

Digvijay Singh and Others Vs. The State of Madhya Pradesh and Others

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Court : Madhya Pradesh

Decided On : Nov-05-2014

Judge : The Honourable Chief Justice Mr. A. M. Khanwilkar & Alok Aradhe

Appeal No. : Writ Petition No.11695, 12196, 12386, 12392, 12431, 13475, 13868 & 6385 of 2014 (PIL)

Appellant : Digvijay Singh and Others

Respondent : The State of Madhya Pradesh and Others

Judgement :

A.M. Khanwilkar, CJ.

1. This common judgment is rendered in all these matters, as similar points arise for consideration. Except the suo motu proceedings, Writ Petition No.6385/2014, all other petitions are filed by private persons as Public Interest Litigation, inter alia, praying for a direction to withdraw the investigation of the criminal cases commonly known as PMT VYAPAM Examination Scam cases from the Special Task Force (hereinafter referred to as the "STF") constituted by the State of Madhya Pradesh; and instead entrust the same to an independent Investigating Agency, namely, Central Bureau of Investigation (hereinafter referred to as the 'CBI'). This very relief was considered by the Division Bench of this Court (one of us, namely, Justice A.M. Khanwilkar, Chief Justice was member of that Bench), in Writ Petition 15186/2013 (Awashesh Prasad Shukla vs The State of Madhya

Pradesh and others) and other companion matters, which were disposed of by a common judgment dated 16th April, 2014. In that judgment, the Division Bench rejected the prayer for transferring the investigation of subject cases to CBI, whereas it found that the investigation of those cases was entrusted by the State Government to STF keeping in mind the sensitivity and the gravity of the issues. Further, although STF was part of the Home Department of the State Government, yet the officials of the STF dealing with the investigation of those cases were not only experienced and well qualified persons, but, also having a track record of being independent officers. The Court further found that the investigation already done by the STF of those cases was proper and was proceeding in right direction. Nevertheless, the Court to re-assure itself, in larger public interest, deemed it proper to monitor the investigation. That judgment deals with every singular criticism made by the petitioners about the manner in which the cases were entrusted to STF and also the ability of the STF to handle investigation of such serious cases.

2. We have been informed across the Bar by the counsel appearing for the respective parties in these new set of petitions filed as Public Interest Litigation that the said decision has not been assailed by anyone before the Supreme Court. In that sense, it may not be possible for us to examine the same issues or factual aspects, which were subject matter of earlier proceedings; as the findings of this Court on those matters have attained finality. Rather, the findings recorded in the previous judgment will bind this Court and it may not be open for us to disregard the same in absence of any request for review of the said decision or for reconsideration of the legal principles stated therein merely because these fresh set of writ petitions have been filed. Thus understood, the scope for examining the self same relief for transfer of investigation to another independent Investigating Agency, namely, CBI, can be considered only if the petitioners are in a position to substantiate inertia or acts of commission and omission of the STF during the investigation of the stated cases subsequent to the earlier decision.

3. Realizing this position, counsel appearing for the petitioners, essentially, adverted to the matters, which unfolded after April 16, 2014, to impress upon us that now the time has come to transfer the investigation to independent

Investigating Agency, namely, CBI.

4. Notably, the petitioner in the first petition (Writ Petition No. 11695/2014) had first addressed a communication dated 1st July, 2014, to the Chief Justice of this Court. That was listed before the Court on 7th July, 2014, as a Letter Petition. It was disposed of with liberty to the petitioner to file a formal petition, if so advised. Accordingly, he has elected to file this petition on 30/7/2014, which is within three months after the earlier judgment was rendered on April 16, 2014. Indeed, the last amongst the writ petitions filed by the private persons was filed on 4/9/2014. Further, these petitions have been filed by persons, who are in public life and are actively associated with one or the other political party, opposed to the ideology of the political party in power in the State. But, as these petitions have been filed in public interest; and, more particularly because the Court itself has decided to monitor the investigation by STF in public interest, without giving much significance to the status and the intention of the petitioners before us, in larger public interest, we would not mind examining the issues raised by them to ascertain

- whether the credibility of the STF has shaken or has become doubtful because of the subsequent acts of commission and omission of its officials in any manner, as mentioned by these petitioners.

5. We may now advert to the submissions made by the counsel for the respective petitioners. The arguments were opened by Shri K.T.S. Tulsi, learned Senior Advocate. Incidentally, he had argued the leading writ petition even in the first round of Public Interest Litigations disposed of by common judgment dated 16th April, 2014. He was, therefore, conscious of the fact that it was not open for him to reagitate the same issues in the present set of petitions filed as Public Interest Litigation, merely because the petitioners are different. He first relied on the order passed by VYAPAM dated 6th May, 2014 (Annexure P/34, in Writ Petition No.11695/2014 at page 358) and contended that VYAPAM did not take action against two candidates and excluded roll numbers of those two candidates. This was done because the candidates were none other than the children of Member of Legislative Assembly of Bhartiya Janata Party (BJP). He invited our attention to

the schedule appended to the said order to buttress his submission.

