties where the legal liabilities are disputed and the disputed question of facts have to be enquired. In the facts and circumstances of the present case, Article 226 of the Constitution is only invoked where there is a legal liability arising out of statute or rules and the Government is disputing it and there is a clear cut violation/obligation or liability under the statutes and only in that situation, a mandamus can be issued to perform the legal duties. Regarding the prayer that the Government be directed to make a provision in the finance budget for payment of money. This question was examined at length in a famous case which happened to go to the Hon'ble Supreme Court in the case of State of H.P. v. Umed, AIR 1986 SC 847. It was observed that the High Court has no jurisdiction to ask the Government to allow the budget for the construction of the roads but, however, it gave a relief under Article 21 of the Constitution that where the State extreme inaction is not providing road to lead a dignify life, a direction to that effect can be given but no direction can be made for allocating budget. Similarly, following the ratio of that authority, no such direction can be passed. It was held in so many cases by the Apex Court that the High Court cannot convert into civil courts.

372. I, therefore, dismiss the writ petitions.

373. Mr. G.K. Mehrotra, Additional Advocate General has made a statement at Allahabad that in Criminal Misc. Writ Petition No. 776 of 1996 and petitions mentioned at S.Nos. 18 to 24,26,28,29,32 and 34 have become infructuous. Similarly writ petition at S.Nos. 23,35,36,37 and 38 and Writ Petition No. 268 of 1996 has been decided and they may be treated as infructuous in view of the cases having been sent to C.B.I, by this Court. He further submitted that this Court may impose exemplary cost for filing successive writ petitions. He further submitted that Dr. Shiv Raj Singh became an outlaw and has not been submitted to the process of the Court and has misused it. He has further submitted that he

has not surrendered in the court or appeared before the police for interrogation. He has illustrated by pointing out so many writ petitions and worth mentioning are 776 of 1996 and 365 of 1996 and the prayer of them is same as prayer in the leading case in which judgment is being delivered and the same was argued by Shri S.C. Maheshwari in Writ Petition No. 2025 of 1996. He further submitted that he filed a Writ Petition No. 1676 of 1996, Dr. Shiv Raj Singh v. State. On 851996 the counsel made a statement that he does not want to press and the same was decided. There is another Writ Petition No. 866 of 1996, decided by Justice N.S. Gupta. He has also mentioned Writ Petition No. 708 of 1996, 70 of 1996, 1355 of 1996 and 778 of 1996 (decided by Hon"ble Giridhar Malviya and Hon"ble Kundan Singh, JJ.) and the said writ petitions have become infructuous, as stated that investigation is more or less complete. Again Writ Petition No. 776 of 1996 was filed in a different form to fix place of surrender etc. The petitioner Dr. Shiv Raj Singh has taken orders through these writ petitions only to show how writ petitions successively being filed and has further pointed out that Dr. Shiv Raj Singh did not choose to file an affidavit himself in the writ petitions.

374. For example, in Writ Petition No. 1676 of 1996, Sri Pundir filed affidavit, who swore the affidavit as a "Pairakar". Again in Writ Petition No. 876 of 1996 affidavit was not filed by Dr. Shiv Raj Singh at all. He has pointed out another Writ Petition No. 3055 of 1996 and in this writ petition also affidavit was not filed by Dr. Shiv Raj Singh but by one Jitendra Singh. In another writ petition being No. 1933 of 1996 filed at Allahabad affidavit was filed by Shri Ram Narain.

375. Normally the rule is that the affidavit is sworn by the petitioner who claims the relief under Order XIX, Rule 3 of the Code of Civil Procedure. For advantage Order XIX, Rule 3 is quoted below:

"3. Matters in which affidavits shall be confined. (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same."

376. But in these writ petitions, the affidavits have not been filed by Dr. Shiv Raj Singh. In so many writ petitions, the affidavits have been sworn by his son, nephew or his wellwishers and the courts are entertaining the writ petitions.

