

(2010) 12 AHC CK 0128

In the Allahabad High Court

Case No : Miscellaneous Bench No. 10503 of 2009

Vishwanath Chaturvedi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Prevention of Corruption Act, 1988 — Section 19

Citation : (2010) 12 AHC CK 0128

Hon'ble Judges : Devi Prasad Singh, J and S.C.Chaurasia, J

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—The petitioner, who claims to be a media person and public spirited citizen while approaching this court under Art. 226 of the Constitution of India, drew the attention of the Court towards the highest degree of corruption prevailing in the State of U.P. whereby the foodgrains meant for B.P.L card holders, Antyodaya Scheme, Jawahar Rozgar Yojna, midday meal etc. meant for poors and downtrodden have been smuggled not only out side the State but exported to outside country.

2. The factual matrix of the case and the material brought on record by the investigating agencies are not only startling but shows the alarming situation whereby the administration has been failed, to ensure the disbursement of foodgrains to the poor and downtrodden under various schemes.

3. The plight of the case is that when C.B.I. in some cases approached the State authorities for grant of statutory sanction, the same has been kept pending since months to come. Substantial question of law of public importance involved is:

(1) Whether it is necessary to obtain prior sanction under Section 19 of the Prevention of Corruption Act, 1988(in short, Act), read with Section 197 of the CrPC for prosecution in each and every case without any exception ?

(2) Even if a public servant do something with blatant abuse of power

intentionally, deliberately in a planned manner, whether he/she shall be entitled for protection of Section 19 of the Act read with Section 197 of the CrPC ?

4. The Government of India under its various schemes allocate foodgrains for distribution to labourers and persons below poverty line at subsidized rates. Such persons are provided cards, commonly called B.P.L., A.P.L. etc. In some cases, State of U.P. allocate foodgrains for distribution among such card holders as well as to supply the same under "MidDay Meal Scheme" to provide lunch to the students of lower classes in terms of directions, issued by the Hon"ble Supreme Court and consequential circular issued from time to time and Jawahar Rozgar Yojana.

5. After receipt of information with regard to sale of foodgrains in open market as well as transportation to Nepal, Bangladesh, other countries as well as other States of India, the petitioner filed a writ petition No.122(M/B) of 2005 with the prayer that the foodgrains meant for B.P.L., A.P.L. cardholders have been sold in open market as well as exported to outside country right from 2003 to 2007, in short 'foodgrain scam', hence, the matter may be investigated by the C.B.I. During the course of hearing, a statement was made by the State government that it has referred the matter to the Central Bureau of Investigation for investigation with regard to foodgrains scam vide its order dated 19.12.2007. In view of the statement given writ petition No.122(M/B) of 2005 was decided finally vide judgment and order dated 19.12.2007(Annexure No.1).

6. The Division Bench of this Court took note of the fact that the allegation is serious one and the foodgrains meant for various beneficial government schemes, such as Jawahar Rozgar Guarantee Yojna, MidDay Meal and Antyodaya Scheme etc have been transported to unforeseen destination. The State government obtained the 'fact finding report' from its special Investigation Team (SIT) marked as P3/2007 which prima facie recorded a finding that the foodgrains in 20022003, 20032004, 20042005, 20052006 and 20062007, meant for B.P.L., A.P.L. and Jawahar Rozgar Yojna etc have been sold in open market or transported to outside country. It shall be appropriate to reproduce relevant portion from the judgment and order dated 19.12.2007, passed by the Division Bench of this Court(supra) which is as under :

¶5. Based on this notification, the State Government moved an application that the parties of the writ petitions are satisfied and the writ petitions, therefore, be dismissed. When the matter was heard by this Court on the last date, Mr. Singh pointed out that the Government notification is for the period from March, 2004 to October, 2005 only and that the earlier period starting from 20022003 onwards was left out. We had asked Mr. Arora to take instructions on this aspect. Mr. Arora has drawn our attention to pages 31 and 52 of the report made by S.I.T. The report does show that during the earlier period too the diversion of food grains was very scanty. In fact, the report shows that no Railway wagon was used to divert the food grains during the years 20022003 and 20032004 itself, therefore, the State Government has confined its order to the period from March,

2004 to October, 2005. Mr. Arora, however, points out that in case further offence(s) or conspiracy is found in connection with the said offence(s) committed in course of the same transaction or arising out of same fact or facts in relation to the aforesaid case, the State Government shall take appropriate action in the matter. In view of the explanation given by Mr. Arora, we do not find any reason to direct the State Government to refer the scam for the investigation to the C.B.I. for further period.

6. The second objection of Mr. Singh was that it may happen that the Central Government may not accept the reference and even if it accepts, it may take its time to take further steps. Mr. Awasthi and Mr. Arora are present in the Court. It is the State Government which on their own consent directed the investigation to be handed over to C.B.I. Considering the Central Scheme wherein number of officers were involved in different organisation all over U.P., it is desirable that the C.B.I. will have to take investigation as consented by the State Government.

7. We expect the C.B.I. to take necessary steps under its powers that are available under Section 6 of the Delhi Special Police Establishment Act, 1946. We also note that under Section 173(8) of Cr.P.C., any further investigation, if required, could also be done by the investigating agency and should also take all necessary steps.

8. Both the writ petitions stand disposed of accordingly. However, in view of the order passed above, the learned Standing Counsel will see to it that the necessary records may be transmitted to the concerned agency at the earliest. The report made by S.I.T. will also be forwarded to the C.B.I. The copy of the report, which was tendered in the Court is returned to Mr. Arora.?

7. It appears that the C.B.I. had declined to proceed with the investigation with regard to all the complaints; rather chose to proceed only with regard to foodgrains scam at Balia and Lakhimpur Kheri. Allegation has been raised that the things were managed and in consequence thereof, the then Director, C.B.I. had declined to undertake the investigation of all cases with regard to food scam in question. Feeling aggrieved, the petitioner filed an appeal before Hon''ble Supreme Court and Hon''ble Supreme Court by order dated 20.3.2009(Annexure No.2) had permitted the petitioner to approach the High Court to ventilate his grievance. Hence, the petitioner has preferred the present writ petition for the following reliefs:

?(i) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to get the investigation of the aforesaid scam by the CBI for the period 2001 till date spread all over the State of U.P.

(ii) Issue any other writ, order or direction in the nature, which this Hon''ble Court may deem fit and proper in the circumstances of the case and allow the writ petition with costs.?

FACTS

8. As referred hereinabove, preliminary fact finding report No.P3/2007 was submitted by the SIT which was perused by the Division Bench of this Court while allowing the writ petition directing the CBI to proceed with the matter. It shall be appropriate to give a brief description of the preliminary fact finding report submitted by the SIT(supra).

9. The SIT in its fact finding report recorded a finding that in districts Agra, Aligarh, Azamgarh, Allahabad, Auraiya, Balrampur, Badaun, Bahraich, Ballia, Etah, Etawah, Fatehpur, Ferozabad, Farrukhabad, Ghazipur, Gonda, Hardoi, Jaunpur, Jalaun, Jhansi, Kausambi, Kanpur Nagar, Kannauj, Lakhimpur Kheri, Lalitpur, Lucknow, Mirzapur, Mau, Mathura, Manpuri, Mahoba, Muzaffarnagar, Pratapgarh, Pilibhit, Sant Kabir Nagar, Sant Ravi Das Nagar, Sonbhadra, Shrawasti, Shahjahanpur, Sitapur, Varanasi, thousands of quintals of foodgrains meant for poor and downtrodden citizens, B.P.L. Cardholder, Jawahar Rozgar Yojna, MidDay Meal etc were either sold in open market or transported to outside State or even outside country like Bangla Desh and Nepal through goods train or trucks. The S.I.T. noted that false and fictitious truck numbers were also used though virtually those numbers are either of scooters, motorcycles or of other fourwheelers to prepare the records and justify the conduct. Records have been fabricated, manipulated and with the aid of forged documents to show that the foodgrains have been sold and transported to "fair price shop" licensee for distribution to B.P.L., A.P.L. cardholders or for Jawahar Rozgar Yojna or MidDay Meal etc.

10. SIT was also not provided due cooperation by godown incharge/Store Keeper and at some places, they were locked. On account of noncooperation, SIT could not submit report with regard to some of the districts. It shall be appropriate to give factual narration of the "scam" with regard to some of the districts.

11. ALLAHABAD Through letter dated 16.11.2004, a Member of the Committee informed the State Government with regard to inspection done of the period of four months. The Committee noted that serious irregularities have been done while recording entry with regard to arrival and distribution of foodgrains from the godowns and fair price shop. Cuttings and overwritings in the records have been found. There was shortage of stock also. Cheques/Bank Drafts prepared from the bank are in a seriatim and seems to be submitted by one or two persons. It shall be appropriate to reproduce relevant portion of the enquiry report sent to the government. To quote :

The report of the enquiry committee prima facie indicates a largescale misappropriation of fund, smuggling of foodgrains, interpolation in records with overwritings. Enquiry has been done for the period of four months. The committee has not inspected the records of whole calendar year though it should have been done since prima facie serious irregularities have been detected.

According to the Preliminary Fact Finding Report No.PE3/2007 submitted by the Special Investigation Team (SIT) in 200203, 200304, 200405, 200506 and

200607 in district Allahabad, the total production of wheat was 407510, 549516, 367569, 454785 and 486357 respectively but the arrival of wheat in Mandi was 359267, 444552, 526088, 271673 and 347371 metric tonne respectively.

12. BALLIA The Director General, Vigilance has sent his report vide letter dated 23.12.2005 and informed that an amount in cash to the tune of Rs.5,56,53,171/ and the foodgrain costing Rs.4,06,72,106 (total Rs.9,63,15,277/) has been misappropriated or embezzled. It shall be appropriate to reproduce relevant portion from the report. To quote :

Thus, misappropriation of the government fund in district Ballia is numerous. The amount may be much more than what the vigilance department as ascertained in case the enquiry would have been done elaborately during 23 financial years.

According to the Preliminary Fact Finding Report No.PE3/2007 submitted by the Special Investigation Team (SIT) in 200203, 200304, 200405, 200506 and 200607 in district Ballia, the total production of wheat was 276499, 321216, 261978, 304352 and 354506 respectively but the arrival of wheat in Mandi was 176303, 406476, 546599, 356178 and 323654 metric tonne respectively.

13. CHANDAULI The report dated 2.7.2005 sent to the Principal Secretary shows that the foodgrains have been supplied even after 23rd day of month in violation of the Government Order. The Committee could not verify the stock because of irregular piling of foodgrains bags of rice, wheat and sugar. The committee could not inspect all 37 blocks. The D.R.M.O. Of the district has not provided required assistance in spite of demand raised by the committee.

There appears to be serious lapses on the part of the district administration in not providing necessary assistance to the committee to conduct inspection in pursuance to the Government Order.

According to the Preliminary Fact Finding Report No.PE3/2007 submitted by the Special Investigation Team (SIT) in 200203, 200304, 200405, 200506 and 200607 in district Chandauli, the total production of wheat was 135281, 190076, 123189, 163179 and 205616 respectively but the arrival of wheat in Mandi was 23270, 149588, 191562, 40766, and 40357 metric tonne respectively.

14. GONDA The Inspector General of Police, Economic Offences Wing, in his report dated 8.7.2005 informed commission of serious irregularities by the authorities in maintaining the records with regard to arrival/purchase, sale and distribution of foodgrains. To reproduce relevant portion:

It has been further noticed that the fund provided for plantation for rural area has been misappropriated and no plantation was done. To reproduce relevant portion:

The committee constituted by the State Government, vide its letter dated 16.11.2004, informed the Principal Secretary with regard to outcome of the enquiry of the period from April to October, 2004 of district Gonda. The

Committee found that in district Gonda, roster has not been applied. No verification of the record has been done at the first and second stage. Serious irregularities have been found in lifting and distribution of foodgrains. In majority of the register of godowns, delivery register contains identical signature with regard to purchase of foodgrains. Signature may have been done by the same person. The letter of the District Magistrate dated 3.11.2004 sent to the government indicates that the foodgrains lifted from the godown has been sold in open market. The verification of the first and second stage has not been done. The incharge of the godown has not complied with the orders passed by the higher authorities. Only one tehsil Tarabganj, the wheat and rice costing 6,27,345/ has been sold in open market. One of the report reveals that the total grains (wheat) transported from Gonda to Bangladesh is more than the entire product of the district.

Thus, prima facie it appears that in district Gonda, there has been interState transfer of foodgrains for selling in open market or they have been diverted to outside the country which requires thorough investigation.

According to the Preliminary Fact Finding Report No.PE3/2007 submitted by the Special Investigation Team (SIT) in 200203, 200304, 200405, 200506 and 200607 in district Gonda, the total production of wheat was 403997, 433629, 376571, 406305 and 428758 respectively but the arrival of wheat in Mandi was 515654, 1259011, 1566949, 105953 and 1267248 metric tonne respectively.

The SIT in its report has observed that in the year 20012002, 200203, 200304 and 200405 the foodgrains misappropriated cost Rs.457 crores. It has been observed that in district Gonda, the foodgrains have been sold in black market with the connivance of higher authorities, Project Directors, District Managers and contractors of Vastu Nigam.

15. LAKHIMPUR KHERI

Inspector General of Police, Food & Civil Supplies has submitted a report dated 28.12.2004 whose copy has again been sent on 23.5.2005. Long time survey was done of six tehsils and 15 blocks. The Inspector General informed that in spite of demand, entire records were not provided.

In one tehsil Sandi in 20032004, from the godown, purchase has been made by fictitious persons. It has been noted that one Sudir son of Shri Daya Shanker has been paid an amount of Rs.2,23,465/. Raj Kumar son of Shri Babu Ram has been paid an amount of Rs.50,03,793/ and Sarvesh Kumar has been paid an amount of Rs.41,61,213.99. These amount have been deposited in their respective Saving Bank accounts. These three persons have prepared cheques/bank drafts after withdrawing the amount from their Saving Bank Account. On behalf of fair price owners, they have sent the bank drafts to the godown incharge with request to deliver the foodgrains. According to the statement of the fair price shop owners, foodgrains were not delivered to them. Thus, prima facie, foodgrains delivered by the incharge godown to these three persons were sold in

open market.

