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HIGH COURT OF CHHATTISGARH, BILASPUROrder reserved on 24-10-2019Order delivered on 30-01-2020WPPIL No. 53 of 2018

1. Kundan Singh Thakur S/o Shri Hari Singh Thakur, Age 43 Years R/o House No. 3, Near Khallari Mata Mandir, P.S. City, Kushalpur Chouck, Dist. Raipur Chhattisgarh

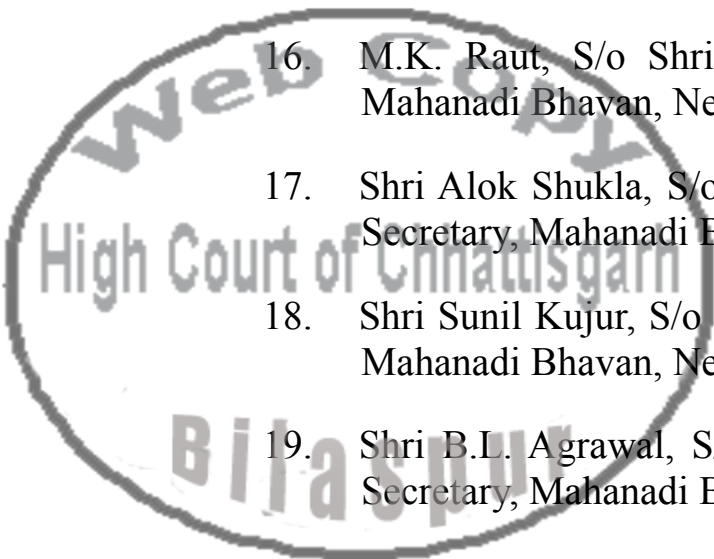
----- Petitioner

Versus

1. Union Of India Through Home Secretary, Ministry Of Home Affairs (India), North Block, Cabinet Secretariat, Raisina Hills New Delhi (New Delhi)
2. Secretary (Personnel) (D O P T) Department Of Personnel And Training, North Block, New Delhi 110001
3. The Secretary, Ministry Of Human Resources And Development (M H R D), Govt. Of India, Shastri Bhavan, New Delhi 110001.
4. State Of Chhattisgarh Through Chief Secretary, Mahanadi Bhawan, New Raipur Chhattisgarh
5. Central Bureau Of Investigation (C B I) Bhilai, Chhattisgarh, Through The Dy.S.P Bhilai, District Durg Chhattisgarh
6. Secretary To Honble Minister, Women And Child Welfare Department, Through Chief Secretary Mahanadi Bhavan, New Raipur Chhattisgarh
7. The Secretary, Nagriya Prashashan Avm Vikash Vibhag, Indravati Bhavan, New Raipur Chhattisgarh
8. The Secretary, Panchayat Avm Gramin Vikash Vibhag, Mahanadi Bhavan, New Raipur Chhattisgarh
9. The Secretary , School Shiksha Vibhag, Mahanadi Bhavan, New Raipur Chhattisgarh



10. The Secretary , Samaj Kalyan Vibhag, Mahanadi Bhawan, New Raipur Chhattisgarh
11. The Secretary , Lok Swasthya Avm Pariwar Kalyan Vibhag, Mahanadi Bhawan, New Raipur Chhattisgarh
12. The Secretary , Vitt Vibhag, Mahanadi Bhavan, New Raipur Chhattisgarh
13. The Director, Panchayat Avm Samaj Sewa Vibhag, Mahanadi Bhavan, New Raipur Chhattisgarh
14. Smt. Renuka Singh, W/o Phool Singh, Ex-Minister Women And Child Welfare Department, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh
15. Shri Vivek Dhand, S/o Shri S. P. Dhand, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh,
16. M.K. Raut, S/o Shri V.T. Raut, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh
17. Shri Alok Shukla, S/o Late Shri T.C. Shukla, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh
18. Shri Sunil Kujur, S/o Shri P. Kujur, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh
19. Shri B.L. Agrawal, S/o Shri R. K. Agrawal, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh
20. Shri Satish Pandey, S/o Shri R.S. Pandey, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh
21. Shri P. P. Soti, S/o Shri P. D. Soti, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh
22. Shri Rajesh Tiwari, Director, State Resource Center (Rajya Shrot Nishakt Jan Sansthan), Samaj Kalyan Parisar, Mana, Dist Raipur Chhattisgarh, District : Raipur, Chhattisgarh
23. Shri Ashok Tiwari, Director, State Resource Center Rajya Shrot Nishakt Jan Sansthan, Samaj Kalyan Parisar, Mana, Dist Raipur Chhattisgarh
24. Shri Herman Khalkho, Dy. Director, Social Welfare Department, Through Chief Secretary, Mahanadi Bhavan, New Raipur Chhattisgarh





