
(2013) 08 MAD CK 0044

In the Madras High Court

Case No : Writ Petition No. 18790 of 2013

Thol. Thirumavalavan

APPELLANT

Vs

Home Secretary and Others

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2013) 5 CTC 113 : (2013) 3 MLJ(Cri) 577

Hon'ble Judges : V. Dhanapalan, J;C.T. Selvam, J

Bench : Division Bench

Advocate : S. Prabhakaran for T.P. Senthilkumar, for the Appellant; A.L. Somayaji, Advocate General for S. Inbadurai, Special Government Pleader, for the Respondent

Judgement

V. Dhanapalan, J.—Praying for a direction to the respondents to form a Forensic Expert Team headed by "Padma Bhushan" Prof.

Chandrasekaran, Former Director of Forensic Department, Chennai to assist the investigation of the death of Ilavarasan, a case registered on the

file of the 6th respondent Police Station in Crime No. 96 of 2013, the petitioner has come up with the present Writ Petition. Facts of the case, as

put forth by the petitioner in the affidavit, would run thus:

1.1. The petitioner is the President of the ""Vidhuthalai Chiruthaikal Katchi"", which is a registered Political Party. From the beginning, Vidhuthalai

Chiruthaikal Katchi works for the upliftment of the poor and downtrodden people and it participates in public issues such as Cauvery issue, Eelam

issue and fights to get justice for each and every people. Vidhuthalai Chiruthaikal Katchi is a People's Political Party. It fights against caste and

race discrimination and untouchability, etc. and also fights against several injustices committed against poor persons, each and every day. In each

and every public issue, Vidhuthalai Chiruthaikal Katchi puts maximum struggle and hard work to get justice. It played an important role to uplift the Schedule Caste and Schedule Tribe community and fights for their Reservation and also for the Reservation of Backward Classes and Most Backward Classes.

1.2. Though our country has developed a lot, caste system, racism, caste discrimination and untouchability have not changed. Few months back, one Divya, aged about 20 years belonging to Vanniyar caste and one Ilavarasan, aged about 20 years belonging to Scheduled Caste community had a love affair and got married on 7.11.2012. Thereafter, they lived in Natham Village, Dharmapuri District. But, the relatives of Divya and her community people did not accept their marriage and created several problems. Even some Caste based Political parties criticized the inter-caste marriage of Ilavarasan and Divya. Further, some leaders from the caste based Political parties created animosity between the upper caste people and the Schedule caste people through their speeches, interview and writings. Due to such type of social pressures, Divya's father is said to have committed suicide.

1.3. Thereafter, on 12.11.2012, thousands of anti-social elements attacked three Dalit Community Villages, viz., Natham, Kottarampatti, Anna Nagar in Dharmapuri District, set fire to the houses of the Dalit Community people and destroyed their entire properties. Due to the said attack, all the Schedule Caste community people of the said Villages lost their houses and belongings and they were put in streets as also, most of them were severely injured. This gory incident was condemned by most of the political leaders.

1.4. Our great leaders like Dr. Ambedkar and Thanthai Periyar greatly fought for abolition of caste discrimination and they also taught to abolish caste discrimination and their teachings mostly say that inter-caste marriages will be the foremost source for abolition of caste system. Further, the Government also provides aid to those who are doing inter-caste marriages.

1.5. Till date, caste system, caste clashes survive everywhere in India and some caste based leaders are creating caste discrimination problems and they are all against inter-caste marriage and are giving speeches against inter-caste marriage, which leads to several problems and in turn, that has

led to the gory Dharmapuri District incident on 12.11.2012, where, three Dalit Villages were entirely collapsed. Some of the caste based political

parties very often kindle casteism and racism in the minds of the public.

1.6. In the meantime, Divya's mother filed a Habeas Corpus Petition before this Court and when the said Petition came up for hearing, originally,

the girl Divya stated that she married Ilavarasan and she wants to be with Ilavarasan and the matter was adjourned and both of them were living

together in their matrimonial home. Thereafter, Divya was threatened by some anti-social elements and hence, lastly when the said Habeas Corpus

Petition came up before this Court on 3.7.2013, Divya said that as her father died, she wants to quit her matrimonial home and she does not want

to be with Ilavarasan and also that she wants to go with her mother.

1.7. Pursuant thereto, on 4.7.2013, the said Ilavarasan was found dead with a head injury nearby the Railway track, backside of Arts College in

Natham Village, Dharmapuri District. Regarding the same, a complaint was lodged by the Village Administrative Officer before the 6th respondent

Police Station and the same was registered in Crime No. 96 of 2013 u/s 174 Cr.P.C.

1.8. A Petition was moved before this Court seeking autopsy on the body of Ilavarasan by a team of Doctors comprising the Doctor of the choice

of the deceased Ilavarasan's family members. As several questions and suspicions arose regarding the death of Ilavarasan, the same were

submitted before this Court on 8.7.2013 and this Court ordered second autopsy on Ilavarasan's body.

1.9. Ilavarasan's death has created several suspicions, one of which is, had the said Ilavarasan been run over by a Train, definitely his body would

have gone into pieces, but, his body was found near the Railway Track only with head injury. Had the Train been run in a speed of 50 kms, the

deceased Ilavarasan would have been thrown at a long distance, at least 15 to 20 feet away from the Railway track, but the body of the deceased

was found very near the Railway track and even if the Train had hit Ilavarasan, his lungs and heart would have been collapsed. But, the post-

mortem report reveals that his lungs and heart were not collapsed. Normally, if a person is hit or run over by a Train, the Train Driver will

immediately inform the same to the Railway authorities. Likewise, if the Train

had run over or hit Ilavarasan, then the Train Driver would have informed the same immediately to the Railway authorities. But, the Kurla Express Train Driver has not given any information to the Railway authorities about it. Furthermore, none of the Drivers of the Trains, which passed through at the scene noticed Ilavarasan's body. Also, had the Kurla Express Train run over Ilavarasan, he would have given a written message to the nearest Station Master immediately. But, no such message was received by the Station Master immediately. Only after four days of the death of Ilavarasan, Tamil Nadu Police authorities have released a Suicide Note alleged to have been written by Ilavarasan, which creates suspicion and some Tamil Nadu Police Officials are creating several suspicious materials and are trying to close this case as "Suicide".

1.10. Hence, there is a need to have a familiar Forensic expert to assist the investigation of this case to find out the truth behind the death of Ilavarasan. The nature of death, scene of occurrence, post-mortem Certificates, Inquest Report, letter alleged to have been written by Ilavarasan and other relevant materials necessarily need to be examined by an independent Forensic expert.

