IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.**04.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MR.JUSTICE **SUBRAMONIUM PRASAD**

W.P.No.2342 of 2019

Y.Akbar Ahmed .. Petitioner

Vs.

1. The Secretary
Home Department, Government of Tamilnadu,
Secretariat,Chennai-600009.

2. The Under Secretary /Public Information officer
Home Department,Government of Tamilnadu,
Secretariat,Chennai-600009.

3. The Public Information Officer/
Under Secretary to Government,
Public (Miscellaneous) Department,
Government of Tamilnadu,Secretariat,
Chennai-600009.

4. The Inspector General of Police (Establishments)
O/o the Director General of Police,
Mylapore,Chennai-600004. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the 1st Respondent herein to Comply with all the directions, issued by the Hon'ble Supreme Court of India in the case of Prakash Singh & Ors vs Union Of India and

Ors. dated 22 September, 2006 in W.P.(Civil) No.310 of 1996 and to report its Compliance within a stipulated time.

For Petitioner : Mr.Y.Akbar Ahmed

For Respondents : Mr.E.Manoharan
Additional Government Pleader

O R D E R

(Order of the Court was made by **SUBRAMONIUM PRASAD, J.)**

Mr.Y.Akbar Ahmed, party-in-person, has filed the instant public interest litigation, for a Writ of Mandamus, directing the Secretary, Government of Tamil Nadu, Home Department, Chennai, 1st Respondent herein, to Comply with all the directions, issued by the Hon'ble Supreme Court of India, in the case of Prakash Singh & Ors vs Union Of India and Ors. dated 22 September, 2006 in W.P.(Civil) No.310 of 1996 and to report compliance within a stipulated time. Directions issued in the above decision, are extracted hereunder:

"we have perused the various reports. In discharge of our constitutional duties and obligations having regard to the aforenoted position, we issue the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations : State Security Commission (1) The State

Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee, which are as under:

NHRC Ribeiro Committee Sorabjee Committee

1. Chief Minister/HM as Chairman.

1. Minister i/c Police as Chairman

1. Minister i/c Police (ex-officio Chairperson)

2. Lok Ayukta or, in his absence, a retired Judge of High Court to be nominated by Chief Justice or a Member of State Human Rights Commission.

2. Leader of Opposition.

3. A sitting or retired Judge nominated by Chief Justice of High Court.

3. Judge, sitting or retired, nominated by Chief Justice of High Court.

3. Chief Secretary

4. Chief Secretary

4. Chief Secretary

4. DGP (ex-officio Secretary)

5. Leader of Opposition in Lower House.

5. Three non-political citizens of proven merit and integrity.

5. Five independent Members.

6. DGP as ex-officio Secretary.

6. DG Police as Secretary.

The recommendations of this Commission shall be binding on the State Government:

The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service oriented functions of the police, evaluation of the performance of the State police and preparing a report thereon for being placed before the State legislature. Selection and Minimum Tenure of DGP:

(2) The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by

the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.

Minimum Tenure of I.G. of Police & other officers:

(3) Police Officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge district and Station House Officer in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer.

Separation of Investigation:

(4) The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.

Police Establishment Board:

(5) There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

Police Complaints Authority:

(6) There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above.

The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire

into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority.

National Security Commission:

(7) The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary.

The aforesaid directions shall be complied with by the Central Government, State Governments or Union Territories, as the case may be, on or before 31st December, 2006 so that the bodies afore-noted became

operational on the onset of the new year. The Cabinet Secretary, Government of India and the Chief Secretaries of State Governments/Union Territories are directed to file affidavits of compliance by 3rd January, 2007."

2. Party-in-person has contended that on 24.09.2018, he sent representations to the Under Secretary /Public Information officer Home Department, Government of Tamilnadu, Chennai-600009 and the Public Information Officer/Under Secretary to Government, Public (Miscellaneous) Department, Government of Tamilnadu, Chennai-600009, respondents 2 and 3 herein, under RTI Act 2005, seeking certain information, as to whether, Government of Tamil Nadu, have obeyed and followed all the directions issued by the Hon'ble Supreme Court of India, in the case of **Prakash Singh & Ors vs Union Of India And Ors, on 22 September 2006 in Writ Petition (civil) No.310 of 1996,** and requested to provide him with detailed information. The said representation was forwarded by the Under Secretary /Public Information Officer, Home Department, Government of Tamilnadu, Secretariat, Chennai-600009, 2nd Respondent herein, to the Public Information Officer/Under Secretary to Government, Public (Miscellaneous) Department, Government of Tamilnadu, Chennai-600009, 3rd Respondent herein, who forwarded the same to the

Inspector General of Police (Establishments), Office of the Director General of Police, Mylapore, Chennai-600004, 4th Respondent herein. But he has not received any information from the Secretary, Home Department, Government of Tamilnadu, 1st Respondent herein, complying with the aforesaid directions of the Hon'ble Supreme Court. He further submitted that under Article 141, 142,and 144 of the Constitution of India, it is the duty of the Secretary, Home Department, Government of Tamil Nadu, Chennai, 1st respondent herein, to obey, follow and act, as per the directions/orders of the Hon'ble Supreme Court of India. Hence, he has filed the present writ petition, for the relief, as stated supra.

3. Supporting the averments, Mr.Y.Akbar Ahmed, party-in-person, made submissions.

4. Record of proceedings in this writ petition discloses, on 28.01.2019, a Hon'ble Division Bench has passed the following orders,

> "The petitioner/party-in-person, who claims to be a Public Interest Litigant, would submit that in terms of the judgment of the Hon'ble Supreme Court dated 22.09.2006 made in Writ Petition (Civil) No.310 of 1996 **[Prakash**

Singh & Ors. v. Union of India and Ors.] reported in **(2006) 8 SCC 1 = (2006) 3 SCC (Crl.) 417,** there must be a separate wing for Investigation and Law and Order and that apart, the State Security Commission is also yet to be constituted and therefore, came forward to file this writ petition for implementation of the said judgment in letter and spirit with a further direction to file compliance report.

2. Mr.E.Manoharan, learned Additional Government Pleader, who accepts notice on behalf of the respondents 1 to 4, would submit that in compliance of the above cited judgment, the Tamil Nadu Act No.22 of 2013, namely the Tamil Nadu Police (Reforms) Act, 2013 came to be passed and drawn the attention of this Court to Section 9 of the said Act and would submit that in the light of the said provision, there is bound to be a separate wing for Law and Order and Investigation and both the wings should be headed by the concerned Station House Officer and also seeks time to get instructions/to file counter affidavit as to the enforcement of the said Act in letter and spirit.

3. This Court has considered the rival submissions and also perused the materials placed before it.

4. This Court, having taken note of Section 9 of the Tamil Nadu Police (Reforms) Act, 2013, is of the prima facie view that it is not in consonance with the directions issued in **Prakash Singh's** case (cited supra) and however, taking into consideration the plea made by the learned

Additional Government Pleader appearing for the official respondents as to the full implementation of the said Act, it is inclined to grant time.

Call on 14.03.2019. The Principal Secretary to Government, Home, Prohibition and Excise Department, Fort St.George, Chennai 600 009, shall file a comprehensive counter affidavit with supporting documents, if any, as to the compliance of **Prakash Singh's** case (cited supra) as well as the Tamil Nadu Police (Reforms) Act, 2013."

5. Mr.E.Manoharan, learned Additional Government Pleader submitted that in the aforesaid Judgment, the Hon'ble Supreme Court issued various directions to the Central Government, State Governments and Union Territories for compliance, till the framing of appropriate legislation. Based on the directions, the Tamil Nadu Police (Reforms) Act, 2013 (Tamil Nadu Act 22 of 2013) [hereinafter referred to as 'the Tamil Nadu Act'] has been enacted and the same has come into force on the 11th day of September, 2013. The Tamil Nadu Police (Reforms) Act, 2013 has been enacted, in compliance with the directions, with the following provisions,

(a) State Security Commission

(b) Selection and minimum tenure of Director

General of Police.

(c) Minimum tenure of Inspector General of Police and other officers.

(d) Separation of investigation.

(e) Police Establishment Board.

(f) Police Complaints Authority.

6. Learned Additional Government Pleader further submitted that the Legislative Assembly of Tamil Nadu has enacted The Tamil Nadu Police (Reforms) Act, 2013, based on the guidelines of the Hon'ble Supreme Court, and considering the needs of the State of Tamil Nadu.

7. Added further, he submitted that the Hon'ble Supreme Court is monitoring the implementation of the orders made in **Prakash Singh's** case and for non-implementation, contempt petition has been filed and many states have filed their reply affidavits in the Supreme Court. He further contended that when the Hon'ble Supreme Court is monitoring the implementation of the order, writ petition filed in this court, for the same purpose, is not maintainable.

8. In support of his contention, learned Additional Government Pleader for the respondents, has filed a copy of the reply affidavit of the Additional Chief Secretary to Government, Home, Prohibition and

Excise Department, Chennai 600 009, in W.P.(Civil) No.310 of 1996, in Hon'ble Supreme Court. For the abovesaid reasons, he prayed for dismissal of the writ petition.

9. By way of reply, inviting the attention of this Court to Article 144 of the Constitution of India, Mr.Y.Akbar Ahmed, party-in-person, submitted that pendency of the writ petition in Hon'ble Supreme Court, would not preclude this Court to issue directions.

10. Heard the party-in-person and the learned Additional Government Pleader and perused the materials available on record.

11. Let us consider the steps taken by the Government of Tamil Nadu in their reply affidavit submitted by the Additional Chief Secretary to Government, Home, Prohibition and Excise Department, Chennai 600 009, in W.P.(Civil) No.310 of 1996, before the Hon'ble Supreme Court,

> "I am the Additional Chief Secretary to Government, Home Department, Secretariat, Chennai-9 and as such I am well acquainted with the facts of the case from the records available. I have read the Written Submission filed by the

petitioner in W.P. (Civil) No.310 of 1996. As the subject matter dealt with in this Writ Petition relates to Home department, I have been authorized to file this Reply affidavit and hence I am filing this Reply affidavit on the implementation of the directions contained in the judgment of the Hon'ble Supreme Court of India issued on 22nd September, 2006 in Prakash Singh and Others Versus Union of India and Others reported in [(2006) 8 SCC].

2. It is respectfully submitted that in the aforesaid Judgment, this Hon'ble Court have issued various directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations. Based on the directions, the Tamil Nadu Police (Reforms) Act, 2013 (Tamil Nadu Act 22 of 2013) herein after referred to as 'the Tamil Nadu Act' was enacted and passed by the State of Tamil Nadu and the same has come into force on the 11th day of September, 2013. The Tamil Nadu Police (Reforms) Act, 2013 has been enacted in compliance to this Hon'ble Court directions, with the following provisions.

(a) State Security Commission.

(b) Selection and minimum tenure of Director General of Police.

(c) Minimum tenure of Inspector General of Police and other officers.

(d) Separation of investigation.

(e) Police Establishment Board.

(f) Police Complaints Authority.

3. It is respectfully submitted that the averments made regarding enactment of the Tamil Nadu Police (Reforms) Act, 2013 in a diluted manner without following the recommendation of the directions of this Hon'ble Court are denied. The Legislative Assembly of Tamil Nadu have enacted the Tamil Nadu Police (Reforms) Act, 2013, which provide for the reforms of the State based on the guidelines of this Hon'ble Court and considering the needs of the State of Tamil Nadu.