25. Shri M. L. Pandey, Addl. Director, Social Welfare Department, Through Chief Secretary, Mahanadi Bhawan, New Raipur Chhattisgarh
26. Shri Pankaj Verma, Dy. Director, Social Welfare Department, Through Chief Secretary, Mahanadi Bhawan, New Raipur Chhattisgarh
27. The Treasurer, Dist. Bilaspur Chhattisgarh
28. The Registrar, Firms And Societies, Indrawati Bhavan, New Raipur Chhattisgarh
29. The Branch Manager, State Bank Of India, Branch, Moti Bagh, Raipur Chhattisgarh
30. The Branch Manager, State Bank Of India, Branch- New Mantralay Branch, New Raipur Chhattisgarh
31. State Resource Center (Rajya Shrot Nishakt Jan Sansthan) Samaj Kalyan Parisar, Mana, District Raipur Chhattisgarh, Through Its Director Samaj Kalyan Parisar, Mana District Raipur Chhattisgarh.

---- Respondents

For Petitioner	Shri Devershi Thakur, Advocate
For Respondent/UOI	Shri B. Gopa Kumar, Assistant Solicitor General
For Respondent/State	Shri S.C. Verma, the then Addl. Adv. General (presently Advocate General) with Shri Gagan Tiwari, Dy. Govt. Advocate
For Respondent/SBI	Shri Vedant Belonde, Advocate on behalf of Shri P.R. Patankar, Advocate

Hon'ble Shri Prashant Kumar Mishra, J.

Hon'ble Shri Parth Prateem Sahu, J.

CAV Order



The following order of the Court was delivered by

Prashant Kumar Mishra, J.

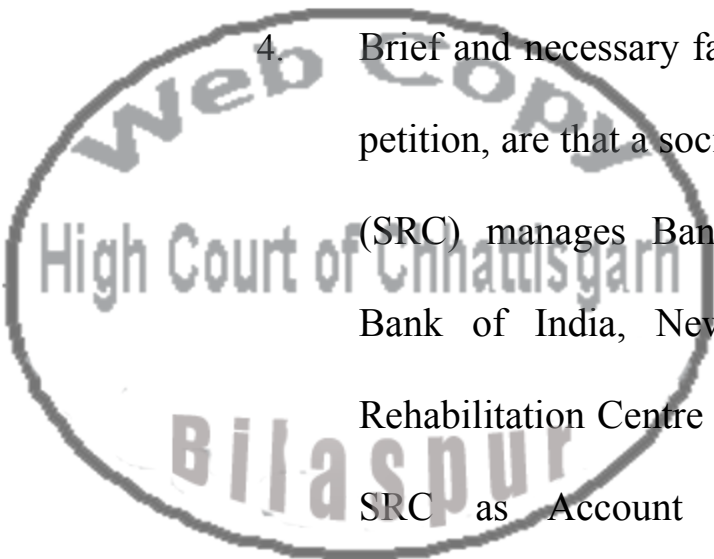
1. This petition, initially filed as writ petition (Cr.) was later on converted into a Public Interest Litigation (PIL) under the orders of the Court, has been preferred seeking an appropriate writ/order/direction to the Central Bureau of Investigation (CBI) to register an FIR (First Information Report) and investigate the matter; as also for a direction to the respondent No.2-Department of Personnel and Training (DoPT), Government of India, for initiating departmental proceedings against the respondents No.15 to 26 namely;



- Shri Vivek Dhand
- Shri M.K. Raut
- Shri Alok Shukla
- Shri Sunil Kujur
- Shri B.L. Agrawal
- Shri Satish Pandey
- Shri P.P. Soti
- Shri Rajesh Tiwari
- Shri Ashok Tiwari
- Shri Herman Khalkho
- Shri M.L. Pandey
- Shri Pankaj Verma