6. Learned counsel then relied on the news item dated 29th June, 2014 (Annexure P/14) in W.P. No.11695/2014 at page 232), published in newspaper 'Nation'. The headline of the said news item reads - "Cops, RSS offer different reasons to give 'clean chit' to Sudarshan, Soni". This news item refers to the statement given by the Police of Madhya Pradesh. According to him, when the Court was monitoring the investigation, STF ought to have eschewed from giving any such information or opinion, which inevitably undermines the authority of the Court. In any case, until filing of final charge-sheet and completion of the investigation, it was not open to STF to give clean chit to anyone involved in the offence. Further, it is intriguing that even though the DGP was not part of the STF team, yet he could give the reported statement. That pre-supposes that the officials of STF were reporting to their superiors in the Home Department/Police Department. Thus, the investigation of subject cases by STF was not fully insulated. Besides, there was possibility of pressure being exerted on STF officials from their higher-ups outside STF. Further, it is possible that the investigation done by STF was controlled by the superiors in the Home Department/Police Department of the State.

7. It was contended that considering the fact that the crime was a serious one and the possibility of involvement of someone from the office of the Chief Minister and the Governor, the present and former Minister of the State or the Minister at the Centre cannot be ruled out at this stage. Hence, it may not be in public interest to allow the STF to continue with the investigation of such matters. He then invited our attention to the memorandum of statement dated 27th November, 2013 (Annexure P/14 at page 231, in Writ Petition No.11695/2014), of one Mihir Kumar Choudhary named as an accused in Crime No.15/2013 recorded under Section 27 of the Evidence Act. According to the learned counsel, the aforesaid statement indicates complicity of Shri Sudarshan in the commission of the alleged offence. In spite of that, the STF and the DGP have gone on record to give a clean chit to that person, even before the conclusion of investigation of that crime.

8. It was then urged that the recent incident of death of one Dr. D.K. Sakalle, Dean of Netaji Subhash Chandra Bose Medical College, Jabalpur in suspicious

circumstances was a part of the larger conspiracy in commission of crime concerning VYAPAM examination scam cases investigated by the STF. Nevertheless, the State Government thought it appropriate to accord consent for investigation only into that episode by CBI. That fact has been published in newspaper "M.P. Online News" (Annexure P/13 at Page 227, in W.P. No.11695/2014). Shri Tulsi argued that if the suspicious circumstances, in which the death had occurred, is a part of larger conspiracy and was to be investigated by CBI, it is preposterous that STF is allowed to investigate the theory of larger conspiracy. In the context of this submission, we had called upon the learned Advocate General to ascertain whether the said Dr. Sakalle, Dean of Netaji Subhash Chandra Bose Medical College, Jabalpur was either a witness or a suspect in any of the crimes investigated by STF so as to enable us to appreciate the argument of Shri Tulsi, learned Senior Advocate that the suspicious circumstances of death of Dr. Sakalle was a part of larger conspiracy in the crimes known as PMT VYAPAM examination scam cases. The unambiguous response given, is that, Dr. Sakalle was neither a witness nor a suspect in any of the crimes investigated by STF.

9. Shri Tulsi, learned Senior Advocate then relied on the communication sent by CBI dated 10th September, 2014 (Annexure P/14 at page 111, of the return). It mentions that the CBI examined the matter and found that no criminal case has been registered in respect of death of Late Dr. D.K. Sakalle, Dean, Netaji Subhash Chandra Bose Medical College, Jabalpur. The said communication further notes that only proceeding under Section 174 of Cr.P.C. has been resorted to by the local police. Relying on these observations, Shri Tulsi, learned Senior Advocate argued that inspite of the seriousness of the case, neither the local police nor the STF or for that matter the State Government was keen to take initiative to register FIR. Instead, the Authorities were content by resorting to inquest proceeding enquiry under Section 174 of Cr.P.C. This reinforces the apprehension about the lack of sincerity and commitment of the respondents and STF, in particular, in the investigation of the subject crimes.

10. Shri Tulsi, learned Senior Advocate then relying on the averments made in paragraph 48 of the Return contended that STF not only played trick on the public

and resorted to sharp practice, but, also misled this Court and Paragraph 48 of the Return explains why the FIR was not registered in connection with the incident of death of Dr. Sakalle.

11. Relying on paragraph 49 of the Return and the observation in the previous judgment dated 16th April, 2014, Shri Tulsi, learned Senior Advocate submitted that on the earlier occasion the Court was assured that investigation of all the cases concerning examinations conducted by VYAPAM would stand transferred to STF, but, without permission of the Court, merely supervision of investigation of those cases has been entrusted to STF. To that extent, respondents have overreached the Court and have failed to fulfil their commitment given to the Court.

12. Shri Tulsi, learned Senior Advocate then relied on Press Release issued through the Public Relation Officer (PRO) of the Police Headquarter, Madhya Pradesh Jan Sampark Kaksha (at page 112, 113 and 114 of the Return, Annexure R/5, R/6 and R/7). This document read with the concerned news item would, according to Shri Tulsi, reveal that there was gross interference with the investigation by the STF from the superiors in Police Headquarter. Moreover, when the investigation by STF was underway, the Police Headquarter could not have given a clean chit to Chief Minister's office; and if the statement as released was on the basis of information given by the STF, then it would necessarily follow that STF was sharing vital information relating to investigation of the subject crimes, that too without taking prior permission of the Court. That was a serious matter and would certainly undermine the fairness and impartiality of such investigation.