1.11. For the above reasons, the petitioner prays this Court to form a Forensic expert team headed by "Padma Bhushan" Prof. Chandrasekaran, Former Director of Forensic Department, Chennai to assist the investigation of the case of Ilavarasan's death. Prof. Chandrasekaran is holding the post of Medical Physicist, Erskine Hospital & Lecturer in Biophysics, Madurai Medical College; Director-Professor, Forensic Sciences Department, Chennai; Member, Syndicate, Senate & Academic Council, University of Madras; UGC Emeritus Fellow, University of Madras, UGC Professor, National Law School of India University, Bangalore; Professor-Director, School of Science and Forensic Sciences & Pro-Vice Chancellor, National Law University, Jodhpur. He was the former Director of Forensic Department and he was appointed as a Forensic expert in several cases. He dealt about 20,000 cases. Some of the landmark cases are Rajiv Gandhi assassination case, Auto Shankar Murder case, M.V. Chidambaram Ship Fire case, L.I.C. Building Fire case, Moore Market fire, Spencer Building fire and he also dealt with cases in Malaysia, Singapore etc. for investigation as a handwriting expert.

In the above circumstances, having no other alternative remedy, the petitioner is before this Court for the above said relief.

2. The Deputy Secretary to Government, Home, Prohibition and Excise Department, Government of Tamil Nadu, Secretariat, Chennai-9, has a filed counter affidavit, wherein, it is stated as follows:

2.1. After the marriage of Divya with Ilavarasan on 7.11.2012, there was a misunderstanding between the Dalit Community people and the

Vanniar Community people. Further, Thiru. Nagaraj, father of Divya, committed suicide in the night on 7.11.2012. Thereafter, people belonging to

Vanniar Community attacked the Dalit Community Village, namely, Natham Colony, Anna Nagar, Kondampatty and Chengalmedu in Dharmapuri

District and destroyed the properties in the Village. The Government took immediate action and sent the Inspector of Police, Western Region

accompanied by the Deputy Inspector General of Police and three Superintendents of Police. Heavy Police bandobust had been provided in the

above said Villages, apart from the fact that police forces were deployed in various places of Dharmapuri District, in order to avoid any untoward

incident. The Government took utmost precaution and prevented spreading of law and order problems to neighbouring Districts, after which,

normalcy was restored in that area. Pursuant to the death of Ilavarasan on 4.7.2013, there was heavy police bandobust in the above mentioned

Villages and also in sensitive places of Dharmapuri District. Hence, law and order situation is now under control.

2.2. With regard to the petitioner's contention that the death of Ilavarasan creates several suspicions and that a Forensic expert team headed by

Professor Thiru. Chandrasekaran, former Director of Forensics, Chennai need to be formed to assist the investigation of the death of Ilavarasan,

registered in Crime No. 96/2013 by the Deputy Superintendent, Coimbatore sub-division, the investigation of the suspicious death of Ilavarasan

was entrusted with Thiru. Sampath, Deputy Superintendent of Police, Dharmapuri. Post-mortem was conducted by a team of three Doctors on

5.7.2013; viscera taken from the dead body of Ilavarasan was sent to the Forensic Science lab for chemical analysis and further examination. All

the events stated by the petitioner and other events related to the case in respect of the death of Ilavarasan are presently under investigation by the

Police Department. The State Government has appointed an one-member Commission of Inquiry comprising of Justice Thiru. S.R. Singavaravelu, Retired Judge of the High Court of Madras to enquire into the facts and circumstances leading to the death of Ilavarasan, in G.O. Ms. No. 670, Public (Law and Order-F) Department, dated 8.7.2013.

2.3. Forensic experts are also involved in the investigation, which is duly monitored by the District Superintendent of Police, Dharmapuri. Utmost

care is being taken during the investigation and the Police Department gets all the required assistance from the Forensic Science Department. A

separate wing of Forensic Sciences Department, having a vast background was started in 1849, after having changed in many colours in its

development. Now, it consists of 14 specialised analytical divisions, inclusive of Anthropology, Ballistics, Biology, Toxicology and DNA Serology

to fulfill the need of various units of Police Department.

2.4. Forensic Sciences Department examines/analyses/compares the material objects/clue materials related to crime/civil cases referred by

Courts/Police Officers/Medical Officers and conducts scientific examination required by Government cases referred by its Departments, Civil

Courts and other agencies. The main objective of this institution is to render quality scientific service to all types of criminal cases for the cause of

justice to prove innocence/guilt by employing classical as well as modern scientific technologies/equipments. Forensic Department has existed even

before 1849. The oldest traceable report of this Department is dated 30.10.1849. The ""Chemical Examiners Laboratory"" for the police purpose

(1859) and the ""Prohibition & Excise Laboratory"" for revenue purpose (1886) and establishment of scientific Sections under police (1905) have

crossed different administrative changes and been merged to become State Forensic Science Laboratory (1959) and in its present form as

Forensic Sciences Department in 1984. At present, it is functioning as an independent Department under the direct control of Home Department of

Government of Tamil Nadu. During the year 2011, the Forensic Sciences Department has efficiently analysed 2,52,851 articles pertaining to

64,961 criminal cases. The main Laboratory is located in Chennai with the following 15 divisions:

•½ Anthropology

½ Ballistics

½ Biology

½ Chemistry

½ Documents

½ Excise

½ Explosives

½ Instruments

½ Narcotics

½ Physics

½ Photography

½ Prohibition

½ Research and Development (R & D)

½ Serology and

½ Toxicology

Highly qualified and competent scientists are heading the above divisions and they are well-experienced in handling the present case.

2.5. Hence, there is no necessity for a team headed by Professor Chandrasekaran, Retired Forensic Director to assist the investigation of the

suspicious death of Ilavarasan, as a competent team in the Forensic Department is already under way. Further, the Department will utilize all the

services of the concerned experts, if needed, in the investigation. There will be no lacuna in the investigation and the investigation is properly

monitored by the Superintendent of Police of Dharmapuri District. Therefore, the request made by the petitioner cannot be complied with and that

the Writ petition is liable to be rejected.

3. Learned counsel for the petitioner would submit that the assistance of a forensic expert, by name, Padma Bhushan Prof. Chandrasekaran,

Former Director of Forensic Department, Chennai, is very much required to ensure fair investigation of the case relating to the suspicious death of

Ilavarasan and, therefore, it is just and necessary to direct the respondents to avail the expertise from the said person. He has relied on the

following decisions:

(i) Peoples' Union for Democratic Rights through its Secretary and Another v. Police Commissioner, Delhi Police Headquarters and Another CDJ

1989 SC 610

2. It is an unfortunate case where the police collected poor people and took them to the police station for doing some work. They were asked to

work without labour charges. On demand, they were beaten and it appears that one of them, Ram Swaroop succumbed to the injuries and the

body has also been disposed of. Petitioner 2 Patasi, as alleged, was also stripped of her clothes and was thrashed in the police station. The other

eight persons namely (1) Dandwa (2) Ram Prasad (3) Jaipal (4) Mahavir (5) Kannu (6) Munsjia (7) Hukka and (8) Pratap were also beaten up

rather than they should have been paid for the work they did at the police station.