2. Albeit the then Hon'ble Minister of the concerned Department *Smt. Renuka Singh* has been arrayed as respondent No.14, but *no relief has been prayed against her* in the writ petition.
3. The petitioner has also prayed for a direction to conduct audit of the accounts maintained by the State Resource Center (for brevity 'the SRC') (राज्य श्रोत निःशक्त जन संस्थान), Samaj Kalyan Parisar, Mana, District Raipur; as also for recovery of the embezzled amount from the respondents No.15 to 26.
4. Brief and necessary facts of the case, as projected in the writ petition, are that a society named as the State Resource Centre (SRC) manages Bank Account No.30790835402 at State Bank of India, New Raipur and the Physical Referral Rehabilitation Centre (for brevity 'the PRRC') under the said SRC as Account Nos.63006155111, 63000051762 & 31647505404 at State Bank of India, Moti Bagh, Raipur. The petitioner and like persons at different PRRC throughout the State are shown as the Government employees and whopping amount towards their salary is withdrawn for purported payment of salary, but neither the petitioner nor any other like persons throughout the State were ever paid salary for working with the PRRC. The entire set up of the SRC and PRRC is running only on papers without there being any





visible tangible activity at any such center. There was no recruitment process through advertisement or otherwise nor any hospital for disabled is established nor any employees were ever appointed, but such persons are shown to be employed and working with the SRC/PRRC only for showing payment of salary to them. Despite the Bank Accounts of the employees throughout the State having been linked through their respective Aadhar Cards such fake employees are shown to be paid in cash, only on papers in a planned and organized manner just to siphon hundreds of crores of rupees. In course of arguments, Shri Devershi Thakur, learned counsel appearing for the petitioner, has stated that the total embezzled amount would be more than Rs.630.00 crores.

5. It is stated in the writ petition that the petitioner is shown in the list of employees who are paid in cash through the society as if the Government is not well equipped to transfer salary to its employees in their respective Bank Accounts. The petitioner is employed in Swawelamban Center and not in PRRC, however, he is shown to be working in the PRRC and the amount showed to be paid to the petitioner in cash for working in PRRC never reached him and was getting remuneration for working in Swawelamban Center. It is further stated that the SRC was registered in the year 2004 as



a society under the provisions of the Chhattisgarh Society Registrickaran Adhinyam, 1973, but has never been audited since after its formation. The respondents No.15 to 26 against whom the relief has been prayed in the writ petition are the office bearers of the society.

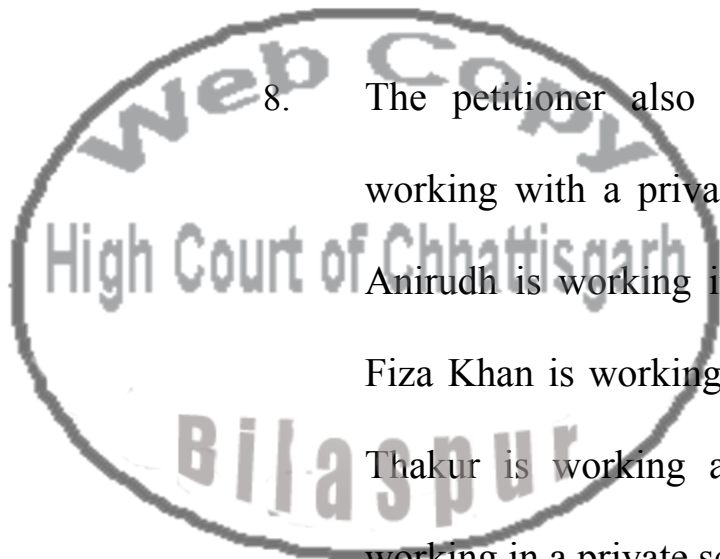
6. According to the petitioner, PRRC was set up for working for the welfare of the disabled and handicapped persons and was supposed to make artificial limbs for them. In such PRRC employees were shown to be working and paid through the withdrawal authority namely; Shri Rajesh Tiwari (Respondent No.22). The SRC provided lacs of rupees to the PRRC for payment to fake employees as also for running the establishment, its functioning and purchase of equipments. One example of such fake payment for payment to the fake employees shown to be working at PRRC, Mana, District Raipur is document Annexure – P/7 showing sanction of amount as per the details given below :

Financial Year	Amount (in lacs)
2013-14	Rs.34.00
2014-15	Rs.34.00
2015-16	Rs.84.35
2016-17	Rs.89.30
2017-18	Rs.92.60



7. The amount towards Travelling Allowance and Dearness Allowance (TA & DA) for the year 2014-15 was sanctioned for Rs.11.00 lacs and similarly other amount on this head were sanctioned and shown to be released for different years. There being no direct payment to the employees, the E-code of the individual employees was never allotted. The cash amount was withdrawn for different purposes only on paper without there being any activity. In fact, there is no PRRC at Mana.

