

**(2012) 02 AP CK 0006**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Petition No. 28951 of 2011**

Y.S. Vijaya

APPELLANT

Vs

The Union of India and Others

RESPONDENT

**Date of Decision :** 16-02-2012

**Acts Referred:**

Army Act, 1950 — Section 130  
Benami Transactions (Prohibition) Act, 1988 — Section 5(2)  
Central Vigilance Commission Act, 2003 — Section 8  
Commissions of Inquiry Act, 1952 — Section 8B  
Constitution of India, 1950 — Article 21, 219, 226, 32  
Criminal Procedure Code, 1973 (CrPC) — Section 190, 200, 227, 228, 239  
Penal Code, 1860 (IPC) — Section 120B, 161  
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 5  
Writ Proceedings Rules, 1977 — Rule 7, 9(1)

**Citation :** (2012) 4 ALT 334 : (2012) 2 ALT(Cri) 229

**Hon'ble Judges :** G. Rohini, J; Ashutosh Mohunta, J

**Bench :** Division Bench

**Advocate :** Sushil Kumar, for Sri Kasa Jaganmohan Reddy, for the Appellant; Ponnam Ashok Goud, Assistant Solicitor General of India for Respondent No. 1, Government Pleader for Home for Respondents 2, 3 and 6, Sri P. Keshava Rao for CBI for Respondent No. 4, Sri V. Gopala Krishna Gokhale for Respondent No. 5, Sri M.S. Ramachandra Rao for Respondent No. 7, Sri A.K. Ganguly, for Sri Srinivas Dammalapati for Respondents 8, 9 and 10, Sri Anil B. Divan, for Sri B. Nalin Kumar for Respondents 11 and 12, None for Respondents 13 and 14, Sri K. Ramakrishna Reddy, for Sri D. Srinivasa Rao for Respondent No. 15, Sri K. Srinivasa Reddy for Respondent No. 16, Sri D. Prakash Reddy, for Sri P. Radhiva Reddy for Respondent No. 17, Sri D. Prakash Reddy, for Sri Harinder Prasad for Respondent No. 18, Sri Ch. Pushyam Kiran for Respondent No. 19, Sri C. Ramachandra Raju for Respondent No. 20 and Sri Harish Salve, for Sri D. Seshadri Naidu for Respondent No. 21, for the Respondent

## Judgement

G. Rohini, J.—This writ petition is filed by way of public interest litigation seeking a Mandamus declaring the inaction of the respondents 1 to 6 in initiating penal action against the respondent No.8 and his associates i.e., respondents 9 to 20

under the provisions of the Prevention of Corruption Act, 1988 and the Money Laundering Act, 2002 and other applicable penal laws is illegal, arbitrary and consequently direct the respondents 1 to 6 to initiate proceedings under law including a direction to the respondent No.4 to conduct an investigation / probe in respect of allotment of lands, granting of licenses, decisions of disinvestment and amassing disproportionate wealth and assets by the respondents 8 to 10 and the involvement of the respondents 11 to 20 and prosecute the unofficial respondents and others in accordance with law. Pending disposal of the writ petition, the petitioner sought an interim direction to the respondent No.4 to conduct a preliminary enquiry into the subject matter and submit a preliminary enquiry report to this Hon'ble Court in regard to the acts of omission and commission of the respondent No.8 during his tenure as Chief Minister of the State including in the matter of allotment of lands, grant of contracts, conferment of incentives and concessions and benami holdings of the respondent No.8 and his family members.

2. At the stage of admission, an elaborate order was passed by this Court on 14.11.2011. Admittedly the respondents were not heard before passing the said order. The operative portion of the order dated 14.11.2011 reads as under:

10. We have bestowed our anxious consideration to the various statements of fact and the legal principles on the subject. We are of the opinion that the petitioner has made out a case of misuse and or abuse of power and also acts of indulgence shown by the 8th respondent, warranting admission of this writ petition. Accordingly, we admit this writ petition and issue Rule Nisi 11. However, we are of the opinion that respondents 3, 4, 5 and 6 should be directed to independently carry out necessary inquiries / investigation into the various acts alleged to have been committed and attributed to respondents 8 to 20 in the affidavit filed in support of this writ petition based upon the documents enclosed as material papers of this writ petition, before an opinion can be firmed up about the criminal culpability. Let the investigation be carried out and a report be submitted by each of the respondents 3 to 6 in sealed covers for further consideration of this Court, to enable it to take appropriate and necessary further action in the matter. For this purpose, we grant respondents 3 to 6, three months time.

12. Learned counsel for the petitioner is directed to deposit eight more sets of the paper book filed in the writ petition together with the material papers exhibited along therewith within one week from today, so that the Registrar (Judicial) will make available to the respondents 3 to 6 two such sets apiece. Call the matter for further consideration after three months. (emphasis supplied)

3. It is to be noticed that respondent No.4 in the writ petition is the Central Bureau of Investigation, New Delhi; whereas the respondents 3, 5 & 6 are the Government of A.P., represented by its Principal Secretary, Home Department; the Enforcement Directorate represented by its Director, New Delhi and the Director General of Police, A.P., Hyderabad respectively.

4. Aggrieved by the above said order, dated 14.11.2011, the respondents 11, 12, 17 & 20 carried the matter to the Supreme Court. By order dated 23.11.2011 the Supreme Court dismissed the Special Leave Petitions observing that the petitioners would be at liberty to approach this Court for modification/vacating the order dated 14.11.2011 and that their applications be disposed of within 15 days from the date of filing of the same.

5. In pursuance thereof, the respondents 11, 12, 17, & 20 filed WVMP.Nos.4348, 4418 & 4350 of 2011 to recall / vacate the order dated 14.11.2011. Similarly respondent Nos.8, 18 & 19 filed WVMP.Nos.4369, 4396 & 4421 of 2011 to recall/ vacate the order dated 14.11.2011.

6. That apart, the respondents 8, 11 & 12 and 20 sought suspension of the order dated 14.11.2011 pending disposal of the vacate petitions by filing WPMP Nos.39191, 39043 & 39067 of 2011.

7. All the above said petitions were initially listed before the Division Bench-I comprising Hon"ble the Chief Justice and Hon"ble Sri Justice Sanjay Kumar and the arguments were heard in part. On 8.12.2011 the DB-I directed the applications to be listed before a Bench of which the Hon"ble the Chief Justice is not a member. Thereafter the matter was listed before DB-IV comprising Hon"ble Sri Justice V. Eswaraiah and Hon"ble Sri Justice K.S. Apparao on 9.12.2011. An elaborate order was passed by the said Bench on 9.12.2011 directing the Registry to place the papers before the Hon"ble the Chief Justice for appropriate orders with regard to listing of the matter before a Division Bench of which Hon"ble Sri Justice V. Eswaraiah is not a member. Pursuant thereto, the matter is listed before us.

8. We have heard Sri Sushil Kumar, the learned Senior Counsel appearing for the writ petitioner; Sri A.K. Ganguly, the learned Senior Counsel appearing for the respondent No.8; Sri Anil B. Divan, the learned Senior Counsel appearing for the respondents 11 & 12; Sri Harish Salve, the learned Senior Counsel appearing for respondent No.21; Sri K. Ramakrishna Reddy, the learned Senior Counsel appearing for the respondent No.15; and Sri D. Prakash Reddy, the learned Senior Counsel appearing for the respondents 17 & 18. We have also heard Sri C.V. Mohan Reddy, the learned Senior Counsel and Sri S. Sriram, the learned Counsel appearing for the petitioners in intervening petitions.

9. Since the order dated 14.11.2011 was passed in the writ petition itself, it is represented by the learned Counsel for the respondents 8, 11, 12, 17, 18, 19 & 20 that the applications are filed to recall the entire order dated 14.11.2011 on various grounds raised in their respective counter-affidavits. The learned counsel for both the parties argued in detail about the sustainability of the order dated 14.11.2011.

10. That apart, the learned counsel for both the parties made elaborate submissions with regard to the maintainability of the writ petition as a Public Interest Litigation.

11. As the hearing was consuming considerable length of time, the learned Senior Counsel appearing for the respondents 8, 11 & 12 and 21 requested to suspend the order dated 14.11.2011 submitting that because of the time-bound order passed by this Court on 14.11.2011 the CBI and other agencies were proceeding with the enquiry and notices had already been issued to many of the respondents. Having considered the said request, on 13.12.2011 we passed an order keeping the order dated 14.11.2011 in abeyance until further orders.

12. Before proceeding further, a brief reference may be made to the pleadings.

Petitioner's case:

13. The writ petitioner, who is the wife of a former Chief Minister of the State of A.P., and a sitting member of the Legislative Assembly apart from being the Honorary president of a political party claims that she has long been socially and politically conscious and has been following the political and social scenario in the State of Andhra Pradesh and that she has participated in various social movements in the Assembly Constituency and has been organizing programmes to create awareness about the rights of the citizens to be governed efficiently and honestly.

14. The writ petitioner alleges that the respondent No.8, who is the former Chief Minister of the State of A.P. for a period of 9 years from 1995 to 2004 and the respondents 9 to 20 had acted in concert to ensure that there has been wrongful gain and designed advantage to them and others at the cost of the State Exchequer. Alleging that the offences committed by them include those under the Prevention of Corruption Act, 1988; the Indian Penal Code; the Prevention of Money Laundering Act; FEMA; the Representation of People Act; the A.P. Land Grabbing (Prohibition) Act and Benami Transaction (Prohibition) Act, it is contended by the petitioner that an enquiry / investigation by an appropriate agency like the Central Bureau of Investigation (for short, CBI) into the alleged acts of criminal misconduct committed by the respondents 8 to 20 during the years of 1995 -2004 while the respondent No.8 was in power and authority is essential.