Similarly, Shri Harihar Singh son of Shri Mahipal Singh in 20032004 and 20042005 submitted 306 bank drafts in the name of fair price shop owners for Rs.26,20,630/. Brajesh Shukla, son of Shri Rama Kant Shukla in 20032004 and 20042005 submitted 60 bank drafts for Rs.8,72,023/. Sharif son of Shri Abdul Latif submitted 45 bank drafts for Rs.1,08,051/. Jashwant Kumar submitted 103 bank drafts for Rs.6,17,558/ from the period 21.11.2003 to 20.8.2004. Laxmi Narain submitted bank drafts of Rs.1,28,339/. All these persons seem to have submitted bank draft on behalf of fair price shop owners and sold the foodgrains either in open market or transported to other district or State.

Similarly, Mithilesh Kumar Singh has deposited in saving bank account an amount of Rs.10,80,000/ on 18.11.2002 and thereafter prepared bank draft in the name of fair price shop owner. Vinod Kumar has prepared bank draft of Rs.2,10,298/. Akhilesh Kumar Shukla, Centre incharge and Mr. J.V. Singh, Accountant had opened their account and paid more than two crores to 30 farmers. The amount was deposited in fictitious names.

Similarly, Sonu Shekhar on 14.6.2004, withdrew an amount of Rs.12,84,594/.

Report reveals that hefty amount was deposited in cash and thereafter it was withdrawn in the form of bank draft/bankers cheques in the name of fair price shop owners for delivery of foodgrains and sugar.

One of the startling revelation is that substantial quantity of "foodgrains" has been transported by two wheelers (scooter and motorcycle), though in the record, it has been shown that they have been transported through truck. Thus, false record has been prepared with regard to transport of goods.

The Committee constituted by the State Government for district Lakhimpur Kheri vide its report dated 11.11.2004 also informed that some of the godowns was found to be closed, rosters have not been followed and there seems to be serious irregularities.

According to the Preliminary Fact Finding Report No.PE3/2007 submitted by the Special Investigation Team (SIT) in 200203, 200304, 200405, 200506 and 200607 in district Lakhimpur Kheri, the total production of wheat was 527329, 580397, 568658, 556093 and 575379 respectively but the arrival of wheat in Mandi was 1669553, 2512428, 29655269, 1617592 and 1822634 metric tonne respectively.

Apart from above, there is one serious incident occurred in district Lakhimpur Kheri. According to the report of SIT, an Account Officer Shri D.K. Shukla was the member of the Inspection Team for district Lakhimpur. He was transferred to district Gonda on 30.10.2004. He was suspended for his good deeds by order dated 2.11.2004. On 8.11.2004, within the jurisdiction of police station Gurubuxganj, district Raebareli, an unidentified dead body was recovered which was later on identified as of D.K. Shukla. In consequence thereof, a criminal case

was registered.

Similarly, in the night of 19/20.2.2006 in district Sitapur at godown Behjam, the foodgrain mafia had killed the Chowkidar, looted the foodgrain and sold it in the open market. On 20.2.2006, a case at Crime No.81 of 2006 under Section 460/120 I.P.C. Was registered. The matter has been referred to C.B.C.I.D. for investigation.

The incident indicates the involvement of hardened criminals in black marketing of foodgrains whose network may be continuing in several districts.

16. LUCKNOW The committee constituted by the government while sending its report dated 16.12.2004 informed the Principal Secretary that because of irregular piling of bags the food stock could not be verified in Lucknow. The committee observed that the foodgrains have been issued in false name and the officers have not followed the roster. The direction issued to the godown incharge vide order dated 3.11.2004 for stock verification has not been followed. It is unfortunate that the committee observed that the authorities have not cooperated to conduct enquiry in terms of the Government Order. Relevant portion from the report is reproduced as under :

Thus, virtually, the committee constituted by the State Government failed to enquire the allegations of irregularities in the capital of the State where the entire government machinery is available and immediate action may be taken for insubordination in the event of violation of the order passed by the higher authorities.

According to the Preliminary Fact Finding Report No.PE3/2007 submitted by the Special Investigation Team (SIT) in 200203, 200304, 200405, 200506 and 200607 in district Lucknow, the total production of wheat was 203626, 198410, 205682, 194437 and 224459 respectively but the arrival of wheat in Mandi was 753999, 942478, 853991, 308226 and 381746 metric tonne respectively, more than the total production of the district in respective year.

17. SITAPUR The Regional Food Controller, as the member of the committee constituted by the State Government while submitting his report dated 20.11.2004 observed that the cheques have been prepared in one seriatim which shows involvement of unauthorized persons in transaction of foodgrains. The Regional Food Controller(RFC) as member of the committee observed that serious irregularities have been committed in district Sitapur. It shall be appropriate to quote relevant portion of the report submitted by R.F.C. :

The fair factual report of R.F.C. could not move the government machinery to act swiftly.

18. According to the report, foodgrains were not distributed to the B.P.L. card holders. It appears that the administration in district Sitapur was failed to supervise the stock as well as distribution of foodgrains in district which were sent to open market.

19. According to the Preliminary Fact Finding Report No.PE3/2007 submitted by the Special Investigation Team (SIT) in 200203, 200304, 200405, 200506 and 200607 in district Sitapur, the total production of wheat was 484999, 542147, 476820, 484784 and 522614 respectively but the arrival of wheat in Mandi was 1135435, 1748467, 1633276, 939807 and 1064151 metric tonne respectively.

20. SIT in its report No.3 of 2007 with regard to district Sitapur recorded a finding that the same truck on a day had lifted foodgrains from FCI godown twice or thrice unloaded the same at distant place of the district which was practically not possible. It shall be appropriate to reproduce the chart given in the report of SIT which is as under :

Apart from above fact, SIT noted that the trucks which were loaded from the godown of the district headquarter on a particular date like truck No.34C7728 dated 28.11.2004, the arrival has been shown four days ahead in the block concerned, namely Machhrehta, i.e. on 24.11.2004. This shows interpolation and fabrication in the record. Such incident is shown through chart by FCI in its report No.3/2007.

The SIT further noted that the drafts deposited in the godown of district Sitapur have been prepared by others in the name of fair price shop owner.

The SIT has filed a chart as Schedule 2 to its report which shows that from Railway Station Sitapur and other Railway Stations of the district, 192 wagons of foodgrains have been sent to other State/district from railway station, Sitapur, namely Rangarani, Kandla Port, GD, SGWF, Korukket, MT, Vizianagaram, VPP, Barasat, Tirunelveli, Kudal Nagar, White Field, SGWF, TEN, Barasta, Jorhat Town, SAMT, New Guwahati, Kossipore Road, Benapole/ Petrapole, Darshna/ Gede, Rohanpur Singhabad, Benapole /Petrapole, Tinsukhiya. It shall be appropriate to reproduce the entire schedule 2 attached with the report of the SIT. To reproduce:

Sr.No. Dist Date Wagon From Rly Stn To Firm Wt Grain Grain Typ RR No. Freight
To Rly Stn

1. Sitapur 24/3/04 2 Biswan Rangarani Self 1160 Wheat A500200 64622
2. Sitapur 23/4/04 40 Sitapur Kandla Port Self 23440 Wheat 332645 2000839
3. Sitapur 02/05/04 40 Biswan GD Self 23432 Wheat A500294 2000156
4. Sitapur 12/5/04 40 Mehmudabad SGWF Self 24000 Wheat 2535125
5. Sitapur 15/5/04 41 Mehmudabad Korukket Self 24600 Wheat A 233555
6. Sitapur 16/5/04 39 Sitapur MT Self 22860 Wheat 332651 1105280
7. Sitapur 16/5/04 1 Sitapur MT Self 588 Wheat 332650 28430
8. Sitapur 20/5/04 5 Mehmudabad Vizianagaram Self 2940 Wheat A485521 229115

9. Sitapur 20/5/04 5 Mehmudabad Vizianagaram Self 2940 Wheat A485522 229115
10. Sitapur 20/5/04 5 Mehmudabad Vizianagaram Self 2900 Wheat A485523 22600
11. Sitapur 20/5/04 1 Mehmudabad Vizianagaram Self 588 Wheat A485524 45825
12. Sitapur 20/5/04 1 Mehmudabad Vizianagaram Self 588 Wheat A485525 45825
13. Sitapur 20/5/04 3 Mehmudabad Vizianagaram Self 1740 Wheat A485526 135600
14. Sitapur 20/5/04 1 Mehmudabad Vizianagaram Self 588 Wheat A485527 45825
15. Sitapur 20/5/04 3 Mehmudabad Vizianagaram Self 1764 Wheat A485528 137470
16. Sitapur 20/5/04 2 Mehmudabad Vizianagaram Self 1160 Wheat A485529 45400
17. Sitapur 20/5/04 2 Mehmudabad Vizianagaram Self 1176 Wheat A485530 91650
18. Sitapur 20/5/04 2 Mehmudabad Vizianagaram Self 1176 Wheat A485531 91650
19. Sitapur 20/5/04 3 Mehmudabad Vizianagaram Self 1764 Wheat A485532 137470
20. Sitapur 20/5/04 2 Mehmudabad Vizianagaram Self 1176 Wheat A485533 91650
21. Sitapur 20/5/04 3 Mehmudabad Vizianagaram Self 1764 Wheat A485534 137470
22. Sitapur 20/5/04 2 Mehmudabad Vizianagaram Self 1160 Wheat A485535 90400
23. Sitapur 20/5/04 40 Sitapur VPP Self 23448 Wheat 332652 1880061
24. Sitapur 23/5/04 40 Sitapur Barasat Self 23416 Wheat 332654 1363448
25. Sitapur 27/5/04 2 Mehmudabad Rangarani RDI 1168 Wheat A485536 59358
26. Sitapur 27/5/04 2 Mehmudabad Rangarani RDI 1176 Wheat A485537 59765
27. Sitapur 27/5/04 2 Mehmudabad Rangarani RDI 1168 Wheat A485538 59358
28. Sitapur 27/5/04 3 Mehmudabad Rangarani RDI 1764 Wheat A485539 89647

29. Sitapur 27/5/04 2 Mehmudabad Rangarani RDI 1176 Wheat A485540 59765
30. Sitapur 27/5/04 2 Mehmudabad Rangarani RDI 1176 Wheat A485541 59765
31. Sitapur 27/5/04 2 Mehmudabad Rangarani RDI 1176 Wheat A485542 59765
32. Sitapur 27/5/04 2 Mehmudabad Rangarani RDI 1176 Wheat A485543 59765
33. Sitapur 27/5/04 2 Mehmudabad Rangarani RDI 1176 Wheat A485544 59765
34. Sitapur 27/5/04 5 Mehmudabad Rangarani RDI 2940 Wheat A485545 149411
35. Sitapur 27/5/04 15 Mehmudabad Rangarani RDI 8788 Wheat A485546 446607
36. Sitapur 27/5/04 2 Mehmudabad Rangarani RDI 1176 Wheat A485547 59765
37. Sitapur 29/5/04 3 Mehmudabad TIRUNELVELI Self 1764 Wheat A485548 209705
38. Sitapur 29/5/04 4 Mehmudabad TIRUNELVELI Self 2352 Wheat A485549 279606
39. Sitapur 29/5/04 2 Mehmudabad TIRUNELVELI Self 1160 Wheat A485550 137901
40. Sitapur 29/5/04 2 Mehmudabad TIRUNELVELI Self 1176 Wheat A485551 139803
41. Sitapur 29/5/04 1 Mehmudabad TIRUNELVELI Self 558 Wheat A485552 69902
42. Sitapur 29/5/04 4 Mehmudabad TIRUNELVELI Self 2352 Wheat A485553 279606
43. Sitapur 29/05/04 4 Mehmudabad TIRUNELVELI Self 2320 Wheat A485554 275802
50 Sitapur 29/5/04 1 Mehmudabad TIRUNELVELI Self 580 Wheat A485561 68951
51 Sitapur 29/5/04 2 Mehmudabad TIRUNELVELI Self 1160 Wheat A485562 137901
52 Sitapur 29/5/04 2 Mehmudabad TIRUNELVELI Self 1160 Wheat A485563 137901
53 Sitapur 29/5/04 39 Sitapur Kudal Nagar PKVK 23408 Wheat 332657 2735462
54 Sitapur 30/5/04 18 Sitapur White Field Self Wheat 33266580
55 Sitapur 30/5/04 4 Sitapur White Field Self Wheat 33266580
56 Sitapur 30/5/04 18 Sitapur White Field Self Wheat 33266580
57 Sitapur 06/06/04 2 Mehmudabad SGWF Self 1176 Wheat A 485565 127103

58 Sitapur 06/06/04 1 Mehmudabad SGWF Self 580 Wheat A485566 62687
59 Sitapur 06/06/04 5 Mehmudabad SGWF Self 2940 Wheat A485567 317757
60 Sitapur 06/06/04 5 Mehmudabad SGWF Self 2900 Wheat A485568 313435
61 Sitapur 06/06/04 2 Mehmudabad SGWF Self 1176 Wheat A485569 127103
62 Sitapur 06/06/04 2 Mehmudabad SGWF Self 1176 Wheat A485570 127103
63 Sitapur 06/06/04 1 Mehmudabad SGWF Self 580 Wheat A485571 62687
64 Sitapur 06/06/04 1 Mehmudabad SGWF Self 588 Wheat A485572 63352
65 Sitapur 06/06/04 5 Mehmudabad SGWF Self 2940 Wheat A485573 317756
66 Sitapur 06/06/04 2 Mehmudabad SGWF Self 1176 Wheat A485574 127103
67 Sitapur 06/06/04 2 Mehmudabad SGWF Self 1176 Wheat A485575 127103
68 Sitapur 06/06/04 2 Mehmudabad SGWF Self 1160 Wheat A485576 125375
69 Sitapur 06/06/04 2 Mehmudabad SGWF Self 1160 Wheat A485577 125375
70 Sitapur 06/06/04 2 Mehmudabad SGWF Self 1160 Wheat A485578 125375
71 Sitapur 06/06/04 1 Mehmudabad SGWF Self 588 Wheat A485579 63552
72 Sitapur 22/6/04 1 Mehmudabad SGWF Self 588 Wheat A485580 62687
73 Sitapur 22/6/04 4 Mehmudabad TEN Self 2352 Wheat A485582 279606
74 Sitapur 22/6/04 4 Mehmudabad TEN Self 2336 Wheat A485583 277704
75 Sitapur 22/6/04 3 Mehmudabad TEN Self 1764 Wheat A485584 209705
76 Sitapur 22/6/04 3 Mehmudabad TEN Self 1764 Wheat A485585 209705
77 Sitapur 22/6/04 3 Mehmudabad TEN Self 1748 Wheat A485586 207803
78 Sitapur 22/6/04 5 Mehmudabad TEN Self 2940 Wheat A485587 349507
79 Sitapur 22/6/04 8 Mehmudabad TEN Self 4680 Wheat A485588 556359
80 Sitapur 22/6/04 8 Mehmudabad TEN Self 4672 Wheat A 485589 555408
81 Sitapur 23/6/04 38 Sitapur GD Self 22226 Wheat 322684 1899773
82 Sitapur 29/6/04 9 Mehmudabad Barasta Self 5292 Wheat A489590 301700
83 Sitapur 29/6/04 8 Mehmudabad Barasta Self 4640 Wheat A489591 264528
84 Sitapur 29/6/04 8 Mehmudabad Barasta Self 4696 Wheat A489592 267720
85 Sitapur 29/6/04 2 Mehmudabad Barasta Self 1168 Wheat A489593 66588
86 Sitapur 29/6/04 4 Mehmudabad Barasat Self 2344 Wheat A489594 133632
87 Sitapur 29/6/04 5 Mehmudabad Barasat Self 2924 Wheat A489595 166700