4. With reference to the comments made on the Government of Tamil Nadu in the written statement of the petitioner, the specific remarks are given hereunder:-

Sl.No.	Provision/Complied in Tamil Nadu Police (Reforms) Act, 2013	Comments made in the Affidavit of the petitioner	Specific Remarks of the respondent
(a)	State Security Commission :- Incorporated in section 5 to 7 of the Tamil Nadu Police (Reforms) Act, 2013.	1. Composition does not follow any of three models prescribed by Court.	The State Security Commission has been constituted in the Act, taking into consideration the Sorabjee Committee recommendation, as a model. For the 5 independent Members recommended in Sorabjee Committee, Chairpersons of Tamil Nadu Public Service Commission, Tamil Nadu State Human Rights Commission, Tamil Nadu State Women's Commission, Tamil Nadu State Minorities Commission are included as Members.
		2. SCC has Chairpersons of Tamil Nadu Public Service Commission,	The said 5 members, included in the State Security Commission are

Sl.No.	Provision/Complied in Tamil Nadu Police (Reforms) Act, 2013	Comments made in the Affidavit of the petitioner	Specific Remarks of the respondent
		State Human Rights Commission, State Women Commission, State minorities Commission as members. They are all ex-officio members are Government nominees and therefore cannot be considered ndependent	Chairpersons of the concerned Constitutional / Statutory Bodies of the state Of Tamil Nadu and they will be more efficient rather than independent members. Hence, it is premature to assume that these Members cannot be considered independent.
		3. Not clear that recommendations of the Commission will be binding.	As per sub-section (I) and (2) of section 7 of the Act, the Commission shall, at the end of every year, submit to the Government the annual report on its work during the preceding year and on the evaluation of performance of the Police Force which shall include recommendations for improvement and the Government shall lay the annual report on the table of the Legislative Assembly. Further process on the recommendation is within the prerogative of the Legislative Assembly.
(b)	Selection, appointment and tenure of Director General of Police:- Incorporated in section 3 of the Tamil Nadu Poice (Reforms) Act, 2013	1. Grounds for premature removal include "Other Administrative grounds to be recorded in writing. This could be misused.	The observation that this proviso could be misused is not acceptable and it is presumptive in nature.
		2. Court had wanted Union Public Service Commission to prepare panel of five officers.	AS per the Act, five officers are to be considered for appointment as Director General of Police. However

Sl.No.	Provision/Complied in Tamil Nadu Police (Reforms) Act, 2013	Comments made in the Affidavit of the petitioner	Specific Remarks of the respondent
		Intention appears to be to give more latitude to CM.	the Director General of Police will be appointed from the list of officer short listed by the Union Public Service Commission only.
(c)	Minimum tenure of Inspector General of Police and other officers:- Incorporated in section 4 of the Tamil Nadu Police (Reforms) Act, 2013.	1. Act is silent about tenure of DIG i/c Range of IGP i/c Zone.	The Director Genera! Of Police has sent proposal for an amendment in this regard. The above said proposal is under consideration of the Government.
		2. Officers may be transferred on administrative grounds to be recorded in writing.	Necessary provision is already in Section 4(2)(i) of the Act, in this regard.
(d)	Separation of Law and Order and Criminal Investigation wings:- Incorporated in section 9 of the Tamil Nadu Police (Reforms) Act, 2013.	No comments have been made	The Police Stations were separated into two different wings i.e. Law & Order and Investigation as mentioned in G.O(Ms)No.640, Home (Pol.XIV) Department, dated 26.04.2007. Subsequently, in G.O(Ms)No.59, Home (Pol.XIV) Department, dated 20.01.2011 the Police Stations are separated as law and Order and Investigation Wing in the ratio of 75:25 and 67:33 staffing pattern for Chennai City and other Cities / Districts respectively.
(e)	Police Establishment Board:- Incorporated in section 8 of the Tamil Nadu Police (Reforms) Act, 2013.	1. DGP alone (and not PEB) will send proposals for Officers of and above the rank of IGP.	The Act clearly provides that the transfer and posting of the officers in the rank of Superintendent of Police and above up to the rank of Inspector General of Police are done by Police Establishment Board. The

Sl.No.	Provision/Complied in Tamil Nadu Police (Reforms) Act, 2013	Comments made in the Affidavit of the petitioner	Specific Remarks of the respondent
			promotion, transfer and posting of officers above the rank of Inspector General of Police (i.e) for Additional Director General of Police, the Director General of Police shall send proposals to Government.
		Not clear that recommendations of Police Establishment Board will be given "due weight" by the Government, which should normally accept them.	Normally the recommendation of Police Establishment Board accepted by the Government without any deviation. Hence, it is considered that there is no need for incorporating the same in the Act.
		3. Composition and function of Police Establishment Committees of Zonal, Range, City and District Levels has not been clarified.	With regard to composition and functions of Police Establishment Committee at Zonal, Range, City and District level, framing of Tamil Nadu Police (Reforms) Rules is under consideration of the Government.
		4. Board has not been given power to generally review the functioning of police in this State.	The Director General Of Police has sent proposal for an amendment in this regard. The above said proposal is under consideration of the Government.
(f)	Police Complaints Authority:- Incorporated in Sections 10 to 19 of the Tamil Nadu Police (Reforms) Act, 2013	Authorities are headed by bureaucrats at both levels by Home Secretary at State Leval and Collector/ DM district level. Direction was that they should be headed by retired judges.	The instances such as custodial death, custodial disappearance, custodial rape are investigated by Judicial Magistrate as per section 176 of Cr.PC, 1973. The recommendation of the Judicial authorities are considered and appropriate orders passed by the

Sl.No.	Provision/Complied in Tamil Nadu Police (Reforms) Act, 2013	Comments made in the Affidavit of the petitioner	Specific Remarks of the respondent
			Government. Moreover, instances of Serious misconduct and violation of Human Rights are closely monitored by the National Human Rights Commission / Sate Human Rights Commission and actions are taken on their recommendations then and there. Hence, in the present circumstances, the State Police Complaints Authority, District Police Complaints Authority and Police Complaints Division which have been constituted in the Act is considered adequate to the State of Tamil Nadu to enquire in to the complaints against Police.
		2. Authorities will make "recommendations"to State Government for appropriate action. Direction was that these should be binding on State Government.	Section 13 (2) and 16(b) of the act dearly provide that the State Police Complaints Authority and District Police Complaints Authority shall submit its recommendations to the Government for appropriate action. Accordingly, the Government will take-appropriate action based on the recombination.

5. With regard to the averment made by the petitioner to bring the 'public order' and 'police' from the 'State List' to the 'Concurrent List', it is respectfully submitted that public order is always a local issue and the crime of local nature should be addressed only by local police of the State. As regards inter-state crimes, the

present arrangement is working well and there is always a coherent, collaborative and congenial relationship between inter-state police forces and every inter-state crime, is being solved in the shortest time with the support of other state police forces. Changing of 'public order' and 'police' from State List to Concurrent List is fraught with the danger of altering the federal structure to a great extent and it is against the Constitution. In view of the above, it is considered that there is no necessity at present to transfer the subjects of “public order" and "police” from the State List to Concurrent list."

12. Admittedly, when the Hon'ble Supreme Court is monitoring the implementation of the order, there cannot be a parallel proceedings on implementation. Article 144 of the Constitution of India, reads thus,

"**144. Civil and judicial authorities to act in aid of the Supreme Court:-**

All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court."

13. It cannot be contended that the Government of Tamil Nadu have not implemented the directions in entirety. Pursuant to the directions, State Legislative Assembly has enacted Tamil Nadu Police (Reforms) Act, 2013 [Tamil Nadu Act No.22 of 2013] and the said Act is extracted hereunder:

"1. Short title and commencement: (1) This Act may be called the Tamil Nadu Police (Reforms) Act, 2013.

(2) It shall be deemed to have come into force on the 11th day of September 2013.

2. Definitions: (1) In this Act, unless the context otherwise requires,—

(a) "Board" means the Police Establishment Board constituted under section 8;

(b) "Commission" means the State Security Commission established under section 5;

(c) "Government" means the State Government;

(d) "Police Officer" means any member of the Tamil Nadu Police and includes an Indian Police Service (IPS) officer working in connection with the affairs of the State and the Tamil Nadu Police;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "subordinate ranks" means all ranks below the rank of Deputy Superintendent of Police or its equivalent;

(g) "supervisory ranks" means ranks of Deputy Superintendent of Police or its equivalent and above;

(2) Words and expressions used in this Act, but not defined specifically shall have the same meaning as provided in the Police Act, 1861, the Tamil Nadu District Police Act, 1859, the Chennai City Police Act, 1888, the Code of Criminal Procedure, 1973 and the Indian Penal Code.

3. Selection, appointment and tenure of Director

General of Police:- (1) The Government shall appoint the Director General of Police from amongst the five senior-most Police Officers of the Department empanelled by the Union Public Service Commission for the post of Director General of Police, having regard to length of service, very good record and range of experience for heading the Police Force.

(2) Notwithstanding anything contained in the Service Rules, the Director General of Police appointed under sub-section (1) shall hold the post for a minimum period of two years, irrespective of the date of his/her superannuation.

(3) The Director General of Police may be relieved of his/her responsibilities under the following circumstances, namely:—

(a) on conviction by a court of law in a criminal case or a case of corruption;

(b) on punishment of dismissal, removal or compulsory retirement from service or of reduction to a lower post awarded under the provisions of All India Services (Discipline and Appeal) Rules or any other relevant rule;

(c) on incapacitation by physical or mental illness or otherwise becoming unable to discharge his/her functions;

(d) on appointment to any other post either under the State Government or Central Government, with his/her consent for such posting;

(e) on other administrative grounds to be recorded in writing.

4. Term of office of holder of certain posts:- (1) Subject to the service conditions, a Police Officer posted to be in charge of a Police Station, Police District or Commissionerate shall hold office for a minimum period of two years, or till the date of his/her superannuation, whichever is earlier.

(2) The provisions of sub-section (1) shall not apply in cases where any Police Officer referred to in sub-section (1) is—

(a) convicted by a court of law in a criminal case or a case of corruption;

(b) involved in a criminal case wherein charges have been framed by a court;

(c) awarded punishment in disciplinary proceedings;

(d) placed under suspension;

(e) subjected to disciplinary proceedings after charges having been framed;

(f) incapacitated by physical or mental illness or otherwise becoming unable to discharge his/her functions;

(g) promoted to a higher post;

(h) to be relieved to fill up a vacancy caused by promotion, transfer or retirement of other officer;

(i) to be relieved for any other administrative grounds to be recorded in writing.

5. State Security Commission:- (1) The Government shall establish a Commission to be known as State Security Commission.

(2) The Commission shall consist of the following

members, namely:— (a) the Minister, in-charge of the port folio of Police, who shall be the Chairperson, ex-officio;

(b) the Leader of the Opposition in the Tamil Nadu Legislative Assembly;

(c) Chairperson, Tamil Nadu Public Service Commission, ex-officio;

(d) Chairperson, Tamil Nadu State Human Rights Commission, exofficio;

(e) Chairperson, State Women's Commission, ex-officio;

(f) Chairperson, State Minorities Commission, ex-officio; (g) the Chief Secretary, ex-officio;

(h) the Secretary in-charge of the Home Department, ex-officio; and

(i) the Director General of Police, who shall be the Member-Secretary, ex-officio.

6. Functions of Commission:- The Commission shall perform the following functions, namely:—

(a) to frame broad policy guidelines for promoting efficient, effective, responsive and accountable policing, in accordance with the law;

(b) to identify performance indicators to evaluate the functioning of the Police Force, which shall include operational efficiency, public satisfaction, victim satisfaction in respect of Police investigation and response, accountability, optimum utilisation of resources and observance of human rights standards;

(c) to review and evaluate organisational

performance of the Police Force; and

(d) such other functions that may be entrusted by the Government.

7. Annual Report:- (1) The Commission shall, at the end of every year, submit to the Government the annual report on its work during the preceding year and on the evaluation of performance of the Police Force which shall include recommendations for improvement.

(2) The Government shall lay the annual report referred to in sub-section (1) on the table of the Legislative Assembly.

8. Constitution and functions of the Police Establishment Board and Committees :- (1) There shall be a Police Establishment Board consisting of the Director General of Police and the following four Senior Police Officers in the rank of Additional Director General of Police, namely:—

(a) Additional Director General of Police (Administration);

(b) Additional Director General of Police (Law and Order);

(c) Additional Director General of Police (Head Quarters); and

(d) Additional Director General of Police (Intelligence).

(2) The Director General of Police shall be the Chairperson and the senior-most Additional Director General of Police shall be the convener of the Board.

(3) The functions of the Board shall be as follows:-

(a) The Board shall consider and recommend promotion, transfer and posting of the officers in the rank of Superintendent of Police and above up to the rank of Inspector General of Police. On the recommendations of the Board, the Director General of Police shall send the proposals to the Government for appropriate action. For promotion, transfer and posting of officers above the rank of Inspector General of Police, the Director General of Police shall send the proposals to the Government for appropriate action.