13. Shri Tulsi learned Senior Advocate relying on the averments in paragraphs 25 (d), 50 and 52 of the Return would contend that it is more than clear that STF was part and parcel of the State and was accountable to superiors in Police Headquarter and the Home Department. Thus, it was not an independent Investigating Agency. He further submits that situation has been made worst by filing a common Return to oppose these writ petitions, by different wings of the State having conflict of interest. It is further damaged by one common counsel representing them. There was intrinsic conflict of interest between the stand of the

State Government and the STF, at least, in relation to the question of impartial investigation of the subject crimes by STF. According to him, therefore, it was eminently a fit case to transfer the investigation to independent Investigating Agency, namely, CBI so as to instil confidence in the public mind about the fairness and credibility of the investigation of the crimes in question.

14. He then submits that the principle of insulation of the investigation to make it independent, has been compromised. He submits that the DGP whose statement has been mentioned in the Press Release be directed to file affidavit to state whether the STF gave him access to the record of investigation of the subject crimes or that he has not seen the same. Depending on the nature of affidavit, the Court may have to initiate contempt action against the officials of STF as well as others who have interfered with the administration of justice.

15. He further submits that the excel-sheet filed along with the charge-sheet in the concerned crimes refers to 73 candidates. But, the Investigating Agency has resorted to pick and choose attitude by naming only 20 candidates as accused, 23 as witnesses and leaving out 30 others without giving any explanation whatsoever. This is nothing short of perversity on the part of Investigating Agency, reflecting on their credibility.

16. To buttress the above submissions, he placed reliance on the decisions in the case of Narmada Bai vs State of Gujarat ¹, Shahid Balwa vs. Union of India and others², Vineet Narain vs. Union of India and another³ and Asharam Bapu vs. Union of India and others⁴.

17. Ms Indira Jaisingh, learned Senior Advocate addressed us in Writ Petition No.12386/2014 for the petitioner. She did not pursue the extreme stand taken by Shri Tulsi. However, according to her, the reference made to CBI to investigate the case of death of Dr. D.K. Sakalle in suspicious circumstances, was only a farce. It was necessary for the State (2011) 5 SCC 79 (paras 58 to 64) (2014) 2 SCC 687 (paras 29 and 30) (1998) 1 SCC 226 (paras 1, 3, 8, 49 and 50) (2013) 10 SCC 37 Government to issue Notification under Section 6 of the Delhi Police Act before making such reference. She then picked up the thread of the last argument made by Shri Tulsi about the intrinsic conflict of interest of the different wings of the State

Government and yet having filed a common affidavit and that they were illadvised to be represented by one Law Officer - Shri P.K. Kaurav, Additional Advocate General. By this, she submits, it was not only a case of collapsing of personalities of different entities who had hostile stand against each other but also giving opportunity to share the vital information including about the contents of the investigation through common Advocate. In a matter of this nature, it would certainly undermine the fairness and independence of the Investigating Agency (STF). According to her, the Investigating Agency should have engaged its own Advocate to completely insulate itself from the other wings of the State. She invited our attention to the reply-affidavit filed by VYAPAM in the previous set of writ petitions, being Writ Petition No.15186/2013, to substantiate that even in those proceedings common Law Officer appeared for the respondents. In that, the affidavit filed on behalf of VYAPAM was drawn and filed by Advocate P.K. Kaurav. He also appeared for the State and the STF. She submits that as has been done by the Supreme Court in cases of national importance, in public interest, even this Court ought to appoint an independent Public Prosecutor/Advocate to represent STF (Investigating Agency), since the Court is already monitoring the investigation of the crimes in question.

18. She, however, in all fairness stated that she was not opposed to monitoring of the investigation by the Court in camera, if it was necessary to do so while analyzing the contents of the investigation. But, as a rule, the hearing of the suo-motu petition must be in open Court, as is the practice followed even by the Supreme Court in such matters.

19. She submits that by filing of common affidavit for the different wings of the State - Home Department, Police Headquarter; STF and VYAPAM - the personalities of these entities have collapsed even though their interests are hostile to each other. Further, from the tenor of the common reply filed by the respondents, it would appear that different wings of the State were wearing the same hat and taking the same position.

20. It was pointed out that in the reply-affidavit filed in Writ Petition No.15404/2013, VYAPAM had taken a stand on merits regarding the scam and

the matters which were engaging the attention of the Court concerning those crimes. The officials of VYAPAM were under scanner and their activities were under investigation by STF. It was also evident that the superiors in Police Headquarter and Home Department were instructing STF. Thus, all of them took a common stand to defend their separate actions. In law, on the face of it, there was conflict of interest between these entities. She further submits that filing of such common affidavit inspite of hostile interest of the different wings of the State was nothing short of interference with the administration of justice; and, more so, when this Court was monitoring the investigation. It was also urged that the Investigating Agency must be responsible only to the Court and none else and the Home Department of the State could not have issued any instructions to the Investigating Agency.

21. She submits that since the Court was monitoring the investigation, the STF should neither have interacted with any other wing of the Government nor shared the information concerning the investigation to anyone, much less without the permission of the Court.