(ii) Gudalure M.J. Cherian and Others Vs. Union of India (UOI) and Others,

8. It is obvious from the affidavit of the senior Superintendent, Police that the nuns who are victims of the tragedy are not coming forward to

identify the culprits in an identification parade to be held by the Magistrate. The petitioners on the other hand, have alleged that the four persons

who have been set up as accused by the police are not the real culprits and the police is asking the sisters to accept the four arrested persons as

culprits. In the face of these averments and keeping in view the facts and circumstances of this case, we are of the view that ends of justice would

be met if we direct the CBI to hold further investigation in respect of the offences committed between the night of July 12 and 13, 1990 as per the

FIR lodged at Police Station, Gajraula.

(iii) R.S. Sodhi Vs. State of U.P. and others,

2. We have examined the facts and circumstances leading to the filing of the petition and the events that have taken place after the so-called

encounters. Whether the loss of lives was on account of a genuine or a fake encounter is a matter which has to be inquired into and investigated

closely. We, however, refrain from making any observation in that behalf; we should, therefore, not be understood even remotely to be expressing

any view thereon one way or the other. We have perused the events that have taken place since the incidents but we are retraining from entering

upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it

would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order.

(iv) Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary Vs. State of Punjab and others, .

8. We have heard Mr. Rajinder Sachar, learned counsel for the appellant. We have also heard Mr. G.K. Chatrath, learned Advocate-General for

the State of Punjab. It is not necessary for us to go into the question as to whether the writ petition before the High Court was for bringing an end

to the lawyers strike or to appoint an independent inquiry-agency to probe into the disappearance and alleged murder of Kulwant Singh, Advocate

and his family. Be that as it may the fact remains that the five-Judge Bench of the High Court was seized of the matter wherein the issues regarding

the abduction and alleged murder of Kulwant Singh, Advocate and his family were raised before it. The report of the ""Action Committee"" of the

Bar Association, statements recorded by the police including that of Harpreet Singh @ Lucky and other relevant documents were before the High

Court. The High Court was wholly unjustified in closing its eyes and ears to the controversy which had shocked the lawyer fraternity in the region.

For the reasons best known to it, the High Court became wholly oblivious to the patent facts on the record and failed to perform the duty entrusted

to it under the Constitution. After giving our thoughtful consideration to the facts and circumstances of this case, we are of the view that the least

the High Court could have done in this case was to have directed an independent investigation/inquiry into the mysterious and most tragic

abduction and alleged murder of Kulwant Singh, Advocate and his family.

(v) Paramjit Kaur (Mrs) Vs. State of Punjab and Others,

17. The second issue highlighted in this petition is equally important. This Court cannot close its eyes to the contents of the Press Note dated

16.1.1995 stated to be investigated by Khalra and Dhillon. In case it is found that the facts stated in the Press Note are correct -- even partially --

it would be a gory tale of human rights violations. It is horrifying to visualize that dead bodies of large number of persons -- allegedly thousands --

could be cremated by the police unceremoniously with a label "unidentified". Our faith in democracy and rule of law assures us that nothing of the

type can ever happen in this country but the allegations in the Press Note -- horrendous as they are -- need thorough investigation. We, therefore,

direct the Director, Central Bureau of Investigation, to appoint a high-powered team to investigate into the facts contained in the Press Note dated

16.1.1995. We direct all the authorities concerned of the State of Punjab including the Director General of Police, Punjab to render all assistance

to the CBI in the investigation. All authorities of the Punjab Government shall render all help and assistance to the CBI team as and when asked by

any member of the said team. We give liberty to the CBI to seek any further directions from this Court from time to time as may be necessary

during the investigation.

(vi) State Vs. Marulasiddaiah alias Murali,

5. In this connection, we brought to the notice of the learned Addl. SPP the Division Bench decision of this Court in the case of Ramesh Purdappa

Ambannavar and Others v. State of Karnataka wherein, in para No. 46 of the said judgment, the Division Bench headed by Justice Padmaraj and

the first of us, observed as hereunder:

46. In the context, we may observe here that the Forensic Science play vital role in crime detections today. The well organized criminals in the

criminal world, as a matter of fact, hold the society and the law abiding citizens to ransom; of late we are also witnessing organized crimes with

international ramifications. That being so, a systematic scientific approach by the Investigating Agency to detect the crimes by resorting to the latest

techniques and devices is the need of the hour. It therefore appears to us that it is good of the State to give equal importance for development of

Forensic Science too in the matter of crime detections by making adequate budgetary provisions to the said Branch also (if not so made yet), so

that more and more, personnel in the Forensic Branch are trained inside and outside India to update their knowledge in the latest techniques in the

field of Forensic Science to be in did to the law enforcing agencies of the State in the matter of crime detection. All the more the Society will be

safe if the authorities are ahead of their time in this regard; least, we fear they may be caught unaware.

(vii) State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others,

35. As regards the power of judicial review conferred on the High Court, undoubtedly they are, in a way, wider in scope. The High Courts are

authorised under Article 226 of the Constitution, to issue directions, orders or writs to any person or authority, including any government to

enforce fundamental rights and, ""for any other purpose"". It is manifest from the difference in the phraseology of Articles 32 and 226 of the

Constitution that there is a marked difference in the nature and purpose of the right conferred by these two Articles. Whereas the right guaranteed

by Article 32 can be exercised only for the enforcement of fundamental rights, but ""for any other purpose"" as well, i.e. for enforcement of any legal

right conferred by a Statute, etc.

37. In Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, , this Court had said that Article 226 of the

Constitution is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is

found. This Article enables the High Courts to mould the reliefs to meet the peculiar and extraordinary circumstances of the case. Therefore, what

we have said above in regard to the exercise of jurisdiction by this Court under Article 32, must apply equally in relation to the exercise of

jurisdiction by the High Courts under Article 226 of the Constitution.

(viii) Thol. Thiruma Valavan and Others etc. Vs. State of Tamilnadu and Others

23..... As far as the case on hand is concerned, as already pointed out, there are allegations and counter allegations made against each other and

allegations made against police officials and as such, if local police even faithfully conducting investigation as claimed by the Investigating Officer in

this case, the same would certainly lack credibility in view of the allegations leveled against police officials of the State. We are also of the

considered view that the facts and circumstances of the instant case raises exceptional situations resulting in the death of 6 persons belonging to a

particular community and allegations have been thrown against police officials, making a strong prima facie ground for a fair and unbiased

investigation in this case by an independent agency.

(ix) Mettur Textiles Mill Quarters Residents Welfare Society Vs. Official Liquidator, High Court, Madras, (as the Liquidator of Mettur Textiles

Industries Ltd., in liquidation) and Others, .

76. In view of the above conclusions,

(i) We hereby appoint Mr. R.K. Raghavan, former Director of Central Bureau of Investigation, as Investigating Officer of Special Investigation

Team (SIT), to be assisted by Dr. M. Narayana Reddy, former Professor and Head of the Department of Forensic Medicine, Osmania University,

Hyderabad, Andhra Pradesh to investigate this case.