377. I am of the view that such type of practice needs to be deprecated other rightly. The practice of not pressing the petitions also needs to be deprecated. The Supreme Court in State of Maharashtra v. Ishwar Piraji Kalpatri and others, (1996) 1 SCC 542, also deprecated the practice of withdrawing the petitions. The Hon"ble Supreme Court held:

"It appears strange that when a petition has been filed in the High Court,

judgment obtained and the losing party comes to the superior court, then in order to avoid in unfavorable order, a request should be made for the withdrawal of the original proceeding in an effort to avoid an adverse decision from these prior court with a view to regulate the same contentions once again before the subordinate court. A party to the proceedings cannot be allowed at this stage at least to take a chance and if he gets the impression that he will not succeed to seek permission to withdraw the original proceeding obviously with a view to reagitate the same contentions, which have been or may be adjudicated upon by a higher court, before the subordinate court though in different proceedings. Practice like this is liable to be strongly deprecated. This will be opposed to judicial discipline and may lead to unhealthy practices which will not be conducive. On facts of the case there is no justification for permitting the respondent to withdraw his writ petition."

378. Shri S.C. Pandey, learned counsel for Dr. Shiv Raj Singh submitted that in the interest of society direction may be passed to reform the Ayurvedic and Unani Department.

379. After going through the entire litigation I am of the view that this Department needs to be manned by proper officer with grit, sufficient experience of administrative ability and capable of initiative to bring it on the rails so as to provide the better management to the department. Ayurvedic Department of medicine is gaining popularity in India as well as in the world. It has been argued that the proper funds and facilities are not being provided to the Department to streamline it. It is hoped and trusted that the Government would provide proper infrastructure facilities to the department and also implement the Rules regarding the promotion to the post of Director and other officers on pure merit pertaining to the department after the department has been brought on the right track which has been derailed in view of the alleged scam and other factors. Promotion of the departmental persons for the post of Director is necessitated to avoid stagnation and frustration but it will be done by the Government after assessing proper situation.

380. It is also very surprising to not that such a huge scam has taken place was the entire Government machinery was lacking in proper checks and balance to control it at the very out set and some suitable measure be adopted atleast to follow the financial procedure, as mentioned in the earlier part of the judgment and no money should be allowed to be spent without proper procedure which has been already alluded to. Even the Minister/Chief Minister has no power to spend the amount unless concurrence by the Finance Department is taken or it is over ruled by the Chief Minister then it is passed by the Legislature by way of supplementary budget as the case may be or the Parliament if the particular State is under the President Rule and there is no other procedure known to under constitutional provisions as mentioned earlier. The Court hopes and trust that in future such type of recurrence may be avoided by the concerned constitutional functionaries at the State level as there are enough checks and balance to

prevent it as there is Auditor and Comptroller General Office of India and at the State level there is office of Accountant General and these functionaries have been entrusted with responsibility to see that nobody spends single rupee without permission.

381. In the end I would like to observe that the investigation has been entrusted to C.B.I, with an idea to find "truth" as it is the only premier agency left in India which is at present unearthing scams. I am reminded of the famous saying of Justice Denning regarding picture of a justice given by Lord Denning in the book, namely "The Closing Chapter" who observed that "Quite recently I have tried to discover more about the conventional picture of justice. She has for centuries been painted blindfold with a sword in one hand and lifted scales in the other. I have never discovered why. Some sort of explanation is given by Joseph Addison. Justice discards party, friendship, kindred and is therefore always represented as blind. By this I take it that justice is painted blind so as to signify that she is impartial and without prejudice. She favours neither one side nor the other and bears no illwill to one or the other. But in modern times justice is not shown as blind. In the statue on the dome of the Central Criminal Court in London, she is not blindfold. It is very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the find the less dust there is about the better."

382. So the counsels have argued at length and it is the duty of the Court to find truth after hearing the counsels but jurisdiction of the Court under Article 226 of the Constitution of India is very limited and it is to be exercised in case of breach of fundamental rights or abuse of process of law but in this case there is abuse of process of law to reach truth by so many agencies of the State. There is a famous saying again at page 277 of the book "The Closing Chapter" by Lord Denning in *Jones v. National Coal Board*, (1957) 2QB55,64

"Let the advocates one after the other put the weights into the Scales the "niceiy calculated less or more" but the Judge at the end decides which way the balance tilts, be it ever so slightly."