22. She further submits that although the decision in the previous round of Public Interest Litigation has neither been challenged nor review thereof has been sought, even so, it was open to her to contend that the Court should not have disposed of those matters. Indeed, if those matters were kept alive, the petitioners in those matters could have rendered meaningful assistance to the Court, to point out the infirmities in the investigation and/or infirmities bordering on doubting the credibility of the Investigating Agency. The registration of suo- motu proceeding pursuant to the same judgment was not enough. For, there was no party appearing before the Court except the respondents who had conflict of interest and yet were represented by a common Advocate. Moreover, the position became still difficult as the Court was hearing those proceedings in camera. For that reason, the Court ought to, at least, appoint an amicus curiae to assist the Court and also to hear suo motu proceedings in open Court.

23. She further contended that since the issue regarding the credibility of STF was in public domain, the Court should not have gagged the media from publishing the

proceedings.

24. In her concluding submission, however, she contends that the best option in the present fact situation is to transfer the investigation of all the criminal cases under monitoring of this Court to CBI; and that the Investigating Agency should be ordered to be represented by an independent Advocate of eminence, to be appointed by the Court or, at best, by the Investigating Agency itself and not the Law Officer of the State. She submits that the Court may direct appointment of a Special Public Prosecutor; and, lastly, to appoint an amicus curiae to assist the Court in monitoring the investigation. She submits that even if the investigation was not transferred to CBI, she would be content with investigation done by STF (existing Investigating Agency), but, under monitoring of the Court and by appointing an amicus curiae to assist the Court during such monitoring. She has reiterated that she is not opposed to in camera hearing of the proceedings when the Court wants to analyze the contents of the investigation record or to seek clarification in that behalf from the Investigating Agency. She, however, prays that the petitions may not be finally disposed of on this occasion, but, should be kept pending for the just outcome of the case.

25. To buttress the above submissions, she has relied on the decisions in the case of Subrata Chatteraj Vs. Union of India and others⁵ and Sahara India Real Estate Corporation Limited and others Vs. Securities and Exchange Board of India and another⁶.

26. Shri Vivek K. Tankha, learned Senior Advocate 2014 (6) SCALE 593 = (2014) 8 SCC 768 (para 31) (2012) 10 SCC 603 appearing for the petitioner in Writ Petition No.12392/2014, submitted three written notes to point out the fatal discrepancies in the investigation of the concerned cases already done by the STF. These notes have been prepared on the basis of the material culled out from the charge-sheets already filed by the STF in the concerned crime against the named accused. The material, amongst others, would indicate that the name of the Minister was not mentioned in the excel-sheet, however, no investigation has been done to ascertain who the Minister was. He further points out that although the name of Ms Uma Bharti (who is presently Cabinet Minister at the Centre)

appears in the material already available with the Investigating Agency, however, she has not been named as an accused in any of these cases. Moreover, the Investigating Agency is adopting the policy of pick and choose, as it mentions some of the candidates as accused and some as witness. Those who spoke against the heavy weights have been made accused and those who have not spoken about them have been made witnesses. At least, this approach of the STF is noticeably consistent and is a clear scar on the credibility of the Investigating Agency. He further points out that the record indicates that VYAPAM furnished information to the Investigating Agency within two days. The material placed on record along with the charge-sheet filed, makes no reference as to how VYAPAM could furnish such voluminous information within two days from the date of requisition. While adopting the arguments of the previous counsel, Shri Tankha, learned Senior Advocate submits that the credibility of the Investigating Agency is under scanner and, therefore, in the larger public interest, it would be proper to transfer the investigation to an independent Investigating Agency like CBI. Further, the investigation to be done by the newly appointed Investigating Agency should be monitored by the Court. He has joined in the submission of the previous counsel that Special Public Prosecutor to represent the Investigating Agency must be appointed by the Court, who is not a Law Officer of the State; and, further, the Court must appoint someone as amicus curiae to assist the Court during the monitoring. He has placed reliance on the decision of the Supreme Court in the case of Vineet Narain (*supra*).

27. Shri Rajendra Tiwari, learned Senior Advocate appearing for the petitioner in Writ Petition No.11695/2014 has adopted the arguments of earlier counsel and has additionally pointed out paragraph 49 and the affirmation clause of the return to contend that the facts stated in the return are not properly affirmed and cannot be looked at and from the common affidavit filed, it is amply clear that the State, STF and VYAPAM were acting hand in glove. It is submitted that there is no mention in the affidavit that it was being filed in consultation with all the wings of the State. Notably, this return affidavit has been sworn by Ashish Khare, AIG, STF, Bhopal and Officer-in-Charge, who is part of the STF team. This argument, in our opinion, would have been of some significance if the affidavit was sworn by official from the other wing of the State and if he had stated that he was filing the affidavit

on the basis of information derived from the record, which would mean that he has seen the record in the office of the Investigating Agency. That is not the case on hand. Moreover, the defect in the affirmation clause of the return, is a curable defect.