(b) The Board shall function as a forum to deal with the representations from officers of the rank of Superintendent of Police and above. The Board shall examine such representations and send its recommendations to the Government by the Director General of Police.

(c) The Board shall also make recommendations to the Government for award of Medals.

(4) There shall be a State Police Establishment Committee to consider matters relating to promotion, transfer and postings of officers of and below the rank of Additional Superintendent of Police.

(5) There shall be Zonal, Range, City and District Level Establishment Committees which will be empowered to effect transfers of Police Personnel of subordinate rank within their jurisdiction in accordance with the instructions and guidelines issued by the Government.

(6) The Government shall prescribe the composition, responsibilities, functions and powers of the State, Zonal, Range, City and District Level Establishment Committees.

(7) The recruitment and promotions made under this section shall be in accordance with the service rules governing the respective service, category and class.

9. Law and Order and Criminal Investigation wings – separation:- (1) In every Police Station, except those specifically designated as Crime Police Stations, there shall be a Law and Order Wing and an Investigation Wing, both working under the control of the Station House Officer, who shall ensure co-ordination between the two wings.

(2) The Investigation Wing shall be responsible for investigation and prosecution of all cases registered in the station, including cases detected by the Law and Order Wing.

(3) The Police Officers of the Investigation Wing may be called Detective Constables, Detective Head Constables and Detective Sub-Inspectors. They shall not be diverted to any bandobust work except with the prior approval of the Zonal Inspector General of Police or Commissioner of Police.

(4) The Investigation Wing shall be provided with adequate staff to cope with the work load. The Board shall lay down norms for staff strength taking into account the volume of cases.

(5) Every Police Station shall have a Missing Person Liaison Officer in the rank of a Detective Sub-Inspector to co-ordinate and follow up the cases of missing persons.

(6) Within the Investigation Wing of each Police Station, at least one officer with aptitude and appropriate training and orientation shall be designated as the 'Juvenile or Child Welfare Officer' as required under sub-section (2) of section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2000. This Officer will handle juveniles or children in co-ordination with other Police Officers. These officers together will be members of the Special Juvenile Police Unit of the District or City to co-ordinate and to upgrade the Police treatment of juveniles and children.

10. State Police Complaints Authority:- The Government shall establish at the State Level, a Police Complaints Authority, which shall have as its Chairperson, the Secretary in-charge of the Home department. The Director General of Police and Additional Director General of Police (Law and Order) shall be the members of the State Police Complaints Authority.

11. Conduct of business:- The State Police Complaints Authority shall frame its own rules for the conduct of its business.

12. Functions of State Police Complaints Authority:- (1) The State Police Complaints Authority shall inquire into allegations of "serious misconduct" against the Police Personnel in the supervisory ranks, on a complaint received

from a victim in the form of a sworn affidavit duly attested by a notary public: Provided that in case of death in Police custody, the complaint can be received from the legal heirs or close relatives of the victim:

Provided further that the State Police Complaints Authority shall entertain the complaint, only on prima facie satisfaction about the veracity of the complaint:

Provided also that no anonymous or pseudonymous complaints shall be entertained: Provided also that the State Police Complaints Authority shall not entertain complaints of serious misconduct which are the subject matter of any judicial proceedings or inquiry under the Commissions of Inquiry Act, 1952 or the Protection of Human Rights Act, 1993 or the Police Standing Orders.

Explanation.— For the purpose of this Chapter, "serious misconduct" means any act or omission of a Police Officer that leads to or amounts to—

(a) death in Police custody;

(b) rape;

(c) grievous hurt in Police custody.

13. Recommendations of State Police Complaints Authority:- (1) Any complaint of serious misconduct received by the State Police Complaints Authority which is not covered by the fourth proviso to section 12 shall be referred to the Police Complaints Division for enquiry and report, if necessary, after examining the victim or complainant or any other person and relevant documents.

(2) The State Police Complaints Authority shall

submit its recommendations to the Government for appropriate action.

14. Constitution of District Police Complaints Authority:- (1) The Government shall, by notification, constitute a District Police Complaints Authority for each District or Commissionerate.

(2) The District Police Complaints Authority shall have as its Chairperson the District Collector/District Magistrate. The Superintendent of Police and the Additional Superintendent of Police shall be the members of the District Police Complaints Authority. In the case of Commissionerates, other than Chennai, the Superintendent of Police of the District and the Deputy Commissioner of the Commissionerate shall be the members. In the case of Commissionerate of Chennai, the District Collector and the Commissioner of Police shall be the members.

15. Functions of District Police Complaints Authority:- (a) The District Police Complaints Authority shall enquire into allegations of misconduct or serious misconduct, against Police Personnel in subordinate ranks, on a complaint received from a victim in the form of a sworn affidavit duly attested by a notary public:

Provided that in the case of death in Police custody, the complaint can be received from the legal heirs or close relatives of the victim:

Provided further that the District Police Complaints Authority shall entertain the complaint, only on prima facie satisfaction about the veracity of the complaint:

Provided also that no anonymous or pseudonymous complaints shall be entertained:

Provided also that the District Police Complaints Authority shall not entertain complaints of serious misconduct or misconduct which are the subject matter of any judicial proceedings or inquiry under the Commissions of Inquiry Act, 1952, or the Protection of Human Rights Act, 1993, or the Police Standing Orders.

Explanation.— For the purpose of this clause, the expression 'serious misconduct' will have the same meaning assigned in the explanation to section 12 and 'misconduct' means extortion, land or house grabbing or any other incident involving serious abuse of authority;

(b) The District Police Complaints Authority shall refer to the State Police Complaints Authority complaints received by it against Police Officers in the 'supervisory rank' and such other matters as it may deem fit.

16. Procedure to be followed by District Police Complaints Authority:- The District Police Complaints Authority shall follow the following procedure for the disposal of complaints:-

(a) Any complaint of misconduct or serious misconduct received by the District Police Complaints Authority which is not covered by the fourth proviso to section 15 shall be referred to the Police Complaints Division for enquiry and report, if necessary, after examining the victim or complainant or any other person

and relevant documents, and after ascertaining from the concerned disciplinary authority whether any disciplinary proceedings have already been initiated in regard to the same complaint of misconduct.

(b) The District Police Complaints Authority shall submit its recommendations to the Government for appropriate action.

17. Complaint involving supervisory rank and subordinate rank:- If a complaint of serious misconduct involving both personnel in supervisory ranks as well as subordinate ranks is made, in respect of the same misconduct, it shall be dealt with by the State Police Complaints Authority.

18. Supporting staff of State Police Complaints Authority and District Police Complaints Authority:- The State Police Complaints Authority and District Police Complaints Authority shall be assisted by requisite supporting staff with such terms and conditions and allowances as may be prescribed for the efficient discharge of their functions.

19. Police Complaints Division:- A Police Complaints Division shall be constituted with field units in such manner as may be prescribed to carry out investigations. It will work under the administrative control of an Additional Director General of Police, under the overall control of the Director General of Police. It shall consist of, apart from serving Police Officers, retired Police Officers or Vigilance

or Intelligence or Crime Branch Police Officers or personnel serving or retired from other departments.

20. Power to make rules:- (1) The Government may make rules to carry out all or any of the purposes of this Act.

(2) (a) All rules made under this Act shall be published in the Tamil Nadu Government Gazette, and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(b) All notifications issued under this Act, shall, unless they are expressed to come into force on a particular day, come into force on the day on which they are so published.

(3) Every rule made or notification or order issued under this Act, shall, as soon as possible, after it is made or issued, be placed on the table of the Legislative Assembly and if, before the expiry of the session in which it is so placed or the next session, the Legislative Assembly makes any modification in any such rule, notification or order, or the Legislative Assembly decides that the rule, notification or order should not be made or issued, the rule, notification or order shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, notification or order.

21. Power to remove difficulties:- If any difficulty

arises in giving effect to the provisions of this Act, the Government may, by an order published in the Tamil Nadu Government Gazette, make such provisions not inconsistent with the provisions of this Act as appear to them to be necessary or expedient for removing the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

22. Acts of State Security Commission, Board, State Police Complaints Authority and District Police Complaints Authority not to be invalidated by certain defects:- No act or proceeding of the Commission, Board, State Police Complaints Authority and District Police Complaints Authority shall be called in question merely on the ground of the existence of any vacancy in, or any defect in the constitution of such Commission, Board, State Police Complaints Authority and District Police Complaints Authority.

23. Repeal and saving:- (1) The Tamil Nadu Police (Reforms) Ordinance, 2013 is hereby repealed.

(2) Notwithstanding such repeal, anything done, any action taken or any direction given under the said Ordinance shall be deemed to have been done, taken or given under this Act."

14. When the Hon'ble Supreme Court is monitoring the implementation of the orders in **Prakash Singh's** case (cited supra) and

in response, the State Government have filed a reply affidavit and when the same is pointed out, propriety demands that the High Court should restrain from issuing directions, on the same subject matter. High Court should not abrogate the jurisdiction of the Hon'ble Supreme Court. By undertaking such exercise, High Court should not interfere in the constitutional jurisdiction of the Hon'ble Supreme Court. Prayer of the party-in-person, on the strength of Article 144 of the Constitution of India, cannot be granted.

15. Thus, to deliver orders, on 2/4/2019, we posted the matter for orders.

16. On 3/4/2019, when orders were about to be passed, in the writ petition, Mr.Y.Akbar Ahmed, Party-in-person submitted that Secretary to the Home Department, Government of Tamil Nadu, first respondent has committed **"perjury"** in this Court, by making a statement, that an affidavit, in W.P.(C) No.310 of 1996 has been filed, before the Hon'ble Supreme Court, but no such affidavit has been filed. Therefore, we directed the Registry, to post the writ petition today, to ascertain the same from the Government.

17. On instructions, and based on the case status details of ***Prakash Singh & Others Vs. Union of India & Others***, in the official website of the Hon'ble Supreme Court, Mr.E.Manoharan, learned Additional Government Pleader submitted that the aforesaid affidavit has been filed, on 14/8/2018, in W.P.(C) No.310 of 1996. In support of the above contention, learned Additional Government Pleader, produced copies of the letter, dated 11/1/2019, of the Commandant, TSP VIII Batallion, New Delhi, addressed to the Director General of Police, Tamil Nadu. Correspondence of the former with the latter, in C.No.E3/5476/2018, confirming filing of the affidavit, on 14/1/2018 in W.P.(C) No.310 of 1996. He has also enclosed the true copy of the proof of filing by Mr.Yogesh Kanna, learned Advocate, on record, for Government of Tamil Nadu and the same, are extracted hereunder:-

POLICE DEPARTMENT

From
Abhishek Dixit, IPS.,
Commandant,
TSP VIII Battalion,
New Delhi-64

To
The Director General of Police,
Tamil Nadu,
Chennai-04.

****

C.No.E3/5476/2018 Dated-14.01.2019

Sir,

Sub:- Police-TSP VIII Bn., - New Delhi Filing of counter affidavit in W.P.(Civil)No.310 of 1996 filed by Tr.Prakash Singh and Others Vs Union of India – Acknowledgement-Copy-forwarded reg.

Ref:- Chief Office Fax Message in Rc.No.211177 / A & R-1/2014, Dated:11.11.2019.

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In response to the Chief Office fax message cited in the reference, the copy of Acknowledgement with seal of Hon'ble Supreme Court of India regarding the filing of reply affidavit on 14.08.2018 to the W.P.(Civil)No.310 of 1996, filed by Tr.Prakash Singh and Others Vs Union of India, received from the Hon'ble Supreme Court of India is sent as desired.

2.This is for favour of kind information.

Yours faithfully,

Commandant,
TSP VIII Bn., New Delhi.

- - - - -

POLICE DEPARTMENT

From
Abhishek Dixit, IPS.,
Commandant,
TSP VIII Battalion,
New Delhi-64

To
The Director General of Police,
Tamil Nadu,
Chennai-04.

****

C.No.E3/5476/2018 Dated-14.01.2019

Sir,

Sub:- Police-TSP VIII Bn., New Delhi - W.P.(Civil)No.310 of 1996 in the file of the Hon'ble Supreme Court of India filed by Prakash Singh and others Vs Union of India-Presentstage called for – report – sent-reg.