383. Shri S.C. Pandey, learned counsel appearing for Dr. Sniv Raj Singh quoted a very apt saying in Hindi which I do not remember but its pith and substance was that the Court is to perform its duty to find out the truth and whosoever has done wrong he should be punished. So after weighing the scale of arguments of all learned counsels at Allahabad and at Lucknow Bench of this Court I feel that the truth would be only revealed when all the petitions are dismissed and investigation/inquiries be conducted in accordance with law and/dismiss the aforesaid writ petitions with respect to suspensions, quashing of F.I.R., petitions for stay of arrest of Dr. Shiv Raj Singh and other employees and even case of suspension of Dr. Shiv Raj Singh and other connected writ petitions of all the employees regarding suspension except some of the ClassIII employees as noted above. I hope that since the matter has been entrusted to the C.B.I and truth will come out and C.B.I, will investigate in the light of observation of the

Supreme Court in Hawala case made in the earlier part of the judgment.

384. Regarding Writ Petition No. 308 of 1990 (filed at Lucknow Bench, Lucknow) in which the orders of Hon'ble Justice S.N. Sahai have been alleged to be forged, the Additional Registrar, Lucknow Bench, Lucknow has been ordered to conduct an enquiry on administrative side regarding loss of file and Justice S.N. Sahai has also retired.

385. Since Shri O.K. Mehrotra, Additional Advocate General has prayed for imposition of the cost and filing of affidavits by persons other than petitioners. I deprecate the practice of filing of affidavits in such cases when no circumstances have been shown regarding not filing the affidavit personally.

386. I would like to have imposed the cost of few lakhs of rupees for indulging into unnecessary and frivolous litigations which is payable to the State Government by Dr. Shiv Raj Singh but as my Brother has imposed Rs. 50,000 so I agree with the amount.

387. I also feel that in the entire litigation how due process of law and abuse of process of law have been made escape goats after filing petition after petition in the name of liberty or abuse of process of law in danger. The petitions could have been thrown at the very initial stage when they were filed as some of the petitions did not disclose cause of action but they were entertained and dockets of cases which were full already were again loaded and the poor persons hailing from the village who were waiting for their turn to get justice since long were put into oblivion by such type of litigation as this type of litigation usually gets preference. We have reached such stage that traditional litigation disposal is not being paid attention.

388. I dispose of the petitions without expressing any opinion on the merits and demerits of the case. Any observation made in this case does not indicate that I have criticised any order passed during the proceeding but my observations confined only in the name of abuse of process of law and so called arbitrary action. How the Indian system of litigation is proceeding in day and day out to discourage the proper investigation but there are also some brighter side of picture that Indian system of justice is controlling maladministration of the Government and has by and large checked the misuse of the authority but in such type of cases the courts owe duty to the society atleast to give a fair and reasonable chance to the State agencies which are instrumentalities of the society to conduct fair enquiry and investigation so that truth is discovered.

389. With the aforesaid observations all the writ petitions arising out of the Ayurvedic scam are dismissed for the reasons recorded. Some of the writ petitions have already become infructuous or have been withdrawn with the passage of time and also with the passage of stages of litigation. Suspension order of some Class III employees have been interfered with by my Brother for several reasons which I adopt.

390. Any writ petition pending arising out of this scam matter stand disposed of even if it has been left by the office for listing at Allahabad as well as at Lucknow Bench of this Court. All stay orders stand vacated even with regard to stay of arrest of Dr. Shiv Raj Singh, The writ petition filed at Lucknow Bench by Shri Madhukar Advocate regarding the jurisdiction of this Court has no force as the State Government has extended the jurisdiction of the C.B.I, for investigation of the offences and the C.B.I. has accepted it. The matter ends and the petition has no force.

391. This Court has already called the report of the C.B.I, regarding progress of the case on 26111996 and it is hoped that the C.B.I, will complete the investigation even before that date and if necessity arises it will be monitored further by this court.

392. Before parting with the judgment I must express my sincere thanks to the assistance rendered by Shri S.C. Pandey, I learned counsel appearing for Dr. Shiv Raj Singh in marshalling the facts of the case. Similarly assistance rendered by Shri G.K.. Mehrotra, learned Additional AdvocateGeneral is also appreciable as he was very short and concise in his arguments. I also appreciate the assistance provided by all the senior and junior Counsels at Allahabad as well as at Lucknow Bench, Lucknow.

Petitions dismissed with observations.