15. It is pleaded that the alleged activities by the respondents 8 to 20 had continued for several years and it is only recently with the advent of the Right to Information Act, 2005 and the information obtained / received by the petitioner from time to time from various sources including the media, the Registrar of Companies, Land Registration Department, SEBI, A.P. Government Orders, Tax Departments and other credible sources, many new documents have come to light which pointed at the criminal culpability of the respondents 8 to 20 and that the petitioner had to seek the help and contribution of many people to secure the information, primarily the Financial Advisor of the petitioner's family since 1985 by name Sri Vijaya Sai Reddy.

16. The details of the allegations against the respondents 8 to 20 have been mentioned in the affidavit filed in support of the writ petition from para-5 to

para-23 under different captions such as disproportionate assets of respondent No.8; other investments and assets of the respondent No.8 and his family; Rama Agricultural Farms; Bhuvaneswari Carbides; Heritage Infra Developers; Krishna Godavari (KG) Basin; Shamshabad Air Port; Hi-tech City; Power Producers Scam; NTR Memorial Trust; Kakinada Port; Privatisation Policies under respondent No.8; Chittoor Dairy; Money Laundering and Foreign Assets of respondent No.8; Yeleru Land Scam; Rithwik Projects Limited; the IMG MOU & the Rao Brothers.

17. The allegations included that the respondent No.8 devised various ingenious methods to ensure that the State policy and the State largesse ends up in the hands of the private individuals and firms which have had transactions with the family of the respondent No.8; that the respondent No.8, who was the pivotal policy maker of the State when he was the Chief Minister had selectively leaked the policy formulations of the State in advance for the benefit of individuals and private entities including the firms and entities owned and promoted by the respondent Nos. 11 & 18; that large amounts were donated from unknown Indian sources to the prestigious institutions in U.S.A. i.e., Carnegie Mellon University and Stanford University wherefrom the son of respondent No.8 had obtained his Bachelors Degree and Masters; that the respondent No.8 laundered his money through one Sujana Chowdary (respondent No.16) and Sujana Group of Companies; that the respondent No.8 encouraged Reliance Group of Industries (who got themselves impleaded as respondent No.21) with heavy exemptions and incentives for exploring Gas reserves in KG Basin in consideration of which Reliance Group of Industries facilitated pay-out of the debts of respondent No.11 to the depositors of Margadarshi Financiers which had fallen on hard times in the year 2007 when its irregularities and violations became public; that the respondent No.8 had shortlisted two locations for the new Air Port at Shamshabad and Ibrahimpatnam to suite the personal benefits and possessions of the respondent No.11.

Case of the respondents:

18. The respondents 8, 11, 12, 17, 18, 19 & 20 filed counter-affidavits in support of their respective vacate petitions contending that the order dated 14.11.2011 passed by this Court which caused grave prejudice to the respondents being an ex parte order is in violation of the fundamental principles of natural justice, equity and fair play, and therefore it is liable to be set aside on that ground alone.

19. It is also contended that the main writ petition itself is liable to be dismissed in limini since (1) it is not a bona fide act in public interest (2) it is nothing but an attempt to reopen certain issues which are already settled and adjudicated by judicial forums, including this Court and that it amounts to abuse of process of the Court and (3) the petitioner who has never made any complaint either to the Police or other respondent agencies, cannot straightaway maintain the writ petition seeking a Mandamus directing the respondents 1 to 6 to initiate proceedings, particularly investigation/probe by the respondent No.4 - CBI.

20. In the counter-affidavit filed by the respondent No.8, it is pointed out that the petitioner's husband while he was the leader of the Opposition during 1999 - 2004 filed several writ petitions on the same set of allegations and all of them ended in dismissal. The particulars of the said writ petitions have been furnished in detail in paragraphs 17 to 24 of his counter-affidavit.

21. It is alleged that all the aforesaid proceedings initiated by/at the instance of the petitioner's husband in different Courts and other forums were deliberately suppressed and the present writ petition is filed as a counter-attack and with a mala fide intention to obscure the probe against the petitioner's son in pursuance of the order dated 10.08.2011 passed by this Court in W.P.No.794 of 2011 and W.P.No.6604 of 2011 directing the CBI to investigate into the issue of amassing wealth by misusing the office of the Chief Minister held by the husband of the writ petitioner.

22. The allegations made in the writ petition have been categorically denied by the respondents 8, 11, 12, 17, 18, 19 & 20 in their respective counter-affidavits and it is contended that the contents of the affidavit filed in support of the writ petition are riddled with contradictions and inconsistencies and that the documents submitted along with the writ petition are wholly irrelevant and unconnected to the contents of the affidavit.

23. The respondents have also reserved their right to file the detailed counter-affidavits on merits.

Contentions on behalf of the writ petitioner:

24. Sri Sushil Kumar, the learned Senior Counsel representing Sri Kasa Jagan Mohan Reddy, the learned counsel for the petitioner, at the outset submitted that as the respondents 8, 11, 12, 17, 18, 20 & 21 are challenging the very maintainability of the writ petition and seeking to recall the order dated 14.11.2011, the judicial propriety demands that the matter should go before the same Bench which passed the order dated 14.11.2011.

25. Referring to various documents filed by the petitioner along with the writ petition which included CAG Report in respect of Kakinada Sea Port, indictment by Justice Chalapathi Commission in respect of Kuppam Project, the House Committee indictments on various actions of disinvestment undertaken by the respondent No.8 during his tenure as the Chief Minister and the sworn counter-affidavit filed by the Secretary to the Government in W.P.No.24781 of 2006, the learned Senior Counsel contended that on the basis of the said material this Court was satisfied that the writ petitioner had made out a case of misuse and abuse of power and also acts of indulgence shown by respondent No.8 during his tenure as the Chief Minister of the State and thus the order dated 14.11.2011 was rightly passed directing inquiry by the respondents 3 to 6.

26. With regard to the contention of the respondents in their counter-affidavits that the order dated 14.11.2011 which was passed without notice to the

respondents is a nullity, the learned Senior Counsel contended that notice was in fact served on the counsel representing the respondents 1 to 6 against whom directions were issued and that they were very much present before this Court. Thus, according to the learned Senior Counsel, the order dated 14.11.2011 cannot be termed as an ex parte order.

27. Placing strong reliance upon the decision in Centre for Public Interest Litigation and Others Vs. The Union of India (UOI) and Others, the learned Senior Counsel further contended that it is open to the Constitutional Courts to issue directions to CBI for investigation without hearing the person against whom the investigation is sought to be made.

28. The learned Senior Counsel has also relied upon Noida Entrepreneurs Association Vs. NOIDA and Others, to substantiate his contention that in the light of the very serious nature of allegations of abuse of power by the respondent No.8 and as there has never been a single enquiry into the disproportionate assets of respondent No.8, the writ petition can be maintained as Public Interest Litigation.

29. Before concluding his arguments on merits of the case, the learned Senior Counsel has drawn the attention of this Court to the three orders passed by one of us (G. Rohini, J) which according to the learned Senior Counsel are in favour of the respondent No.8 and his associates. The learned Senior Counsel submitted that in the light of the said orders the writ petitioner apprehends that there is a reasonable likelihood of G. Rohini, J being biased towards the respondents and that justice may not be done to her by this Bench.

30. Relying upon the decisions in Ranjit Thakur Vs. Union of India (UOI) and Others, and P.D. Dinakaran v. Judges Inquiry Committee (2011) 8 SCC 380, particularly the recent decision in STATE OF PUNJAB v. DEVINDER PAL SINGH BHULLAR AND OTHERS, dated 7.12.2011 in Crl. Appeal Nos.735-755 of 2009, the learned Senior Counsel contended that so far as the legal bias is concerned, actual proof of prejudice is not required and what is relevant is the reasonableness of the apprehension in that regard in the mind of the party.

31. The learned Senior Counsel further stated that the petitioner moved the Supreme Court for transferring the case from this Court on the ground that listing of the present case has been arranged in the name of "Not Before Vakalats" so as to avoid the Bench which should have heard the case. While contending that practice of "Not Before" being followed in this Court has no sanction of the Constitution, it is submitted by the learned Senior Counsel that by reason of the tactics adopted by the vacate petitioners in engaging counsel who are "Not Before Counsel" in respect of other Division Benches, the petitioner bona fide believes that there is a reasonable likelihood of bias in favour of the respondents 8 to 20.

Contentions on behalf of the respondents:

32. Sri Anil B. Divan, the learned Senior Counsel appearing for the respondents 11 & 12 at the outset submitted that the order dated 14.11.2011 being an ex parte order is a nullity and is liable to be set aside on that ground alone.

33. Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, wherein it is held that the right to life under Article 21 includes the right of a person to live without being hounded by the police or CBI to find out whether he has committed any offence or is living as a law abiding citizen, the learned Senior Counsel contended that this Court ought not to have passed the order dated 14.11.2011 without giving an opportunity of being heard to the respondents. He also relied upon a recent judgment of the Apex Court, dated 7.12.2011 in State of Punjab v. Devinder Pal Singh Bhullar and Others (Criminal Appeal Nos. 735-755 of 2009) wherein it is held that the person against whom the CBI investigation is sought has to be impleaded as a party and he must be given a reasonable opportunity of being heard before directing investigation.