Ref:-1.Chief Office Memo in Rc.No.211177 / A & R-1/2014, dated 18.09.2018.

2.This Office Fax Message in even no dated:20.09.2018.

3.This Office letter in even no dated 24.09.2018.

4.Chief Office Fax Message in RC.No.211177 / A & R-1/2014, dated:10.01.2019.

5.This Office letter in even no dated 10.01.2019.

Kind attention is invited to the references cited.

2.As instructed in Chief Office fax message in the references 4th cited, a copy of the Counter Affidavit obtained from Hon'ble Supreme Court of India is connection with W.P.(Civil)No.310 of 1996, is sent herewith for favour of kind perusal as desired. The above W.P. Has been posted for hearing of applications filed by the status of West Bengal and Kerala on 15.01.2019.

3.This is for favour of kind information.

Yours faithfully,

Commandant,
TSP VIII Bn., New Delhi.

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IN THE SUPREME COURT OF INDIA
(CIVIL/CRIMINAL/A/APPELLATE/ORIGINAL JURISDICTION)
SPECIAL LEAVE PETITION ©/(CRL).No.-------- of 201-
W.P./T.P/APPEAL NO.---------- OF 201

BETWEEN

Prakash Singh fors PETITIONER(S)

VERSUS

U.O.I fors RESPONDENT(S)

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3.	T.P/W.P/S.L.P/C.A/Contempt		
4.	Petition/Review Petition with ...		
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6.	Application for Condonation of Del SLP/Refiling of SLP		
7.	Application for Exemption form till certified Copy of the impugned order.		
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20.	Vakalat name with memo of Appearance for Respondent/Petitioner		
21.	Caveat on behalf of the respondent/Caveator with		
22.	Vakalatnama		
23.	Proof of Service		
24.	Proof of Dasti Service		
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	copy of Logement for SLP paper Book		

Filed on. 14.08.2018

M.YOGESH KANNA
Advocate of the petitioner(s)

Appellant(s) Respondent(s)
104, Lawyers Chambers,
Supreme Court of India,
New Delhi-110 001
Mob.9868429142.

V.Saravana Kumar
L.C.4860
MO.9910339467

18. In response to the above, Mr.Y.Akbar Ahmed, Party-in-person submitted that when the instant Writ Petition No.2342 of 2019, came up for hearing, on 28/1/2019 for admission, respondents in particular, the first respondent could have brought to the notice of this Court that in W.P.(C) No.310 of 1996, a reply affidavit has been filed, on 14/8/2018 and in such circumstances, petitioner would have taken appropriate decision in the matter and the Court could have passed suitable orders.

19. Party-in-Person, further submitted that even I.A.No.24616 of 2019 in W.P.(C) No.310 of 1996, r/w. I.A.Nos.115064 of 2018, 20735 of 2019 and 11484 of 2019, in the matter of Prakash Singh and Others Vs. Union of India, there is no reference to the reply affidavit, dated 14/1/2018, filed by the Additional Chief Secretary to Government, Home, Prohibition & Excise Department, Government of Tamil Nadu and that therefore, there is sufficient cause for him to infer that the reply affidavit, dated 14/8/2018 has not been filed.

20. By way of reply, learned Additional Government Pleader submitted that word "Perjury" has been very loosely used against the Additional Chief Secretary to Government, Home, Prohibition & Excise Department and that the same should not be ignored by this Court, when a public interest writ petition is filed.

21. Party-in-Person has further submitted that on 28/1/2019, when Hon'ble Division Bench of this Court, directed the Principal Secretary to Government, Home, Prohibition and Excise Department, Chennai, to file a comprehensive counter affidavit, with supporting documents, if any, as to the compliance of Prakash Singh' case as well as to Tamil Nadu Police (Reforms) Act, 2013, no such affidavit has been filed in the subsequent hearing dates i.e., on 14/3/2019 , 1/4/2019, 2/4/2019 and 3/4/2019, respectively, and thus, both on the day, when the Hon'ble Division Bench ordered notice, ie., on 28/1/2019 and on the subsequent hearing dates, filing of an affidavit, dated 14/8/2018, was not brought to the notice of this Court and therefore, there was sufficient cause, for the petitioner to infer that there is an act of perjury by the Additional Chief Secretary to the Government, Home, Prohibition and Department, Chennai.

22. When party-in-person has alleged “perjury” by the Additional Chief Secretary to the Government, Government of Tamil Nadu, we wanted to ascertain as to whether he has understood the meaning of the word “perjury” and in that context, wanted to ascertain his educational qualifications. Party-in-person replied that he has studied upto Standard 12. However, during the course of hearing, we could infer that the party-in-person is able to understand the averments and submissions which he has made.

23. When the question relating to educational qualification was posed, party-in-person submitted that this Court has posed questions regarding his credibility and knowledge of the party-in-person. We are not in a position to accept this submission, for the reason that now-a-days, a parties-in-person file writ petitions, without understanding the very concept of public interest writ petitions and what the Hon'ble Supreme Court, has time and again held in several decisions, relating to public interest writ petitions.

24. In order to explain the concept of public interest writ petitions and what the Hon'ble Supreme Court, intended to achieve in

public interest writ petitions, we have extracted few judgments of the Hon'ble Supreme Court.

(i) In **S.P.Anand v. H.D.Deve Gowda,** reported in **1996 (6) SCC 734,** the Hon'ble Supreme Court, at Paragraph 18, held as follows:

> *"It is of utmost importance that those who invoke this Court's jurisdiction seeking a waiver of the locus standi rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. Such a litigant must not succumb to spasmodic sentiments and behave like a knight-errant roaming at will in pursuit of issues providing publicity. He must remember that as a person seeking to espouse a public cause, he owes it to the public as well as to the court that he does not rush to court without undertaking a research, even if he is qualified or competent to raise the issue. Besides, it must be remembered that a good cause can be lost if petitions are filed on half-baked information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights. Lastly, it must also be borne in mind that no one has a*

right to the waiver of the locus standi rule and the court should permit it only when it is satisfied that the carriage of proceedings is in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations. So also the court must be careful to ensure that the process of the Court is not sought to be abused by a person who desires to persist with his point of view, almost carrying it to the point of obstinacy, by filling a series of petitions refusing to accept the Court's earlier decisions as concluding the point. We say this because when we drew the attention of the petitioner to earlier decisions of this Court, he brushed them aside, without so much as showing willingness to deal with them and without giving them a second look, as having become stale and irrelevant by passage of time and challenged their correctness on the specious plea that they needed reconsideration. Except for saying that they needed reconsideration he had no answer to the correctness of the decisions. Such a casual approach to considered decisions of this Court even by a person well-versed in law would not be countenanced. Instead, as pointed out earlier, he referred to decisions having no bearing on the question, like the decisions on

cow slaughter cases, freedom of speech and expresssion, uniform civil code, etc., we need say no more except to point out that indiscriminate of this important lever of public interest litigation would blunt the lever itself."

(ii) In ***Narmada Bachao Andolan Vs. Union of India and Others, reported in 2000 (10) SCC – 664***, the Hon'ble Supreme Court observed as follows:-

"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The Court has come down heavily whenever the executive has sought to impinge upon the Court's jurisdiction.

233. At the same time, in exercise of its enormous power, the Court should not be called upon to or undertake governmental duties or functions. The Courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under values of the Constitution and the rights of Indians. The Courts must

therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the Court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation, the Court should not refrain from being asked to review the decision just because a petitioner in filing a

PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

The above mentioned observations have been quoted with approval by the Hon'ble Supreme Court in ***BALCO EMPLOYEES' UNION (REGD) Vs. UNION OF INDIA AND OTHERS {2002 (2) SCC – 333}.***

(iii) In **Balco Employees' Union (Regd.) v. Union of India** reported in **2002 (2) SCC 333**, the Hon'ble Supreme Court, held that,

"Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor,

ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz. "litigation in the interest of the public."

.....

92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

.....

97. Judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory

obligations on the part of the Government. Here it is not so and in the sphere of economic policy or reform the court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject-matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of constitutional or statutory provisions or non-compliance by the State with its constitutional or statutory duties. None of these contingencies arise in this present case.

(iv) In ***Guruvayoor Devaswom Managing Committee and another vs. C.K.Rajan and others, reported in 2003 (7) SCC 546,*** the Hon'ble Supreme Court observed as follows:

41. The courts exercising their power of judicial review found to their dismay that the poorest of the poor, the depraved (sic), the illiterate, the urban and rural unorganized labour sector, women, children, those handicapped by "ignorance, indigence and illiteracy" and other downtrodden persons have either no access to justice or had been denied justice. A new branch of proceedings known as "social action litigation" or "public interest litigation" was evolved with a view to render complete justice to the

aforementioned classes of persons. It expanded its wings in course of time. The courts in pro bono publico granted relief to inmates of prisons, provided legal aid, directed speedy trials, maintenance of human dignity and covered several other areas. Representative actions, pro bono publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass real issues on merits by suspect reliance on peripheral procedural shortcomings. (See Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai (1976) 3 SCC 832)

46. But with the passage of time, things started taking different shapes. The process was sometimes abused. Proceedings were initiated in the name of public interest litigation for ventilating private disputes. Some petitions were publicity-oriented.

50. The principles evolved by this Court in this behalf may be suitably summarized as under:

(i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not

in a position to knock the doors of the Court.

The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfil its constitutional promises. (See S.P. Gupta v. Union of India [1981 Supp SCC 87] , People's Union for Democratic Rights v. Union of India [(1982) 2 SCC 494 : 1982 SCC (L&S) 262] , Bandhua Mukti Morcha v. Union of India [AIR 1963 SC 1638 : (1964) 1 SCR 561] and Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] .)

(ii) Issues of public importance, enforcement of fundamental rights of a large number of the public vis-à-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. (See Charles Sobraj v. Supdt., Central Jail [(1978) 4 SCC 104 : 1978 SCC (Cri) 542] and Hussainara Khatoon (I) v. Home Secy., State of Bihar [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] .)

(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as theInternational Conventions on Human Rights

provide for reasonable and fair trial.

In Maneka Sanjay Gandhi v. Rani Jethmalani [(1979) 4 SCC 167 : 1979 SCC (Cri) 934 : AIR 1979 SC 468] it was held: (SCC p. 169, para 2)

"2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances."

(See also Dwarka Prasad Agarwal v. B.D. Agarwal [(2003) 6 SCC 230 : (2003) 5 Scale 138] .)

(iv) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the depraved (sic), the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. [See Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India [(1981) 1 SCC 568 : AIR 1981 SC 344] , S.P. Gupta [1981 Supp SCC 87] , People's Union for Democratic Rights [(1982) 2 SCC 494 : 1982 SCC (L&S) 262] , D.C. Wadhwa (Dr) v. State of Bihar [(1987) 1 SCC 378] and BALCO Employees' Union (Regd.) v. Union of India [(2002) 2 SCC 333] .]

(v) When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition. (See Bandhua Mukti Morcha [(1984) 3 SCC 161 : 1984 SCC (L&S) 389 : (1984) 2 SCR 67] .)

(vi) Although procedural laws apply to PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would apply depends on the nature of the petition as also facts and circumstances of the case. [See Rural Litigation and Entitlement Kendra v. State of U.P. [1989 Supp (1) SCC 504] and Forward Construction Co. v. Prabhat Mandal (Regd.) [(1986) 1 SCC 100]

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation. (See Ramsharan Autyanuprasi v. Union of India [1989 Supp (1) SCC 251] .)

(viii) However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See Shivajirao Nilangekar Patil v. Dr Mahesh Madhav Gosavi [(1987) 1 SCC 227] .)

(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such

Committee. (See Bandhua Mukti Morcha [(1984) 3 SCC 161 : 1984 SCC (L&S) 389 : (1984) 2 SCR 67] , Rakesh Chandra Narayan v. State of Bihar [1989 Supp (1) SCC 644] and A.P. Pollution Control Board v. Prof. M.V. Nayudu [(1999) 2 SCC 718]) In Sachidanand Pandey v. State of W.B. [(1987) 2 SCC 295] this Court held: (SCC pp. 334-35, para 61)

"61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action on when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."

In Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] this Court opined: (SCC p. 348, para 109) "109. It is thus clear that only a person acting bona fide and having

sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold." The Court will not ordinarily transgress into a policy. It shall also take utmost care not to transgress its jurisdiction while purporting to protect the rights of the people from being violated.

(V) In **Ashok Kumar Pandey v. State of W.B.,** reported in **2004 (3) SCC 349,** the Hon'ble Apex Court, after considering few decisions, on the aspect of public interest litigation, observed as follows:

"4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. ***Public Interest Litigation which has now***

come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". *If not properly regulated and abuse averted it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant or poke ones into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. 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. These aspects were highlighted by this Court in The* ***Janta Dal v. H.S.Chowdhary [1992 (4) SCC 305]*** *and* ***Kazi Lhendup Dorji vs. Central***

Bureau of Investigation (1994 Supp (2) SCC 116). *A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective.* See ***Ramjas Foundation v. Union of India (AIR 1993 SC 852)*** and ***K.R.Srinivas v. R.M.Premchand (1994 (6) SCC 620).***

5. It is necessary to take note of the meaning of expression **'public interest litigation'. In Strouds Judicial Dictionary, Volume 4 (IV Edition), 'Public Interest' is defined thus:**

"Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."

6. ***In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows :***

"Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean

anything the particular localities, which may be affected by the matters in question. Interest shared by national government...."

*7. In **Janata Dal case (supra)** this Court considered the scope of public interest litigation. In para 52 of the said judgment, after considering what is public interest, has laid down as follows :*

"The expression 'litigation' means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy. Therefore, lexically the expression "PIL" means the legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

8. In paras 60, 61 and 62 of the said judgment, it was pointed out as follows:

"Be that as it may, it is needless to emphasis that the requirement of locus standi of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any

specific remedy sought for has to be primarily ascertained at the threshold."

9. In para 96 of the said judgment, it has further been pointed out as follows:

"While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow its process to be abused by a mere busy body or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

10. ***In subsequent paras of the said judgment, it was observed as follows:***

"109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have as locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private

profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL, brought before the Court for vindicating any personal grievance, deserves rejection at the threshold".

11. ***It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons***

suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity.

The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

13. The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

14. ***The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests;***

(i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

15. ***Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See State of***

Maharastra v. Prabhu [(1994 (2) SCC 481)] and Andra Pradesh State Financial Corporation v. M/s.GAR Re-Rolling Mills and Another [AIR 1994 SC 2151]. No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See Buddhi Kota Subbarao (Dr.) v. K.Parasaran, (1996) 7 JT 265]. Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

16. ***As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are***

entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Dr.Duryodhan Sahu and Ors., v. Jitendra Kumar Mishra and Ors., (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the

frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

17. ***.....***

18. ***In S.P.Gupta v. Union of India [1981 Supp. SCC 87], it was emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant. He has also left the following note of caution: (SCC p.219, para 24)***

"But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective."

19. ***In State of H.P. vs. A Parent of a Student of Medical College, Simla and Ors. (1985 (3) SCC 169), it has been said that***

public interest litigation is a weapon which has to be used with great care and circumspection.

20. ***Khalid, J. in his separate supplementing judgment in Sachidanand Pandey vs. State of W.B., (1987 (2) SCC 295, 331) said:***

"Today public spirited litigants rush to courts to file cases in profusion under this attractive name. They must inspire confidence in courts and among the public. They must be above suspicion. (SCC p. 331, para 46)

* * *

Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and

executive functions. (SCC p.334, para 59)

* * *

I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self- imposed restraint on public interest litigants." (SCC p.335, para 61)

21. ***Sabyasachi Mukharji, J. (as he then was) speaking for the Bench in ramsharan Autyanuprasi v. Union of India (1989 Supp (1) SCC 251), was in full agreement with the view expressed by Khalid, J. in Sachidanand Pandey's case (supra) and added that 'public interest litigation' is an instrument of the administration of justice to be used properly in proper cases. [See also separate judgment by Pathak, J. (as he then was) in Bandhua Mukti Morcha v. Union of India (1984 (3) SCC 161).***

22. ***Sarkaria, J. in Jasbhai Motibhai Desai v. Roshan Kumar (1976 (1) SCC 671) expressed his view that the application of the busybody should be rejected at the threshold in the following terms: (SCC p. 683, para 37)***

"It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories : (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold."

23. **Krishna Iyer, J. in Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India (1981 (1) SCC 568) in stronger terms stated: (SCC p.589, para 48)**

"48. If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him."

24. **In Chhetriya Pardushan Mukti Sangharash Samiti v. State of U.P., (1990 (4) SCC 449), Sabyasachi Mukharji, C.J. observed: (SCC p.452, para 8)**

"While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by the court."

25. **In Union Carbid Corporation v. Union of India (1991 (4) SCC 584, 610), Ranganath Mishra, C.J. in his separate judgment while concurring with the conclusions of the majority judgment has said thus: (SCC p.610, para 21)**

"I am prepared to assume, nay, concede, that public activists should also be

permitted to espouse the cause of the poor citizens but there must be a limit set to such activity and nothing perhaps should be done which would affect the dignity of the Court and bring down the serviceability of the institution to the people at large. Those who are acquainted with jurisprudence and enjoy social privilege as men educated in law owe an obligation to the community of educating it properly and allowing the judicial process to continue unsoiled."

26. **In Subhash Kumar v. State of Bihar, (1991 (1) SCC 598) it was observed as follows:**

"Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement

of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation".

27. ***In the words of Bhagwati, J. (as he then was) "the courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J. "the applications of the busybodies should be rejected at the threshold itself" and as Krishna Iyer, J. has pointed out, "the doors of the courts should not be ajar for such vexatious litigants"."***

(vi) In ***Dr.B.Singh vs. Union of India,*** reported in ***2004***

(3) SCC 363, the Hon'ble Supreme Court held as follows:

> *12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, courts must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of*

habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

(vii) In **Vikas Vashishth v. Allahabad High Court** reported in **2004 (13) SCC 485,** the Hon'ble Supreme Court held as follows:

"At the very outset, we put it to the petitioner that a bare perusal of the petition shows that it is based entirely on newspaper reports and asked him whether before filing the petition he has taken care to verify the facts personally. His answer is in the negative. In the writ petition all the 21 High Courts have been included as respondents and Union of India has also been impleaded as the 22nd respondent. We asked the petitioner what has provoked him to implead all the High Courts as respondents and he states that it is his apprehension that similar incidents may occur in other High Courts though there is

no factual foundation for such appreciation.

5. After affording the full opportunity of hearing, we are satisfied that what purports to have been filed as a public interest litigation is nothing more than a "publicity interest litigation". It is writ large that it has been filed without any effort at verifying the facts by the petitioner personally."

(viii) In **Dattaraj Nathuji Thaware Vs. State of Maharashtra, 2005 (1) SCC 590,** the Hon'ble Supreme Court observed as follows:

"12..... The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The court must not allow its process to be abused for oblique considerations by masked phantoms

who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

(ix) In **R & M.Trust Vs. Koramangala Residents Vigilance Group** reported in **2005 (3) SCC 91,** the Hon'ble Supreme Court, at Paragraphs 23 and 24, observed as follows:

"23. Next question is whether such Public Interest Litigation should at all be entertained & laches thereon. This sacrosanct jurisdiction of Public Interest Litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends.

24. Public Interest Litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by

some interested persons and it has brought very bad name. Courts should be very very slow in entertaining petitions involving public interest in a very rare cases where public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the down trodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilize the service of the innocent people or organization in filing public interest litigation. The Courts are sometimes persuaded to issue certain directions without understanding implication and giving a handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this jurisdiction lightly but should exercise in a very rare and few cases involving public interest of large number of people who cannot afford litigation and are made to suffer at the hands of the authorities."

(x) In **Gurpal Singh v. State of Punjab** reported in **2005 (5) SCC 136,** the Hon'ble Supreme Court, while considering the scope of a petition styled as a public interest litigation, held as follows:

> ***"5. The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be***

liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

6. .....

7. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, High Courts are entertaining such petitions and wasting valuable judicial time which, as noted

above, could be otherwise utilized for disposal of genuine cases. Though in Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors. (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message

goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

8. ……

9. It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service

matters - government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to loose but trying to gain for nothing and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants.

10. Public interest litigation is a

weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal

as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

(xi) In **Rohit Pandey v. Union of India** reported in **2005 (13) SCC 702,** Hon'ble Apex Court held as follows:

"1. This petition purporting to be in public interest has been filed by a member of the legal fraternity seeking directions against the respondents to hand over the investigation of the case pertaining to recovery of light machine gun, which is said to have been stolen from the army according to reports published in two newspapers, to the Central Bureau of Investigation for fair investigation to ensure that the real culprits who are behind such theft of army arms and ammunition endangering the integrity and sovereignty of the country may be brought to book and action may be taken against them in accordance with law. The only basis for the petitioner coming to this Court are two newspaper reports dated 25-1-2004, and the other dated 12-2-2004. This petition was immediately filed on 16-2-2004 after the

aforesaid second newspaper report appeared. On enquiry from the learned counsel, we have learnt that the petitioner is a young advocate having been in practice for a year or two. The Union of India, the State of Uttar Pradesh and the Chief Minister of the State of Uttar Pradesh, have been arrayed as party respondents. In the newspaper reports, there is no allegation either against the Union of India or against the Chief Minister.

2. We expect that when such a petition is filed in public interest and particularly by a member of the legal profession, it would be filed with all seriousness and after doing the necessary homework and enquiry. If the petitioner is so public-spirited at such a young age as is so professed, the least one would expect is that an enquiry would be made from the authorities concerned as to the nature of investigation which may be going on before filing a petition that the investigation be conducted by the Central Bureau of Investigation. Admittedly, no such measures were taken by the petitioner. There is nothing in the petition as to what, in fact, prompted the petitioner to approach this Court within two-three days of the second publication dated 12-2-2004, in the newspaper Amar Ujala. Further, the

State of Uttar Pradesh had filed its affidavit a year earlier i.e. on 7-10-2004, placing on record the steps taken against the accused persons, including the submission of the charge-sheet before the appropriate court. Despite one year having elapsed after the filing of the affidavit by the Special Secretary to the Home Department of the Government of Uttar Pradesh, nothing seems to have been done by the petitioner. The petitioner has not even controverted what is stated in the affidavit. Ordinarily, we would have dismissed such a misconceived petition with exemplary costs but considering that the petitioner is a young advocate, we feel that the ends of justice would be met and the necessary message conveyed if a token cost of rupees one thousand is imposed on the petitioner."

(xii) In ***DIVISIONAL MANAGER, ARAVALI GOLF CLUB AND ANOTHER 2008 (1) SCC 683***, in paragraphs Nos.17, 19, 20 and 22, the Hon'ble Supreme Court held thus:-

"17. Before parting with this case, we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform

executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily, it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State – the legislature, the executive and the judiciary – must have respect for the other and must not encroach into each other's domains.

22. In Tata Cellular Vs. Union of India (vide AIR para 113 : SCC para 94), this Court observed that the modern trend points to judicial restraint in administrative action. The same view has been taken in a large number of other decisions also, but it is unfortunate that many Courts are not following these decisions

and are trying to perform legislative or executive functions. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the Judges' preferences. The Court must not embarrass the administrative authorities and must realise that administrative authorities have expertise in the filed of administration while the Court does not. In the words of Neely VJ (Scc p.681, para 82).

"82.... I have very few illusions about my own limitations as a Judge ... I am not an accountant, electrical engineer, financier, banker, expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation."

It is not the function of a Judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator."

(xiii) In **Common Cause (A Regd. Society) v. Union of India** reported in **2008 (5) SCC 511,** Hon'ble Mr. Justice Markandey Katju (as he then was), held as follows:

40.<u>"The justification given for judicial activism is that the executive and legislature have failed in performing their</u>

functions. Even if this allegations is true, does it justify the judiciary in taking over the functions of the legislature or executive? In our opinion it does not: firstly, because that would be in violation of the high constitutional principle of separation of powers between the three organs of the State, and secondly, because the judiciary has neither the expertise nor the resources for this. If the legislature or executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfil their expectations, or by other lawful means e.g., peaceful demonstrations and agitations, but the remedy is surely not by the judiciary in taking over the functions of the other organs."