88 Sitapur 29/6/04 3 Mehmudabad Barasat Self 1756 Wheat A489596 100110

89 Sitapur 08/07/04 Many Mehmudabad Jorhat Town Self 22258 Wheat D332728 1910483

90 Sitapur 22/7/04 4 Mehmudabad SAMT Self 2344 Wheat A485602 253340

91 Sitapur 22/7/04 4 Mehmudabad SAMT Self 2336 Wheat A485603 252475

92 Sitapur 22/7/04 4 Mehmudabad SAMT Self 2344 Wheat A485604 253340

93 Sitapur 22/7/04 4 Mehmudabad SAMT Self 2344 Wheat A485605 253340

94 Sitapur 22/7/04 3 Mehmudabad SAMT Self 1748 Wheat A485606 188924

95 Sitapur 22/7/04 4 Mehmudabad SAMT Self 2352 Wheat A485607 254205

96 Sitapur 22/7/04 5 Mehmudabad SAMT Self 2916 Wheat A485597 315162

97 Sitapur 22/7/04 2 Mehmudabad SAMT Self 1176 Wheat A485598 127103

98 Sitapur 22/7/04 1 Mehmudabad SAMT Self 588 Wheat A485599 63552

99 Sitapur 22/7/04 4 Mehmudabad SAMT Self 2328 Wheat A485600 251611

100 Sitapur 22/7/04 4 Mehmudabad SAMT Self 2336 Wheat A485601 252475

101 Sitapur 28/7/04 9 Mehmudabad Ragarani Self 5292 Wheat A485609 268942

102 Sitapur 28/7/04 8 Mehmudabad Ragarani Self 4688 Wheat A485610 238246

103 Sitapur 28/7/04 7 Mehmudabad Ragarani Self 4116 Wheat A485611 209177

104 Sitapur 28/7/04 4 Mehmudabad Ragarani Self 2336 Wheat A485613 118717

105 Sitapur 28/7/04 6 Mehmudabad Ragarani Self 3504 Wheat A485614 178075

106 Sitapur 28/7/04 4 Mehmudabad Ragarani Self 2350 Wheat A485615 119930

107 Sitapur 30/7/04 40 Sitapur MT Self 23464 Wheat 595211 366544

108 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 580 Wheat A485616 39179

109 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485617 39719

110 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 580 Wheat A485618 39779

111 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485619 39719

112 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485620 39719

113 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485621

39719

114 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 580 Whea t A485622
39179

115 Sitapur 05/08/04 1 Mehmudabad Mehmudabad Self 588 Wheat
A48562339179

116 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 580 Wheat A485624
39179

117 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485625
39719

118 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485626
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119 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485627
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120 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485628
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121 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485630
39719

122 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485629
39719

123 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 580 Wheat A485631
39179

124 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485632
39719

125 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485633
39719

126 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485634
39719

127 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485635
39719

128 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 588 Wheat A485636
39719

129 Sitapur 05/08/04 2 Mehmudabad New Guwahati Self 1160 Wheat A485637
78357

130 Sitapur 05/08/04 6 Mehmudabad New Guwahati Self 3496 Wheat A485638
266150

131 Sitapur 05/08/04 1 Mehmudabad New Guwahati Self 188 Wheat A485639
12700

132 Sitapur 14/8/04 40 Sitapur Kassipore Road Self 23416 Wheat J245059
1450855

133 Sitapur 15/8/04 39 Sitapur Rangarani Self 22844 Wheat J245060 1330436

134 Sitapur 04/09/04 38 Mehmudabad Benapole/Petrapo NTC 21090 Wheat
A485650 1238230

135 Sitapur 08/09/04 37 Biswan Darshna/Gede RS 20535 Wheat A500263
1256331

136 Sitapur 11/09/04 36 Biswan Darshna/Gede UFI 19980 Wheat A500264
1222380

137 Sitapur 22/9/04 37 Biswan RohanpurSinghabad SIB 20525 Wheat A500266
1078513

138 Sitapur 27/9/04 40 Biswan RohanpurSinghabad UFI 22200 Wheat A500268
1165960

139 Sitapur 07/10/04 37 Biswan Benapole/Petrapole PBL 2053 Wheat A500269
1220879

140 Sitapur 15/10/04 40 Biswan Benapole/Petrapole MCB 22200 Wheat A500270
1330680

141 Sitapur 13/11/04 35 Biswan Benapole/Petrapole PBL 19425 Wheat A500274
1164345

142 Sitapur 24/11/04 35 Biswan Darshna/Gede JBG 19385 Wheat A500275
1188425

143 Sitapur 14/12/04 37 Biswan Benapole/Petrapole SBP 20313 Wheat A500278
1230868

144 Sitapur 12/01/05 35 Biswan Darshna/Gede JBG 19241 Wheat A5002363
1188425

145 Sitapur 22/4/05 38 Biswan RohanpurSinghabad MB 21090 Wheat
D4064661703230

146 Sitapur 01/05/05 40 Biswan CPR Self 23360 Wheat A500416 173760

147 Sitapur 06/05/05 40 Sitapur RohanpurSinghabad ST 22200 Wheat D436467
1792872

148 Sitapur 07/05/05 38 Biswan Darshna/Gede AG 21090 Wheat A500417
1987324

149 Sitapur 20/6/05 36 Sitapur RohanpurSinghabad BH 19980 Wheat D436472

1387811

150 Sitapur 20/07/05 39 Sitapur Darshna/Gede SIB 21643 Wheat D436698
1788960

151 Sitapur 26/7/05 40 Sitapur RohanpurSinghabad BH 22200 Wheat D436741
1542012

152 Sitapur 26/7/05 40 Sitapur RohanpurSinghabad BH 22200 Wheat D436700
1542012

153 Sitapur 23/9/05 40 Sitapur Darshna/Gede PBL 22200 Wheat D067327
1821621

154 Sitapur 09/10/05 8 Sitapur Darshna/Gede INLB 4440 Wheat 366966

155 Sitapur 09/10/05 30 Sitapur Darshna/Gede PBL 16476.4 Wheat
D0673311376123

156 Sitapur 28/10/05 2 Sitapur Tinsukhiya Self 1240 Wheat D067413 148044

157 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 600 Wheat D067405 71631

158 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 400 Wheat D067406 47756

159 Sitapur 28/10/05 ? Sitapur Tinsukhiya Self 230 Wheat D067407 27431

160 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 630 Wheat D067408 35270

161 Sitapur 28/10/05 3 Sitapur Tinsukhiya Self 1800 Wheat D067409 21490

162 Sitapur 28/10/05 2 Sitapur Tinsukhiya Self 1260 Wheat D067410150432

163 Sitapur 28/10/05 ? Sitapur Tinsukhiya Self 390 Wheat D067411 46567

164 Sitapur 28/10/05 ? Sitapur Tinsukhiya Self 210 Wheat D067412 2573

165 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 600 Wheat D67398 71634

166 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 630 Wheat D67399 75217

167 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 610 Wheat D067400 72820

168 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 630 Wheat D067401 75217

169 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 630 Wheat D067402 75217

170 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 630 Wheat D067403 75217

171 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 630 Wheat D067404 75217

172 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 600 Wheat D067405 75217

173 Sitapur 28/10/05 3 Sitapur Tinsukhiya Self 1800 Wheat D067374 150432

174 Sitapur 28/10/05 2 Sitapur Tinsukhiya Self 1260 Wheat D067374 150432

175 Sitapur 28/10/05 2 Sitapur Tinsukhiya Self 1200 Wheat D067374 143268
 176 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 630 Wheat D067374 75217
 177 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 583 Wheat D067374 69605
 178 Sitapur 28/10/05 ? Sitapur Tinsukhiya Self 27 Wheat D067374 3225
 179 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 630 Wheat D067374 75217
 180 Sitapur 28/10/05 ? Sitapur Tinsukhiya Self 153 Wheat D067374 18268
 181 Sitapur 28/10/05 ? Sitapur Tinsukhiya Self 300 Wheat D067374 35917
 182 Sitapur 28/10/05 1/3 Sitapur Tinsukhiya Self 149 Wheat D067374 17790
 183 Sitapur 28/10/05 1/3 Sitapur Tinsukhiya Self 328 Wheat D067374 39161
 184 Sitapur 28/10/05 ? Sitapur Tinsukhiya Self 310 Wheat D067374 37012
 185 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 610 Wheat D067374 72829
 186 Sitapur 28/10/05 ? Sitapur Tinsukhiya Self 300 Wheat D067374 35917
 187 Sitapur 28/10/05 ? Sitapur Tinsukhiya Self 300 Wheat D673391 35917
 188 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 630 Wheat D067393 75217
 189 Sitapur 28/10/05 2 Sitapur Tinsukhiya Self 1260 Wheat D067394 150432
 190 Sitapur 28/10/05 ? Sitapur Tinsukhiya Self 300 Wheat D067395 35917
 191 Sitapur 28/10/05 ? Sitapur Tinsukhiya Self 300 Wheat D067396 35917
 192 Sitapur 28/10/05 1 Sitapur Tinsukhiya Self 600 Wheat D067397 71634

21. VARANASI Vide letter dated 11.11.2004 to the Principal Secretary, the member of the inspection team informed that from perusal of the majority of the bank drafts, it has been found that the drafts were prepared on one day and in the same sequence. It has been observed that on 15.10.2004, the drafts were prepared in the same sequence seems to have been done by the outsiders. The stock in fair price shop were short, roster has not been followed. The signature of the Fair Price Shop owner does not tally with the register kept in the godown and the bank. The stock could not be verified because of incorrect piling of bags. It shall be appropriate to reproduce relevant passage from the report :

Thus, the report shows misappropriation of fund, blackmarketing of foodgrains and abuse of power in district Varanasi by the authorities in connivance with foodgrain merchants.

22. While submitting the report, the SIT has summarised the total production of wheat in respective years in 31 districts and total arrival in the Mandi which indicates that the wheat arrived in Mandi of the respective 31 districts is much more than its total production in the district concerned. Prima facie, at the face

of record, this indicates that the foodgrains meant for distribution through the fair price shop owners or other schemes has been sold in the open market. It shall be appropriate to reproduce the chart from the report of the SIT which is as under:

23. SIT has also assessed the production and arrival and prepared a comparative chart of 200203 and 200304 in the aforesaid districts. The chart as given on pages 27, 28 and 29 of the report of SIT is as under :

Thus, from the combined reading of the report submitted by the State agencies including the SIT, prima facie, there appears to be no doubt with regard to blackmarketing of foodgrains in various districts of the State. The foodgrains, meant for distribution under the various schemes, have either been sold in the open market or transported to other district of the State or outside State or from some districts, the foodgrains have been smuggled outside the country like Bangladesh or Nepal. The Committee constituted by the State Government has not effectively investigated the records in four months of various districts with regard to arrival and distribution of foodgrains. In some districts, local authorities have not cooperated with the committees. This indicate the structural failure of administrative machinery and serious misconduct on the part of subordinate authorities who have not cooperated with the enquiry committee. From the fact finding report of the SIT, marked as PE3/2007, overall picture with regard to blatant abuse of power for vested interest comes to light.

24. Shri Jacob Thomas, Principal Secretary, Department of Food & Civil Supplies has filed an affidavit sworn on 7.1.2010. along with the affidavit, he has submitted an extract of enquiry report with regard to 54 districts. From the report, it appears that 15 railways racks of wheat from district Gonda have been exported to Bangladesh or other country. The export of wheat is much higher than the total production of the district.

25. Shri Kunwar Fateh Bahadur, Principal Secretary, Department of Home has filed his affidavit dated 8.1.2010 and given details with regard to investigation done by various agencies. The updated position of investigation has been given by him in paras A to H of para 8 which is reproduced as under :

?8.....A. That through the State Government as back as on 01.12.2007 had already requested the Central Government to get the entire matter investigated by the C.B.I., till date only 8 investigations pertaining to District Ballia and one investigation pertaining to District Lakhimpur Kheri has been taken up by the C.B.I. Later on 4 connected cases have also been taken up by the CBI pertaining to District Lakhimpur Kheri. Thus in respect of two districts namely Ballia and Lakhimpur Kheri investigations in $8+5=13$ cases are being conducted by C.B.I.

B That in district Gonda, total number of cases registered is 63, out of which, in 62 cases charge sheet against 233 persons have been filed by the Economic Offences Wing and the further proceedings are going on/pending in respect of 56 persons. As per the said investigation conducted by Economic Offence Wing, the

misappropriated amount is about Rs.2,52,000.00. One of the 63 cases did not pertain to food scam, as such, the same has been dropped.

(C) That in district Ballia, the investigation by Economic Offences Wing is pending which is being continued pursuant to First Information Report in respect of 43 cases. In these 43 cases, as per the first Information Report, the amount misappropriated is about Rs.20,79,86,735.00.

In two cases in district Ballia investigation has been completed by the S.I.T. Wherein a sum of Rs.22,47,119.00 + Rs.12,000.00 was found to have been misappropriated.

4 cases are being investigated in district Ballia by district police and out of these four cases, in one case charge sheet has been filed. As stated above 8 cases are investigated by C.B.I.