34. Sri Anil B. Divan, the learned Senior Counsel further contended that the writ petition which is apparently filed with political motivation cannot be maintained as Public Interest Litigation. In support of his submission, the learned Senior Counsel relied upon Divine Retreat Centre Vs. State of Kerala and Others, Placing reliance upon State of Karnataka Vs. Arun Kumar Agarwal and Others, Aiiims Employees" All India Institute of Medical Sciences Employees" Union (Regd.) through its President Vs. Union of India (UOI) and Others, Hari Singh Vs. The State of U.P., the learned counsel further contended that unless a prima facie finding is recorded by the Court as to the truth of the allegations, the enquiry by CBI cannot be ordered.

35. Sri A.K. Ganguly, the learned Senior Counsel appearing for the respondent No.8 has also relied upon DIVINE RETREAT CENTRE"S case (6 supra), SAHNGOO RAM ARYA"S case (5 supra), State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, , D. Venkatasubramaniam and Others Vs. M.K. Mohan Krishnamachari and Another, and Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others, to substantiate his submission that the order dated 14.11.2011 which was passed without notice to the respondent No.8 is a nullity. So far as the contention that the writ petition cannot be maintained as a Public Interest Litigation is concerned, the learned Senior Counsel relied upon Ashok Kumar Pandey Vs. The State of West Bengal and Others, Dr. B. Singh Vs. Union of India (UOI) and Others, , Dr. B. Singh Vs. Union of India (UOI) and Others, , State of Uttaranchal Vs. Balwant Singh Chaufal and Others, and Kunga Nima Lepcha and Others Vs. State of Sikkim and Others,

36. It is further contended by Sri A.K. Ganguly, the learned Senior Counsel that the order dated 14.11.2011 which is in the nature of a final relief ought not to have been passed as an interim order even before issuing notice to the persons against whom the investigation is ordered. In support of the said submission, the

learned Senior Counsel relied upon Union of India (UOI) and Others Vs. Modiluft Ltd., and P.R. Sinha and Others Vs. Inder Krishan Raina and Others, .

37. Referring to the various cases instituted by the petitioner's husband while he was the leader of the Opposition during 1999 -2004 seeking similar reliefs on the same set of allegations, and submitting that the petitioner's husband who was the Chief Minister of the State from 2004 to 2009 had never chosen to direct any investigation by CBI, the learned Senior Counsel submitted that the present writ petition is filed only with a view to settle the personal and political scores.

38. With regard to the objection raised on behalf of the writ petitioner that the matter cannot be heard by this Bench presided over by G. Rohini, J, it is urged by Sri A.K. Ganguly, the learned Senior Counsel that the so-called apprehensions expressed by the petitioner are without any basis and unwarranted. The learned Senior Counsel further submitted that since the matter has been listed before this Bench by virtue of an administrative order passed by the Hon'ble the Chief Justice who is the Master of Roster, the objection raised by the petitioner is untenable.

39. We have also heard Sri Harish Salve, the learned Senior Counsel appearing for the Reliance Industries Limited, which got it impleaded as respondent No.21 to the writ petition.

40. Reiterating the submission that the order dated 14.11.2011, which was passed without notice to the persons against whom the investigation was ordered is a nullity, Sri Harish Salve, the learned Senior Counsel has pointed out that the Reliance Industries Limited against which serious allegations are made was not even made a party to the writ petition. The learned Senior Counsel has also taken a serious objection as to the very maintainability of the writ petition as a Public Interest Litigation.

41. It is further contended by Sri Harish Salve, the learned Senior Counsel that the order dated 14.11.2011 which resulted in drastic consequences of affecting the reputation of the respondents 11 & 12 and all other persons connected with their affairs ought not to have been passed without providing a reasonable opportunity of being heard to them. The learned Senior Counsel cited DIVINE RETREAT CENTRE'S case (6 supra) and D. VENKATASUBRAMANIAM'S case (11 supra) in support of his submission that such judicial order which was passed without any notice or opportunity of hearing is a nullity.

42. While submitting that Public Interest Litigation is different from adversary litigation and that PIL can be maintained only to espouse a cause in the public interest unlike seeking adjudication of a lis, the learned Senior Counsel vehemently contended that the petitioner's apprehension of bias itself shows that the petitioner is personally interested.

43. Sri K. Ramakrishna Reddy, the learned Senior Counsel appearing for the respondent No.15 and Sri D. Prakash Reddy, the learned Senior Counsel

appearing for the respondents 17 & 18 have also made their submissions on the same lines.

Reply:

44. Sri Sushil Kumar, the learned Senior Counsel appearing for the writ petitioner while making his submissions by way of reply, raised a new objection as to the maintainability of the vacate petitions by the respondents 8, 18 & 19 contending that only those respondents who carried the matter to the Supreme Court were granted liberty to move this Court for vacating the order dated 14.11.2011.

45. The learned Senior Counsel further contended that the order dated 14.11.2011 was passed after serving copies of the writ petition and other documents on the Government Pleader and Standing Counsel appearing for the respondents 1 to 6 as provided under Rule 7(a) of Writ Proceeding Rules, 1977, and that after hearing them the order dated 14.11.2011 was rightly passed. It is further contended that as per Rule 9 (1) of the Writ Proceeding Rules, it is only the person against whom an interim order is made without giving such party an opportunity of being heard can make an application for vacation of such order and therefore the respondents 8 to 20 against whom no directions were issued under the Order dated 14.11.2011 are not entitled to move this Court to vacate the said order.

46. The learned Senior Counsel contended that as the respondents 3 to 6 against whom the directions were issued neither filed their counter-affidavits nor filed applications to vacate, the order dated 14.11.2011 cannot be disturbed at the instance of the respondents 8 to 21.

Bias:

47. Before advertng to the contentions advanced by the learned counsel for the parties on merits of the case, we would like to consider the objection raised on behalf of the writ petitioner as to the competence of this Bench to hear the matter alleging bias against one of us (G. Rohini, J).

48. As per the well-settled principles of law, the first requirement of natural justice is that the judge should be impartial and neutral and must be free from bias. The Courts have consistently held that a judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non iudice". Therefore, a judge who is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed is disqualified to act as a judge.

49. In a catena of decisions it has been recognized by the English Courts as well as the Courts in India that any direct pecuniary or proprietary interest of a judge in the subject matter of a proceeding, however small it may be, operates as an automatic disqualification to act as an adjudicator since bias can be assumed under law.

50. However, non-pecuniary bias does not stand on the same footing. Non-pecuniary bias is based on the principle "justice should not only be done but should manifestly and undoubtedly be seen to be done". In the cases of non-pecuniary bias, though normally the judge is not a party to the proceedings and does not have a financial interest in its outcome, in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial. Though different rules have been evolved for deciding whether non-pecuniary bias would vitiate the ultimate decision, the Courts in India have preferred to apply the test of real likelihood of bias to disqualify a person from acting in a judicial or quasi-judicial capacity. The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the adjudicator was likely to be disposed to decide the matter only in a particular way.

51. This aspect has been considered in detail in P.D. DINAKARAN'S case (4 supra). After referring to the various decisions of the English Courts and the Courts in India, including *Manak Lal Vs. Dr. Prem Chand*, , *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , *S. Parthasarathi Vs. State of Andhra Pradesh*, , *G. Sarana Vs. University of Lucknow and Others*, , *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, , *RANJIT THAKUR'S case* (3 supra), *Secretary to Government, Transport Department v. Munuswamy Mudaliar* 1988 Supp SCC 651 and *Bihar State Mineral Dev. Corpn. and Another Vs. Encon Builders (I) Pvt. Ltd.*, , the tests to be applied for deciding the bias have been summarized as under:

The principles which emerge from the aforesaid decisions are that no man can be a Judge in his own cause and justice should not only be done, but manifestly be seen to be done. Scales should not only be held even but it must not be seen to be inclined. A person having interest in the subject matter of cause is precluded from acting as a Judge. To disqualify a person from adjudicating on the ground of interest in the subject matter of lis, the test of real likelihood of the bias is to be applied. In other words, one has to enquire as to whether there is real danger of bias on the part of the person against whom such apprehension is expressed in the sense that he might favour or disfavour a party. In each case, the Court has to consider whether a fair minded and informed person, having considered all the facts would reasonably apprehend that the Judge would not act impartially. To put it differently, the test would be whether a reasonably intelligent man fully apprised of all the facts would have a serious apprehension of bias. In cases of non-pecuniary bias, the 'real likelihood' test has been preferred over the 'reasonable suspicion' test and the Courts have consistently held that in deciding the question of bias one has to take into consideration human probabilities and ordinary course of human conduct. We may add that real likelihood of bias should appear not only from the materials ascertained by the complaining party, but also from such other facts which it could have readily ascertained and easily verified by making reasonable inquiries.(emphasis supplied)

52. The above principles have been reiterated in a later decision in STATE OF PUNJAB v. DEVINDER PAL SINGH BHULLAR AND OTHERS, dated 7.12.2011 in Crl. Appeal Nos.735-755 of 2009 and Narinder Singh Arora Vs. State (Govt. of NCT of Delhi) and Others, .

53. It is clear from the above decisions that there must exist circumstances from which it would appear to a reasonable man that there is a real likelihood in the sense of a real possibility of bias on the part of the person adjudicating the dispute.