.....

"59. Unfortunately, the truth is that PILs are being entertained by many courts as a routine and the result is that the dockets of most of the superior courts are flooded with PILs, most of which are frivolous or for which the judiciary has no remedy. As stated in Dattaraj Nathuji

Thaware v. State of Maharastra reported in AIR 2005 SC 540, public interest litigation has nowadays largely become 'publicity interest litigation', 'private interest litigation', or 'politics interest litigation' or the latest trend 'paise income litigation'. Much of P.I.L. is really blackmail.

60. Thus, Public Interest Litigation which was initially created as a useful judicial tool to help the poor and weaker section of society who could not afford to come to courts, has, in course of time, largely developed into an uncontrollable Frankenstein and a nuisance which is threatening to choke the dockets of the superior courts obstructing the hearing of the genuine and regular cases which have been waiting to be taken up for years together."

In the same judgment, concurring with the view of his Brother Judge, Hon'ble Mr. Justice H.K.Sema (as he then was), further added, as follows:

"69. Therefore, whether to entertain the petition in the form of Public Interest Litigation either represented by public-spirited person; or private interest litigation

in the guise of public interest litigation; or publicity interest litigation; or political interest litigation is to be examined in the facts and circumstances recited in the petition itself. I am also of the view that if there is a buffer zone unoccupied by the legislature or executive which is detrimental to the public interest, judiciary must occupy the field to subserve public interest. Therefore, each case has to be examined on its own facts."

(xiv) Villianur Iyarkkai Padukappu Maiyam v. Union of India, reported in **(2009) 7 SCC 561,** the Hon'ble Supreme Court held thus:

168. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

169. It is neither within the domain of the

courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.

170. Normally, there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or against public interest because there are large number of considerations, which necessarily

weigh with the Government in taking an action.

(xv) In ***State of Uttranchal Vs. Balwant Singh Chaufal***, reported in ***(2010) 3 SCC 402***, the Hon'ble Supreme court has held as follows:

> *(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.

(xvi) In **Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale** reported in **2012 (2) SCC 425,** the Hon'ble Supreme Court observed as follows:

"57. In the light of the above, we shall

first consider whether the High Court committed an error by entertaining the writ petition filed by Subhash Rahangdale as public interest litigation. This Court has, time and again, laid down guiding principles for entertaining petitions filed in public interest. However, for the purpose of deciding the appellants' objection it is not necessary to advert to the plethora of precedents on the subject because in State of Uttaranchal v. Balwant Singh Chaufal (2010) 3 SCC 402, a two-Judge Bench discussed the development of law relating to public interest litigation and reiterated that before entertaining such petitions, the Court must feel satisfied that the petitioner has genuinely come forward to espouse public cause and his litigious venture is not guided by any ulterior motive or is not a publicity gimmick.

58. In paragraphs 96 to 104, the Bench discussed Phase-III of the public interest litigation in the context of transparency and probity in governance, referred to the judgments in Vineet Narain v. Union of India (1998) 1

SCC 226, Centre for Public Interest Litigation v. Union of India (2003) 7 SCC 532, Rajiv Ranjan Singh "Lalan" (VIII) v. Union of India (2006) 6 SCC 613, M.C. Mehta v. Union of India (2007) 1 SCC 110, M.C. Mehta v. Union of India (2008) 1 SCC 407 and observed:

"These are some of the cases where the Supreme Court and the High Courts broadened the scope of public interest litigation and also entertained petitions to ensure that in governance of the State, there is transparency and no extraneous considerations are taken into consideration except the public interest. These cases regarding probity in governance or corruption in public life dealt with by the courts can be placed in the third phase of public interest litigation."

59. Reference also deserves to be made to the judgment of the three-Judge Bench in Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi (1987) 1 SCC 227 in which a new dimension was given to the power of the Superior Courts to make investigation into the issues of public importance even

though the petitioner may have moved the Court for vindication of a private interest. In that case the High Court had entertained a writ petition filed by Assistant Medical Officer of K.E.M. Hospital, Bombay questioning the assessment of answer sheets of the Post Graduate Medical Examinations held by the Bombay University in October 1985. He alleged malpractices in the evaluation of the answer sheets of the daughter of the appellant who, at the relevant time, was Chief Minister of the State. The learned Single Judge held that altering and tampering of the grade sheets was done by Dr. Rawal at the behest of the Chief Minister. The Division Bench affirmed the order of the learned Single Judge with some modification.

60. While rejecting the objection raised on behalf of the appellant that the writ petition filed by the respondent cannot be treated as a petition filed in public interest, this Court observed:

"The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might

have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the Court, it was the duty of the Court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice." **(emphasis supplied)**

(xvii) The Hon'ble Supreme Court in **Kishore Samrite v. State of Uttar Pradesh** reported in **(2013) 2 SCC 398,** once again laid down the principles governing obligations of the litigants while approaching the Court and the consequences for abuse of process of law while filing the Public Interest Litigation.

(xviii) In **Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and others** reported in **(2013) 4 SCC 465,** the Hon'ble Supreme Court held that in a public interest litigation, the Court must ensure that there is an element of genuine public interest is involved.

(xix) In ***State of Jaipur Shahar Hindu Vikas Samiti vs State of Rajasthan and Others,*** reported in ***2014 (5) SCC 530***, the Hon'ble Supreme Court has held as follows:

> *47. The scope of public interest litigation is very limited, particularly, in the matter of religious institutions. It is always better not to entertain this type of public interest litigations simply on the basis of affidavits of the parties. The public trusts and religious institutions are governed by particular legislation which provide for a proper mechanism for adjudication of disputes relating to the properties of the trust and the management thereof. It is not proper for the court to entertain such litigation and pass orders. It is also needless to mention that the forums cannot be misused by the rival groups in the guise of public interest litigation.*
>
> *48. We feel that it is apt to quote the views*

expressed by this Court in Guruvayoor Devaswom Managing Committee [(2003) 7 SCC 546] wherein this Court observed: (SCC pp. 574-75 & 578, paras 60, 64 & 76)

"60. It is possible to contend that the Hindus in general and the devotees visiting the temple in particular are interested in proper management of the temple at the hands of the statutory functionaries. That may be so but the Act is a self-contained code. Duties and functions are prescribed in the Act and the Rules framed thereunder. Forums have been created thereunder for ventilation of the grievances of the affected persons. Ordinarily, therefore, such forums should be moved at the first instance. The State should be asked to look into the grievances of the aggrieved devotees, both as parens patriae as also in discharge of its statutory duties.

***

64. The Court should be circumspect in entertaining such public interest litigation for another reason. There may be dispute amongst the devotees as to what practices should be followed by the temple authorities. There may be dispute as regards the rites and rituals to be performed in the temple or omission thereof. Any decision in favour of one sector of the

people may hurt the sentiments of the other. The courts normally, thus, at the first instance would not enter into such disputed arena, particularly, when by reason thereof the fundamental right of a group of devotees under Articles 25 and 26 may be infringed. Like any other wing of the State, the courts also while passing an order should ensure that the fundamental rights of a group of citizens under Articles 25 and 26 are not infringed. Such care and caution on the part of the High Court would be a welcome step.

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76. When the administration of the temple is within its control and it exercises the said power in terms of a statute, the State, it is expected, normally would itself probe into the alleged irregularities. If the State through its machinery as provided for in one Act can arrive at the requisite finding of fact for the purpose of remedying the defects, it may not find it necessary to take recourse to the remedies provided for in another statute. It is trite that recourse to a provision to another statute may be resorted to when the State finds that its powers under the Act governing the field are inadequate. The High Courts and the Supreme Court would not ordinarily issue a writ of

mandamus directing the State to carry out its statutory functions in a particular manner. Normally, the courts would ask the State to perform its statutory functions, if necessary within a time-frame and undoubtedly, as and when an order is passed by the State in exercise of its power under the statute, it will examine the correctness or legality thereof by way of judicial review."

49. The concept of public interest litigation is a phenomenon which is evolved to bring justice to the reach of people who are handicapped by ignorance, indigence, illiteracy and other downtrodden people. Through the public interest litigation, the cause of several people who are not able to approach the court is espoused. In the guise of public interest litigation, we are coming across several cases where it is exploited for the benefit of certain individuals. The courts have to be very cautious and careful while entertaining public interest litigation. The judiciary should deal with the misuse of public interest litigation with iron hand. If the public interest litigation is permitted to be misused the very purpose for which it is conceived, namely, to come to the rescue of the poor and downtrodden will be defeated. The courts should discourage the unjustified litigants

at the initial stage itself and the person who misuses the forum should be made accountable for it. In the realm of public interest litigation, the courts while protecting the larger public interest involved, should at the same time have to look at the effective way in which the relief can be granted to the people whose rights are adversely affected or are at stake. When their interest can be protected and the controversy or the dispute can be adjudicated by a mechanism created under a particular statute, the parties should be relegated to the appropriate forum instead of entertaining the writ petition filed as public interest litigation.

(xx) In ***D.N.Jeevaraj vs. Chief Secretary, Government of Karnataka and Others*** reported in **2016 2 SCC 653,** the Hon'ble Supreme Court observed as follows:

35. However, we note that generally speaking, procedural technicalities ought to take a back seat in public interest litigation. This Court held in Rural Litigation and Entitlement Kendra v. State of U.P. to this effect as follows:

" The writ petitions before us are not inter-partes disputes and have been raised by way of public interest litigation and the controversy

before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court."

36. A considerable amount has been said about public interest litigation in R & M Trust and it is not necessary for us to dwell any further on this except to say that in issues pertaining to good governance, the courts ought to be somewhat more liberal in entertaining public interest litigation. However, in matters that may not be of moment or a litigation essentially directed against one organization or individual (such as the present litigation which was directed only against Sadananda Gowda and later Jeevaraj was impleaded) ought not to be entertained or should be rarely entertained. Other remedies are also available to public spirited litigants and they should be encouraged to avail of such remedies.

37. In such cases, that might not strictly fall in the category of public interest litigation and for which other remedies are available, insofar as the issuance of a writ of mandamus is concerned, this Court held in Union of India v. S.B. Vohra[6] that:

"Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.

A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted."

38. A salutary principle or a well recognized rule that needs to be kept in mind before issuing a writ of mandamus was stated in

Saraswati Industrial Syndicate Ltd. v. Union of India[7] in the following words:

"The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in Halsbury's Laws of England (3rd Edn.), Vol. 13, p. 106): "As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal." In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution."

39. It is not necessary for us to definitively pronounce on the contention of learned counsel for Sadananda Gowda and Jeevaraj that the litigation initiated by Nagalaxmi Bai was not a public interest litigation or that no mandamus ought to have been issued by the High Court since no demand was made nor was there any refusal to meet that demand. But we do find it necessary to reaffirm the law should a litigant be asked to avail of remedies that are not within the purview of public interest litigation. Exercise of discretion

40. Learned counsel for Sadananda Gowda and Jeevaraj also addressed us on the issue that the High Court had exceeded its jurisdiction in questioning the sanctioning of the building plans by the BBMP and further mandating the BDA to take action against Sadananda Gowda and Jeevaraj in terms of condition No. 4 of the lease-cum-sale agreement and the affidavit undertaking given by them, thereby effectively requiring the BDA to forfeit the lease.

41. This Court has repeatedly held that where discretion is required to be exercised by a statutory authority, it must be permitted to do so. It is not for the courts to take over the discretion available to a statutory authority and render a decision. In the present case, the High

Court has virtually taken over the function of the BDA by requiring it to take action against Sadananda Gowda and Jeevaraj. Clause 10 of the lease-cum-sale agreement gives discretion to the BDA to take action against the lessee in the event of a default in payment of rent or committing breach of the conditions of the lease-cum-sale agreement or the provisions of law.[8] This will, of course, require a notice being given to the alleged defaulter followed by a hearing and then a decision in the matter. By taking over the functions of the BDA in this regard, the High Court has given a complete go-bye to the procedural requirements and has mandated a particular course of action to be taken by the BDA. It is quite possible that if the BDA is allowed to exercise its discretion it may not necessarily direct forfeiture of the lease but that was sought to be pre- empted by the direction given by the High Court which, in our opinion, acted beyond its jurisdiction in this regard.