8. The petitioner also contended that one Sanjiv Reddy is working with a private firm at Shankar Nagar, Raipur; one Anirudh is working in the Health Department at Jagdalpur; Fiza Khan is working in GATLAB; petitioner-Kundan Singh Thakur is working at Swawelamban Center; and Stuti is working in a private school, but all these persons are shown to be employed at the PRRC and shown payment of salary in cash which has never been paid to them. The manner in which the amount is released and thereafter it reaches to the PRRC is mentioned in para 8.12 of the writ petition. When the petitioner sought information under the provisions of the Right to Information Act and made representations he has been threatened with dire consequences.

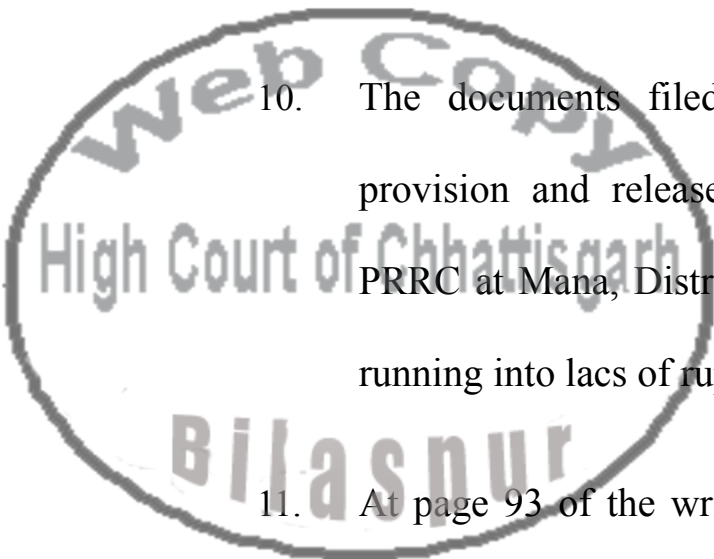




9. It is argued by Shri Devershi Thakur, learned counsel appearing for the petitioner, that lacs of amount at an average of Rs.35.00 to Rs.40.00 lacs per month has been released for each district. Thus, for each district the annual amount would be about Rs.4.0 crores (approx.). If this is multiplied for all the revenue districts of the State of Chhattisgarh the yearly figure comes to more than Rs.100.00 crores (approx.). It can be very well imagined that for the last 10 years the total embezzled amount may cross Rs.1000.00 crores (approx.).

10. The documents filed with the petition shows budgetary provision and release of amount for establishment of the PRRC at Mana, District Raipur. It also shows huge amount running into lacs of rupees being withdrawn in cash.

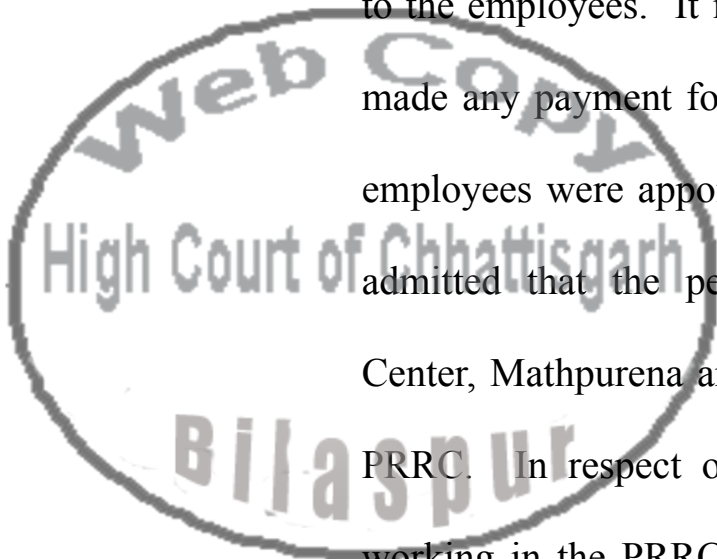
11. At page 93 of the writ petition cash withdrawal of Rs.51.00 lacs has been shown in the name of employees, who are already in the Government service. It is argued that since these persons are Government servants and receive regular salary they were never aware that their salary is also drawn for payment in cash showing them to be working in the PRRC. The document at page 93 is signed by the Joint Director, District Office, Social Welfare, Bilaspur. The document also shows withdrawal of cash for paying





honorarium, towards fuel expenses, etc. In one of the document filed subsequently by the petitioner on 24-10-2019 a sum of Rs.50,000=00 was withdrawn for expenses towards the vehicle hired for Hon'ble Shri Justice Altamas Kabir, Judge, Supreme Court of India, on 9-9-2011.