54. In the light of the legal position noticed above, we shall now consider whether the writ petitioner's allegation can be treated as a form of bias and what consequences should follow.

55. At the outset, it may be noticed that the bias alleged in the case on hand is not on account of any personal interest or pecuniary interest of the judge in the subject-matter of the proceedings. There is also no allegation that the judge has any personal hostility, ill-will or prejudice against the writ petitioner or the political party to which she belongs to. Nor there is any allegation that the judge is interested to favour any of the respondents 8 to 20 by stalling the inquiry / investigation directed against them on account of the involvement of the Judge in promotion of a particular cause. But the only contention is that in the light of the alleged favourable orders given to the respondent No.8 and his associates in at least three cases, the petitioner apprehends that the judge will not be impartial in deciding the present case.

56. The three matters in which, according to the writ petitioner, orders were given in favour of the respondent No.8 and his associates by one of us (G. Rohini, J) are (1) W.P.No.1094 of 2004 (2) W.P.No.29476 of 1997 and (3) W.P.No.4976 of 2009.

57. As could be seen from the material placed before this Court, W.P.No.1094 of 2004 was filed by Kanna Lakshminarayana, a Member of the Legislative Assembly, and another seeking a Mandamus declaring the action of the authorities in not conducting an investigation into the allegations against the respondent No.8 herein, the then Chief Minister of the State, as arbitrary and illegal and to issue directions to Government of India and C.B.I. under the supervision of Central Vigilance Commission of India to investigate the charges of various allegations of corruption and abuse of official position. The said writ petition was dismissed by the Division Bench comprising Sri Devinder Gupta, the then Chief Justice and G. Rohini, J, by judgment dated 8.7.2004 assigning elaborate reasons for its conclusions.

58. The second matter referred to by the learned counsel for the writ petitioner is W.P.No.29476 of 1997 which was filed by D. L. Raveendra Reddy, a Member of the Legislative Assembly by way of Public Interest Litigation seeking a Mandamus declaring the action of the respondent authorities in alienating 158 acres of land in favour of M/s. Larsen & Toubro Limited without calling for any global tenders

and without following the procedure established by law for a mere 11% equity share in the total project contrary to the public interest and only to favour the respondent No.4 therein (respondent No.8 herein) and M/s. Larsen & Toubro Limited as illegal and arbitrary, and consequently declare the agreement / MOU as illegal. The said writ petition was listed for hearing on 25.06.2004 before the Division Bench comprising Sri Devinder Gupta, the then Chief Justice and G. Rohini, J. When the writ petition was called as there was no appearance for the petitioner, the writ petition was dismissed observing that by passage of time the petitioner appeared to have lost interest in prosecuting the case.

59. The third order relied upon by the learned Senior Counsel for the petitioner in support of the bias alleged is an interim order passed at the stage of admission in W.P.No.4976 of 2009. The said writ petition was filed by the respondent No.14 herein seeking a Mandamus declaring the action of the 3rd respondent therein in accepting the report of the Commission of Inquiry, dated 19-4-2007 pursuant to the G.O.Ms.No. 371, Agriculture & Cooperation (HORTI) dated 19-9-2005 and G.O.Ms.No. 465, Agriculture & Cooperation (HORTI), dated 02-12-2005, in the cabinet meeting on 24-2-2009 is arbitrary, illegal and ultra vires the provisions contained in Section 8B of the Commissions of Inquiry Act, 1952 and consequently restrain the respondents from giving effect to the acceptance of the said report. While admitting the said writ petition, interim stay was granted on 13.03.2009 by one of us (G. Rohini, J) assigning reasons as under:

The specific allegation of the petitioner is that no opportunity was provided to the petitioner by the 1st respondent before submitting the Report dated 19.04.2007 recommending Criminal investigation against the petitioner. Since such opportunity is mandatory u/s 8-B of the Commissions of Inquiry Act, 1952, prima facie this Court is of the opinion that the acceptance of the 1st respondent's recommendations by the Council of Ministers in the meeting held on 24.02.2009 is illegal. Hence, pending further orders, there shall be interim stay as prayed for.

60. Out of the above said three matters, W.P.No.29476 of 1997 was admittedly dismissed for default and the writ petitioner herself pleaded in her reply affidavit dated 2.12.2011 that the dismissal of W.P.No.29476 of 1997 for non-prosecution cannot be construed as an affirmation of the policy of the respondent No.8 or his misconduct in regard to the subject-matter.

61. Similarly, the order in W.P.No.4976 of 2009 is only an interim order which was passed at the stage of the admission assigning sufficient reasons. Nothing has been placed before this Court to show that any steps are taken by the respondents therein to get the said order vacated. Moreover the respondent No.8 is not a party to the said writ petition. Be that as it may, the fact that the said interim order is allowed to continue in operation for the past about three years itself shows that it is unexceptionable in the facts and circumstances of the case.

62. Therefore on the face of it there is no factual basis for the alleged apprehension of bias on the ground of the so-called favourable orders passed in

W.P.No.29476 of 1997 and W.P.No.4976 of 2009.

63. So far as W.P.No.1094 of 2004 is concerned, it is true that a similar relief was sought by the petitioners therein i.e., to direct investigation into the various allegations of corruption, disproportionate assets, etc., made against the respondent No.8 herein, the then Chief Minister of the State. In fact, most of the allegations made in the said writ petition have been reproduced in the present writ petition.

64. Since W.P.No.1094 of 2004 was dismissed and the judge who was a member of the Division Bench which dismissed W.P.No.1094 of 2004 is presiding over this Bench, the learned Senior Counsel for the petitioner contends that the writ petitioner bona fide believes that there is a reasonable likelihood of the judge being biased towards the respondent No.8. In support of the said contention, the learned Senior Counsel relied upon P.D. DINAKARAN'S case (4 supra) and RANJIT THAKUR'S case (3 supra).

65. At the outset, it may be pointed out that both the above said cases arose on a different factual matrix.

66. In P.D. DINAKARAN'S case (4 supra) the petitioner therein had an objection to the inclusion of the respondent No.3 therein in the committee constituted under the Judges (Inquiry) Act, 1968 pursuant to a notice of motion submitted by 50 members of the Rajya Sabha for removal of the petitioner, who at the relevant point of time was the Chief Justice of Karnataka High Court. It was alleged by the petitioner that since the respondent No.3 had led a delegation of advocates to meet the then Chief Justice of India and he was a signatory to the representation made by the Senior Advocates against the petitioner's elevation to the Supreme Court, the 3rd respondent was biased against the petitioner and that the petitioner did not expect a just and fair inquiry with the respondent No.3 being a member of the Committee. Having found that the 3rd respondent did oppose elevation of the petitioner to the Supreme Court and also demanded a public inquiry into the charges levelled against the petitioner, the Supreme Court accepted the apprehension of likelihood of bias expressed by the petitioner therein observing that the issue of bias has to be seen from the angle of a reasonable objective and informed person and what opinion would he form is of paramount importance.

67. In RANJIT THAKUR'S case (3 supra) the appellant therein had challenged his dismissal from service on the ground of violation of the provision contained in Section 130 of the Army Act, 1950. In the said case, the appellant was already serving the sentence of 28 days' rigorous imprisonment imposed by the respondent No.4 therein for violating the norms for presenting representations to higher officers. Appellant was stated to have sent representation complaining ill-treatment at the hands of respondent No.4 directly to the higher officers. While serving the sentence, the appellant was said to have committed another offence for which he was subjected to summary Court-Martial and was dismissed from

service. Respondent No.4 who had earlier punished the appellant was a member of the summary Court-Martial. The writ petition filed by the appellant challenging his dismissal from service was summarily dismissed by the High Court. The matter was carried to the Supreme Court contending inter alia that the proceedings of the Court-Martial were vitiated by bias on the part of the respondent No.4, who participated in and dominated the proceedings. Applying the test of real likelihood of bias, the Supreme Court held that having regard to the antecedent events, the participation of the respondent No.4 in the Court-Martial rendered the proceedings coram non iudice.

68. Apparently in both P.D. DINAKARAN'S case (4 supra) and RANJIT THAKUR'S case (3 supra) the allegations of bias were based upon the antecedent events in which the person adjudicating the dispute was directly involved causing prejudice to the complainant.

69. However W.P.No.1094 of 2004 in which a favourable order was allegedly given to the respondent No.8 was dismissed by the Division Bench on merits after due observance of the judicial process. It is a judicial order. Moreover, it is not challenged by the petitioners therein or by anybody else and it has become final.

70. Such judicial order, in our considered opinion, cannot be treated as a form of bias.

71. In this context, it would be appropriate to refer to some of the excerpts from the decision in State of West Bengal and Others Vs. Shivananda Pathak and Others, .

Para-25. Bias may be defined as a preconceived opinion or a predisposition or predetermination to decide a case or an issue in a particular manner, so much so that such predisposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the judge unable to exercise impartiality in a particular case.

Para-27. Judges, unfortunately, are not infallible. As human beings, they can commit mistakes even in the best of their judgments reflective of their hard labour, impartial things and objective assessment of the problem put before them. In the matter of interpretation of statutory provisions or while assessing the evidence in a particular case or deciding questions of law or facts, mistakes may be committed bona fide which are corrected at the appellate stage. This explains the philosophy behind the hierarchy of courts. Such a mistake can be committed even by a judge of the High Court which are corrected in the letters patent appeal, if available.