(ii) Mr. R.K. Raghavan, shall select his own Team of Officers from the Tamil Nadu State Police to be the members of the Special Investigating

Team.

(iii) We further direct the Director General of Police, Government of Tamil Nadu, to spare the services of those Police Officers, whom Mr. R.K.

Raghavan, requires to be part of the Special Investigating Team.

(iv) The Director General of Police, Government of Tamil Nadu, is further directed to render fullest co-operation and provide all assistance,

including manpower to assist the Special Investigating Team and to provide vehicles and other modes of conveyance for the Special Investigating

Team.

(v) The Director, Tamil Nadu Forensic Science Laboratory, shall provide all assistance to the Special Investigating Team as and when required by

them.

(vi) The Home Secretary, Government of Tamil Nadu, is directed to pay initial remuneration of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand

only) to Mr. R.K. Raghavan and Rs. 75,000/- (Rupees Seventy Fifty Thousand only) to Mr. M. Narayana Reddy within a period of four weeks

from today. The final remuneration to be paid shall be decided later.

4. On the other hand, the learned Advocate General, appearing for the State/ respondents, would contend that when the affected parties are

available, filing of the Writ Petition by the petitioner in the name of Public Interest Litigation is an abuse of process of law; hence, the petitioner has

no locus standi to file this writ petition and, as such, the Writ Petition is to be dismissed. He has relied on the following decisions:

(i) Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others Vs. Union of India (UOI) and Others,

43. Public interest litigation is part of the process of participate justice and "standing" in civil litigation of that pattern must have liberal reception at

the judicial doorsteps. The floodgates argument has been nailed by the Australian Law Reforms Commission:

The idle and whimsical plaintiff, a dilettante who litigates for a lark, is a specter which haunts the legal literature, not the Courtroom.

A major expressed reason for limiting standing rights is fear of a spate of actions brought by busy bodies which will unduly extend the resources of

the Courts. No argument is easier put, none more difficult to rebut. Even if the fear be justified it does not follow that present restrictions should

remain. If proper claims exist it may be necessary to provide resources for their determination. However, the issue must be considered.

... Over recent years successive decisions of the United States Supreme Court have liberalised standing so as to afford a hearing to any person

with a real interest in the relevant controversy. Surveying the result in 1973 Professor Scott commented:

When the floodgates of litigation are opened to some new class of controversy by a decision it is notable how rarely one can discern the flood that

the dissenters feared.

Professor Scott went on to point out that the liberalised standing rules had caused no significant increase in the number of actions brought, arguing

that parties will not litigate at considerable personal cost unless they have a real interest in a matter.

We agree with the conclusion of the Commission:

The moral, perhaps, applies; if the Courts cannot, or will not, give relief to people who are in fact concerned about a matter then they will resort to

self-help, with grave results for other persons and the rule of law. Some may reply that if there is no evidence of a great increase in numbers there

is no evidence of need for enlarged standing rights. The reply would overlook two considerations. One case may have a dramatic effect on

behaviour in hundreds of others; this is the whole notion of the legal "test case", Secondly, the mere exposure to possible action is likely to effect

the behaviour of persons who presently feel themselves immune from legal control.

47. In the present case a worker, who, clearly, has an interest in the industry, brings this action regarding an alleged wrongdoing by the Board of

Management. Article 43A of the Constitution confers, in principle, partnership status to workers in industry and we cannot, therefore, be deterred

by technical considerations of corporate personality to keep out those who seek to remedy wrongs committed in the management of public sector.

Locus standi and justiciability are different issues, as I have earlier pointed out. This takes us to the question of justiciability of questions like sale of

public property by public bodies. Certainly, it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws. The Court

is least equipped for such oversights. Nor, indeed, is it a function of the Judges in our constitutional scheme. We do not think that the internal

management, business activity or institutional operation of public bodies can be subjected to inspection by the Court. To do so, is incompetent and

improper and, therefore, out of bounds. Nevertheless, the broad parameters of fairness in administration, bona fides in action, and the fundamental

rules of reasonable management of public business, if breached, will become justiciable.

48. If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million

people of this country, the door of the Court will not be ajar for him. But, if he belongs to an organisation which has special interest in the subject-

matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him is

justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Article

226.

49. The learned Attorney-General drew our attention to Article 32 and cited decisions to support his contention that only the petitioner's

fundamental rights could be agitated under that Article. As the rulings now stand, he is right, although the question still survives as to whether a

worker's fundamental right under Article 14 is not affected when arbitrary action of the enterprise in which he is employed has an impact on his

well-being,

50. The democratisation of judicial remedies which is the thrust of our separate opinion, induces us to conclude with a quote:

It was the boast of Augustus that he found Rome of brick and left it of marble. But how much nobler will be the sovereign's boast when he shall

have it to say that he found law dear and left it cheap; found it a sealed book and left it a living letter; found it the patrimony of the rich and left it the

inheritance of the poor; found it the two-edged sword of craft and oppression and left it the staff of honesty and the shield of innocence.

Having sought to illumine the half-lit zone of access jurisprudence, we wish to make it clear that we are not dealing with the likely application of

Article 19(1)(f) (sic 19(1)(g)) or of Article 14 which have been raised in the present case because the learned Chief Justice has held that on the

merits the action of the Corporation is above-board. The question which we reserve may well be considered when an appropriate occasion arises.

(ii) Janata Dal Vs. H.S. Chowdhary and Others,

45. The Special Judge disposed of the petition holding, ""Shri H.S. Chowdhary has no locus standi to claim the reliefs sought for in the petition"". In

the revision petition, Mr. H.S. Chowdhary took certain additional grounds stating that the first information report has not disclosed the commission

of any cognizable offence and the CBI has gone wrong in registering the FIR in the absence of any additional evidence which were not available

before the JPC and that the letter rogatory ought not to have been issued without recording evidence. The High Court dismissed the revision

petition as being not maintainable on the sole ground of locus standi and did not go to other questions of law raised by Mr. Chowdhary. Only for

the first time before this Court, the parties are litigating on the above-stated propositions of law which except for one or two have neither been

raised before the Courts below nor agitated. Strictly speaking, as the present appeals are preferred challenging only the judgment of the High

Court dated 19.12.1990, this Court is called upon to examine the tenability of the reasons given by the High Court as regards the locus standi of

Mr. H.S. Chowdhary and in addition, the invocation of the suo motu action of the High Court in exercise of its revisional jurisdiction. This Court

while disposing of Criminal Appeal No. 306 of 1991 filed by Mr. H.S. Chowdhary challenging the first part of the order of the High Court

dismissing his revision petition on the ground that he has no locus standi, has confined its consideration only on that point. However, with regard to

the various questions of law, we expressed our view in our earlier order as follows:

Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused

persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before

the proper forum and not for third parties under the garb of public interest litigants.

161. While so, it shocks our judicial conscience that Mr. Justice M.K. Chawla before whom no aggrieved or affected party had come challenging

the FIR, has taken suo motu action and recorded such a categorical assertion that "no offence" thereby meaning much less a cognizable offence is

made out in the FIR.