(D) That in District Lakhimpur Kheri, S.I.T. is conducting enquiry in 61 cases and in one case, investigation has been completed and the report has been sent to the State Government. The investigation completed in one case by S.I.T. reveals misappropriation of a sum of about Rs.94,470.00. In rest of the cases investigation are still going on.

As already submitted above, CBI has undertaken investigation in 5 cases, i.e. to say that investigation was undertaken by CBI in one case earlier and later on four connected cases were also taken up for investigation by CBI.

(E) That in District Sitapur, 43 matters are being/have been investigated, out of which in 30 matters, charge sheets have been filed and in 10 matters final report have been submitted before trial court. 3 matters are still under investigation.

Two matters in district Sitapur are being investigated by S.I.T. In one case investigation has been completed where the misappropriation to the tune of Rs.95,155.00 has been found and in one case the investigation is pending.

(F) That S.I.T. has completed the investigation/enquiry in two districts namely Lakhimpur Kheri and Sitapur. The matter has been sent to CBI for being included in its investigation and in respect of district Sitapur the enquiry report has been included in the case under investigation.

(G) That in pursuance of the government order dated 29.06.2007, the SIT has initiated enquiry in the districts of Basti, Kanpur Dehat, Shahjahanpur, Hardoi, Sant Ravidas Nagar, Gonda, Lucknow and Lalitpur. In rest of the districts enquiry could not be initiated till date because of lack of manpower and logistic support available with the S.I.T.

(H) That the irregularities pertaining to Sampurna Gramin Rojgar Yojana, Jaunpur is being enquired by EOW, which is pending.

The aforesaid details and up to date status of enquiry/ investigation has been completed and is being annexed as Annexure No.A7 to this affidavit.?

26. While filing affidavit, it has been submitted by the Principal Secretary, Home that the employees of Railways, Central Government, Food Corporation of India, Central Ware Housing Corporation and banks are involved in the food scam whereby the foodgrains have been smuggled outside the country like Bangla Desh.

27. The fact finding report of SIT (PE3/07) seems to have been reaffirmed while submitting final report by various agencies of the State of U.P. From the reports of various districts, it appears that the foodgrains with regard to B.P.L., Antyodaya, Jawahar Rozgar Yojana etc sold in open market or exported outside the State or country is almost hundred crore or more. The finding of SIT has been reaffirmed that the foodgrains have been diverted to foreign countries like Bangladesh and others. It shall be appropriate to reproduce the conclusion drawn by investigating agencies with regard to some of the districts while submitting final enquiry report.

DISTRICT VARANASI :

SIT while submitting its final report with regard to Varanasi has observed as under :

28. The modus operandi of diversion of foodgrains under various schemes meant for poor and downtrodden seems to be same. Records were fabricated, foodgrains were diverted on the vehicles, alleged to have been done by truck but actually, the numbers given in the records are of motorcycle, scooter, Maxi Cub, Mini Bus, Tempo etc. The amount deposited in the bank and bank draft were obtained by the same person with fictitious names. Bank drafts were prepared in seriatim. The entry of number of motorcycle, scooter, maxicub, bus, minibus, tempo speaks itself that the foodgrains were sent to unforeseen destination instead of fair price shop, schools for midday meal or for distribution under Antyodaya or Jawahar Rozgar Yojna.

29. The manner in which foodgrains have been smuggled outside the State or country does not rule out that all has been done by sharing of profit from top to bottom with conscious application of mind in a deliberate and planned manner. The exposure of crime by SIT and State agencies committed by public servant is unprecedented, unfortunate and shameful and seems to be outcome of highest degree of corruption, crept into administration of State of U.P. It shows failure on the part of bureaucracy to maintain the minimum requirement of integrity, fairness in action.

30. The facts revealed by the investigating agencies remind us copulate of a poem of Alfred Tennyson. To quote :

?He claps the crag with crooked hands;

Close to the sun in lonely lands,

Ring'd with the azure world, he stands.

The wrinkled sea beneath him crawls;
He watches from his mountain walls,
And like a thunderbolt he falls.?

31. Thus, from the facts made available on record by the State authorities and investigating agencies, prima facie, there appears to be no doubt that the foodgrains meant for poor and downtrodden have been smuggled not only outside the State for sale in open market but also transported to other countries like Bangladesh, Nepal or may be African countries from sea port. Bank drafts were prepared in the name of single person or fake person in seriatim. The number of vehicles shown are not trucks but scooters, motorcycle, tempo etc. In the same sequence, by issuing bank draft amount deposited then again withdrawn. All this could not have been happened without involvement of higher authorities and the distribution or sharing of earned profit from top to bottom. Poor man's ROTI has been snatched by higher ups.

32. Prima facie, it appears that exporters from Calcutta and Delhi are involved in purchasing and transporting the foodgrains to unforeseen destination, i.e. outside the country. Goods trains/railway racks were loaded by foodgrains in district Gonda, Mahmudabad(Sitapur), Basti, Biswan(Sitapur), Barabanki, Sultanpur, Akbarpur, Gonda, Nakaha Jungle and in majority of cases, name of consignor and consignee has not been given. Real culprits still are under clout and have not been arrested. Prima facie, unholy nexus of mafia employees of the State Government, Central Government, Railways, Food Corporation of India, Essential Commodities Corporation, State Ware Housing Corporation seems to exist.

33. The petitioner as well as Shri Bireshwarnath, learned counsel for the C.B.I. has submitted a written argument. However, the State Government has not filed a written argument.

34. While pressing to relegate the entire enquiry to the C.B.I., the petitioner's counsel submitted that it is one of the rarest cases where foodgrains meant for poor and downtrodden have been smuggled outside the country or outside the State of U.P. Hence whole investigation should be done by C.B.I. It has also been submitted that the allegations are not only serious but also at the face of record in no way, such act can be defended as the part and parcel of official duty which may require statutory sanction from the Government. The court should proceed immediately after filing of the chargesheet with trial of the case without requiring any sanction.

35. On the other hand, learned counsel for the C.B.I. states that in one case, application has been moved for sanction to the State Government under Section 19 of the Act but the same has been kept pending since March, 2010 and yet no decision has been taken. Learned counsel for the State stated that sanction is required under Section 19 of the Act and without sanction, no criminal case may

proceed in any manner whatsoever.

36. So far as the investigation by the CBI is concerned, while deciding the controversy finally, in writ petition No.122(M/B) of 2000, a Division Bench of this Court has directed the CBI to hold an enquiry with regard to entire foodgrain scam. However, keeping in view bulk of First Information Reports lodged, it shall be appropriate that all those cases where foodgrains have been smuggled outside the State of U.P. or outside the country like Bangla Desh, Nepal or other countries, matter should be investigated by the CBI and rest of the cases should be investigated by the State agencies expeditiously. Submission of Shri Bireshwar Nath seems to be correct that referring all the cases for investigation by the CBI may not only increase the workload of the CBI but also prolong the investigation because of nonavailability of infrastructure to meet out the requirement for speedy investigation.

37. But the allegation as stand seems to make out a case for investigation of all those cases by the CBI as observed hereinabove where foodgrains have been smuggled outside the State of U.P. for unforeseen destination like Nepal, Bangladesh or other countries. State agencies will not be able to meet out the requirement for speedy investigation while visiting foreign countries, if necessary to apprehend the culprit charged for smuggling. It shall be more convenient and feasible for the C.B.I. to visit foreign countries, if necessary and procure link evidence while charging the accused for smuggling of foodgrains outside the country.

38. There is one more reason why the CBI should investigate the cases where smuggling outside the State of U.P. or foreign countries. Prima facie, it appears that higher authorities are involved in food scam who have facilitated for sale of foodgrains to exporters. Without involvement of higher authorities, it is not easy for lower rung to smuggle such huge quantity of foodgrains outside the State of U.P. or outside the country. Transportation by goods train to far north east part of the country or southern part of the country and sea ports itself indicates that the foodgrains have been smuggled outside the country in collusion with authorities of the State of U.P. and profit so earned has been shared by higher ups.

39. Needless to say that in the event of investigation by the CBI with regard to complaint of some other districts, it shall be obligatory on the part of the State Government to provide immediate necessary assistance which includes staff and other infrastructure to CBI as and when a demand is raised.

40. Subject to aforesaid broader principle with regard to investigation, the next limb of argument and the question involved is with regard to sanction by the State under Section 19 of the Act shall be necessary keeping in view the present facts and circumstances.

STATUTORY PROVISIONS/SANCTION

41. Section 197 of CrPC requires sanction in case a public servant is charged for

corrupt practices under the Indian Penal Code. Section 6 of the Prevention of Corruption Act, 1947 (in short 1947 Act) requires sanction in case a public servant is charged for an act during official discharge of duty. The Prevention of Corruption Act, 1947 has been repealed and substituted by Prevention of Corruption Act, 1988, in short Act. Under Section 19 of the Act, it is necessary to obtain prior sanction in case a public servant is charged under 1988 Act.

42. However, under the new Act, though sanction under Section 19 is mandatory but the provision does not contain the condition that the act for which a public servant is charged should be an offence committed during course of discharge of official duty. It shall be appropriate to reproduce Section 197 of Code of Criminal Procedure which is as under :

?Section 197 Prosecution of Judges and public servants.

(1)When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

1 [Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression ?State Government? occurring therein, the expression ? Central Government? were substituted.]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of subsection (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that subsection will apply as if for the expression ?Central Government? occurring therein, the expression ?State Government? were substituted.

2 [(3A) Notwithstanding anything contained in subsection (3), no Court shall take cognizance of any offence, alleged to have been committed by any member

of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.?

43. Since the offence committed by the accused while misappropriating fund with regard to foodgrains also falls under the 1988 Act, the provisions contained in Section 19 of the Act is also relevant and is reproduced as under :

? 19. Previous sanction necessary for prosecution.

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974 .),

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation. For the purposes of this section,

(a) sanction includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature. ?

44. Now, the question cropped up as to whether sanction shall be necessary with regard to the allegation in the present controversy where foodgrains scam has got interstate or international ramification. A plain reading of language contained in Section 19 of the Act prima facie reveals that the sanction against a person employed in connection with affairs of Union or State shall be necessary but in case the foodgrains have been smuggled outside the country which meant for poor and downtrodden class the provisions contained in Section 19 of the Act should be looked into with other angle to make the law effective with regard to anti corruption and check the absurdity.

45. While construing statutory provisions, in case the language used in the Act or statute result into absurdity and create public nuisance, anarchy in society, frustrate the aims and object of the Act and creates a ground to abuse the process of law by the State authorities, then the courts are not precluded to interpret the law in such a manner which shall fulfill the aims and object of the Act and also fulfil the wishes of Parliament or collective wishes of Legislature.

AIMS AND OBJECT OF THE ACT

46. While enacting special law, apart from the provisions contained in Indian

Penal Code in the Prevention of Corruption Act, 1947 under its Statement of Objects and Reasons, following observation was made :

?The scope for bribery and corruption of public servants had been enormously increased by war conditions and though the war is now over, opportunities for corrupt practices will remain for considerable time to come. Contracts are being terminated; large amounts of Government surplus stores are being disposed of; there will be years of shortage of various kinds requiring imposition of controls, and extensive schemes of postwar reconstruction, involving the disbursement of very large sums of Government money. All these activities offer wide scope of corrupt practices and seriousness of the evil and possibility of its continuance or extension in future are such as to justify immediate and drastic action to stamp it out.?

?The existing law has proved inadequate for dealing with the problem which has arisen in recent years and the Bill is intended to render the criminal law more effective in dealing with cases of bribery and corruption of public servants.?(Gazette of India dated November 23, 1946, Part V, page 374).

47. The aims and object of the Prevention of Corruption Act, 1988 seems to deal with corruption with more stringent measures. It contains the following statement of objects and reasons:

?1. Statement of Objects and Reasons :

(1)The Bill is intended to make the existing anticorruption laws more effective by widening their coverage and by strengthening the provisions.

(2)The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of illgotten wealth obtained through corrupt means, including from transferees of such wealth. The Bill seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants. 455

(3)The Bill, inter alia, envisages widening the scope of the definition of the expression ?public servant?, incorporation of offences under Secs. 161 to 165A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for daytoday trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included.

(4)Since the provisions of Secs. 161 to 165A are incorporated in the proposed legislation with an enhanced punishments, it is not necessary to retain those

sections in the Indian Penal Code. Consequently, it is proposed to delete those sections with the necessary saving provision.?

48. Thus, from the Statement of Objects and Reasons, it is obvious that the 1988 Act was enacted by the Parliament to make the provisions with regard to anticorruption law more effective in combating corruption amongst public servants. It contains prohibitory provision with regard to grant of stay and exercise of power of revision on interlocutory orders. It also provides to expedite the proceedings by day to day trial of cases.

49. Privy Council in *Emperor versus Benoari Lal* 1913 PC 36 held that the history of legislation and the facts which give rise to the enactment may usefully be employed to interpret the meaning of the statute, though they do not afford a conclusive argument.

50. In a case reported in AIR 1955 SC 604, *M.K. Ranganathan v. Govt. of Madras*, Hon''ble Supreme Court observed that though the Statement of Objects and Reasons is not admissible as an aid to the construction of a statute but it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the bill to introduce the same and the extent and urgency of the evil which he sought to remedy.

51. In AIR 1958 SC 578, *Express Newspapers Pvt. Limited v. Union of India*, their Lordships of Hon''ble Supreme Court held that when the terms of statute are ambiguous or vague, the statement of Objects and reasons may be resorted for the purpose of arriving at true intention of the legislature.

52. In AIR 1963 SC 1356, *S.C. Prashar v. Vasantasen*, Hon''ble Supreme Court held that the Statement of Objects and Reasons may be referred for the purpose of ascertaining the circumstances which led to the legislation in order to find out what was the mischief which the legislation sought to remove is aimed at.

53. In *State of West Bengal v. Union of India*, AIR 1963 SC 1241, Hon''ble Supreme Court observed that the statement of Objects and Reasons may be used for limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation.

54. Same principle has been reiterated in AIR 1973 SC 913, *A.C. Sharma v. Delhi Administration*.

55. In AIR 1987 SC 138 *Kameswar Singh versus Addl. Dist. Judge, Lucknow*, Hon''ble Supreme Court has widened the scope of object and reasons and observed that the court may strive to so interpret the statute as to protect and advance the object and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The courts must therefore, keep the legislative policy in mind in applying the provisions of the Act to the facts of the case.