Para-29. As pointed out earlier, an essential requirement of judicial adjudication is that the judge is impartial and neutral and is in a position to apply his mind objectively to the facts of the case put up before him. If he is predisposed or suffers from prejudices or has a biased mind, he disqualifies himself from acting

as a judge. But Frank, J. of the United States in *Linahan*, In re 138 F 2d 650 says:

If, however, "bias" and "partiality" be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions.... Much harm is done by the myth that, merely by... taking the oath of office as a judge, a man ceases to be human and strips himself of all predilections, becomes a passionless thinking machine.

[See also Griffith and Street, *Principles of Administrative Law* (1973 Edn.), p. 155; *Judicial Review of Administrative Action* by de Smith (1980 Edn.), p. 272; *II Administrative Law Treatise* by Davis (1958 Edn.), p. 130.]

Para-30. These remarks imply a distinction between prejudging of facts specifically relating to a party, as against preconceptions or predispositions about general questions of law, policy or discretion. The implication is that though in the former case, a judge would disqualify himself, in the latter case, he may not. But this question does not arise here and is left as it is.

Para-33. Bias, as pointed out earlier, is a condition of mind and, therefore, it may not always be possible to furnish actual proof of bias. But the courts, for this reason, cannot be said to be in a crippled state. There are many ways to discover bias; for example, by evaluating the facts and circumstances of the case or applying the tests of "real likelihood of bias" or "reasonable suspicion of bias". de Smith in *Judicial Review of Administrative Action*, 1980 Edn., pp. 262, 264, has explained that "reasonable suspicion" test looks mainly to outward appearances while "real likelihood" test focuses on the court's own evaluation of the probabilities.

72. It is also relevant to refer to the decision in *R.K. Anand Vs. Registrar, Delhi High Court*, wherein the Apex Court has upheld the response of the High Court of Delhi on a request for recusal made by the appellant therein in the form of a petition requesting the presiding judge on the Bench of the High Court to recuse himself from the proceeding.

73. It is a case where a petition for recusal was filed before the Bench of the Delhi High Court dealing with the matter, requesting the judge presiding over the Bench to recuse himself from hearing the matter on the ground of the old hostility of the petitioner with the judge. The prayer for recusal was declined by the High Court by an elaborate order holding that there was no factual basis or any foundation for nurturing any apprehension of bias, leave aside any reasonable basis therefor. It was further observed in the said order:

The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill will

while upholding the Constitution and the laws. In a case where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting/Bench preference or browbeating the court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office.

74. Approving the High Court's decision, the Supreme Court observed:

We are constrained to pause here for a moment and to express grave concern over the fact that lately such tendencies and practices are on the increase. We have come across instances where one would simply throw a stone on a Judge (who is quite defenceless in such matters ) and later on cite the gratuitous attack as a ground to ask the Judge to recuse himself from hearing a case in which he would be appearing. Such conduct is bound to cause deep hurt to the Judge concerned but what is of far greater importance is that it defies the very fundamentals of administration of justice. A motivated application for recusal, therefore, needs to be dealt with sternly and should be viewed ordinarily as interference in the due course of justice leading to penal consequences.

75. It is clear from the above decisions that there must be real likelihood of bias and surmises or conjectures would not be enough to operate as disqualification to act an adjudicator.

76. That apart, as held in P.D. DINAKARAN'S case (4 supra) the Court has to first ascertain all the circumstances which had a bearing on the suggestion of bias before considering the question whether there is any basis for the apprehension that the judge might favour the case of one of the parties. Similar view was expressed in RANJIT THAKUR'S case (3 supra) cited by the learned counsel for the writ petitioner while applying the test of real likelihood of bias. In STATE OF PUNJAB v. DEVINDER PAL SINGH BHULLAR AND OTHERS, dated 7.12.2011 in Crl. Appeal Nos.735-755 of 2009 also it was noticed that the allegations of judicial bias are required to be scrutinised taking into consideration the factual matrix of the case in hand.

77. In the instant case, it is not the case of the writ petitioner that the judge (G. Rohini, J) has anything personal against her nor there an allegation that the decision of the judge will lead to promotion of a cause in which the judge is involved together with the respondent No.8 and his associates. Since no circumstances exist even for a reasonable man to presume real likelihood of deciding the matter only in a particular way, we are of the opinion that there is no basis for the petitioner's apprehension that the judge is prejudiced or ill-disposed against her or that the issue is prejudged. Therefore, the mere fact that one of the previous judicial orders was in favour of the respondent No.8 does not entitle the petitioner to attribute bias to the judge.

78. For the aforesaid reasons, we are unable to accept the apprehension of alleged bias expressed by Sri Sushil Kumar, the learned Senior Counsel for the writ petitioner, who on the said ground virtually sought recusal of the judge presiding over this Bench. In fact the said request is nothing but an obstructive

measure adopted by the writ petitioner.

79. We shall now proceed to consider the rival contentions addressed on behalf of the parties on merits of the case.

Order dated 14.11.2011 whether sustainable:

80. Admittedly the order dated 14.11.2011 was passed at the stage of admission without hearing any of the respondents.

81. However, it is sought to be contended on behalf of the petitioner that as there was only a direction to the respondents 3 to 6 to conduct an inquiry/ investigation and submit their reports in sealed covers for further consideration by this Court and there was no direction as such for registration of F.I.R. or commencement of proceedings under Chapter-XII of Cr.P.C., no prejudice is caused to the respondents 8 to 20 and therefore the order dated 14.11.2011 warrants no interference.

82. While submitting that in pursuance of the order dated 14.11.2011, the CBI has initiated only preliminary enquiry by registering P.E. Case No.39 of 2011 and that at the stage of the preliminary enquiry the CBI is not at all empowered to take any coercive measures except collecting required documents and recording the statements of witnesses, Sri Sushil Kumar, the learned Senior Counsel contended that the proceedings already initiated by the respondents 3 to 6 pursuant to the order dated 14.11.2011 need not be scuttled and that it is for the respondent No.8 to explain the allegations. To substantiate his submission, the learned Senior Counsel has taken this Court through various provisions of Chapter-IX of the CBI Code.

83. On a reading of the order dated 14.11.2011 we find that the submission of the learned Senior Counsel for the petitioner is factually incorrect. By order dated 14.11.2011 this Court has not merely ordered preliminary enquiry by CBI but in fact there is a direction to three other investigating agencies i.e., the Home Department, State of A.P., Enforcement Directorate, New Delhi and Director General of Police, A.P., to independently carry out necessary inquiries/ investigations and submit separate reports in sealed covers. As held in SAHNGOO RAM ARYA'S case (5 supra) the right to life under Article 21 includes the right of a person to live without being hounded by the police or CBI to find out whether he has committed any offence or is living as a law-abiding citizen. In our opinion, the order dated 14.11.2011, under which inquiry/investigation was ordered against the respondents 8 to 20 by four agencies simultaneously has undoubtedly affected their interest adversely. Therefore, we are unable to accept the contention that the order dated 14.11.2011 is innocuous.

84. Thus the first question that requires consideration is whether such an order can be passed without providing an opportunity of being heard to the respondents 8 to 20.

85. In DIVINE RETREAT CENTRE'S case (6 supra) while considering the question

as to whether the High Court could have passed a judicial order directing investigation against the appellant therein and its activities without providing an opportunity of being heard to it, the Apex Court held :

Para-50. Can the High Court set the law in motion against the named and unnamed individuals based on the information received by it without recording the reasons that the information received by it prima facie disclosed the commission of a cognizable offence? Setting criminal law in motion is fraught with serious consequences, which cannot lightly be undertaken by the High Court even in exercise of its jurisdiction under Article 226 of the Constitution of India. In our view, the High Court in exercise of its whatsoever jurisdiction cannot direct investigation by constituting a special investigation team on the strength of anonymous petitions. The High Courts cannot be converted into station houses.

Para 51. The order directing the investigation on the basis of such vague and indefinite allegations undoubtedly is in the teeth of principles of natural justice. It was, however, submitted that the accused gets a right of hearing only after submission of the charge-sheet, before a charge is framed or the accused is discharged vide Sections 227 and 228 and 239 and 240 CrPC. The appellant is not an accused and, therefore, it was not entitled for any notice from the High Court before passing of the impugned order. We are concerned with the question as to whether the High Court could have passed a judicial order directing investigation against the appellant and its activities without providing an opportunity of being heard to it. The case on hand is a case where the criminal law is directed to be set in motion on the basis of the allegations made in anonymous petition filed in the High Court. No judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic consequences of affecting one's own reputation. In our view, the impugned order of the High Court directing enquiry and investigation into allegations in respect of which not even any complaint/information has been lodged with the police is violative of principles of natural justice

(emphasis supplied)

Para-59. We do not propose to burden this judgment with various authoritative pronouncements of this Court laying down the parameters of public interest litigation. Suffice it to recapitulate that this Court uniformly and consistently held that the individual who moves the Court for judicial redress in cases of public interest litigation must be acting bona fide with a view to vindicating the cause of justice and not for any personal gain or private profit or of the political motivation or other oblique consideration. The Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular petition filed in court. In *S.P. Gupta Vs. President of India and Others*, this Court in clear and unequivocal terms observed that it would be prudent for the constitutional courts to "confine this strategic exercise of

jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal aid organisation which can take care of such cases.

86. Reiterating the said principle, in D. VENKATASUBRAMANIAM'S case (11 supra), the order of the High Court directing CBI investigation without hearing the appellants therein and without assigning any reasons was held to be a nullity.