28. As regards other matters on merits, Shri Tiwari, learned Senior Advocate invited our attention to the memorandum statement of Mihir Choudhary, which was pointed out by Shri Tulsi, learned Senior Advocate as well. He further invited our attention to the contents of the FIR in Crime No.20/2013, which refers to the involvement of Ms Uma Bharti, but, she has neither been named as an accused nor any investigation has progressed qua her so far. The STF was going slow on that investigation for reasons best known to it. According to him, since such high dignitary was involved, to instil public faith in the investigation and to uphold the majesty of law, it was essential to transfer the investigation to an independent Investigating Agency such as CBI. That was also necessary because the subject criminal cases have inter State ramifications, inasmuch as, it is matter of record that the students who appeared in the examination were not only from the State of Madhya Pradesh, but, also from the neighbouring States like Uttar Pradesh, Rajasthan and including Himachal Pradesh etc. That being the case, investigation by CBI would be most appropriate and desirable. He also invited our attention to Annexure P/5 (in Writ Petition No.12431/2014, at page 24), to point out that the stand taken by the respondents that Shri Sudarshan had died on 12th September, 2012 and had no concern with the examination, is belied from the contents of Annexure P/5. It is noticed that the application forms were required to be submitted before 26th June, 2012 and the examination was actually conducted on 7th October, 2012. The death of Shri Sudarshan on 12th September, 2012, therefore, would not rule out his involvement in the commission of the crime. This aspect has been completely glossed over by the Investigating Agency before giving a clean chit to Shri Sudarshan. He further pointed out that the material already available with the Investigating Agency would indicate that the telephone calls were made from Chief Minister's official residence. Even this aspect has not been investigated by the STF.

29. Shri Manish Verma, learned counsel appearing for the petitioner in Writ Petition No.12196/2014, relied on the proceeding in Writ Petition No.9781/2014 and Writ Petition No. 9783/2014 before the Single Bench, to contend that the possibility of manipulation of cut off higher marks for the open category cannot be totally ruled out, but, no investigation in that behalf has been done.

30. Shri Siddharth Seth, learned counsel appearing for the petitioner in Writ Petition No.13475/2014, who, incidentally, appeared in the first round of litigation reiterated his argument of the doctrine of State obligation to discharge the role of *parens patriae*. He submits that he has personal knowledge about the public outcry due to the scam and disillusionment of common man because of the lackadaisical approach of the Investigating Agency. He adopted the arguments of the previous counsel. Similarly, Shri Adwait Fouzdar, Advocate for the petitioner appearing in Writ Petition No.13868/2014 adopted the arguments of the previous counsel.

31. Per contra, Shri Nageshwar Rao, Additional Solicitor General of India appearing for the respondents-State and STF handed in a brief note in sealed cover for the perusal of the Court, with reference to the three written notes submitted by Shri Tankha, Senior Advocate on factual matters, explaining the same. After perusing the said note, we asked Shri Rao to clarify as to on what date the STF wrote to M.P. Online for furnishing the information concerning certain candidates - whose data was not available with VYAPAM; and further whether M.P. Online has responded in that behalf. We also asked him to find out whether STF has done any investigation in respect of the stand taken by VYAPAM about non-availability of data of the concerned candidates and what follow up action has been taken in that behalf. After taking instructions, in response to our queries, it was clarified by him that M.P. Online has since submitted the information and follow up action on that basis is being taken by STF. He further informed the Court that as regards non-availability of data with VYAPAM, even that matter was inquired into by STF and it has been found that data of large number of candidates was not available. The non-availability of data was not specific to the candidates mentioned by the petitioners in the written note, submitted by Shri Tankha. However, now, in view of the information received from M.P. Online the

investigation is proceeding independently against all concerned. In other words, non-availability of VYAPAM data was no impediment in the progress of investigation, on the basis of that information.

32. He then submitted that the petitioners have essentially raised grounds in the context of the death of Dr. Sakalle in suspicious circumstances and the Press notes released by the Public Relation Officer of M.P. Police, mentioning about STF giving a clean chit to named persons and lastly about the appearance of Shri Kaurav, Additional Advocate General to espouse the cause of the four wings of the State, namely, State of Madhya Pradesh, Home Department, Police Headquarters and the STF. On that basis, the credibility of STF is being questioned. He first took us through the facts noted in the earlier judgment, which mention about how the STF came into the picture and the steps taken by STF thereafter till the decision was rendered by this Court on 16th April, 2014. It is the same STF, which, essentially, started with the investigation of ten cases assigned to it and during the course of that investigation, registered new cases on the basis of material gathered by it - not only against the beneficiaries (candidates) but also against the middleman and the racketeers and including against persons in high position in Government and public life. After the judgment was rendered and until now, the STF has done investigation of in all 55 cases. Out of that, 10 cases pertain to VYAPAM officials, Government Officials and persons in public life. The other 45 cases, ostensibly are individual offences of impersonation of the original candidate. During the investigation of these 45 impersonation cases, it has been noticed that those offences were committed in an organized manner at specific examination centres and not across the State.

33. As regards 10 cases which are of recent period, involving VYAPAM and Government Officials, it is submitted that the investigation has reached at an advanced stage. As a matter of fact, charge-sheets have been filed in those 10 cases and in two cases the STF is committed to file final charge-sheet before end of March, 2015, because of complexity of the investigation and involvement of large number of accused. In 45 cases concerning impersonation which were pending for quite some time and investigated by the local police stations, after taking over supervision thereof, further investigation has been advised and which

is in progress. Further, final charge-sheets even in those 45 cases will be filed before end of March, 2015. He highlighted the achievements of the STF after the judgment in the earlier round of litigation since April, 2014. He submits that the STF, because of monitoring by the Court, has been successful in identifying and arresting more than 1000 persons and 1427 in all. This arrest includes arrest of high officials and persons in public life.