162. As pointed out in Nirmaljit Singh Hoon v. State of W.B. that once an investigation by the police is ordered by a Magistrate u/s 156(3) of the

Code, the Magistrate cannot place any limitations or direct the officer conducting it as to how to conduct the investigation. When that is the

position of law, Mr. Justice M.K. Chawla, in our considered view, has overstepped his jurisdiction and made the statement which is unwarranted

and uncalled for. As we feel that any further deliberation on this matter may affect the merits of the case at any later point of time, we refrain from

making any more observation on this aspect as the matter is at the threshold of the investigation.

(iii) Simranjit Singh Mann Vs. Union of India and another,

8. More apposite is the view expressed by a Division Bench of this Court in

Janata Dal v. H.S. Chowdhary. That was a public interest litigation for quashing an FIR lodged by the CBI on 22.1.1990 based on the core allegation that certain named and unnamed persons had entered into a criminal conspiracy in pursuance whereof they had secured illegal gratification of crores of rupees from Bofors, a Swiss Company, through their agents as a motive or reward. The CBI had moved an application before the learned Judge, Delhi, for the issuance of a letter rogatory to the Swiss authorities for assistance in conducting investigation, which request was conceded. An Advocate, Shri Harinder Singh Chowdhary, filed a criminal revision application before the High Court of Delhi for quashing the FIR and the letter rogatory on certain grounds. Several questions of law and fact were raised in support of the challenge. The High Court came to the conclusion that the said third party litigant had no "locus standi" to maintain the action and so also the interveners had no right to seek impleadment/intervention in the said proceeding. However, the learned Judge took suo motu cognizance of the matter and for reasons stated in his order directed issue of show cause notice to the CBI and the State why the FIR should not be quashed. On appeal this Court came to the conclusion that the learned Judge in the High Court was right in holding that the Advocate litigant as well as the interveners had no "locus standi". The relevant observations found in paragraph 45 of the judgment read as under:

Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.

(emphasis supplied)

In that case besides the Advocate litigant certain political parties like the Janata Dal, the CPI (Marxist), the Indian Congress (Socialist) and one Dr.

P. Nalla Thampy Thera also approached this Court questioning the High Court's rejection of their request for impleadment/intervention. It was in

this context that this Court was required to examine the question whether third parties had any "locus standi" in criminal proceedings and answered

the same as stated above. This decision clearly negatives the submission made

by Mr. Sodhi in support of the maintainability of this petition. We

are, however, in respectful agreement with the view expressed in the observations extracted hereinbefore.

(iv) Vinoy Kumar Vs. State of U.P. and Others,

2. Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his

fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired

interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in

favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus

or quo warranto or filed in public interest. It is a matter of prudence, that the Court confines the exercise of writ jurisdiction to cases where legal

wrong or legal injuries are caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or

injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public

interest, the Court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal

burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or economically

disadvantaged position, unable to approach the Court for relief.

3. In the instant case the petitioner had not filed the petition in public interest and did not disclose the circumstances which prevented the affected

persons from approaching the Court. In the discharge of his professional obligations, the petitioner Advocate is not obliged to file the writ petition

on behalf of his clients. No circumstance was mentioned in the petition which allegedly incapacitated the affected persons from filing the writ

petition. Section 30 of the Advocates Act only entitles an Advocate to practise the profession of law and not to substitute himself for his client. The

filing of the writ petition in his own name, being not a part of the professional obligation of the Advocate, the High Court was justified in dismissing

the writ petition holding that the petitioner had no locus standi

(v) Rajiv Ranjan Singh "Lalan" and Another Vs. Union of India (UOI) and Others,

58. In our opinion, public interest litigation is meant for the benefit of the lost and lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the Court. We also say that PILs are not meant to advance the political gain and also settle their scores under the guise of a public interest litigation and to fight a legal battle. In our opinion, the liberty of an accused cannot be taken away except in accordance with the established procedure of law under the Constitution, criminal procedure and other cognate statutes. We are also of the opinion that PIL is totally foreign to pending criminal proceedings. The records placed before us would only go to show that Respondent 4 had no hand in any of these matters whether in the appointment of Judges or in the change of the prosecutor or on the decision not to file an appeal in the income tax cases.

(vi) W.P. No. 15779 of 2008, dated 27.3.2012 K. Senguttuvan v. The Secretary to Govt. Home (P & E) Department

5. ... In a criminal investigation and trial, there is no scope for any third party to butt in and interfere. If at all the accused can make appropriate representation. Merely because an office bearer of the association without disclosing in what capacity he sends an unofficial letter to the Chief Justice, that cannot be treated as a substantive document for derailing an otherwise proper investigation.

(vii) State of West Bengal Vs. S.N. Basak,

3. ... As to the powers of the judiciary in regard to statutory right of the police to investigate, the Privy Council in King Emperor v. Khwaja Nazir

Ahmad, observed as follows:

The functions of the judiciary and the police are complementary, not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course subject to the right of the Court to intervene in an appropriate case when moved u/s 491 of the Code of Criminal Procedure to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it, and not until then. It has sometimes been thought that Section 561A has given increased powers to the Court which it did not possess before that Section was enacted. But this is not so. The Section

gives no new powers, it only provides that those which the Court already inherently possesses shall be preserved and is inserted, as Their

Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Code of Criminal

Procedure and that no inherent power had survived the passing of that Act.

(viii) State of Bihar and Another Vs. J.A.C. Saldanha and Others,

25. There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is

the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The

executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have

been committed it is its bounded duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having

been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits

report to the Court requesting the Court to take cognizance of the offence u/s 190 of the Code its duty comes to an end. On a cognizance of the

offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there

commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or

persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved

to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent

adjudication between the police and the Magistrate. This had been recognised way back in King Emperor v. Khwaja Nazir Ahmad where the

Privy Council observed as under:

In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime

without requiring any authority from the judicial authorities and it would, as Their Lordships think, be an unfortunate result if it should be held

possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police

are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by

leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved u/s

491 of the Code of Criminal Procedure to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's

functions begin when a charge is preferred before it, and not until then.

26. This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its

subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by

the judiciary.