87. The view expressed in the above decisions has been approved by a Constitution Bench of five-judges in STATE OF W.B. v. COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS (10 supra) holding as under:

Para-69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

Para-70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

Para-71. In Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after

considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations.

88. This principle has again been reiterated in a recent decision of the Apex Court in *STATE OF PUNJAB v. DEVINDER PAL SINGH BHULLAR AND OTHERS*, dated 7.12.2011 in Crl. Appeal Nos.735-755 of 2009.

... .... it is evident that a Constitutional Court can direct the CBI to investigate into the case provided the Court after examining the allegations in the complaint reaches a conclusion that the complainant could make out prima facie, a case against the accused. However the person against whom the investigation is sought, is to be impleaded as a party and must be given a reasonable opportunity of being heard. CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful activities. The Court can direct CBI investigation only in exceptional circumstances where the Court is of the view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant and it is necessary so to do in order to do complete justice and make the investigation credible. (emphasis supplied)

89. However Sri Sushil Kumar, the learned Senior Counsel appearing for the petitioner sought to draw a distinction relying upon the decision in *CENTRE FOR PUBLIC INTEREST LITIGATION'S* case (1 supra). The learned Senior Counsel submitted that the fact situation in *CENTRE FOR PUBLIC INTEREST LITIGATION'S* case (1 supra) is similar to the case on hand and therefore it is open to this Court to issue directions to CBI for investigation without hearing the respondents 8 to 20.

90. The learned Senior Counsel has also relied upon *Union of India & Another v. W.N. Chadah* (1993) SCC (Cri.) 1171 in support of his contention that audi alteram partem is not attracted to the case on hand.

91. In *CENTRE FOR PUBLIC INTEREST LITIGATION'S* case (1 supra) a representation was made to the Chief Vigilance Commissioner (CVC) pointing out the irregularities committed in the grant of Unified Access (Basic and Cellular) Services Licence (UASL) by Department of Telecommunications (DoT) resulting in serious financial loss to the public exchequer. The CVC got conducted an inquiry u/s 8 (d) of the CVC Act, 2003 and on the basis of its report, CBI registered an FIR for offence u/s 120-B of I.P.C. read with Sections 13 (2) & 13 (1) (d) of the Prevention of Corruption Act, 1988. At that stage, a writ petition came to be filed before the Delhi High Court for a court monitored investigation by the CBI or a Special Investigation Team into what has been termed as "2G Spectrum Scam" for unearthing the role of the then Union Minister for the Department of Telecommunications (DoT), Senior Officers of that Department, middlemen, businessmen and others. The High Court refused to entertain the said writ petition and aggrieved by the same the matter was carried to the Supreme Court

alleging that though the CAG submitted final report within a few months from the receipt of relevant records from CBI and the Directorate of income tax (investigation), CBI has not been able to make any tangible progress.

92. After hearing the counsel appearing for CBI, DoT as well as the Union Minister for the DoT and after going through the record and the reports of CAG and CVC, the Supreme Court issued various directions to ensure that comprehensive and coordinated investigation is conducted by CBI and the Enforcement Directorate without any hindrance observing as under :

We have considered the respective submissions and carefully scanned the record. We have also gone through the reports produced by Shri K.K. Venugopal and Shri Harin P. Raval. In our opinion, the Division Bench of the High Court committed a serious error by dismissing the writ petition at the threshold ignoring that the issues raised by the appellants, whose bona fides have not been doubted, are of great public importance. We are, prima facie, satisfied that the allegations contained in the writ petition and the affidavits filed before this Court, which are supported not only by the documents produced by them, but also the report of the Central Vigilance Commission, which was forwarded to the Director, CBI on 12-10-2009 and the findings recorded by the CAG in the Performance Audit Report, need a thorough and impartial investigation. However, at this stage, we do not consider it necessary to appoint a special team to investigate what the appellants have described as 2G Spectrum scam because the Government of India has, keeping in view the law laid down in Vineet Narain and others Vs. Union of India and another, and orders passed in other cases, agreed for a Court monitored investigation.

93. At the outset, it may be pointed out that in the above case the investigation by the CBI and the Enforcement Directorate was directed only after hearing the persons against whom the investigation was ordered. Hence the said decision has no application at all for deciding the issue involved in the case on hand.

94. Coming to the next decision relied upon by Sri Sushil Kumar i.e., W.N. CHADAH'S case (30 supra), it is a case where an FIR was registered by the Superintendent of Police, CBI, New Delhi u/s 120-B read with Section 161 and etc., of IPC and Sections 5 (2) and etc., of the Prevention of Corruption Act, 1988, mentioning various allegations regarding the payment of bribes / kickbacks and receipt of illegal gratification. After registration of FIR, the Director, CBI requested the concerned authorities in Switzerland for freezing/ blocking certain Bank accounts said to be relevant to the case. The Bank accounts were accordingly frozen. However it was made clear that the same would remain frozen till 28.02.1990 and further assistance would be rendered only on receipt of "letter rogatory" from a competent judicial authority in India. Pursuant thereto, CBI made a request to the Special Judge, Delhi. After hearing the prosecution, the Special Judge by order dated 5.2.1990 allowed the application and issued "letter rogatory" followed by an amended "letter rogatory" dated 21.08.1990. It may be noticed that "letter rogatory" is a formal

communication in writing sent by a Court in which action is pending to a foreign Court or Judge requesting the testimony of a witness residing within the jurisdiction of that foreign Court may be formally taken thereon under its direction and transmitted to the issuing Court making such request for use in a pending legal contest or action.

95. The question raised before the Supreme Court was whether the accused is entitled to any right of audience before issuing "letter rogatory". The Supreme Court held that the rule of audi alteram partem was not attracted since follow-up consequences of letter rogatory would be that the corpus of the offence would be preserved intact by preventing the withdrawal of the money from those accounts or closure of the accounts by the account holders till the merit of the case was decided and that it did not result in depriving a person of his liberty or his property.

96. Thus it is clear that the rule of audi alteram partem was held to be not applicable in W.N. CHADAH'S case (30 supra) since the order impugned therein was not shown to have adversely affected the interest of the accused.

97. We may also add that in DIVINE RETREAT CENTRE'S case (6 supra) the decision in W.N. CHADAH'S case (30 supra) was distinguished observing that it is not relevant to decide the issue of locus in cases where challenge is to a judicial order under which institutions and/or persons connected therewith are subjected to inquiry and investigation.

98. Hence, in our considered opinion, both the decisions in CENTRE FOR PUBLIC INTEREST LITIGATION v. UNION OF INDIA (1 supra) and UNION OF INDIA v. W.N. CHADAH (30 supra) relied upon by Sri Sushil Kumar are clearly distinguishable on facts and the ratio laid down therein has no relevance for the purpose of deciding the case on hand.

99. In the light of the principles laid down in SAHNGOO RAM ARYA'S case, DIVINE RETREAT CENTRE'S case (6 supra), D. VENKATASUBRAMANIAM'S case (11 supra), STATE OF W.B. v. COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS (10 supra) and STATE OF PUNJAB v. DEVINDER PAL SINGH BHULLAR AND OTHERS, dated 7.12.2011 in Crl. Appeal Nos.735-755 of 2009, the legal position is clear that though it is always open to this Court to pass a judicial order directing investigation by CBI, before passing such an order which would result in setting the criminal law in motion it is mandatory for the Court to come to a prima facie conclusion that there is a need for such investigation/inquiry and that such prima facie conclusion should be based on examination of the allegations made by the complainant and after giving an opportunity of being heard to the person against whom an inquiry/investigation is directed. It is also clear that the CBI cannot be directed to have a roving enquiry as to whether a person is involved in the alleged unlawful activities or not, but the investigation/inquiry can be directed only after the Court reaches a conclusion that an offence is prima facie disclosed.

100. Coming to the order dated 14.11.2011, which is sought to be vacated/recalled, admittedly no opportunity of being heard was provided to the respondents before passing the said order. It is also pointed out by the learned Senior Counsel appearing for the respondents 8, 11 & 12 that except referring to the various allegations made by the petitioner in the writ affidavit, no reasons were assigned in the order dated 14.11.2011 in support of the conclusion that the writ petitioner has made out a case of misuse of power and etc., by the respondent No.8.

101. In fact, what was recorded in the order dated 14.11.2011 is not a mere prima facie satisfaction of the Court but a clear finding appears to have been recorded that the respondent No.8 is guilty of misuse of power. Such finding recorded by this Court may have far reaching persuasive effect on the investigating agencies and may cause serious prejudice to the persons against whom the investigation is ordered. Hence before arriving at such a conclusion and passing a judicial order, it is imperative to put the respondents 8 to 20 on notice. As held in DIVINE RETREAT CENTRE'S case (6 supra) setting criminal law in motion is fraught with serious consequences which cannot likely be undertaken even in exercise of jurisdiction under Article 226 of the Constitution of India. Therefore, the order dated 14.11.2011, in our considered opinion is in the teeth of principles of natural justice.

102. We are also not impressed with the contention on behalf of the writ petitioner that no notice is necessary to the respondents 8 to 20 at that stage since hearing is available to them after the reports in sealed covers are received from the respondents 3 to 6. The said contention runs contrary to the law laid down by the Apex Court that before passing a judicial order directing investigation by CBI, it is mandatory to give reasonable opportunity of being heard to the person against whom an inquiry is directed since he is likely to be adversely affected by such order.