12. In the memo of submission filed by the State on 1-10-2018 it has been admitted that there is no precise information available at the PRRC regarding drawl of salary for payment to the employees. It is also admitted that the SRC has never made any payment for its own offices or for PRRC and that employees were appointed through outsourcing. It is further admitted that the petitioner is working at Swawelamban Center, Mathpurena and was doing the additional duty at the PRRC. In respect of payment made to the petitioner for working in the PRRC neither any enquiry was made by the respondent, though directed by the Court, nor any statement in this regard has been made in the memo of submission. The Finance Department was requested for conducting audit only after filing of the present writ petition. In the said audit irregular and illegal withdrawal of cash has been found, *prima facie*, proved. Thus, the allegation of the petitioner about the financial irregularity has been, *prima facie*, admitted in the State's memo of submission. State has issued show cause





notices to some of the employees, but no further action has been taken.

13. Petitioner's counter to the State's submission would highlight that the SRC is a society whereas the PRRC is the Government entity under the Department of Social Welfare, therefore, it is impossible and questionable as to how the society manages the Government department. According to the petitioner, the State authorities are trying to hush up and cover up the entire issue so that the high rank officials are saved.

14. Learned counsel appearing for the State, *per contra*, would submit that the matter has been enquired and remedial measures to be taken are in the pipeline.

15. In order to appreciate as to whether the facts brought before this Court alleging rampant misuse or misappropriation or embezzlement of public money needs to be investigated by the CBI or an independent agency, we deem it appropriate to refer to the observations made by the Supreme Court in its decisions dealing with the prayer made for conduct of enquiry by the CBI.



16. In the celebrated case of *Vineet Narain and Others v Union of India and Another*¹, the Supreme Court held thus in paras 55 & 56 :

55. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.

56. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to under-developed countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries: *R v Secy. of State for Foreign and Commonwealth Affairs*.

¹ (1998) 1 SCC 226



17. On the issue as to whether sanction or approval under Section 6 & 6-A of the Delhi Special Police Establishment Act, 1946 is required even for Court directed/monitored investigation was dealt with by the Supreme Court in *Manohar Lal Sharma v Principal Secretary and Others*² held thus in para 98 :

98. The law laid down by the Constitution Bench vis-à-vis a High Court exercising judicial review under Article 226 of the Constitution and a statutory restriction under Section 6 of the Act, would apply (perhaps with greater vigour) mutatis mutandis to the exercise of judicial review by this Court under Article 32 of the Constitution with reference to a statutory restriction imposed by Section 6A of the Act. That being so, Section 6A of the Act must be meaningfully and realistically read, only as an injunction to the executive and not as an injunction to a constitutional court monitoring an investigation under Article 32 of the Constitution in an exercise of judicial review and of issuing a continuing mandamus.

18. In *Subramanian Swamy v Director, Central Bureau of Investigation and Another*³ the Supreme Court has observed that office of public power cannot be the workshop of personal gain. A person howsoever high he may be, the law is above him. This signature tune in *Vineet Narain* (supra) was reiterated in this matter and adding further it was observed that corruption is an enemy of nation and tracking down

2 (2014) 2 SCC 532

3 (2014) 8 SCC 682



corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crimedoers and have to be tracked down by the same process of inquiry and investigation. The Supreme Court also observed that corruption corrodes the moral fabric of the society and corruption by public servants not only leads to corrosion of the moral fabric of the society but is also harmful to the national economy and national interest, as the persons occupying high posts in the Government by misusing their power due to corruption can cause considerable damage to the national economy, national interest and image of the country.

19. In *Subramanian Swamy* (supra) the Supreme Court highlighted the need of fair and independent investigation observing thus in para 86 :

86. The Criminal justice system mandates that any investigation into the crime should be fair, in accordance with law and should not be tainted. It is equally important that interested or influential persons are not able to misdirect or highjack the investigation so as to throttle a fair investigation



resulting in the offenders escaping the punitive course of law. These are important facets of the rule of law. Breach of rule of law, in our opinion, amounts to negation of equality under Article 14. Section 6-A fails in the context of these facets of Article 14. The argument of Mr. L. Nageswara Rao that the rule of law is not above law and cannot be a ground for invalidating legislations overlooks the well settled position that rule of law is a facet of equality under Article 14 and breach of rule of law amounts to breach of equality under Article 14 and, therefore, breach of rule of law may be a ground for invalidating the legislation being in negation of Article 14.