56. In (1984)2 SCC 183, *R.S. Nayak v. A.R. Antulay*, while considering the

purpose of Prevention of Corruption Act, 1947 and mode of construing a provision of the Act, their Lordships observed that the purpose of Act is to make more effective provisions for prevention of bribery and corruption. To quote :

¶18. The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it..... The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be selfdefeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act, namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it.?

57. In a case reported in AIR 1986 SC 1499, M/s. Girdhari Lal & Sons v. Balbir Nath Mathur and others, Hon"ble Supreme Court observed that while interpreting the statutory provisions, the Court has to ascertain the intention of the legislature, actual or imputed and the Court must strive to interpret the statute as to promote and advance the object and purpose of the enactment. To reproduce relevant portion, to quote :

¶9. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing, the written word if necessary.?

58. Hon"ble Supreme Court in a case reported in AIR 1957 SC 29, State v. Govindan Thampi Bhaskaran Thampi observed that resort to the history of the legislation to construe the meaning of any provisions therein is more often taken exception to than not. At the same time it is common knowledge that when the words of a statute are ambiguous, attempts are not infrequently made to ascertain their true meaning by reference to the state of the law at the time the statute was passed, the mischief sought to be avoided and the stages through

which the concerned legislation passed.

59. Allahabad High Court in a case *Kunwar Murli Manohar v. State of U.P.*, AIR 1957 All 159, observed that in the interpretation of a statute, the history of the legislation and the surrounding circumstances which existed at the time and demanded a change of law or the enactment of a new one, can all be taken into consideration.

60. A Full Bench of Patna High Court in a case reported in 1993 CrLJ 3246 on a reference made by Ravinandan Sahai, Sessions Judge, Patna held that while interpreting the Prevention of Corruption Act, 1988, the legislative history of object and reasons though do not contain meaning of any expression used in the statute but can be used for interpreting the meaning of the statute.

INTENTION OF THE LEGISLATURE

61. The object of Section 197(1) of Code of Criminal Procedure, 1898 was considered by Federal Court in a case reported in AIR 1943 FC 18 (at page 21), *Afzalur Rahman and others v. Emperor*. It was held by the Federal Court that the purpose of Section 197(1) CrPC was to save the public servant from frivolous prosecution.

62. Observation by Federal Court in *Afzalur Rahman* (supra) was followed and affirmed by their Lordships of Hon''ble Supreme Court in AIR 1962 SC 1573 (p. 1581), *R.R. Chari v. State of U.P.*

63. However, with regard to sanction and for the offences of misconduct committed by the public servant, the observation of the Privy Council in the case reported in AIR 1948 PC 128, *H.H.B. Gill and another v. The King* requires consideration. The Privy Council while considering the question whether sanction is necessary under 197(1) CrPC relying upon earlier judgment of *Hori Ram Singh versus Emperor* AIR 1939 FC 43 held that 'A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty.....The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.'

64. The case of *H.H.B. Gill*(supra) has been followed by Privy Council in *Albert West Meads versus The King* AIR 1948 PC 156 and *Phanindra Chandra versus the King* reported in AIR 1949 PC 117.

65. The aforesaid view of the Privy Council was followed by the Hon''ble Supreme Court in the case of *Ronald Wood Mathams v. State of West Bengal*, AIR 1954 SC 455.

66. Whether the sanction is required or not was explained by Bombay High Court in *Lumbhardar Zutshi v. Emperor*, AIR 1948 Bombay 79 with observation that each case must be examined in the light of the offence alleged against the accused in order to ascertain whether Section 197 of the Code is applicable.

67. In another case reported in AIR 1958 SC 124 (at page 126), *Jaswant Singh v. State of Punjab*, Hon"ble Supreme Court held that sanction under the Act is not intended to be nor is an automatic formality but it is essential that the provisions with regard to sanction should be observed with complete strictness with due application of mind.

68. In AIR 1979 SC 1677, *Mohammad Iqbal Ahmed v. State of Andhra Pradesh*, Hon"ble Supreme Court held that the grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servants. Meaning thereby the sanction is not an empty formality but is intended to be a protection to a public servant when prosecuted for an offence which challenges his honesty and integrity. Sanction deals with the morale of public services and also the administrative interest of the State and it provides an opportunity for assessment and weighing of the acquisition in a dispassionate and responsible manner. Sanction to prosecute has sanctity attached to it, for the liberty of the person prosecuted is involved.

69. In 2007 Vol. 11 SCC 273, *State of Karnataka v. Ameerjan*, Hon"ble Supreme Court affirmed the aforesaid principle with observation that sanction should not be construed in a pedantic manner. But. the purpose for which an order of sanction is required to be passed should always be borne in mind.

70. While construing the provision of Section 6 of Prevention of Corruption Act, 1947 in a case reported in AIR 1958 SC 107, *S.A. Venkataraman v. State*, Hon"ble Supreme Court observed that while construing the provision of a statute, it is essential for a Court, in the first instance, to give effect to the natural meaning of the words used therein. However, in the event of ambiguity, a court is entitled to ascertain the intention of the legislature by construing the provisions of statute as a whole and taking into consideration other matters and circumstances for enactment of a statute.

71. In view of above, the provisions with regard to sanction provided in the statute is meant to save the honest and upright public servant from false acquisition. But in any case, it does not appear that the intention of the Legislature is to give a cover to corrupt public servants to face the trial.

72. Francis Fukuyama in his famous treatise, *'Trust'* had rightly observed that a society is composed of infinite number of unorganized individuals and the State is too remote from individuals, its relation with them is too external and intermittent to penetrate deeply into individual conscious and socialize them within. Fukuyama opined, to quote :

'There are also clear major cultural differences with respect to the nature and prevalence of corruption. One of the chief problems with any industrial policy is that it invites the corruption of public officials, which in turn vitiates any possible beneficial effect of the policy. Clearly industrial policies work better in societies with long traditions of honest and competent civil service?.'

73. Fukuyama's observation seems not only correct but law should be interpreted keeping in view the observation made by the eminent political philosopher/thinker.

CASUS OMISSUS

74. Question cropped up whether the omission of word, 'during discharge of duty' in 1988 Act is deliberate and intentional or casual because of fault of draftman. The Indian Parliament never intended to protect or shield the corrupt bureaucracy or public servant. The aim and object of the Act (supra) is to make law more stringent and not to keep the matters pending with regard to corrupt public servant under the garb of sanction, particularly in the case where at the face of record, the charges levelled against the public servant in any case does not/shall not fall within the official obligations.

75. The provision contained in Section 19 is to defend honest, fair and upright public servants and not to create a gallery to escape from trial where a public servant acted in derogation of his public office usurping the public fund meant for peoples of the country.

76. Learned counsel for the petitioner submits that in the present case, the corrupt practices adopted by the employees while misappropriating the B.P.L. fund and grains does not come within their official discharge of duty. Even if Section 19 does not provide the Court has to read into it by supplying 'casus omissus' and only in the event a government servant commits some bona fide wrong during discharge of his official duty, sanction shall be necessary. Holding of office, ipse dixit does not make out a case to obtain sanction but it correlate with the conduct of the government employee for which he is charged under the Act. It has been stated that at no stretch of imagination, the government employee is supposed to smuggle foodgrains meant for poor and downtrodden class to sell it to the smugglers, anti social elements or to exporters to export them outside the State or the country. The allegation against the employees is so serious that it shall never fall by any stretch of imagination in the official discharge of duty. The petitioner's counsel submits that in spite of the fact that against an accused Satyendra Singh Gangwar, the then Chief Finance and Accounts Officer, DRDA, Ballia, C.B.I. has submitted a report for grant of sanction to the State Government on 31.3.2010 but till date, no decision has been taken.

77. In view of above, whether casus omissus can be supplied to Section 19 by construing it under the principle of reading down?

78. Needless to say that the courts are not precluded to supply casus omissus in the statutory provisions in case a plain reading of the statute result into absurdity, anomaly and loss or injury to public exchequer or public at large.

In AIR 1959 SC 422 (at page 427, 428), Viluswami Thevar v. G. Raja Nainar, their Lordships of Hon'ble Supreme Court held that a construction which gives rise to anomalies should be avoided.

79. In AIR 1955 SC 830(p. 833), Tirath Singh v. Bachittar Singh, Hon''ble Supreme Court observed, to quote:

?Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.?

Their Lordships have approved the interpretation of statute as done by Maxwell (11th Edn. Page 221).

80. Tirath Singh's case(supra) has been affirmed by the Hon''ble Supreme Court in State of Madhya Pradesh v. Azad Bharat Finance Co., AIR 1967 SC 276 (p. 278), Union of India v. Sankalchand, AIR 1977 SC 2328 (pp. 2337, 2358, 2373) CIT v. National Taj Traders, AIR 1980 SC 485 (p. 490), R. Rudraiah v. State of Karnataka, AIR 1998 SC 1070, Molar Mal v. Kay Iron Works (P.) Limited, AIR 2000 SC 1261, AIR 2002 SC 1334 (pp. 1340, 1341) Padmasundara Rao v. State of T.N. and Modern School versus Union of India, AIR 2004 SC 2236 (p. 2257).

81. In R.S. Nayak v. A.R. Antulay AIR 1984 SC 684, a Constitution Bench of Hon''ble Supreme Court observed while interpreting the provisions of Prevention of Corruption Act, 1947 that object underlying the Acts be advanced. Their Lordships observed that legislation is enacted to achieve certain object. The object may be to remedy a mischief or to create some rights, obligations or impose duties. While relying upon the statement of objects and reasons, Hon''ble Supreme Court observed as under :

?34.....Even apart from precedents the basic purpose underlying all canons of construction is the ascertainment with reasonable certainty of the intention of Parliament in enacting the legislation.....In this connection, it would be advantageous to refer to a passage from Crawford on Statutory Construction (page 388). It reads as under:

?The judicial opinion on this point is certainly not quite uniform and there are American decisions to the effect that the general history of a statute and the various amendments or modifications of the original bill and reports of Legislative Committees can be looked at for ascertaining the intention of the Legislature where it is in doubt; but they held definitely that the legislative history is inadmissible when there is no obscurity in the meaning of the Statute.? In United States v. St. Paul, M.M. Rly Co., (1917)62 L. ed 1130 at p. 1134, it is observed that "the reports of a Committee, including the bill as introduced, changes made in the frame of the bill in the course of its passage and the statement made by the Committee Chairman in charge of it, stand upon a different footing, and may be resorted to under proper qualifications?. The objection therefore of Mr. Singhvi to our looking into the history of the evolution of the section with all its clauses, the Reports of Mudiman Committee and K. Santhanam Committee and such other external aids to construction must be overruled.?

82. In AIR 1958 SC 341(p. 346), Central India Spinning, Weaving and Manufacturing Company Limited, Empress Mills, Nagpur v. Municipal Committee, Wardha, while construing Section (66)1 of the Central Provinces and Berar Municipalities Act, 1922 which authorized imposition of ""a terminal tax on goods or animals imported into or exported from the limits of a municipality", their Lordships of Hon"ble supreme Court while reversing the judgment of High Court observed that the effect of construction of word, ""import" or ""export" in the manner insisted upon by the municipal committee would make railborne goods passing through a railway station within the limits of a municipality liable to the imposition of the tax on their arrival at the railway station or departure therefrom or both which would not only lead to inconvenience but confusion, and would also result in inordinate delays and unbearable burden on trade both interState and intraState. Such an interpretation would lead to absurdity which has according to rules of interpretation to be avoided.

83. Similarly in AIR 2002 SC 2004 (p. 2012), Rakesh Wadhawan v. Jagadamba Industrial Corporation, Hon"ble Supreme Court while interpreting Section 13(2) (i) of the East Punjab Urban Rent Restriction Act, 1949 held that the qualifying expression ""assessed by the controller" in the proviso qualified also ""the arrears of rent" and not merely ""cost of application.

84. In (1990)2 All ER 170, R. v. Registrar General, ex parte, Smith while holding that a prima facie absolute statutory obligation may be construed subject to an implied limitation that is performance can be refused on grounds of public policy, i.e. when the performance may give rise to a real risk of a serious crime.

85. In AIR 1993 SC 361, A.A. Hajee Muniuddin v. Indian Railways, their Lordships of Hon"ble Supreme Court in spite of the fact that under Railway Claims Tribunal Act, 1987, there is no specific mention of power under Order 33 to entertain claims of indigent persons ruled that the tribunal must be held to have the implied power of invoking the provisions of Order 33 of the Code.

86. However, in the words of LORD MOULTON, while construing a statute on the ground of hardship, injustice or absurdity, a great care should be taken. The argument ab inconvenient, LORD MOULTON observed requires to be used with great caution (1913)AC 107, Vacher & Sons v. London Society of Compositors.

87. In (1966)3 All ER 265 (page 268(PC)), IRC v. Mutual Investment Co., while affirming the construction on the basis of absurdity, it has been observed that in case of ambiguity, that construction which better serves the ends of fairness and justice will be accepted, but otherwise it is for the Legislature in forming its policy to consider these elements.

88. It was Lord Denning, L.J. in his oft quoted judgment, reported in (1949)2 All ER 155 , p. 164(CA), Seaford Court Estates Limited v. Asher had given his landmark verdict with regard to principle of reading down or supply of cassus omissus. . Denning L.J. opined :

?When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give ""force and life" to the intention of the Legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.?

89. DENNIN, L.J. followed the aforesaid principle in another case reported in (1950)2 All ER 1226, p. 1236, Magor & St. Mellons Rural District Council versus Newport Corporation and observed, ?We sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis?.

90. The observation of Denning L.J. was seriously criticized by House of Lords but Hon"ble Supreme Court in a case reported in 1977(4)SCC 193, Bangalore Water Supply v. A. Rajappa had approved the rule of construction as stated by Denning, L.J. while dealing with the definition of industry under the Industrial Disputes Act, 1947.

91. Special Bench of Hon"ble Supreme Court in a case reported in AIR 1955 SC 661, Bengal Immunity Co. Limited v. State of Bihar and others, while considering the mode of interpretation considered certain ingredients required to be taken into account with regard to statutory interpretations. One of the modes of interpretation propounded by Hon"ble Supreme Court is always to make such construction as shall suppress the mischief, and advance the remedy. Relevant portion is reproduced as under:

?22.It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon"s case ; was decided that

?..... for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered :

1st. What was the common law before the making of the Act.,

2nd. What was the mischief and defect for which the common law did not provide.,

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Common wealth., and

4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and

remedy, according to the true intent of the makers of the Act, pro bono publico?.