103. The order dated 14.11.2011 does not stand to judicial scrutiny also for the reason that it virtually amounts to granting the relief sought in the main writ petition. In fact the relief granted is much more than what was sought by the petitioner. Whereas the interim prayer in the writ petition is to direct the respondent No.4 (CBI) to conduct a preliminary enquiry into the subject-matter, the order dated 14.11.2011 shows that the inquiry/investigation was directed to be carried out by other investigating agencies also i.e., the respondents 3, 5 & 6 which may have far reaching consequences including tarnishing the reputation of the respondents 8 to 20. Such a relief cannot be granted as an interim order, particularly without hearing the respondents.

104. As held in State Bank of Patiala and Others Vs. Vinesh Kumar Bhasin, in cases where the grant of the interim order will have the effect of allowing the petition, the Court will desist from issuing ex parte orders without hearing the respondents.

105. For the aforesaid reasons, the order dated 14.11.2011 is a nullity and cannot be continued any longer.

Maintainability of the writ petition as Public Interest Litigation:

106. As the learned Counsel appearing for both the parties made elaborate submissions with regard to the maintainability of the writ petition as a Public Interest Litigation, it is necessary for us to deal with the said issue also.

107. It may be mentioned that none of the counsel appearing for the respondents made any submissions on merits of the case. We are also not inclined to express any opinion as to the correctness of the allegations made by the writ petitioner against the respondents 8 to 21 and we are confining ourselves only to the question of maintainability of the writ petition as PIL in the light of the facts borne out of the record.

108. Alleging that the writ petitioner has suppressed the material facts and misused the vehicle of public interest litigation for malicious and motivated reasons to wreak political vengeance against the respondent No.8, it is contended by the respondents 8, 11, 12, 17, 18, 19, 20 & 21 that the writ petition is not bona fide and it is not in public interest. It is also contended that the writ petition is nothing but an attempt to reopen certain issues which are already settled and adjudicated by different forums and that it amounts to abuse of process of the Court.

109. The law is well-settled that a person acting bona fide and having sufficient interest in the proceeding of Public Interest Litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. It is also well-settled that a writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other petitioner but also with a clean heart, clean mind and clean objective. [vide *ASHOK KUMAR PANDEY v. STATE OF W.B.* (13 supra), *B. SINGH (DR) v. UNION OF INDIA* (14 supra), *KALYANESHWARI v. UNION OF INDIA* (15 supra) and *HOLICOW PICTURES (P) LTD. v. PREM CHANDRA MISHRA* (12 supra)]

110. Having considered in detail the scope of a public interest litigation and after reviewing various decided cases on the subject, the following guidelines have been laid down in *STATE OF UTTARANCHAL v. BALWANT SINGH CHAUFAL* (16 supra):

We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

111. In the instant case, the writ petitioner is the honorary president of a political party. The respondent No.8 is also the president of another political party and he is the Leader of Opposition in the A.P. Legislative Assembly. It is not disputed before this Court that there is political rivalry between the two parties. It is relevant to note that the petitioner's husband was the Chief Minister of Andhra Pradesh for a period of about six years from 2004 to 2009 and prior to that he was the Leader of Opposition during 1999 - 2004 when the respondent No.8 was the Chief Minister of the State. It is also relevant to note that the allegations set out in the writ petition relate to the alleged illegal actions / inactions of the respondent No.8 during his term of office as the Chief Minister of Andhra Pradesh from 1995 to 2004.

112. The material placed before this Court by the respondent No.8 shows that the petitioner's husband had filed several writ petitions against the respondent No.8 during 1999 - 2004 as under:

(1) W.P.(Sr).No.74226 of 1999 for issue of a Writ of Mandamus to His Excellency the Governor with same accusation of disproportionate assets against respondent

No.8, who was the Chief Minister of the State at that point of time.

The said writ petition was dismissed as not maintainable and the SLP which was registered as Civil Appeal No.1799 of 2000 was also dismissed by the Supreme Court by order dated 28.10.2008.

(2) W.P.No.17627 of 1999 and W.P.(Sr).No.74241 of 1999, W.P.Nos.20077 of 1999, 20124 of 1999, 20125 of 1999, 20126 of 1999, 20127 of 1999, 20128 of 1999 and 20129 of 1999 were filed by the petitioner's husband along with several others praying inter alia for investigation by CBI into the properties held by the family of the respondent No.8.

All the said writ petitions were withdrawn and were accordingly dismissed by the Division Bench by order dated 12.12.2000. Though W.P.M.P.No.4560 & 4148 of 2001 and etc., were filed subsequently to recall the order 12.12.2000 stating that they were misled by their counsel, all the said applications were dismissed by the Division Bench.

(3) The petitioner's husband again filed W.P.No.19696 of 2000 alleging that the respondent No.8 made false declarations in the prospectus of M/s. Heritage Foods Company and there were irregularities in the disposal of his assets and therefore seeking investigation by the CBI.

The said writ petition was dismissed by a Division Bench by order dated 10.11.2000 observing that in the guise of public interest the jurisdiction under Article 226 of the Constitution of India cannot be invoked to order an enquiry by the CBI.

(4) The petitioner's husband filed Civil W.P. No.127 of 2001 in the High Court of Delhi seeking a direction to the Central Vigilance Commission, New Delhi to enquire into the assets of the family members of the respondent No.8.

The said writ petition was also dismissed as withdrawn for want of evidence on 29.03.2001.

(5) Some of the associates of the petitioner's husband i.e., Kanna Lakshminarayana and others at the behest of the petitioner's husband filed W.P.No.1094 of 2004.

The said writ petition was dismissed by a Division Bench of this Court by a detailed judgment dated 8.7.2004.

(6) Prior to that, they filed W.P.(Crl.) Nos.272 & 273 of 2003 in the Supreme Court of India seeking a probe by CBI into the assets of the family of the respondent No.8 and the same was dismissed as withdrawn on 8.1.2004.

(7) W.P.No.13302 of 1997 which was filed making allegations against the respondent No.8 as Managing Trustee of N.T.R. Trust was dismissed on 12.09.1998. Against the said order, SLP (C) No.631 of 1999 was filed and the same was dismissed by order dated 22.07.1999.

(8) After assuming office as Chief Minister, the petitioner's husband during his tenure from 2004 to 2009 ordered several Inquiries and House Committees against the respondent No.8, however the respondent No.8 cannot be indicted in any of the said inquiries.

113. Having gone through the averments / contentions as well as the reliefs sought in the above noticed proceedings, we are convinced that the cause sought to be espoused by the petitioner in this writ petition was already agitated before different forums including this Court. Apparently the petitioner has preferred this writ petition on the same set of allegations. Moreover, as rightly pointed out by the learned counsel for the respondents, the above noticed previous proceedings are suppressed in the writ petition in spite of the fact that the petitioner's husband was a party to most of the said proceedings. This undoubtedly amounts to abuse of process of the Court under the guise of Public Interest Litigation.

114. It is also found that the allegations set out in the writ petition relate to the alleged illegal actions and inactions of the respondent No.8 during his term of office as the Chief Minister of A.P. from 1995 to 2004. No justifiable reason is forthcoming as to why the petitioner has chosen to file this writ petition by way of Public Interest Litigation after so many years that too without exhausting the statutory remedies.

115. In this context, it is relevant to note that by order dated 10.08.2011 passed in W.P.NOs.794, 6604 & 6979 of 2011 (P. Shankar Rao v. Government of Andhra Pradesh 2011 (5) ALT 1 (D.B.)) this Court directed the CBI to investigate into the issues of amassing wealth by the writ petitioner's son by misusing the office of the Chief Minister held by the husband of the writ petitioner. This Court also directed investigation by CBI into the mining leases granted to M/s. Saraswathi Power and Industries Limited which is a company closely held by the writ petitioner's family and the petitioner herself is a subscriber/director. Pursuant to the said order, the CBI registered a case against the writ petitioner's son and one Vijaya Sai Reddy, the family auditor of the writ petitioner.

116. Soon thereafter the writ petitioner wrote a letter dated 19.08.2011 to the Prime Minister of India wherein she sought to know the reasons for not conducting similar investigation against the respondent No.8 and the business concerns of respondent Nos.11 & 12 and various other individuals named therein. Immediately thereafter, the present writ petition came to be filed on 17.10.2011.

117. The sequence of events noticed above, particularly the admitted fact that the writ petitioner is politically antagonistic to the respondent No.8 substantiates the allegation of the respondents that the writ petition by way of Public Interest Litigation is not genuine and that it is filed only for extraneous considerations.

118. Yet another important aspect is that the present writ petition has been filed without exhausting any of the ordinary statutory remedies. Admittedly the petitioner has not approached any competent authority to initiate inquiry/

investigation.

119. However the learned Senior Counsel appearing for the petitioner contended that though there were specific complaints in the past regarding the illegalities committed by the respondent No.8 to various authorities by various representations, there was no action taken on the same by any of the agencies. To substantiate the same, the learned Senior Counsel relied upon G.O.Ms.No.310, Home (SC.A) Department, dated 13.12.2006, whereunder consent was accorded by the Government of A.P. for exercise of powers by the members of the Delhi Special Police Establishment for the investigation into the transactions entered into between IMG Academies Bharata Private Limited and Government of A.P. at low price and its subsequent transactions. It is contended by the learned senior counsel that in spite of the consent so given for CBI probe, no further steps were taken and thus the inaction on the part of the statutory agencies, Government of A.P., and the Union of India is writ large.