20. The Supreme Court in *E. Sivakumar v Union of India and*

*Others*⁴ observed thus in paras 13 & 14 :

13. In *Dharam Pal v. State of Haryana*, this Court has underscored the imperativeness of ensuring a fair and impartial investigation against any person accused of commission of cognizable offence as the primary emphasis is on instilling faith in the public at large and the investigating agency. The dictum in paras 24 and 25 of this reported decision is quite instructive which read thus (SCC pp.70-71) :

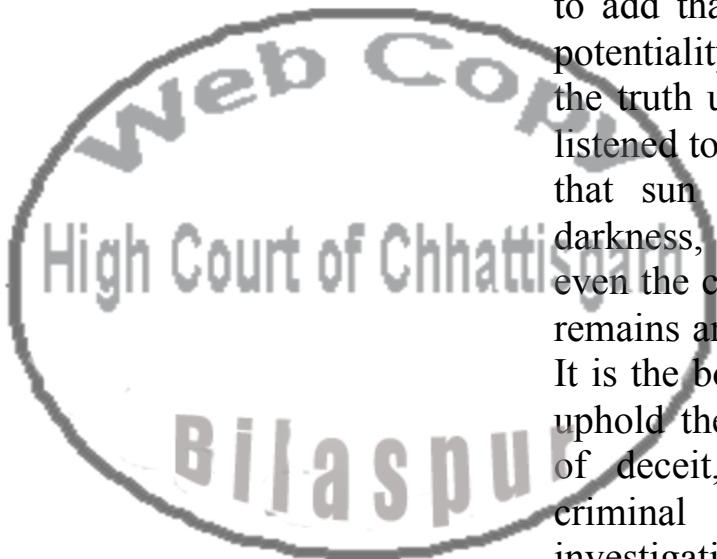
“24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that

4 (2018) 7 SCC 365



miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the “faith” in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the “tour de force” of the prosecution and if we allow ourselves to say so it has become “idée fixe” but in





our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an "orphan under law".

14. Suffice it to observe that we do not intend to deviate from the conclusion reached by the High Court that in the peculiar facts and circumstances of the case, it is but appropriate that investigation of the crime in question must be entrusted to CBI.

21. Having noted the law declared and observations made by the Supreme Court in the above referred judgments and considering the same in the facts and circumstances of the case it requires serious notice that the petitioner alleges large scale bungling and siphoning of public funds which may run into hundreds of crores or even more than thousand crores. The report along with submission memo of the respondent/State partially admits of certain financial irregularities, however, no serious attempt has been made to unearth and find out as to who has siphoned the amount. Only some notices for departmental action have been issued without registering any offence for misuse of public funds of such enormous proportion. Public office cannot be a place



for acquiring personal gain. Probity in public life is of great importance. Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the Prevention of Corruption Act, 1988 and the Indian Penal Code.

22. The public officers arrayed as the respondents No.15 to 26 are high ranked officers and it seems to be the precise reason why the respondent State is reluctant to investigate the crime to find out as to whether any criminal offence has been committed or not, however, when startling and disturbing facts have been brought to our notice with, *prima facie*, proof, this Court cannot shun its constitutional duty and be a mute spectator to condone such lapses, if it is eventually find out in a fair and independent investigation.

23. The respondent officers being high ranked, there is apprehension that the investigation may be influenced, therefore, having considered the law laid down and the observations made by the Supreme Court in the facts and circumstances of the case, we direct that the matter be investigated by the CBI in a fair and independent manner.



24. In the result, we dispose of the instant writ petition with the following directions :

- a) The CBI shall register an FIR within a period of one week from today.
- b) The CBI shall seize the relevant original records from the concerned department, organization and offices throughout the State within 15 days from the date of registration of FIR.
- c) The CBI shall make all possible endeavour to complete fair and independent investigation at the earliest.
- d) It is made clear that in the event the CBI needs any further direction from this Court it would be at liberty to move necessary application in this regard.

25. There shall be no order as to cost(s).

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Parth Prateem Sahu)
Judge

HEAD NOTE

CBI Investigation directed for alleged misappropriation and siphoning of more than Rs.1,000/- (Rupees One Thousand Crores) in State Resource Centre (SRC) and the Physical Referral Rehabilitation Centre (for brevity 'the PRRC') of the State Government for the last about 10 years.