92. Though in subsequent judgment reported in AIR 2002 SC 1334, p. 1340, Padmasundara Rao v. State of T.N., a Constitution Bench of Hon"ble supreme Court observed that casus omissus cannot be supplied by the court except in the case of clear necessity but maintained the right of Court to do so in exceptional circumstances in the event of clear necessity and when reason for it is found in the four corners of the statute itself without any inference drawn for the purpose.

93. In (2005)3 SCC 551, Pratap Singh v. State of Jharkhand while interpreting Juvenile Justice Act, 1986, their Lordships applied the principle of reading down and held that being a beneficial legislation, interpretation should be done to achieve the object of the Act.

94. While referring the aforesaid case (supra) in interpretation of statutes by Dr. Vepa P. Sarathi, learned author observed as under:

?My respectful submission is that interpretation should always be to achieve the object and for finding this object all material, including international conventions and treaties should be and could be considered, as the Honourable Court did in this case, for holding that the reckoning date for determining the age of the juvenile is the date of the offence.?

95. The aforesaid rule of interpretation has been applied by Hon"ble supreme Court in the case reported in (2006)12 SCC 583, ISPAT Industries Limited v. Commr. Of Customs.

96. The rights and duties of higher judiciary is also reflected from the observations made by Constitution Bench of Hon"ble Supreme Court in the case of Carew and Company Limited v. Union of India, AIR 1975 SC 2260. To reproduce relevant portion, to quote:

?20. The law is not "a brooding omnipotence in the sky" but a pragmatic instrument of social order. It is an operational art controlling economic life, and interpretative effort must be imbued with the statutory purpose. No doubt, grammar is a good guide to meaning but a bad master to dictate. Notwithstanding the traditional view that grammatical construction is the golden rule, Justice Frank further used words of practical wisdom when he observed (Massachusetts S & Insurance. Co. v. U.S. (1956) 352 U.S. 128 at p. 138):

There is no surer way to misread a document than to read it literally.?

97. Lord Denning in his famous treatise, ?Discipline of Law? has observed that the Judges should not be mute spectator to ground realities and may proceed with ideas to remedy the mischief. The observation of Lord Denning in the ? Discipline of Law? is reproduced as under :

?Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all

ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges' trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsmen. He must set to work on the constructive task of finding the intention of Parliament.?

?15. And it is clear that when one has to look to the intention of the Legislature, one has to look to the circumstances under which the law was enacted. The Preamble of the law, the mischief which was intended to be remedied by the enactment of the statute and in this context, Lord Denning, in the same book at Page No. 10, observed as under:

?At one time the Judges used to limit themselves to the bare reading of the Statute itself to go simply by the words, giving them their grammatical meaning and that was all. That view was prevalent in the 19th century and still has some supporters today. But it is wrong in principle. The Statute as it appears to those who have to obey it and to those who have to advise them what to do about it; in short, to lawyers like yourselves. Now the eccentrics cut off from all that is happening around them. The Statute comes to them as men of affairs who have their own feeling for the meaning of the words and know the reason why the Act was passed just as if it had been fully set out in a preamble. So it has been held very rightly that you can enquire into the mischief which gave rise to the Statute to see what was the evil which it was sought to remedy.?

98. The aforesaid observation of Lord Denning (supra) has been affirmed and accepted by their Lordships of Hon''ble Supreme Court in the case reported in AIR 1988 SC 2239, U.P. Bhodan Yagna Samiti, U.P. v. Braj Kishore and others.

99. While interpreting Rule 89 Order 21 CPC, a Constitution Bench of Hon''ble Supreme Court while overruling earlier judgment in a case reported in AIR 2001 SC 2699 : (2001)7 SCC 71, Dadi Jagannadham v. Jammulu Ramulu, observed that though the Court cannot make up deficiencies left by the legislature, but Court must try to harmonize the conflicting provisions. On this reasoning it was held that Rule 89 does not provide any limitation.

100. In AIR 1990 SC 123, Tinsukhia Electric Supply Co. Limited v. State of Assam and others, Hon''ble Supreme Court observed that the Courts should strongly lean against any construction which tends to reduce a Statute to a futility (para 49).

101. In (2004)5 SCC 385, Deepal Girishbhai Son and others v. United India Insurance Co. Limited, Baroda, Hon''ble Supreme Court held that while interpreting the statute, it shall be read in its entirety. The purport and object of

the Act must be given its full effect by applying the principle of purposive interpretation.

102. In (2009)7 SCC 1, *N. Kannadasan v. Ajoy Khose and others*, their Lordships of Hon'ble Supreme Court have applied purposive interpretation while ascertaining the intention of the Legislature.

103. In *Bhakra Beas Management Board v. Krishan Kumar Vij and another*, Hon'ble Supreme Court held that a statute should be made workable and the interpretation thereof by a Court should be to secure that object. A construction should be rejected which is likely to defeat the plain intention of the Legislature. For convenience, relevant portion from the case of *Bhakra Beas Management Board* (supra) is reproduced as under :

¶34. It has been stated by Lord Dunedin, in the case of *Murray v. IRC* that, "it is our duty to make what we can of statutes, knowing that they are meant to be operative and not inept and nothing short of impossibility should in my judgment allow a judge to declare a statute unworkable". The principle was reiterated by him in a later judgment in the case of *Whitney v. IRC* , where he observed, "a statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable.

35. The aforesaid observations make it abundantly clear that the courts will, therefore, reject the construction which is likely to defeat the plain intention of the legislature even though there may be some inexactitude in the language used. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided.?

104. The principle of reading down has been applied by the Hon'ble Supreme Court again in a recent case, reported in (2009)5 SCC 625, *M. Rathinaswamy and others v. State of Tamilnadu*. Their Lordships held that while construing a statute, interpretation should be in favour of constitutionality of statute and to remove anomaly.

105. When Montesque propounded the principle of compartmentalization while discussing the constitutional philosophy and part of government, he would not have imagined the situation which the Bharat, i.e. India is facing. Justice, social, economic and political cannot be achieved unless every penny of public exchequer reaches to its destination. It is the solemn duty of the Court to interpret the statutory provisions keeping in view the aims and object of an Act and the real intention of legislature.

PRESUMPTIVE CONSTRUCTION

106. The provision contained in Section 19 may be interpreted by applying the principle of ?presumptive construction? which is the recent widely accepted mode of construction throughout the world to remove absurdity in plain reading of statutory provisions.

107. The Courts, particularly the higher judiciary should not be a mute spectator with the present scenario where under the garb of sanction and seal provided by Section 19 of the Act, corruption crept into blood of public offices causing irreparable loss and injury to national development and depriving the poor and downtrodden from their bread and butter.

108. While interpreting Section 19 to meet out the challenges and necessity, the presumptive and purposive construction may be applied. The construction may involve ?reading down? of certain things in Section 19 of the Act. The aims and object of the Act is to make the law more stringent with regard to corruption and not let out the corrupt public servants from facing the trial. Common law of England has laid down various presumptions about what the Parliament is likely to intend regarding the operation of an Act. According to "Bennion on Statutory Interpretation,

?The interpretative presumptions are not distinct from rules and principles of law, but are to a large extent drawn from them. At the same time they recognise the essential nature of legislation, and look in particular to its effective working.....

The literal meaning is one arrived at from the wording of the enactment alone, without consideration of other interpretative criteria. When account is taken of such other criteria (for the purpose of arriving at the legal meaning of the enactment), it may be found necessary to depart from the literal meaning and adopt a strained construction.?

109. In *Hollands v. Williamson*, [1920]1 KB 716, it has been held that in case the literal meaning produce an absurd result and the absurdity is so extreme so as to induce the court to depart from the literal meaning, then the Court may proceed with preemptive interpretation of a statute. However, such departure should not be based on mere speculation.

110. While considering the recent trend evolved by Courts in statutory representation to remove absurdity, some of the cases and discussion given in "Bennion Statutory Interpretation? shall be appropriate to be reproduced, which is as under :

?The modern attitude is indicated by a dictum of Mustill J that "a statute.....cannot be interpreted according to its literal meaning without testing that meaning against the practical outcome of giving effect to it. Some modern judges have gone so far as to suggest that the correct course is to start by considering which result would be desirable, and then see if the law permits it. Thus Lord Radcliffe said :

".....it sometimes helps to assess the merits of a decision, if one starts by noticing its results and only after doing that allots to it the legal principles upon which it is said to depend."

Lord Radcliffe went on to say that in the instant case he had begun by

considering the consequences of the apparent meaning of the enactment, and found these disquieting. He went on : " I start then with the assumption that something must have gone wrong in the application of legal principles that produce such a result.

Prima facie, as we have seen, the ordinary meaning of the words is to be followed. If the consequences are adverse, this presumption may be displaced. As Donaldson MR put it:

Our task, as I see it, is to construe [the Act], and in so doing the prima facie rule is that words, have their ordinary meaning. But that is subject to the qualification that if, giving words their ordinary meaning, we are faced with extraordinary results which cannot have been intended by Parliament, we then have to move on to a second stage in which we reexamine the words....

The so-called "golden rule" The "prima facie rule" referred to in the above dictum of Donaldson MR was called by Viscount Simon the "golden rule". He said : "The golden rule is that the words of a statute must prima facie be given their ordinary meaning". However, the term golden rule is more usually applied to the precept Lord Blackburn described as "what Lord Wensleydale used to call the golden rule. Lord Blackburn went on to express this so-called rule as :

".....that we are to take the whole statute together, and construe it all together giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification."

This was an attempt by Lord Blackburn to provide in a few words an all-embracing single prescription for the task of statutory interpretation.?

111. Learned author (supra) noted that by passage of time, the intention of the originator of the statute loses its effectiveness and become irrelevant but even then the statutory provisions continue to operate. With the change of social condition and keeping in view that the Constitution is living organism an Act may also be treated ?living statute? and may be constructed in such a manner which may remove the absurdity. The old enactments should be read in the light of the dynamic processing received over the years with such modification of current meaning of its language as will now give effective legislative intention. Learned author observed that updating principle may be applied in mind while interpreting the statutory provisions after passage of time.

112. It shall be appropriate to reproduce relevant portion from the Bennion on Statutory Interpretation (supra):

With the updating principle in mind, the competent drafter frames the language in terms suitable for continuing operation into the unforeseeable future. The drafter does not conspicuously compose the Act as at the date of the draft. Rather the aim is to employ a continuous present tense, using the word "shall",

as Thring enjoined, as "an imperative only, and not as a future". Yet, since language (like human society) is continually in flux, the formula expressed in the words of one age may not feel comfortable as current law to its subjects in another. It might even fill them with the consciousness of governance from the grave : an always absurd, and sometimes intolerable, infliction. Where the words have changed their meaning, an interpreter may find it impracticable to apply the original sense. Imagination and historical awareness are here required.

Each generation lives under the law it inherits. Constant formal updating is not practicable, so an Act takes on a life of its own. What the original framers intended sinks gradually into history. While their language may endure as law, its current subjects are likely to find that law more and more ill fitting. The intention of the originators, collected from an Act's legislative history, necessarily becomes less relevant as time rolls by. Yet their words remain law. Viewed like this, the ongoing Act ressembles a vessel launched on some oneway voyage from the old world to the new. The vessel is not going to return; nor are its passengers. Having only what they set out with, they cope as best they can. On arrival in the present, they deploy their native endowments under conditions originally unguessed at.

In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly, the interpreter is to make allowances for any relevant changes that have occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters. Just as the US Constitution is regarded as "a living Constitution", so an ongoing British Act is regarded as "a living Act". That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will try to foresee the future, and allow for it in the wording.

Example 288.5 On one view of the definition of "superior court" in the Contempt of Court Act 1981 s 19, it applied to a type of court that did not yet exist in 1981. Lord Diplock said :

"I should.....have reached the same conclusion on the construction of the definition of ?superior court? in s 19, even if it were impossible to point to any existing court which complied with the description and one were driven to the conclusion that the draftsman was making anticipatory provision for possible new courts that might be subsequently created with the status of superior courts of record."

An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual

adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials.?

Learned author(supra) further observed that if the original terminology referred to has been allotted a different meaning, the court will look at the substance behind the wording. The fact that the term referred to by the enactment is still in use does not mean the enactment will apply if the current use gives the term an essentially different meaning (page 898).

113. Keeping in view not only the Constitution but statutory provisions are also living organism (supra). The provisions contained in Section 19 of the 1988 Act should be read taking into account the ground realities of our country where transparency international has placed India in the list of corrupt countries at serial No.87 though earlier, it was at serial No.84. It means even if we do not given any sanctity to the transparency international but the fact is that the corruption by all means is increasing in various forms in India with ?jet speed? and it is not far away when being suffered because of corruption and dominance of antisocial elements and mafia in our society, people may take law in their own hand losing their trust not only in the government but also in judiciary. There is no wrong without remedy. Accordingly, treating law/statute as living organism like the Constitutional provisions, Section 19 should be interpreted by applying principle of presumptive interpretation.

114. Meaning thereby, the Parliament intends to make the law with regard to corruption more stringent, effective and efficacious and accordingly, the provisions contained in Section 19 should be interpreted. All those offences where the public servant is involved in corrupt practice committed intentionally, deliberately and planned manner pocketing and siphoning the public fund shall not make out a case to claim prior sanction under Section 19 of the Act like the present case where from the prima faice evidence on record, it appears that the foodgrains meant for poor and downtrodden have been smuggled outside country. Presumption is sanction shall be necessary only in case a government servant acted bona fidely while discharging his official duty and while doing so, he commits some wrong resulting in commission of crime.

115. Needless to say that under Sections 101, 102 and 103 of the Evidence Act, burden lies on the person/public servant to establish that he had acted in his official discharge of duty and action is bona fide, since it is in his or in her knowledge that he has discharged his obligation bona fide as a public servant.

116. In case the investigating agency records a finding that the public servant had committed offence in a planned, deliberate and intentional manner to usurp the public fund for his own vested interest, then the investigating agency may submit a chargesheet to the court concerned which may proceed with due trial in accordance with the Code of Criminal Procedure and other law in force without compelling for prior sanction. But it does not mean that the public servant shall have no defence to claim protection of Section 19 of the Act. He may move

application in the trial Court or may approach higher judiciary under Article 226/32 of the Constitution and if the court found that he or she acted bona fide in discharge of public duty, the matter may be referred by the court itself for sanction to the government.