120. Relying upon State of Maharashtra and Others Vs. Uttamrao Rayala Nikam, and Shri Girish Vyas and Another Vs. The State of Maharashtra and Others, it is sought to be contended on behalf of the petitioner that in the facts and circumstances of the case the cause of justice would be better served by permitting the petitioner to agitate the issues raised in the writ petition than by non-suiting her on the ground of laches.

121. It is to be noticed that the objection is not merely on the ground of laches but the failure of the petitioner to exhaust the statutory remedies. In a catena of decisions, it is held by the Apex Court that a writ petition seeking a direction for investigation cannot be entertained even before the ordinary statutory remedies are exhausted. Even in cases where no action is taken by the police on the information given to them, the Courts held that the informant's remedy lies u/s 190 read with Section 200 of Cr.P.C., but a writ petition in such a case is not to be entertained [vide Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others, and AIIMS EMPLOYEES' UNION v. UNION OF INDIA (8 supra)]. As noticed above, the same principle has been reiterated by the Constitutional Bench of five judges in STATE OF W.B. v. COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS (10 supra). Hence the submission of the learned Senior Counsel for the writ petitioner that the writ petition can be maintained as Public Interest Litigation cannot be accepted.

122. Sri Sushil Kumar, the learned Senior Counsel appearing for the writ petitioner has placed much reliance upon the decision in P. SHANKAR RAO'S case (32 supra) wherein a Division Bench of this Court in a writ petition filed as a Public Interest Litigation directed CBI to register a case against the son of the writ petitioner and investigate into the accusations indicated therein. Adopting the reasons given by the Division Bench in the said decision, the learned Senior Counsel vehemently contended that since similar allegations are made against the respondent No.8, there cannot be any objection as to the maintainability of the writ petition as Public Interest Litigation.

123. We do not find any substance in the said contention since the petitioner in P. SHANKAR RAO'S case (32 supra) invoked the jurisdiction of this Court under Article 226 of the Constitution of India aggrieved by the failure of the statutory authorities to take action on his complaint making accusations against the son of the petitioner herein. Moreover, it is a case where the respondents therein were heard by this Court before recording its prima facie satisfaction as to the accusations made against them and opined that intervention by this Court was necessary to safeguard the public interest. The facts and circumstances under which the said order was passed are entirely different from the case on hand.

124. As noticed above, the present writ petition is based on the same set of allegations which were already considered by different forums including this Court which fact has been suppressed by the writ petitioner. That apart, the writ petitioner has straightaway invoked the jurisdiction of this Court without approaching any authority and no justifiable reason could be shown to grant expeditious relief in exercise of the jurisdiction under Article 226 of the Constitution of India by setting the criminal law in motion.

125. Sri Sushil Kumar has also cited Vishwanath Chaturvedi Vs. Union of India (UOI) and Others, which was relied upon by the Division Bench in P. SHANKAR RAO'S case (32 supra) in support of his contention that the intervention by this Court is necessary in public interest. He has also relied upon STATE OF UTTARANCHAL v. BALWANT SINGH CHAUFAL (16 supra) in which it was held that the Courts can issue directions in Public Interest Litigation to maintain the probity, transparency and integrity in governance.

126. In VISHWANATH CHATURVEDI'S case (33 supra) the petitioner therein approached the authorities alleging that the respondents therein had acquired wealth disproportionate to their known source of income. Since the authorities failed to take any action, having been satisfied about the failure of public duty the Apex Court entertained the writ petition as a Public Interest Litigation and directed investigation and enquiry in the matter. Moreover that is a case where the respondent No.2 therein was holding a very high public post of Chief Minister and allegations made by the petitioner against him had cast a cloud on his integrity. Therefore, the Supreme Court observed:

... .. It is of utmost importance that the truth of these allegations is determined by a competent forum. Such a course would sub-serve public interest and public morality because the Chief Minister of a State should not function under a cloud and that it would also be in the interest of the respondent No.2 and the members of his family to have their honour vindicated by establishing that the allegations are not true. In our view, these directions would sub-serve public interest.

127. However, in the instant case, the petitioner has not approached any authority before filing this writ petition. Thus the question of failure of public duty does not arise at all.

128. It is also relevant to note that the judgment in VISHWANATH

CHATURVEDI'S case (33 supra) was rendered by a two-judge Bench of the Supreme Court. In a later decision rendered by a three-judge Bench in identical circumstances in KUNGA NIMA LEPCHA v. STATE OF SIKKIM (17 supra) the Supreme Court expressed a different opinion.

129. In the said case, the petitioners therein who belong to a political party instituted a writ petition in the Supreme Court by way of Public Interest Litigation levelling allegations of misuse of public office and amassing assets disproportionate to his known sources of income against the incumbent Chief Minister of the State of Sikkim who was impleaded as respondent No.2 and seeking a Writ of Mandamus directing the CBI to investigate the allegations levelled against the respondent No.2. Dismissing the writ petition, the Supreme Court held as under:

10. The fact that this petition was instituted at the initiative of four individuals belonging to a political party raises the apprehension that they were motivated by a sense of political rivalry rather than a public-spirited concern about the misuse of office by the incumbent Chief Minister. We must of course emphasise that the writ jurisdiction exercised by this Court cannot be turned into an instrument of such partisan considerations. However, even if we were to accept the locus standi of the petitioners keeping in mind that the allegations of corruption on the part of the incumbent Chief Minister do touch on public interest, this Court is not the appropriate forum for seeking the initiation of investigation.

13. However, the remedies evolved by way of writ jurisdiction are of an extraordinary nature. They cannot be granted as a matter of due course to provide redressal in situations where statutory remedies are available. It is quite evident that the onus is on the petitioners to demonstrate a specific violation of any of the fundamental rights in order to seek relief under writ jurisdiction.

16. While it is true that in the past, the Supreme Court of India as well as the various High Courts have indeed granted remedies relating to investigations in criminal cases, we must make a careful note of the petitioners' prayer in the present case. In the past, writ jurisdiction has been used to monitor the progress of ongoing investigations or to transfer ongoing investigations from one investigating agency to another. Such directions have been given when a specific violation of fundamental rights is shown, which could be the consequence of apathy or partiality on the part of investigating agencies among other reasons. In some cases, judicial intervention by way of writ jurisdiction is warranted on account of obstructions to the investigation process such as material threats to witnesses, the destruction of evidence or undue pressure from powerful interests. In all of these circumstances, the writ court can only play a corrective role to ensure that the integrity of the investigation is not compromised. However, it is not viable for a writ court to order the initiation of an investigation. That function clearly lies in the domain of the executive and it is up to the investigating agencies themselves to decide whether the material produced

before them provides a sufficient basis to launch an investigation.

17. It must also be borne in mind that there are provisions in the Code of Criminal Procedure which empower the courts of first instance to exercise a certain degree of control over ongoing investigations. The scope for intervention by the trial court is hence controlled by statutory provisions and it is not advisable for the writ courts to interfere with criminal investigations in the absence of specific standards for the same.

18. Hence it is our conclusion that the petitioners' prayer cannot be granted. This Court cannot sit in judgment over whether investigations should be launched against politicians for alleged acts of corruption. The Supreme Court of India functions as a constitutional court as well as the highest appellate court in the country. If the Supreme Court gives direction for prosecution, it would cause serious prejudice to the accused, as the direction of this Court may have far-reaching persuasive effect on the court which may ultimately try the accused. It is always open to the petitioners to approach the investigative agencies directly with the incriminating materials and it is for the investigative agencies to decide on the further course of action. While we can appreciate the general claim that the efforts to uncover the alleged acts of corruption may be obstructed by entrenched interests, in this particular case the petitioners would be well advised to rely on the statutory remedies. It is only on the exhaustion of ordinary remedies that perhaps a proceeding can be brought before a writ court and in any case the High Court of Sikkim would be a far more appropriate forum for examining the allegations made in the present petition.

130. From the decisions noticed above, it can be concluded that for entertaining a writ petition as a Public Interest Litigation what is required to be seen is existence of substance in the material and failure of public duty. That apart the petitioner must not have a personal interest and he should be in a position to demonstrate that he is moving the process of law for the benefit of unrepresented or underrepresented strata of the society. In case the Court comes to a conclusion that there are no bona fides on the part of the petitioner and that the petitioner has abused the process of law, such litigation should be curbed at the earliest stage.

131. The petitioner in the instant case has never taken any steps before the competent authority to take up the inquiry / investigation against the respondent No.8 and not even a complaint is lodged with the police. Hence the petitioner cannot attribute any inaction on the part of the respondents 1 to 6. Thus it is not a case of failure of public duty.

132. Moreover, there is political rivalry and the present writ petition is filed as a counter-attack to the investigation ordered against the son of the petitioner in P. SHANKAR RAO'S case (32 supra). The admitted facts borne out of the record make it clear that the writ petition is not bona fide and that the approach of the petitioner is motivated to settle the political scores. Therefore, in our considered

opinion, the writ petition cannot be maintained as a Public Interest Litigation.

Conclusion:

133. For the reasons stated hereinbefore, the Writ Petition is not maintainable as a Public Interest Litigation and therefore it is liable to be dismissed. We have already expressed above that the order dated 14.11.2011 being in violation of the fundamental principles of natural justice is a nullity. Accordingly, the order dated 14.11.2011 is hereby recalled and the Writ Petition is dismissed. Consequently WPMP.Nos.39944 & 40862 of 2011 which are filed by the proposed interveners shall also stand dismissed. No costs.