(ix) Director, Central Bureau of Investigation and Others Vs. "Niyamavedi" represented by its Member K. Nandini, Advocate and Others,

4. The petitioners had, as directed by the Division Bench, produced for perusal of the Court case diaries of the Kerala State Police as well as of

the CBI relating to the investigations carried out in respect of the said crimes including the statements recorded in the course of investigation and

certain video cassettes in that connection. These were perused by the Division Bench in chambers. However, a reference at some length has been

made in the course of the judgment to the material disclosed in the course of investigation, presumably, in order to examine the contention relating

to the alleged involvement of the first respondent in the crimes in question. Clearly, under the Code of Criminal Procedure, 1973, only a very

limited use can be made of the statements to the police and police diaries, even in the course of the trial, as set out in Sections 162 and 172 of the

Code of Criminal Procedure. The Division Bench, therefore, should have refrained from disclosing in its order, material contained in these diaries

and statements, especially when the investigation in the very case was in progress. It should also have refrained from making any comments on the

manner in which investigation was being conducted by the CBI, looking to the fact that the investigation was far from complete. Any observations

which may amount to interference in the investigation, should not be made. Ordinarily the Court should refrain from interfering at a premature stage

of the investigation as that may derail the investigation and demoralise the

investigation. Of late, the tendency to interfere in the investigation is on the increase and Courts should be wary of its possible consequences. We say no more. However, we clarify that certain directions given to the Director of CBI in regard to the investigation matters do not meet with our approval and may be ignored. In short the adverse comments against the CBI were, to say the least, premature and could have been avoided. Ignoring the innuendoes the Court was, however, right in expressing a general view that the investigating agency is expected to act in an efficient and vigilant manner without being pressurised and in dismissing the appeal.

(x) D. Venkatasubramaniam and Others Vs. M.K. Mohan Krishnamachari and Another,

A short question that arises for our consideration in these appeals is whether it is open to the High Court in exercise of its jurisdiction u/s 482 of the Code of Criminal Procedure to interfere with the statutory power of investigation by police into a cognizable offence? If such a power is available with the Court, what are the parameters for its interference?

27. This Court while observing that it was not appropriate for the High Court to issue a direction that the case should not only be investigated but a chargesheet must be submitted, held:

18. ... In our view the High Court exceeded its jurisdiction in making this direction which deserves to be set aside. While it is open to the High Court, in appropriate cases, to give directions for prompt investigation, etc. the High Court cannot direct the investigating agency to submit a report that is in accord with its views as that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the investigating agency.

(emphasis supplied)

It is worthwhile to notice that the directions in the said case were issued by the High Court of Bombay in a writ petition filed in public interest in which a grievance had been made that though the Provident Fund Commissioner has lodged a complaint against several Directors, the investigation has made no progress on account of the fact that the Directors were government servants and enjoying considerable influence. The High Court

issued a series of directions which were challenged in this Court contending that the High Court was in error in exercising jurisdiction under Article

226 of the Constitution resulting in unjustified interference of the investigation of the case. It is, therefore, clear that if the High Court, in exercise of

its power under Article 226 of the Constitution of India, cannot direct the investigating agency to investigate the case in accord with its views as

that would amount to unwarranted interference, equally no such directions could be issued in exercise of inherent jurisdiction u/s 482 of the Code.

30. The High Court, in the instant case, did not even advert to the relevant facts. As stated in the order itself, it was more guided by the arguments

made across the Bar that the police has not taken any steps to arrest the persons and seize the amounts involved in this case from the appellants

though there is no such factual foundation as such laid in the petition. It has altogether ignored the counter filed by the police that the police had

already examined ten witnesses within a short span of time after the registration of crime and recorded their statements.

31. The High Court, without recording any reason whatsoever, directed the police that it is obligatory on their part to record statements from

witnesses, arrest, seizure of property and filing of chargesheet. It is difficult to discern as to how such directions resulting in far-reaching

consequences could have been issued by the High Court in exercise of its jurisdiction u/s 482 of the Code. The High Court interfered with the

investigation of crime which is within the exclusive domain of the police by virtually directing the police to investigate the case from a particular

angle and take certain steps which the police, depending upon the evidence collected and host of other circumstances, may or may not have

attempted to take any such steps in its discretion.

(xi) Disha Vs. State of Gujarat and Others,

21. Thus, it is evident that this Court has transferred the matter to CBI or any other special agency only when the Court was satisfied that the

accused had been a very powerful and influential person or State authorities like high police officials were involved and the investigation had not

been proceeded with in a proper direction or it had been biased. In such a case, in order to do complete justice and having belief that it would lend

the final outcome of the investigation credibility, such directions have been

issued.

24. In the instant case, the petitioner herself is the accused. A huge amount of Rs. 60 crores has been collected from innocent persons giving them

false assurances that their amount would have a high premium. It has not been alleged in the petition that any of the investors is very powerful or

capable to manage the investigation against the petitioner or that the case of suicide of her husband is not being properly investigated. It is

nobody's case that the police has unnecessarily harassed the petitioner; rather, the record of the case reveals that it is only after completing the

investigation, that the charge-sheet has been filed against 13 persons including the petitioner. No allegation of mala fide or bias has been alleged

against any investigating authority nor had it been pleaded that the charge-sheet had been filed against the petitioner without investigating the case

or having any vindictive attitude towards the petitioner. In fact, the petition is based purely on mere apprehension by the petitioner. None of the

grounds taken by the petitioner for transfer is tenable.

(xii) Divine Retreat Centre Vs. State of Kerala and Others,

39. The sum and substance of the above deliberation and analysis of the law cited leads us to an irresistible conclusion that the investigation of an

offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the

cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII of the Code. However, we may hasten to

add that unfettered discretion does not mean any unaccountable or unlimited discretion and act according to one's own choice. The power to

investigate must be exercised strictly on the condition of which that power is granted by the Code itself.

40. In our view, the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any

agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions

addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither are the

accused nor the complainant or informant entitled to choose their own investigating agency to investigate a crime in which they may be interested.

41. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue

appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by

an investigating officer mala fide That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and non-

compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in

such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of

process as provided for in the Code.

5. We have heard the learned counsel for the parties and also gone through the records, including the decisions relied upon by the learned counsel.

6. A Member of Parliament, who is a leader of a political movement, has come before this Court, by way of this Writ Petition, under the style

Public Interest Litigation", knocking the doors of justice for giving a direction to the Government to form a Forensic Expert Team headed by

Thiru. "Padma Bhushan" Prof. Chandrasekaran, the Former Director of Forensic Department, Chennai, to assist the investigation of the death of

Ilavarasan's case.

7. According to the petitioner, Ilavarasan's death has created several suspicions; the nature of death, scene of occurrence, post-mortem

certificates, Inquest Report, letter alleged to have been written by Ilavarasan and other relevant materials necessarily need to be examined by an

independent Forensic expert and, hence, there is every need to have a familiar Forensic expert, by name, Padma Bhushan Prof. Chandrasekaran

to assist the investigation of the case to find out the truth behind the death of Ilavarasan.

8. Before deciding the issue involved in this Writ Petition, it is necessary to first decide as to what is meant by Public Interest Litigation?

9. Public Interest Litigation or PIL is a litigation for the protection of the public interest. Articles 32 and 226 of the Constitution of India contain a

tool which directly joins the public with judiciary. PIL may be introduced in a Court of law by the Court itself suo motu, rather than the aggrieved

party or any other third party. For the exercise of the Court's jurisdiction, it is

unnecessary for the victim of the violation of his or her rights to

personally approach the Court. In PIL, the right to file suit is given to a member of the public by the Courts through judicial activism. Public Interest

Litigation should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta.