INVESTIGATION UNDER SUPERVISION OF COURT

117. While considering the power of higher judiciary to direct for C.B.I enquiry, a Constitution Bench of Hon''ble Supreme Court in the recent case reported in AIR 2010 SC 1476, *State of West Bengal and others versus Committee for Protection of Democratic Rights, West Bengal and others* observed that in a democratic polity, Constitution is supreme. All three organs derive power and authority from the Constitution. Their Lordships observed as under :

?25. In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. As observed in *Raja Ram Pal v. Hon''ble Speaker, Lok Sabha and Ors.* (2007) 3 SCC 184, the Constitution is the *suprema lex* in this country. All organs of the State, including this Court and the High Courts, derive their authority, jurisdiction and powers from the Constitution and owe allegiance to it. Highlighting the fundamental features of a federal Constitution, in *Special Reference No. 1* (AIR 1965 SC 745)(supra), the Constitution Bench (7Judges) observed as follows:

?...the essential characteristic of federalism is 'the distribution of limited executive, legislative and judicial authority among bodies which are coordinate with and independent of each other'. The supremacy of the Constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity. This supremacy of the Constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers.?

Hon''ble Supreme Court observed that a constitutional provision should not be interpreted in a narrow and constricted sense but in a wide and liberal manner. To reproduce relevant portion, to quote:

?30. In *M. Nagaraj and Ors. v. Union of India and Ors.*, speaking for the Constitution Bench, S.H. Kapadia, J. observed as under:

?The Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an expanding future and is intended to endure for ages to come and consequently to be adapted to the various crisis of human affairs. Therefore, a purposive rather than a strict literal approach to the interpretation should be adopted. A Constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and

purposes so that a constitutional provision does not get fossilised but remains flexible enough to meet the newly emerging problems and challenges.? [Emphasis supplied]

In the same judgment, their Lordships held that the Supreme Court and the High Courts are protectors of the civil liberties of the citizen and have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution of India. Relevant portion from the judgment of Committee for Protection of Democratic Rights(supra) is reproduced as under:

?33. In this context, it would be profitable to make a reference to the decision of this Court in Nilabati Behera, (AIR 1993 SC 1960 : 1993 AIR SCW 2366)(supra). The Court concurred with the view expressed by this Court in Khatri and Ors. (II) v. State of Bihar and Ors. and Khatri and Ors. (IV) v. State of Bihar and Ors. wherein it was said that the Court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared ?to forge new tools and devise new remedies? for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the enquiry, needed to ascertain the necessary facts, for granting the relief, as may be available mode of redress, for enforcement of the guaranteed fundamental rights. In his concurring judgment, Dr. A.S. Anand, J. (as His Lordship then was), observed as under:

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings.?

Their Lordships further held that the Court may mould the relief to meet the peculiar extraordinary circumstances of the case in the following words :

?37. In Dwarkanath's case (AIR 1966 SC 81)(supra), 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.?

While concluding the judgment, Hon''ble Supreme Court observed that exercise of power by higher judiciary shall not violate the doctrine of separation of powers; rather in case the court fails to grant relief, it would be failing in its constitutional duty. It shall be appropriate to reproduce operative portion contained in para 44 of the judgment, to quote:

?Conclusions:

44.....

(vi) If in terms of Entry 2 of List II of The Seventh Schedule on the one hand and Entry 2A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the Statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

(vii)When the Special Police Act itself provides that subject to the consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct the CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.?

118. In the case of D.K. Basu versus state of West Bengal, 1997 Vol1. SCC 416, Hon''ble Supreme Court had proceeded to hold as under:

?The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities.?

119. According to Latin phrase Ubi jus, ibi remedium means there is no wrong without a remedy. Law expects that in every case where a man is wronged and endamaged, he must have a remedy. A mere declaration of invalidity of an action shall not be sufficient to meet the constitutional mandate.

120. Courts cannot shirk from their responsibility to fulfil the wishes of Parliament or collective wisdom of Legislatures who have enacted the Act. Country is served by not only legislatures but also by judicial legislation. Aim and object or goal of legislature, bureaucracy and judiciary is to serve the people. In case investigation is done under the supervision of Court and the First Information Report is lodged and chargesheet is filed in a Court of competent jurisdiction for trial of the accused, then in such a situation, there appears to be no reason to permit a Government to exercise power under Section 19 of the Act or Section 197 of CrPC to accord sanction for prosecution. Judicial legislation or exercise of power is part and parcel of sovereign function and in appropriate case where an action is taken on the direction issued by the Court, the governmental authorities will have no power to exercise discretion under Section 19 of the Act. Things deem to have been done and formalities shall be deemed to have been completed with regard to sanction under the Act.

121. Like in the present case, it is under the supervision of this Court, the C.B.I. and State agencies have investigated the matter and prepared a chargesheet. It is not open for the investigating agencies either to send for sanction under the Act to the State Government or the State Government may claim its right to exercise power under Section 19 of the Act for sanction or denial of prosecution. The government cannot sit in appeal over the discretion exercised by the court while supervising investigation and directing to proceed in the matter.

PRIVATE AND PUBLIC CONDUCT

122. Now, it has been settled by Hon"ble Supreme Court that not only right to life but dignity and quality of life and also right to privacy are fundamental rights vide 2001(6) SCC 496, Hinch Lal Tewari v. Kamala Devi and AIR 1991 SC 1902, Bangalore Medical Trust v. B.S. Mudappa, AIR 2007 SC 1046, Milkmen Colony Vikas Samiti v. State of Rajasthan and others and 2006(13) SCC 382, Nagar Nigam, Meerut v. Al Faheem Meat Exports Private Limited and others. Once, Hon"ble Supreme Court declared that the right to privacy is a fundamental right, protected by Art. 21, then a person holding public office also retain right of privacy as constitutionally protected right. A public office and right to privacy are two different things. What is correct in personal life may not be correct in public life. For example, making a false statement to a friend with regard to personal matter may not attract the public office but false statement given during discharge of official duty shall necessarily invite punitive action and may amount to misconduct. Corally to it, is the corrupt practices. Indulgence in corrupt practice by public servant intentionally, deliberately and planned manner is his or her private conduct and for that he cannot claim protection of Section 19 of the Act. It is his personal conduct and owing to holding public office, he will be liable to be prosecuted under the Act because of misappropriation of public fund but it shall not require any sanction from the government under Section 19 of the Act.

123. Holding of public office and a conduct of personalise nature while holding public office are two different things. A conduct may be of personalised nature or

official in nature. A thing done in official nature may attract Section 19 but a conduct of personalised nature shall not attract Section 19 of the Act. Where ever a public servant do certain thing, intentionally, deliberately and planned manner and the root cause or motive is not to serve the people but to misappropriate the fund or commit a crime, then for such action, no permission shall be required.

124. In Section 19 of the Act by using word 'employed in connection with the affairs of Union or State' means the conduct for which a public servant has been charged under the Act must be with regard to official discharge of duty. Fabrication of records for misappropriation of fund in a planned manner shall not be fall in connection to affairs of State.

125. Of course, as observed (supra), he will have option to move application under Section 239/245 of Cr.P.C. or approach the higher judiciary under Art. 226/227 of the Constitution of India with submission that he or she acted bona fide in discharge of his/her public duty, hence the matter may be referred to the government for sanction. In case, the court finds sufficient material and is satisfied, then formality with regard to sanction under the Act may be completed or the courts may reject such application.

126. There is one other aspect of the matter. Section 19 of the Act extends uncontrolled, unbridled power in the hands of the government with regard to exercise power for grant of sanction. Hon'ble Supreme Court by catena of judgments vide (2004) 7 SCC 68, Godawat Pan Masala Products I.P. Ltd. and another v. Union of India and others, AIR 1954 SC 224, Dwarka Prasad Laxmi Narain v. State of U.P.; 1988 SCC (L&S) 559, B.B.Rajwanshi v. State of U.P.; 1978 (1) SCC 248 paras 7 and 8, Maneka Gandhi v. Union of India; AIR 1968 SC 445, Kanti Lal Babular v. H.C. Patel held that the statute cannot confer any uncontrolled, unguided and unbridled power in the State authorities. Conferment of such power shall be antithesis of rule of law and arbitrary, hence shall be hit by Art. 14 of the Constitution of India. Since the vires of Section 19 has not been challenged, we have constructed Section 19 by applying the principle of reading down and presumptive construction while interpreting Section 19 of the Act. It is because of blanket power given by the statute to the government, the matter with regard to sanction has been kept pending by the State authorities for one or the other reasons. In democratic polity, no one can be conferred such power which ultimately amounts to encourage commission of crime/corruption in the society.

127. According to National Crime Record Bureau, 2008, since 1997, 1,99,132 farmers committed suicide. Only in the year 2008, 16196 farmers committed suicide. Thus, at every 30 minutes, one Indian commits suicide. This is happening in spite of waiver of loan to the tune of 70000 crore (Hindu dated 22.1.2010).

128. According to the reports, 77.2 crores children never go to schools. 79.9

crores people are illiterate (Amar Uzaja dated 21.1.2010).

129. According to Tendulkar Committee Report, 77% of Indian population lived at an average monthly per capita consumption expenditure of Rs.16/ per day (year 20042005). The annual income in 20042005 in rural area of 41.8% Indians were assessed Rs.446.68 per capita per month whereas in urban area, Rs.578.80 per capita per month, i.e. 25.7% which comes to 15 and 18 rupees per day respectively (Hindu 2.10.2010).

130. Uttar Pradesh ranks at five amongst poor State in the country and two in every five live below poverty line. In U.P., 40.9% are poor. 2 billion out of 8 billion live a life of Begar (Times of India 7.1.2010). According to newspaper, ratio of poverty in rural area is 42.7%, urban area 24.1% in U.P. According to census, average monthly income of B.P.L. Card holders in district Chandauli, 37834 B.P.L. Cardholders have average income is less than 250 per month whereas in district Sonbhadra, the number of persons of the same income is 14176. The maximum income of B.P.L. Cardholders is around 2500 (Times 21.1.2010).

131. The maternal mortality ratio (MMR) in U.P. is 440 out of one lac. 78000 women died during pregnancy and child birth every year. Meaning thereby, the national average of maternity death is 250 out of one lac and the Uttar Pradesh is at top. In India, lifetime risk of maternal death is 1 out of 70 whereas in U.K., USA, one out of 8200 and 4800 respectively.

According to reports, those who raise voice against corrupt practices as whistle blower are either killed or snubbed and the bureaucracy is silent spectator. It is needless to mention the names disclosed in the Frontline dated 1.12.2010.

132. The disturbing feature is that the graph of corruption is towards elevation and not downward. The higher judiciary cannot close its eyes to such scenario. While interpreting Section 197 CrPC read with Section 19 of the Corruption Act, the provisions should be interpreted to make it effective to curb the corruption.

133. In a case reported in 2010 (28) LCD 1248, Dhrendra Kumar Rai v. State of U.P. and others, this Court after considering catena of judgments, held that principle of 'High Authority Theory' is neither feasible nor workable in India. Keeping in view the loss of "public trust" in individual office holder, it shall be appropriate that the Act may be amended and the trial of public servant for corrupt practice may be done by the tribunal consisting five or more members, with regard to fund involving 10 lacs or more or as the Legislature pleases.

134. In Khalil Gibran's book, 'A Tear and a Smile' containing compilation of essays, prose and poems (page 168) virtually seems to cover the present state of affairs where the poor man's, 'pound of flesh' has become food of overrich public servants, to quote :

'I stand alone in mourning, listening. And I hear those that dwell thereon for their weariness.

But did my people take up the sword, saying it was out of love of their land, and fall upon my neighbor's land and plunder its goods and slay its men and render its children orphans and make its women widows, and water its soil with its sons' blood and feed to the prowling beast the flesh of its youth, I would hate my land and its people.

I am kindled when I remember the place of my birth.....

Sacred humanity is the spirit of divinity on earth. That humanity which stands amidst ruins clothing her nakedness in ragged garments, and shedding abundant tears upon her withered cheeks; calling upon her sons in a voice that fills the air with lament and mourning.?

135. Principle of reading down, presumptive interpretations are the tools which makes the law living and organic (supra). Not only the Constitution but the statutory provisions are also organic and not static(supra). In case the legislature do not amend the law to face the challenges, then the courts are not precluded to interpret the old law in such a manner which may fulfill the collective wishes of the legislatures to serve the peoples of the country. Law and Constitution both are not static but are organic and after a passage of time, in case the statutory provisions are outdated and not amended, the courts may depart from settled norms of interpretation to achieve the object.

136. Lord Acton century back, said, to quote :

?Power tends to corrupt, and absolute power corrupts absolutely.?

In the same line, the Earl of Chatham, a British Prime Minister of 18th century in his speech in UK House of Lords in 1770 rightly said, to quote :

?Unlimited power is apt to corrupt the minds of those who possess it.?

The abuse of unlimited power by legislature and State authorities has been acknowledged while dealing with contemporary history of the country by Fali S. Nariman in his autobiography, ?Before Memory Fades?.

FINDING

137. In view of above, we conclude our finding on the question raised in the present writ petition as under :

1. In every case, sanction for prosecution is not necessary. Cases where investigation is done under the supervision of High Court or Supreme Court and report is prepared and investigating agency records a finding with regard to abuse of public office in a planned, deliberate manner, then sanction under Section 19 of the Prevention of Corruption Act or Section 197 of the CrPC shall not be required. The courts may proceed with the trial expeditiously in accordance with statutory provisions after receipt of chargesheet.

2. In case a public servant intentionally, deliberately and in a planned manner wilfully abuses his public office to usurp or misappropriate the public fund or

commit a crime, then it shall not be necessary for the investigating agencies to obtain sanction under the statutory provisions. The courts may proceed with the trial after receipt of chargesheet.

For example, diversion of foodgrains by train to smuggle outside the country like Bangladesh or other countries (supra) are the instances where public servant deemed to acted intentionally, wilfully and deliberately to misappropriate the public fund and shall not fall within their official duty but it shall be their ?private conduct? under the garb of ?public office? for which sanction shall not be required. The other example may be misappropriation of public fund or undisclosed wealth or earning by usurping the public office and depositing the same in foreign banks or commission of crime like murder, dacoity or association with antinational element against National Interest for the commission of crime shall not attract Section 19 of the Act.