42. In Mansukhlal Vithaldas Chauhan v. State of Gujarat[9] this Court held that it is primarily the responsibility and duty of a statutory authority to take a decision and it should be enabled to exercise its discretion independently. If the authority does not exercise

its mind independently, the decision taken by the statutory authority can be quashed and a direction given to take an independent decision. It was said: "Mandamus which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words "shall" or "must". But this is not conclusive as "shall" and "must" have, sometimes, been interpreted as "may". What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the statute in which the "duty" has been set out. Even if the "duty" is not set out clearly and specifically in the statute, it may be implied as correlative to a "right".

In the performance of this duty, if the authority in whom the discretion is vested under the statute, does not act independently and passes an order under the instructions and orders of another authority, the Court would intervene in the matter, quash the order and issue a mandamus to that authority to exercise its own discretion."

43. To this we may add that if a court is of the opinion that a statutory authority cannot take an independent or impartial decision due to some external or internal pressure, it must give its reasons for coming to that conclusion. The reasons given by the court for disabling the statutory authority from taking a decision can always be tested and if the reasons are found to be inadequate, the decision of the court to by-pass the statutory authority can always be set aside. If the reasons are cogent, then in an exceptional case, the court may take a decision without leaving it to the statutory authority to do so. However, we must caution that if the court were to take over the decision taking power of the statutory authority it must only be in exceptional circumstances and not as a routine. Insofar as the present case is concerned, the High Court has not given any reason why it virtually took over the decision taking function of the authorities and for this reason alone the mandamus issued by the High Court deserves to be set aside, apart from the merits of the case which we have already adverted to.

(xxi) In ***Joint Secretary, Political Department, State of Meghalaya, Main Secretariat, Shillong vs. High Court of***

Meghalaya, reported in ***2016 (11) SCC 245,*** the Hon'ble Supreme Court observed as follows:

> *11. There can be no doubt, the court can initiate suo motu proceedings in respect of certain issues which come within the domain of public interest. In Budhadev Karmaskar (1) v. State of W.B.[5] the Court, while dismissing an appeal, observed thus:-*
>
> *"14. Although we have dismissed this appeal, we strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as the 'prostitutes' as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.*
>
> *15. As already observed by us, a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body.*

16. Hence, we direct the Central and the State Governments to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India. The schemes should mention in detail who will give the technical/vocational training and in what manner they can be rehabilitated and settled by offering them employment. For instance, if a technical training is for some craft like sewing garments, etc. then some arrangements should also be made for providing a market for such garments, otherwise they will remain unsold and unused, and consequently the woman will not be able to feed herself."

13. Suo motu public interest litigation can be initiated to ameliorate the conditions of a class of persons whose constitutional or otherwise lawful rights are affected or not adequately looked into. The Court has adopted the said tool so that persons in disadvantaged situation because of certain reasons – social, economic or socio-economic – are in a position to have access to the Court. The Court appoints Amicus Curiae to assist the Court and also expects the executive to respond keeping in view the laudable exercise.

14. In Ramlila Maidan Incident, In Re[6], suo motu probe of incident was ordered by the

Court against imposition of prohibitory order at night and hasty and forcible evacuation of public on the basis of media reports and CCTV camera footage. In Nirmal Singh Kahlon v. State of Punjab & others[7], the Court has held:-

"33. The High Court while entertaining the writ petition formed a prima facie opinion as regards the systematic commission of fraud. While dismissing the writ petition filed by the selected candidates, it initiated a suo motu public interest litigation. It was entitled to do so. The nature of jurisdiction exercised by the High Court, as is well known, in a private interest litigation and in a public interest litigation is different. Whereas in the latter it is inquisitorial in nature, in the former it is adversarial. In a public interest litigation, the court need not strictly follow the ordinary procedure. It may not only appoint committees but also issue directions upon the State from time to time. (See Indian Bank v. Godhara Nagrik Coop. Credit Society Ltd.& another[8] and Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar.)"

16. Be it noted, the constitutional courts can entertain letter petitions and deal with them as writ petitions. But it will depend upon the nature of the issue sought to be advanced.

There cannot be uncontrolled or unguided exercise of epistolary jurisdiction.

(xxii) In **Re-Inhuman conditions in 1382 Prisons, reported in 2018 SCC Online SC 1662,** the Hon'ble Supreme Court in paragraphs, 2 to 4, held as follows:

2. During the last several decades, public interest litigation has compelled this Court to consider issues relating to the environment, social justice, violation of human rights and disregard for Article 21 of the Constitution; either because of an absence of governance due to the failure of the State to faithfully and sincerely implement laws enacted by Parliament or due to mis-governance by the State, that is, the Central Government, the State Governments and Union Territory Administrations leading to rampant illegalities. The failure of the State to take remedial steps to fill in the gap when there is no operative law, except that enshrined in the Constitution, more particularly Article 21 has resulted in public interest litigation and at least two cases where a treaty obligation ought to be fulfilled.

3. In recent times, usually and regrettably,

the State has chosen to challenge the idea of public interest litigation or denigrate it by chanting the mantra of 'judicial activism' or 'separation of powers'. In most cases, these mantras are nothing but a fig leaf to cover the failure of the State to recognise the existence of the rule of law and the need for providing social justice to the people of the country, as stated in the Preamble to our Constitution. There must be a realization that public interest litigation has given a voice to millions of marginalized sections of society, women and children. Public interest litigation is one of the more important contributions of India to jurisprudence. In fact, the Indian experience has encouraged some other countries to introduce public interest litigation in their jurisprudence.

4. This is not to suggest that public interest litigation has not been misused or that occasionally this Court has not exceeded its jurisdiction, but it must be emphasised that wherever this Court might have exceeded its jurisdiction, it has always been in the interest of the people of the country prompted by administrative mis-governance or absence of governance. There are, therefore, occasional transgressions on both sides, but that cannot take away from the significance of public

interest litigation as a non-adversarial source of righting some wrongs and encouraging social change through accountability and, in cases, transparency.

(xxiii) In **Tehseen Poonawalla v. Union of India** reported in **2018 (6) SCC 72,** the Hon'ble Supreme Court, at Paragraphs 96 to 98, held as follows:

*"**96.** Public interest litigation has developed as a powerful tool to espouse the cause of the marginalised and oppressed. Indeed, that was the foundation on which public interest jurisdiction was judicially recognised in situations such as those in **Bandhua Mukti Morcha v. Union of India [Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389]**. Persons who were unable to seek access to the judicial process by reason of their poverty, ignorance or illiteracy are faced with a deprivation of fundamental human rights. Bonded labour and undertrials (among others) belong to that category. The hallmark of a public interest petition is that a citizen may approach the court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. Public interest*

litigation has been entertained by relaxing the rules of standing. The essential aspect of the procedure is that the person who moves the court has no personal interest in the outcome of the proceedings apart from a general standing as a citizen before the court. This ensures the objectivity of those who pursue the grievance before the court. Environmental jurisprudence has developed around the rubric of public interest petitions. Environmental concerns affect the present generation and the future. Principles such as the polluter pays and the public trust doctrine have evolved during the adjudication of public interest petitions. Over time, public interest litigation has become a powerful instrument to preserve the rule of law and to ensure the accountability of and transparency within structures of governance. Public interest litigation is in that sense a valuable instrument and jurisdictional tool to promote structural due process.

97. *Yet over time, it has been realised that this jurisdiction is capable of being and has been brazenly misutilised by persons with a personal agenda. At one end of that spectrum are those cases where public interest petitions are motivated by a desire to seek publicity. At the other end of the spectrum are petitions which*

have been instituted at the behest of business or political rivals to settle scores behind the facade of a public interest litigation. The true face of the litigant behind the façade is seldom unravelled. These concerns are indeed reflected in the judgment of this Court in ***State of Uttaranchal v. Balwant Singh Chaufal [State of Uttaranchal v. Balwant Singh Chaufal, (2010) 3 SCC 402 : (2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807]*** *. Underlining these concerns, this Court held thus: (SCC p. 453, para 143)*

"143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts."

98. *The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this Court and the High Courts are flooded with litigations and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes. This Court has a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested interests in litigation. There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the*

propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law. There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space."

25. In line with the judgments of the Hon'ble Supreme Court, High Court, Madras has issued notification in SRO C-2/2010 dated 26.07.2010, which is extracted hereunder:-

"No. SRO C-2/2010.

By virtue of Article 225 of the Constitution of India and of all other powers hereunto enabling, the High Court makes the following Rules to regulate Public Interest Litigations (PIL) filed under Article 226 of the Constitution of India:

Every Public Interest Litigation must be filed in accordance with the following rules:

1. Every PIL must indicate that the petitioner has no personal interest in the case. If he has any personal interest, he must disclose the same. In the event of the High Court finding the claim as frivolous or vexatious, the PIL shall be dismissed with exemplary cost.

2. If the PIL is filed on behalf of a class of persons, the details of the persons for whose benefit the PIL is filed, must be indicated. If it is a society or association of persons, the writ petitioner must enclose a resolution from such society or association of persons, authorising the petitioner to file the writ petition and if the body is duly registered with competent authority, a copy of the bye-laws of the said body authorising the petitioner to file the writ petition, shall be enclosed.

3. If the petitioner has filed any PIL earlier, the details of the petition, and the final order, if any, passed in that petition, the relief granted and costs, if any, awarded, shall be indicated. No Public Interest Litigation Petition will be entertained in respect of civil disputes between individuals or in service matters. The petitioner shall give an undertaking that he will pay the costs, if any, if it is found to be intended for personal gain or oblique motive.

4. The petitioner must disclose whether he has

filed the petition out of his own funds or from other sources. If it is the latter, the particulars should be given.

5. The petitioner must state in the affidavit that to his knowledge, no PIL arising on the same issue, has been filed anywhere.

6. The affidavit filed by the petitioner must contain the averments that he has filed the writ petition based on his information and his personal knowledge. If he has filed the writ petition based on an information received from any other source, he must clearly indicate the source. If it is a newspaper report, the affidavit shall clearly state as to whether the deponent has verified the facts by personally visiting the place or talking to any responsible person or Reporter or Editor of the newspaper concerned.

7. If the petitioner has given any representation to any authority, a copy of the same shall be filed in the typed set of papers along with reply, if any, received from the authority. He shall file the proof of service of representation before the Court.

The above rules will not be applicable to the Public Interest Litigations taken on file by the High Court"

26. Party-in-Person has filed the instant writ petition, for

issuance of a writ of mandamus, directing the first respondent, to comply with all the directions, issued by the Hon'ble Supreme Court of India, in the case of Prakash Singh & Others Vs. Union of India & Others, dated 22nd September 2006, in W.P.(Civil) No.310 of 1996 and to report its compliance, within a stipulated time.

27. Record of proceedings show that at the time, when the writ petition came up for admission, on 28/1/2019, learned Additional Government Pleader has submitted that in compliance with the judgment, in Prakash Singh & Others Vs. Union of India & Others, Government of Tamil Nadu Act No. 22 of 13, viz., the Tamil Nadu (Reforms) Act, 2013, and that as per the provisions of the said enactment, there is bound to be a separate wing for Law and Order and investigation and both the wings should be headed by the concerned Station House Officer. He has also sought for time to get instructions/ to file counter affidavit, as to the enforcement of the said Act in letter and spirit.

28. However, a Hon'ble Division Bench of this Court, taking note of Section 9 of the Tamil Nadu Police (Reforms) Act, 2013, was of the

prima facie view that it is not in consonance with the directions issued in Prakash Singh's case. Taking note of the further submissions of the learned Additional Government Pleader, as to the implementation of the said Act, a Hon'ble Division Bench of this Court, on 28/1/2019, has granted time.

29. Thus, a Hon'ble Division Bench, on 28/1/2019, directed the Principal Secretary to the Government, Home, Prohibition and Excise Department, Government of Tamil Nadu, to file a comprehensive counter affidavit, with supporting affidavits, if any, as to the compliance of Prakash Singh's case, as well as Tamil Nadu Police (Reforms) Act, 2013.