34. He submits that although the respondents have raised preliminary objections about the locus of the petitioners and that the petitions filed by them being politically motivated - as each of these petitioners belong to political party, which is in opposition in the State and also at the Centre; and further that the writ petitioners in W.P. No.12386 and 12392 of 2014 have not disclosed the material fact that those petitioners are facing prosecution for having committed serious criminal offences; even so, the respondents are duty bound to satisfy this Court about the quantitative and qualitative progress made in the investigation by STF. On the basis of the averments in the return filed by the respondents, he submits that it is amply clear that STF has investigated the concerned crimes with utmost dispatch and has left no stone unturned. The sincerity and commitment of the officials of the STF should neither be undermined nor doubted in any manner. According to him, these petitions are based on misplaced assumptions without there being any substance in any of the issue raised therein.

35. Regarding the question of death of Dr. Sakalle on 04.07.2014, he pointed out that Dr. Sakalle was due to retire on 30th September, 2014 as Dean of Medical College, Jabalpur. He was expected to submit his report about the incident of impersonation during the concerned examinations, which were conducted when Dr. Guha was the Officer-in-charge. Dr. Sakalle had submitted the report in the year 2011 on the basis of which two criminal cases were eventually registered by Dr. Guha. Notably, Dr. Sakalle was neither an accused nor a witness in any of the cases assigned to STF. He submits that the State Government in its wisdom took a political decision to request CBI to inquire into the incident of the death of Dr. Sakalle in suspicious circumstances, even though merely an enquiry under Section 174 Cr.P.C. was registered. He submits that without the report of medical experts about the cause of death, the question of registering FIR by the local

police did not arise. It is in that context, the CBI has mentioned that the inquiry initiated is yet to be registered as FIR. That, however, does not reflect upon the bonafides of the local police or for that matter, independence of STF. In absence of clear information about the cause of death, the local police could not have taken the matter forward. Further, the State Government under compelling circumstances, because of the call given by the Indian Medical Council to go on strike, which would have affected the working of all the hospitals across the State causing untold misery and problem to the patients undergoing treatment in the hospitals, took a political decision to request CBI to take over the inquiry, as insisted by the Indian Medical Council. That decision has no bearing on the fairness or independence of the on-going investigation of PMT VYAPAM examination scam cases by STF.

36. He further submits that from the communication sent by CBI dated 15.09.2014, if the same is read as a whole, in its proper perspective, it would be amply clear that CBI has also mentioned that the death of Dr. Sakalle has nothing to do with inter-State repercussion and that the local police is capable of investigating the same. For that reason, CBI did not act upon the request of the State Government. The first sentence appearing in the said communication, therefore, cannot be read in isolation, lest to give a distorted meaning. He submits that the first circumstance pressed into service by the petitioners, therefore, is completely devoid of merits and further it has no bearing on the outcome of the ongoing investigation of PMT VYAPAM examination scam cases by STF. That investigation is proceeding in right direction and in most effective manner, which is being monitored by the Court periodically.

37. He then submits that the argument advanced on behalf of the petitioners that the State Government should not have sent request in absence of any Notification issued under the provisions of the Delhi Police Act is founded on misunderstanding of the facts as well as the settled legal position. He relies on Supreme Court decision in the case of Balkrishna Reddy Vs. Director Bureau of Investigation, New Delhi⁷. In para-71 of this decision the argument under consideration, according to him, has been dealt with and rejected. He submits that the fact that the State Government acceded to the request of Indian Medical

Council to refer the inquiry concerning the death of Dr. Sakalle in suspicious circumstances, is, in no way, concerned with the crimes arising from PMT VYAPAM Examination Scam cases under investigation by STF. For the same reason, the incident of death of Dr. Sakalle cannot be treated as part of the larger conspiracy theory in the said crimes, as is contended on behalf of the petitioners and that the said argument is fallacious and ill-(2008) 4 SCC 409 advised.

38. With reference to the Press notes released by the Public Relation Officer (PRO) of Public Relation Department, Government of Madhya Pradesh, it is submitted that if the same is examined in its correct perspective, was only in response to the misleading Press news published in the local media to create confusion in the minds of the common man. In any case, the Press release neither refers to any matter of substance of the investigation nor even remotely suggests that the same has been shared by STF with higher Authorities in the Police Headquarters or the Home Department of the State. The information which has been divulged is limited to the status of the records - whether the same have gone missing, as mentioned in the Press news or otherwise. Thus, the Press Release as issued, is without disclosing or sharing the details of the investigation. He submits that limited information was provided by STF in good faith and in larger public interest to assuage the misgiving and misinformation generated by the news publication. That should not be the basis to doubt the credibility and fairness of the investigation done by STF. He fairly submits that STF could have avoided such criticism, but, then it does not mean that the integrity of officials of STF, who are senior officials and by far known to be independent police officers, having vast experience, can be doubted. He submits that the officials of STF have already established their impartiality and independence, by not only registering fresh crimes involving high officials and also by arresting large number of middlemen and racketeers including high Government officials and persons in public life in connection with criminal cases under monitoring.

39. He further submits that the Press Release mentioning of having given a clean chit to the named persons also cannot be the basis to doubt the credibility of STF or the investigations under monitoring. He submits that the crimes concerning Samvida Shala Shikshak are not the subject matter of monitoring by this Court.