3. However, in case a person holding public office acted bona fidely while discharging his official duty and commits some wrong and a statement is given before the investigating agency taking such plea and in the event of factual corroboration from material on record, the investigating agency shall refer the case to the State Government under Section 19 of the Act.

4. Indulgence in corrupt practices deliberately, wilfully and intentionally is a ? private conduct? and does not fall in public domain. Being of personalised nature for such corrupt practice, sanction shall not be required under Section 19 of the Act as observed in the body of the judgment.

5. In case a public servant feels that he has acted bona fidely while discharging his obligation as a government servant, he will have option to move appropriate application before the trial Court or approach higher judiciary and in case the courts prima facie found that the government servant acted bona fidely while committing such "misconduct" may refer the matter to the State Government to consider for sanction

6. All those cases where foodgrains have been diverted outside the State of U.P. or other countries shall be investigated by the C.B.I. Apart from Ballia, Sitapur and Lakhimpur, the cases with regard to district Varanasi, Gonda and Lucknow shall also be investigated by the C.B.I. During the course of investigation, in case the State agencies find some other case within their jurisdiction under investigation where prima facie it appears that the foodgrains have been diverted outside the U.P. Or other countries, then the State agencies shall immediately send the record to the C.B.I. for further investigation.

7. Except the aforesaid cases where foodgrains have been diverted outside the State or country, the other matter shall be investigated by the State agencies expeditiously.

8. Except the cases of above referred nature, rest shall be referred to Government for statutory sanction. State or Central Government as the case

may be, shall consider request for sanction within three months and communicate the decision. In case no decision is taken within three months, sanction shall be deemed to be granted, chargesheet may be filed and trial Court shall proceed with the case to its logical end in accordance with law.

9. It shall be open for the C.B.I. to raise the demand with State Government to provide further assistance as required and it shall be obligatory on the part of the State Government to fulfil the same immediately, say within a month.

10. Union of India should consider appropriate amendment in the Prevention of Corruption Act, 1988 in the light of observation, made in the present judgment expeditiously with regard to sanction, deemed sanction and trial by TRIBUNAL.

138. While concluding the finding, as above, it shall be appropriate to observe that the corruption in administration has been a matter of deep concern since ages. Kautilya (Chanakya) in his age old treatise, 'The Arthashastra' (321 B.C.), has observed, to quote :

'Government servants could enrich themselves improperly in two ways, either by cheating the government or by exploiting the public.'

Kautilya was of the view that though honest official should be protected against false accusation but corrupts should be punished severely. Kautilya suggests to encourage the corrupt government servants to confess the guilt. Interest of the public was protected by providing compensation to the victim of malpractices (Kautilya the Arthashastra, page 294).

139. Niccolo Machiavelli, a great political thinker had shown deep concern over the misappropriation of the public fund by the political and bureaucratic abuse of power. Machiavelli was of the view that most people remain more committed to their own ambitions than to the public interest, and "never do anything good except by necessity". The outcome is a perpetual tendency for overmighty citizens and powerful interest groups to alter the balance of the constitution in favour of their own selfish and factional ends, thereby introducing the seas of corruption into the body politic and endangering its liberty.

Machiavelli was of the view that the citizens are to be watched so that they cannot under cover of good do evil. It is then essential for everyone "to keep their eyes open", holding themselves in readiness not only to identify such corrupting tendencies, but also to employ the force of the law in order to stamp them out as soon as or even before they begin to become a menace (Machiavelli, Oxford Publication, page 77).

140. With all sobriety, the Father of Nation, Mahatma Gandhi also noted the expectation of people or weaker section from the men in power in an article published in Young India in October, 1931, a part of which is as under, to quote :

'I know that people who voluntarily undergo a course of suffering raise themselves and the whole of humanity, but I also know that people, who become

brutalized in their desperate efforts to get victory over their opponents, or to exploit weaker nations or weaker men not only drag down themselves but mankind also. And it cannot be a matter of pleasure to me or anyone else to see human nature dragged in the mire. If we are all sons of the same God, and partake of the same divine essence, we must partake of the sin of every person whether he belongs to us or to another race. You can understand how repugnant it must be to invoke the beast in any human being.?

141. In his famous letter, written to Headmaster of the school where his son was studying, Abraham Lincon has advised to teach his son to face the challenges and art of life with due skill and knowledge. Lincon said, to quote :

?He will have to learn I know,
That all men are not just,
All men are not true,
But teach him also,
That for every scoundrel there is a hero,
For every selfish politician,
There is a dedicated leader.....?

142. Thus, since ages, corruption has been burning point in administration. In case the king or person at the helm of affair of a country are good having selfless life with commitment to serve the people the corruption is tamed without any substantial damage to public exchequer and society at large. But in case a country is managed by persons who lacks skill and knowledge and who use to harm public exchequer for their own vested interest, the corruption flourish and perpetuate to swallow public fund from upper to lower strata of the governance.

143. Dr. Radha Krishnan in his commentary on Geeta, while interpreting verse 21 Chapter 3, has observed that great men are path makers who bless the trail that other men follow.

144. It appears that since last almost two or three decades, the constitutional functionaries of the country for one or other reason have failed to regulate their action with highest standard expected in public life. In spite of having knowledge, we are losing wisdom. Without wisdom, knowledge shall not cater the needs of time. Wisdom not only inhibit in itself the present but also possess foresightness for future generation. Wisdom requires research, wisdom requires thinking and wisdom requires sacrifice of the personal interest in public life. In a recent book, a former Vice Chancellor and a person of eminence observed as under :

?Action is an integral part of wisdom. Without action knowledge is like building castles in the air, it adorns debates and literature giving mental satisfaction but is of no practical value. Knowledge becomes fruitful only when a decision taken on

its basis is implemented transforming it into wisdom. If you find a person, family or nation more advanced than others, you can be rest assured that it is based on their work ethos. Our ancestors were food gatherers living in caves but today we have better living conditions in all aspects of life. The credit goes to our work culture which has made all round development possible.? (Wisdom for Happy Life by D.S. Rathore, page 43)

145. In India, administration of justice is suffering from lack of assistance by research oriented scholars, barring few exceptions. System has been commercialized. Lawyers have no time to make some research and assist the court with visionary suggestions.

146. Benjamin N. Cardozo while delivering Yale University lectures in the year 1923, noted this fact and encouraged the universities, particularly Law Universities to guide the course of judgment (The Growth of the Law, pages 12, 13 and 14). It was the effort of government as well as U.S. Supreme Court that since decades, with their research oriented output, Harvard and Yale Universities are publishing criticism of judgments and assisting the higher judiciary by their articles and research papers.

147. Philosophy of Law or philosophical studies are necessary for development of law. Benjamin N. Cardozo(supra) while appreciating the works of Rose Pound observed as under :

?My present purpose will be attained if I arouse in you a sense of the bond between law and its philosophy. In the analysis of ends, the most fruitful generalizations yet reached, at least in AngloAmerican law, are those of Roscoe Pound. Certain branches of the law call in conspicuous measure for certainty and order, for an administration of justice that is strict and in a sense mechanical. ?

Justice Cardozo was of the view that the purpose of law is not only to secure present but also future interest of the society, to quote :

?Psychologically, law is a science of prediction par excellence. It concerns primarily our future interest; people do not study cases for pleasure, but generally with a view to anticipating what the courts will do when future cases arise.?

148. Out of three menace corruption, casteism and communalism, the latter two may be regulated by effective administration and trial with punishment but the former cannot be. It is the corruption in administration which creates breeding ground not only to usurp the public fund, keep the people hungry but also it keeps the communalism and casteism to perpetuate and flourish.

Long back, Manu said that people obey law not because of its existence but because of the fear of punishment. The more liberal law the more chance of its violation and creation of gallery for the anteethical element.

149. Collective wisdom of the Parliament should be looked into while interpreting

the law and the courts should not hesitate applying the principle of reading down or presumptive interpretation by supplying *causis omissis* to remove absurdity and secure public interest (supra).

150. In democratic polity, in case the judiciary finds itself helpless and remains a mute spectator, then either the people will take law in their own hands with mobocracy, , public lynching etc. or the country may disintegrate. As we have observed not only the Constitution is living organism but the statutory enactments are also living organism(supra) and with lapse of time, in case it is not amended to meet the requirement, then the Courts are not precluded to give it worthy meaning.

151. Famous phrase of the series of James Bond's "Licence to Kill" with regard to substantial number of "public office" becoming "licence to corrupt". The "mesh" of corrupt people day by day seems to becoming stronger. In administration, corruption has become rule and honesty an exception. Corrupt people make the situation chaotic to save their skin. Who will bell the "cat", when famous phrase of Aneurin Bevan seems to be true, to quote : "I stuffed their mouth with gold" ??

The Bible says, where there is no vision, the people perish. The mechanism of recruitment, appointment and surveillance of the conduct of public servant seems to be faulty and requires "Dutch Courage" to reform by corrective measures, picking persons possessing impeccable integrity to run the administration with firm hands. Otherwise, the country shall suffer serious set back in coming days.

152. The height of corruption (supra) is alarming, administration seems to have been crippled requires some remedial measures. Gandhi's vision, Nehru's tryst with destiny, Sardar Patel's efforts for United India and Ambedkar's concern for downtrodden are likely to be swallowed by the "monster of corruption". Should judiciary be mute spectator ?? O God ! Enlighten us and help !

It is strange that we are not ashamed of corruption, more so when a foreigner like Indonesian ambassador Lt. General (retired) Andi M. Ghalib has stated that our country is suffering from the drawback because of corruption(The Times of India, Lucknow dated November 25, 2010). To quote:

"India's pace of development and transformation into a super power will be much faster if corruption is eliminated at high places,"

It is a thing of research as to why corrupt people in the form of "bad coins" are gradually replacing "good coins", i.e. people who possess honesty, integrity and impeccable character. One of the reasons appears is that ordinarily, the persons who are honest, fair and possess impeccable character do not reach to the gallery of power from where the persons to administer the government are chosen. There may be one other reason, i.e. sometime persons possessing impeccable character are not liked by persons who are at the helm of affairs. A

scenario has been created in the country that every thing can be purchased in cash or kind. Such scenario is horrible and requires immediate remedial measure.

153. Their Lordships of Hon^{ble} Supreme Court in a case reported in (1998)1 SCC 226, Vineet Narain and others v. Union of India and another has discussed various codes of conduct and seven principles of public life, the objectives of the judiciary but it is unfortunate that good advice given by Hon^{ble} Supreme Court in national interest could not move the government/public servants towards right direction.

According to catena of judgments of Supreme Court, the quality of life, dignity of life and privacy and so many rights necessary for human living has been protected under Art. 21 of the Constitution of India, then there appears to be no reason to think otherwise than to hold that right of good governance is the part and partial of quality of life, hence is fundamental right and must be ensured by all three wings of the government.?

154. Smuggling of foodgrains by fabrication of records using the numbers of motorcycle, scooter, Maxi Cub, Mini Bus, Tempo etc. and then transporting it to far off places of Eastern India and Southern India to Railway station, sea port is not only daring but shows that now the public servants feel that they have ? unfettered right? to indulge into corrupt practices having remote chance of punishment by the Court of competent jurisdiction. It is unfortunate for the country.

155. In view of above, we allow the writ petition subject to observation made and finding recorded hereinabove and issue the following directions for compliance not only in the interest of present controversy but to safeguard the future public interest till Act is appropriately amended(supra) by the Parliament :

(i) The C.B.I. shall proceed with further enquiry not only with regard to Ballia, Lakhimpur and Sitapur but also with regard to Varanasi, Gonda and Lucknow District.

(ii) All those cases where the State agencies found that the foodgrains have been smuggled outside the State of U.P. or to other countries, immediately, they shall refer such cases to the C.B.I for further investigation.

(iii) It shall not be necessary for the C.B.I or State agencies to obtain sanction under the statutory provisions with regard to present controversy where from initial stage, prima facie intentionally, deliberately and in a planned manner, the foodgrains were lifted from godown for sale either in open market or to smuggle outside the State of U.P or to other countries.

(iv) Subject to exception above(supra), the Chief Secretary of the State of U.P is directed to ensure that not only in the present controversy but in all cases where State agencies or the C.B.I or other investigating agency moves an application for sanction under the Code of Criminal Procedure or Prevention of Corruption Act, 1988 or any other law for the time being in force, a decision should be taken

within a period of three months. In absence of any decision with due communication, it shall be deemed that the sanction has been accorded, chargesheet shall be filed and the trial Court shall proceed with trial to logical end in accordance to law.

(v) Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of such person shall be conducted and completed expeditiously. It is imperative to retain public confidence in the impartial working of the State agencies.

A message must be given by the investigating agencies keeping in view the concept of equality enshrined in the Constitution that, "Be you ever so high, the law is above you." Law must take its course to punish the guilty.

(vi) Directorate of Enforcement, Ministry of Finance, Government of India shall also proceed with search and seizure of assets, property, cash or kind earned under food scam under the Prevention of Money Laundering Act and Foreign Exchange Management Act or any other law time being in force expeditiously.

(vii) The State and the central agencies shall proceed with the investigation expeditiously and conclude the same within a period of six months. At the interval of every two months, they shall submit a status report to this Court henceforth till filing of the chargesheet/report to Court concerned.

It shall be open to the C.B.I. and State agencies to proceed with investigation with regard to food scam not only up to the year 2007 but even beyond the said year in case some link evidence/material is found with regard to continuance of diversion of food under various schemes of the State and Central Government.

(viii) As and when a chargesheet is filed, the trial Court shall proceed with the trial and conclude the same expeditiously and preferably within a period of one year.

Registrar General shall communicate the order passed by this Court and circulate to all Courts concerned and submit a compliance report within one month.

Registry shall send a copy of the present judgment to the Secretary, Law, Government of India as well as to the Principal Secretary, Law and Chief Secretary of the State of U.P. to consider for appropriate amendment in the Prevention of Corruption Act, 1988 in the light of observations, made in the body of judgment. Till the law is appropriately amended by the State of U.P. (State Amendment) or the Central Government, findings recorded and directions issued shall be followed by all investigating agencies and subordinate courts of the State while dealing with corruption cases. Copy of the judgment shall also be provided to the Addl. Solicitor General of India as well as the Advocate General of the State for appropriate action. A copy shall also be sent to the Directorate of Enforcement, Ministry of Finance, Government of India for appropriate action in the light of the directions issued(supra).

The writ petition is allowed accordingly. No order as to costs.