30. Subsequently, on 2/4/2019, we heard the Party-in-Person and Mr.E.Manoharan, learned Additional Government Pleader, made submissions, which we have extracted, in the foregoing paragraphs.

31. Contention of Party-in-person is that

(i). Perjury is committed by the Additional Chief Secretary to Government, Home, Prohibition & Excise Department, Government of

Tamil Nadu, Chennai.

(ii). factum of filing of the reply affidavit, dated 14/8/2018 and W.P.(C) No.310 of 1996 was not reported to Court, at the time of admission, on 28/1/2019 and when the writ petition was posted for further hearing.

(iii). Nothing could be deduced from the order of the Hon'ble Supreme Court, in I.A.No.24610 of 2019 in W.P.(C) No.310 of 1996 along with I.A.Nos.115064 of 2018, 20735 of 2019 and 11484 of 2019 and therefore, according to him, submission of the respondents made all along was the cause for him to plead that there was perjury committed by the first respondent in making a statement to this Court that an affidavit, dated 14/8/2018 has been filed in the Supreme Court. In this context, he referred to the order made in I.A.Nos.115064 of 2018, 20735 of 2019 and 11484 of 2019 and submitted that the same does not reflect filing of an affidavit, copy of which is produced before this Court.

32. On the contra, learned Additional Government Pleader submitted that at the time when the case came up for hearing on

28/12019, as per the instructions of the Government, framing of an enactment was submitted to the Court with the impression that it would be an answer to the prayer sought for, in the writ petition.

33. Subsequently, when the instant writ petition came up for hearing, on instructions, it was reported to this Court that in W.P.(C) No.310 of 1996, when notices have been issued by the Hon'ble Supreme Court with regard to the implementation of the Act, a reply affidavit was necessitated and accordingly, an affidavit was filed on 14/8/2018, which fact was brought to the notice of this Court, on 2/4/2019.

34. Learned Additional Government Pleader, further submitted that Additional Chief Secretary to the Government, Home, Prohibition & Excise Department, Chennai, has not committed any perjury.

35. Writ petition, in the Hon'ble Supreme Court has been filed emanated in the year 1996 and several interim applications have been filed. Website details of W.P.(C) No.310 of 1996 are extracted hereunder:-

Doc.No.	*Document type*	*Filed by*	*Filing date*	*Entered on*
115105/	Affidavit	M. Yogesh	14/8/2018	Amrit Bhola

Doc.No.	*Document type*	*Filed by*	*Filing date*	*Entered on*
2018		Kanna	3.26 p.m	27/8/2018 @ 4.21 p.m.

36. From the particulars extracted, we could find that an affidavit has been filed by Mr.Yogesh Kanna, learned counsel on record, Supreme Court of India, on 14/8/2018, at 3.26 p.m., with Diary No.115105/2018, which confirms the factum of filing of the affidavit.

37. Perusal of the copy of the Office Report, dated 8/9/2018, pertaining to the matter of Prakash Singh & Others Vs. Union of India & Others, listed on 10/9/2018, in Court No.1, produced before this Court by the learned Additional Government Pleader also supports the contention that Mr.M.Yogesh Kanna, learned Advocate on record has filed an affidavit on behalf of State of Tamil Nadu and that the same was placed in a separate volume with paper books.

38. Office Report, dated 8/9/2018, reads thus:-

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

INTERLOCUTORY APPLICATION NO.129261/2018

(Application for Modification of Hon'ble Court's order dated 3.7.2018 filed by Mr.M.Shoeb Alam, Advocate)

IN
WRIT PETITION (CIVIL) NO. 310 OF 1996
(Under Article 32 of the Constitution of India)

Prakash Singh & Ors. etc. .. Petitioners

Versus

Union of India & Ors. etc. ... Respondents

OFFICE REPORT

It is submitted that the Writ petition above mentioned alongwith applications and connected matters was listed before the Hon'ble Court on 03.07.2018 withoffice report dated 29.06.2018 when the Hon'ble Court was pleased to inter-alia pass the following order:-

"LA.No.25307 of 2018

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

This is an application for modification of the judgment in Prakash Singh and others vs. Union of India & others, (2006) 8 SCC 1. In the said judgment the Court has prescribed a minimum tenure for Director General of Police. Direction No.2 given in the said judgment, which is relevant for the present purpose, reads thus:

"(2) The Director General of Police of the State shall be selected by the State Government from amongst the three seniormost officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Service (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Having heard learned counsel for the parties, we pass the following directions:

(a) All the States shall send their proposals in anticipation of the vacancies to the Union Public Service Commission, well in time at least three months prior to the date of retirement of the incumbent on the post of Director General of Police;

(b) The Union Public Service Commission shall prepare the panel as per the directions of this Court in the judgment in Prakash Singh's case (supra) andintimate to the States;

(c The State shall immediately appoint one of the persons from the panel prepared by the Union Public Service Commission;

(d) None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in Prakash Singh's case(supra);

(e) An endeavour has to be made by all concerned to see that the person who was selected and appointed as the Director General of Police continues despite his date of superannuation. However, the extended term beyond the date of superannuation should be a reasonable period. We say so as it has been brought to our notice that some of the States have adopted a practice to appoint the Director General of Police on the last date of retirement as a consequence of which the person continues for two years after his date of superannuation. Such a practice will not be in conformity with the spirit of the direction.

(f) Our direction No.(c) should be considered by the Union Public Service Commission to man that the persons are to be empanelled, as far as practicable, from amongst the people within the zone of consideration who have got clear two years of service. Merit and seniority should be given due weightage.

(g) Any legislation/rule framed by any of the States of the Central Government running counter to the direction shall remain in abeyance to the aforesaid extent.

The present directions shall be followed scrupulously by the Union of India and all the States/Union Territories. If any State Government/Union Territory has a grievance with regard to these directions, liberty is granted to them to approach this Court for modification of the instant order.

I. A. stands disposed of accordingly.

Rest of the matters

List after two weeks."

Thereafter the Writ petition above mentioned alongwith applications and connected matters was listed before the Hon'ble Court was pleased tointer-alia pass the following order:-

"I.A. No.97142/2018 in W.P.(C) No.310/1996

This is an application at the instance of the State of Meghalaya for modifying the order dated 3rd July 2018. We may immediately clarify that there is no need for modification at the instance of the State of Meghalaya because the situation is quite different.

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

At this juncture, it is submitted by Mr.Bhushan, learned counsel for the original petitioner that clause (f) of the order passed on 3rd July, 2018, needs to be clarified. He has given certain instances which may occur in future. Liberty is granted to Mr.Bhushan to file an application for clarification, if occasion arises.

The interlocutory application for modification of Court's order stands disposed of.

Let all other interlocutory applications and petitions be listed after two weeks. Learned counsel for the parties are required to file their submissions on proposition wise by the next date of hearing."

Pursuant to above order certified copies were sent to concerned parties through Registered Post on 9.08.2018.

It is submitted that M/s.Devasa & Co., Advocates has on 9.8.2018 filed Written proposition on behalf of petitioner in connected Contempt Petition(c) No.1037/2018 and same is placed in a separate volume with the paper books.

It is further submitted that Mr.M.Yogesh Kanna, Advocate

has on 14.08.2018 filed an affidavit on behalf of State of Tamil Nadu and same is place in a separate volume with the paper books.

It is next submitted that Mr.Prashant Bhushan, Advocate for the petitioners has on 14.8.2018 filed an application seeking clarification of this Hon'ble Court's order dated 3.7.2018 alongwith an application seeking permission to file additional documents. The said applications are registed as I.A.Nos.115064/2018 and 115046/2018 respectively and placed in a separate volume with the paper books.

It is further submitted that Mr.Abhinav Mukerji, Advocate has on 27.8.2018 filed an affidavit on behalf of UPSC regarding steps taken in compliance of order dated 30.7.2018 and same is placed in a separate volume with the paper books.

It is further submitted that M/s.PLR Chambers & Co., Advocates has on 31.8.2018 and Mr.M.Shoeb Alam, Advocate has on 7.9.2018 filed separate applications for modification of Hon'ble Court's order dated 3.7.2018 on behalf of State of West Bengal and State of Jammu & Kashmir. The said applications are registered as I. A.Nos.125544/2018 and 129261/2018 respectively. I.A.No.125544/2018 is placed in a separate volume with the paper books and I.A.No129261/2018 is being circulated for kind perusal of the Hon'ble Court.

It is lastly submitted that I.A.No.129261/2018 (Application for Modification on behalf of State of Jammu & Kashmir) was mentioned before the Hon'ble Court on 7.9.2018 when the following order was passed:-

"Let the application be listed on Monday, 10.09.2018 before appropriate Bench as per roster, subject to removal of defects, if any."

The application in the matter above-mentioned is listed before the Hon'ble Court with this Office Report for Orders.

39. Party-in-person submitted that had the filing of an affidavit, dated 14/8/2018 was brought to the notice of this Hon'ble Division Bench of this Court, the confusion would not have arisen.

40. Now that we have extracted the documents filed on behalf of the Additional Chief Secretary to the Government, Home Department, to prove that an affidavit, dated 14/8/2018 has been filed in W.P.(C) No.310 of 1996 on the file of the Hon'ble Supreme Court in Prakash Singh & Others Vs. Union of India & Others, question remains to be considered is whether the Additional Chief Secretary to Government, Home, Prohibition & Excise Department, Government of Tamil Nadu, Chennai, has committed perjury, whether the statement made by the party-in-person without responsibility, should simply be ignored or in the light of judgments of the Hon'ble Supreme Court, be deprecated by imposing exemplary costs.

41. Party-in-person reiterated that confusion has arisen only due to the Government which did not inform this Court about the filing of the reply affidavit. Towards the end of this matter, party-in-person

sought for apology, which we are not inclined to accept for the reason when the party-in-person could obtain a copy of the order made in I.A.Nos.115064 of 2018, 20735 of 2019 and 11484 of 2019 and tried to justify his statement that perjury has been committed by the Additional Chief Secretary to the Government, Home, Prohibition & Excise Department, Government of Tamil Nadu, Chennai, first respondent, he could have very well ascertained from the website of the Hon'ble Supreme Court, as to whether an affidavit, dated 14/8/2018 has been filed or not. When the party-in-person has chosen to file a public interest litigation, in the light of the decisions extracted, he is supposed to ascertain the stage of the case pending in the Hon'ble Supreme Court, periodical orders passed and to produce all the material documents. The mere fact that the party-in-person is able to produce the order made in I.A.Nos.115064 of 2018, 20735 of 2019 and 11484 of 2019 shows that the party-in-person is not ignorant, as to how to obtain information from the website of Hon'ble Supreme Court. We hold there is no perjury committed by the first respondent. On the other hand, party-in-peson without verifying the records of the Hon'ble Supreme Court has alleged perjury.

42. On the facts and circumstances, **we dismiss the writ petition**

with costs of Rs.25,000/- (Rupees Twenty five thousand only) to be paid by the party-in-person to the Tamil Nadu Juvenile Justice Fund, Ministry of Social Defence, Kellys, Chennai, within a period of fifteen days, from the date of receipt of a copy of this order, failing which, the District Collector, Chennai District, is directed to take proceeding against the petitioner under the Revenue Recovery Act, 1890.

43. **Copy to be issued to the District Collector, Chennai District for suitable action, in case of default.**

44. Even after the pronouncement of orders, Party-in-person has reiterated that everything has happened only because of the submissions of the Government, right from the date when the matter came up for admission.

(S.M.K.,J) (S.P.,J)
4/4/2019

Index : Yes
Internet : Yes
Speaking/Non-speaking order

mvs.

Note: Issue order copy on 10/4/2019

To

1. The Secretary
Home Department, Government of Tamilnadu,
Secretariat,Chennai-600009.

2. The Under Secretary /Public Information officer
Home Department,Government of Tamilnadu,
Secretariat,Chennai-600009.

3. The Public Information Officer/
Under Secretary to Government,
Public (Miscellaneous) Department,
Government of Tamilnadu,Secretariat,
Chennai-600009.

4. The Inspector General of Police (Establishments)
O/o the Director General of Police,
Mylapore,Chennai-600004.

S.MANIKUMAR, J

AND

SUBRAMONIUM PRASAD, J

mvs.

Writ Petition No.2342 of 2019

4/4/2019