The subject matter of monitoring is only about the offences commonly known as PMT VYAPAM Examination Scam cases for admission to Undergraduate and Postgraduate Courses in Medical Colleges. The named persons are in no way involved in any of those cases. He then submits that the stated Press Release concerns the criminal cases registered pertaining to Transport Department, which are entirely different set of criminal cases and not subjected to monitoring by this Court. He further submits that the investigation of those cases is proceeding as per law and will be taken to its logical end. At the same time, he fairly contends that if the matter is pending investigation, the Investigating Agency should eschew from issuing any statement on factual matters until filing of the charge-sheet in the concerned Court in those cases.

40. With reference to the argument of the petitioners that the Investigating Agency has not made any attempt to collect the call records of Nitin Mohindra and Pankaj Trivedi etc., he submits that the same is devoid of merits, as the call records of the concerned persons are already part of the charge-sheet filed in the PMT VYAPAM examination scam cases. He submits that the points urged by the petitioners are essentially based on miscommunication and misreading of the material facts. Further, the petitioners have failed to substantiate any circumstance that would lead to doubting the credibility of STF much less giving rise to even a reasonable apprehension about the fairness of the investigation of PMT VYAPAM examination scam cases by STF.

41. As regards the argument that Shri Kaurav, Additional Advocate General should not represent all the wings of the State, he submits that that was not impermissible. As a matter of fact, there was no conflict of interest between different wings of the State on the matters in issue. In that, the stand of the State, as is noticed in the earlier judgment, also even now, is that, the investigation of all these matters has been assigned to special investigation team (i.e. STF), which is proceeding with the investigation of those cases independently and was not required to take instructions from any superior Authority, outside the structure of STF.

42. As regards the stand of the Home Department, even though STF may be part of the Home Department, that does not mean that the Investigating Officers of the STF were not independent. The Police Headquarter has also taken the same stand. The fact that he also represented VYAPAM, would make no difference inasmuch as VYAPAM was taking the same stand against its erring officials and was the complainant, which had led to the registration of crimes even against the erring officials of VYAPAM. It is not a case where the same Advocate was appearing for the complainant as well as the accused. He submits that in any case there was no conflict of interest between the different wings of the State on the matters in issue, who were represented by the Additional Advocate General in his capacity of a Law Officer. There is no bar in law, for the Law Officer, to appear for the investigating agency and other Agencies and Departments who were working in tandem to proceed against the high officials. The matter of propriety or desirability cannot be raised to the level of conflict of interest. He further submits that Shri Kaurav, Advocate has been appearing in this Court not only in the public interest litigation filed for transferring of the investigation to CBI but also in other cases to defend the actions of VYAPAM against the candidates, who may be incidentally named as accused in the offence registered and investigated by STF. It would have been a different matter if the Court were to notice any or slightest of unworthy conduct of the Advocate in any of the appearances made before the Court. So long as the Court has confidence on the conduct of the Advocate, the question of Law Officer withdrawing from the case or not to appear for all the wings of the State, in absence of conflict of interest on the matters in issue, does not arise. He has placed reliance on the decision of the Supreme Court in the case of Deepak Agarwal vs. Keshav Kaushik and others⁸, in particular, paragraph 100 to buttress the above submission.

43. At the end, however, he submits on instructions of Shri Kaurav, that Shri Kaurav was willing to withdraw from the proceedings, if the Court opines that there is conflict of interest between the different wings of the State in the matter of (2013) 5 SCC 277 (para 100) investigation of the subject crimes by STF. He submits that whether the Court should appoint an amicus curiae to assist it or not, is the prerogative of the Court. There is no hard and fast rule that in every public interest litigation; and even if commenced suo motu by the Court, it was imperative

to nominate an amicus curiae from the Bar.

44. It was urged that the issue pertaining to hearing of the proceedings whether in open Court or in camera is also a matter of judicial discretion. However, when it is concerning the on- going investigation, it is but appropriate that the hearing should be in camera, lest it would be fraught with the danger of divulging material information to the accused, who in turn may take undue advantage to scuttle the investigation or deviate the focus of the Investigating Agency. He submits that the respondents would abide by all the directions that may be given by the Court to do substantial justice and in public interest.

45. At the outset, we may recapitulate the decision of the Division Bench of this Court in the earlier round of litigation on the same subject. The Court after analysing many precedents, some of which are relied even now, restated the well established legal position about the plenitude of the power under Article 226, which requires great caution in its exercise and must be used sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. The Court thoroughly examined the diverse arguments of the said petitioners, who attempted to persuade the Court that prima facie case was made out calling for investigation by an independent agency. That relief was negatived by a speaking judgment. We need not burden this judgment by adverting to the findings on the factual matters considered in that judgment to negative the same relief claimed. The Court relying on the decision of the Apex Court held that merely because the crime has generated immense amount of public interest, or in other words, a public outcry and that in a manner a public demand has been made towards transference of the investigation to independent agency, alone cannot be the legal basis to exercise powers under Article 226. The Court is obliged to record a clear finding that it has become "necessary" to provide credibility and to instil confidence in the investigation assigned to STF or that the transfer of investigation to some other agency is essential for doing complete justice in enforcing the fundamental rights.