10. Also, PIL is not a pill or a panacea for all wrongs. It is essentially meant to protect basic human rights of the weak and the disadvantaged and

was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of

poverty, helplessness or economic and social disabilities could not approach the Court for relief. There have been, in recent times, increasingly

instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner and

entertained by the Court.

11. The cardinal principle in filing a Public Interest Litigation which is part of the process of participate justice and "standing" in civil litigation of that

pattern must have liberal reception at the judicial doorsteps is required to be considered. On the other hand, it is also to be noted that it may open

floodgates to the person in vexatious nature. Over recent years successive decisions of the Courts in India have a liberalised approach as to

affording a hearing to any person with a real interest in the relevant controversy. When the floodgates of litigation are opened to some new class of

controversy by a decision, it is notable how rarely one can discern the flood that the dissenters feared.

12. The principle of entertaining a Public Interest Litigation in a criminal proceeding has been dealt with by the Supreme Court in various cases,

some of which are as under.

13. In *Janata Dal v. H.S. Chowdhary and Others* (supra), it is held that even if there are million questions of law to be deeply gone into and

examined in a criminal case registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the

proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest

litigants. The same is the view expressed by the Supreme Court in *Simranjit Singh Mann v. Union of India* (supra) case, stated above.

14. In *Vinoy Kumar v. State of U.P. and Others* (supra) case referred to above, the Apex Court has held that a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. It is a matter of prudence, that the Court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries are caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the Court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief.

15. In *Rajiv Ranjan Singh ""Lalan"" (VIII) and Another v. Union of India and Others* (supra) case cited above, the Apex Court has held that public interest litigation is meant for the benefit of the lost and lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the Court. PILs are not meant to advance the political gain and also settle their scores under the guise of a public interest litigation and to fight a legal battle. The liberty of an accused cannot be taken away except in accordance with the established procedure of law under the Constitution, criminal procedure and other cognate statutes. PIL is totally foreign to pending criminal proceedings.

16. Keeping the above principles and guidelines in mind, if we look at the present case, it is to be seen as to whether the petitioner is an aggrieved person to advance the cause of a particular matter when the parents of the deceased are already fighting for it and they can also come before this

Court as parties aggrieved and have a legal right to enforce the same. Therefore, the question as to whether the case on hand is a PIL or not is a

matter to be examined in the given circumstances. Of course, the matter in a sensitive way has given some dimension to the public at large raising

certain suspicion about the death of the deceased Ilavarasan and investigation in this regard has already started by now.

17. The respondents, in their counter, have taken a stand to the following effect:

The investigation of the suspicious death of Ilavarasan was entrusted with Thiru. Sampath, Deputy Superintendent of Police, Dharmapuri. Post-

mortem was conducted by a team of three Doctors on 5.7.2013. Viscera taken from the dead body of Ilavarasan was sent to the Forensic

Science lab for chemical analysis and further examination. All the events stated by the petitioner and other events related to the case in respect of

the death of Ilavarasan is presently under investigation by the Police Department. The State Government has appointed an one-member

Commission of Inquiry comprising of Justice Thiru. S.R. Singavaravelu, Retired Judge of the High Court of Madras to enquire into the facts and

circumstances leading to the death of Ilavarasan, in G.O. Ms. No. 670, Public (Law and Order-F) Department, dated 8.7.2013. Forensic experts

are also involved in the investigation, which is duly monitored by the District Superintendent of Police, Dharmapuri. Utmost care is being taken

during the investigation and the Police Department gets all the required assistance from the Forensic Science Department. A separate wing of

Forensic Sciences Department, having a vast background was started in 1849, after having changed in many colours in its development. Now, it

consists of 14 specialised analytical divisions, inclusive of Anthropology, Ballistics, Biology, Toxicology and DNA Serology to fulfill the need of

various units of Police Department. Forensic Sciences Department examines/ analyses/compares the material objects/clue materials related to

crime/civil cases referred by Courts/Police Officers/Medical Officers and conducts scientific examination required by Government cases referred

by its Departments, Civil Courts and other agencies. The main objective of this institution is to render quality scientific service to all types of

criminal cases for the cause of justice to prove innocence/guilt by employing classical as well as modern scientific technologies/equipments.

Forensic Department has existed even before 1849. The old esttraceable report of this Department is dated 30.10.1849. The ""Chemical

Examiners Labarotory"" for the police purpose (1859) and the ""Prohibition & Excise Laboratory"" for revenue purpose (1886) and establishment of

scientific Sections under police (1905) have crossed different administrative changes and been merged to become State Forensic Science

Laboratory (1959) and in its present form as Forensic Sciences Department in 1984. At present, it is functioning as an independent Department

under the direct control of Home Department of Government of Tamil Nadu. During the year 2011, the Forensic Sciences Department has

efficiently analysed 2,52,851 articles pertaining to 64,961 criminal cases. The main Laboratory is located in Chennai with 15 divisions viz.,

Anthropology, Ballistics, Biology, Chemistry, Documents, Excise, Explosives, Instruments, Narcotics, Physics, Photography, Prohibition, Research

and Development (R & D), Serology and Toxicology. Highly qualified and competent scientists are heading the above divisions and they are well-

experienced in handling the present case. Hence, there is no necessity for a team headed by Professor Chandrasekaran, Retired Forensic Director

to assist the investigation of the suspicious death of Ilavarasan, as a competent team in the Forensic Department is already under way. Further, the

Department will utilize all the services of the concerned experts, if needed, in the investigation. There will be no lacuna in the investigation and the

investigation is properly monitored by the Superintendent of Police of Dharmapuri District. Therefore, the request made by the petitioner cannot be

complied with and that the Writ petition is liable to be rejected.

18. When that being the clear stand and position of the State/respondents and a person with locus standi having a legal right is not before this

Court, the law will take its own course in the sphere of criminal justice system and the process to be adopted therein. The Government has come

out with a clear stand of keeping every system in order, including the forensic expertise and, in a circumstance where more than what is required to

be available, the Government can on its own find out the truth by choosing the expertise if necessary. Further, the Government is at its wisdom to

decide as to what type of expertise is to be availed to bring out the truth in case of any doubt or suspicion. In this case, the parents of the deceased

or any other person or other close relatives of the deceased are the affected parties and it is for them to approach the Court, otherwise, the principle, as stated above in a number of decisions of the Supreme Court that no third party public interest litigation in a criminal matter should be entertained would be violated.

19. The Supreme Court, while considering a Public Interest Litigation filed by Members of Parliament concerned with the criminal investigation of a case in *Rajiv Ranjan Singh ""Lalan"" (VIII) and Another v. Union of India and Others (supra)*, praying for change of Public Prosecutors and constitution of an appropriate Bench, has laid down a principle that Public Interest Litigation is meant for the benefit of the lost and lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the Court and is not meant to advance the political gain and also settle their scores under the guise of a Public Interest Litigation and to fight a legal battle. It further held that the liberty of an accused cannot be taken away except in accordance with the established procedure and other cognate statutes and that a Public Interest Litigation is totally foreign to pending criminal proceedings.

20. In the case of *State of Bihar v. J.A.C. Saldanha and Others (supra)*, the Supreme Court viewed that there is a clear-cut and well demarcated sphere of activity in the field of investigation of an offence, which is exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed, it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Further, it is held that once the investigation is completed and the investigating officer submits a report to the Court, requesting the Court to take cognizance of the offence, the police function of investigation comes to an end. The adjudicatory function of the judiciary is to determine whether an offence has been committed and, if so, whether by the person or persons charged with the crime by the police in their report to the Court, and to award adequate punishment.

21. While referring to a case in *King Emperor v. Khwaja Nazir Ahmad*, which was referred to in *State of West Bengal v. S.N. Basak (supra)* case

above, the Privy Council has observed that in India, as has been shown, there is a statutory right on the part of the police to investigate the

circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as Their Lordships think, be

an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The

functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law

and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an

appropriate case when moved u/s 491 of the Code of Criminal Procedure to give directions in the nature of habeas corpus.

22. Thus, the above position exposes the scope of interference of the judiciary in a matter concerned with investigation and alleged cognizance on

the crime, while exercising the inherent jurisdiction of the Court.

23. In *Fertilizer Corporation Kamgar Union, Sindri and Others v. Union of India and Others (supra)* case, the Supreme Court has held that if a

citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million of this

country (at that point of time), the door of the Court will not be ajar for him. But, if he belongs to an organization which has special interest in the

subject-matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him

is justiciable may still remain to be considered.

24. In the case of *Director, CBI and Others v. Niyamavedi, rep. by its Member K. Nandini, advocate and Others (supra)*, the Supreme Court

observed that of late, the tendency to interfere in the investigation is on the increase and Courts should be wary of its possible consequences,

however, with a clarification that certain directions given to the Director of CBI in regard to investigation matters do not meet with the approval. It

is further held therein that any observation which may amount to interference in the investigation, should not be made and that ordinarily, the Court

should refrain from interfering at a premature stage of the investigation as that

may derail the investigation and demoralise the investigation.

25. In the above backdrop, it is to be examined whether the petitioner is an aggrieved person to espouse the cause of a common issue, though it

may be larger, when the incident took place in a village and when it assumed a greater dimension creating communal problems for the greater

issues of discrimination on the basis of caste and creed.

26. In this context, it is to be stated that sometimes, Public Interest Litigation can be aimed to achieve the benefit of the last and lonely and those

whose social backwardness is the reason for non-access to the Court. If there is any occasion to go before the Court to file a Public Interest

Litigation to redress a common grievance on social issues, without any political gain and popularity, when it is done in the right spirit to bring out the

social issues to the Court, instead of looking into the technical aspects, the Supreme Court, on many occasions, has taken up such litigations and

granted relief to the public, at large. When a Parliamentarian has taken up such a cause without any political gain and popularity and only with a

cause to eliminate discrimination and obnoxious situation prevailing in the society, it cannot be said that Public Interest Litigation is filed for the sake

of popularity and personal gain. Even so, the decision in *Vinoy Kumar v. State of U.P. and Others* (supra) case lays down that it should be shown

that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason of poverty,

helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief. However, as this case has its

own sensitivities, we proceed to decide the matter on merits.

27. While that being the position, the prayer sought for by the petitioner seeking a direction to the respondents to form a Forensic Expert Team

headed by Thiru. "Padma Bhushan" Prof. Chandrasekaran, the Former Director of Forensic Department, Chennai to assist the investigation of the

death of Ilavarasan's case is a matter of criminal investigation. Already, this Court has taken serious note of the case concerned and ordered re-

postmortem and there also, certain Forensic experts have been a part of it. Now, the investigation has proceeded with further stages, i.e. the nature

of death, scene of occurrence, post-mortem certificate, Inquest report and further proceeded to adjudicate the matter before the appropriate

forum and trial. Then the truth will triumph ultimately.

28. It is true that experts could be allowed to participate to explain all their expertise to the investigation. But, in the given circumstances, the

respondents have come out with a clear stand that teams of experts are available with them and all other mechanisms are devised to aid them.

Giving expertise as claimed by the petitioner would result in some kind of interference in the investigation process. But, if the very same expertise is

not available with the respondents, definitely, it is for them to invite the Prof. Chandrasekaran, a "Padma Bhushan" awardee for his meritorious

service in the Forensic department, to assist the investigation of the death of Elavarasan.

29. Therefore, we feel that though the prayer of the petitioner is only to occasion a clear investigation, the same will rest with the respondents and

only in case of any kind of bias or lack of certain process, the petitioner can claim such assistance from experts. Now, the investigation is in the

premature stage, having the initial process already started, and, it may be in the future course, if there is anything lacking in the investigation process

and there is a need of Forensic expertise, it is always open to the petitioner or the parents of the deceased or his relatives to come before this

Court.

30. Article 17 of the Constitution of India contemplates ""abolition of untouchability"". In the terms of the said Article, ""Untouchability"" is abolished

and its practice in any form is forbidden. The enforcement of any disability arising out of ""Untouchability"" shall be an offence punishable in

accordance with law.

31. In the present case, the above mandate serves as a fundamental right. This Court, in a recent decision in Ramesh v. State, represented by the

District Collector, Dharmapuri, in H.C.P. No. 1265 of 2013, by an order dated 10.7.2013, while observing ""Despite this State being the

forerunner in social reforms, despite its boasting of the tallest leaders in support of the cause, the infamous "Dharmapuri incidents" have

demonstrated that we still are to rid our minds of the cobwebs of caste and communal prejudice. The death of Elavarasan is a sad sequel"", has

ordered for re-post-mortem on the body of the deceased Elavarasan, whose death has become the limelight all over the State.

32. Before parting with, we observe that the petitioner has suggested a very eminent forensic expert, who has been awarded with Padma Bhushan

by our country and he is a person respected by every Section of the society and he will extend maximum assistance if really his expertise is

required, but it is not for this Court to give any direction to the Government in this regard, which, in fact, is open to the Government for taking such

a decision and, if it is so taken, the grievance of the petitioner as well as the affected persons will be redressed.

33. For the foregoing reasons and discussions coupled with the stand taken by the Government in their counter as to the ensuring of fair and

proper investigation regarding the nature and cause of Elavarasan's death by eminent forensic teams, we are of the considered opinion that the

petitioner's prayer to form a Forensic expert team headed by "Padma Bhushan" awardee Prof. Chandrasekaran to assist the death of

Elavarasan's case, cannot be acceded to in toto. However, it is open to the respondents to invite Prof. Thiru. Chandrasekaran to extend his

expertise in the investigation in the case of Elavarasan's death. With the above observation, this writ petition stands disposed of. No costs.