46. In paragraph 19 of the said decision, the Court adverted to the background in which STF was constituted and was assigned the investigation of the criminal cases concerning PMT VYAPAM examination scam. The Court held that STF is a "separate unit" in the Home Department, headed by the ADGP (Additional Director General of Police) and consists of experienced and independent IPS officers with unblemished record. The Court unambiguously rejected the grievance of the said petitioners that the STF was incapable of handling the investigation of the offences in question or had shown any inertia in the investigation after it came on the scene. Instead, the Court found that STF swung into action without wasting any time. The Court also found that none of the petitioner(s) had attributed any motives to any official(s) of STF. On the contrary, there was enough material to indicate that the officials of STF were acting fairly and independently and were not taking instructions from their higher-ups in the State administration. For, during investigation of the assigned crimes, they proceeded to register fresh cases, mentioning about the possible involvement of high Government officials and political leaders including of the ruling party. That reinforced their resolve to proceed against one and all involved in the commission of stated offences impartially and independently. The Court held that taking any other view would result in demoralizing the officials of STF and questioning their sincerity and integrity in absence of any tangible material in that behalf merely on the basis of misplaced and unsubstantiated apprehensions of the said petitioners.

47. In paragraph 44 of the judgment, while rejecting the arguments of the petitioner(s), the Court pointedly held that even though STF is one of the wing of the State Government, that does not mean that it will not investigate the matters independently and impartially or will act on the instructions from higher Authorities outside STF. Even the premier Investigating Agency, CBI, was, as of now, one of the wing of the Union of India and not an independent or autonomous Agency. Notably, it has been found that the structure of STF nowhere indicates that STF is required to report to any other Authority outside STF about the investigation carried out by it. Further, there was nothing to suggest that information regarding the stage of investigation or the contents of the material were being divulged or reported to the Minister Incharge by the STF. On the contrary, like any other investigation, the investigating officers of STF, of the concerned crimes, were in

complete control of the investigation and that the superior officer(s) in the STF (IPS Officer(s) including the rank of A.D.G.P., who is the head of the STF), were only supervising the investigation to ensure that it was progressing in the right direction and properly. The Court also found that it was nobody's case that superior officers in the Home Department were directly or indirectly associated with the investigation done by STF or that the officials of STF were in contact with other high officials outside STF or political leaders and had ever divulged any matter of substance regarding the investigation of the stated cases. Even after having said this, the Court decided to monitor the investigation of the stated cases itself, in larger public interest; and to instil confidence in the investigation by STF.

48. As per the operative order passed by the Division Bench of this Court, for the purpose of monitoring, the Registry was directed to register suo motu proceedings, which was registered as Writ Petition No.6385/2014. The said writ petition was listed for hearing on different dates, inter alia, as under:-

("Table")

49. Initially, for first four hearings, the suo motu matter was heard in open Court, but, having realized that for making deeper enquiry about the nature and quality of progress limited to monitoring of the investigation, it was necessary to seek explanation from the Investigating Officer(s) about the contents of the material collected during the investigation on case to case basis and to obviate disclosure of the contents of the investigation in open Court which would have given clue to persons watching the proceedings, who may be incidentally interested in the accused named in those crimes, it was deemed appropriate to hear the matter in camera. As a result, the Court on the subsequent dates was monitoring the progress of the investigation in Chamber (in camera), where the officials supervising the investigation of the concerned crime along with the Head of the STF remained present and participated in that process. The order-sheets in the suo motu petition of the respective dates, mention about the amount of time spent (on an average around two hours each hearing) by the Division Bench for monitoring of PMT VYAPAM examination scam cases investigated by STF. However, after institution of second set of writ petitions, which are the subject

matter of this common judgment; and, in particular, because of the vehement submission made by the counsel for the petitioners on 4th September, 2014, that the Court is obliged to monitor the investigation in open Court and also about the objection to the appearance of Shri P.K. Kaurav, Additional Advocate General, the said suo motu petition was listed in open Court along with the present writ petitions for considering the said objection. We have already adverted to the arguments of the petitioners in this behalf in the earlier part of this judgment.

50. This Bench (A.M. Khanwilkar, Chief Justice and Alok Aradhe,J) has been monitoring the investigation from 30/06/2014. As during the earlier hearing in Chamber, even after 30/06/2014, the compilations furnished by the officials of STF disclosing the progress of investigation, on case to case basis, was considered and then ordered to be kept in sealed cover. We have no hesitation in going on record that the performance of the officials of STF and, in particular, of the Investigating Officers and the progress of investigation was never found wanting. Rather, they were open to correction and to improvise the quality of investigation. As has been rightly noted in the return filed by the respondents that after the Court started monitoring, the working strength of STF was not only strengthened, but, its independence has also been ensured. Moreover, the number of arrests caused to be made by the Investigating Team including of high Government officials and former Minister speaks volumes about the achievements of STF. The STF has succeeded in not only making significant arrests concerning the crimes investigated by them, but, also in taking the investigation to its logical end by filing charge-sheets in most of the cases under monitoring. Suffice it to observe that we did not notice any inertia of STF in the progress of investigation, both on the scale of quantity and quality thereof. On each of these hearing, we were prima facie convinced that the investigation of the concerned cases was proceeding in right direction and in a proper manner. However, as the present set of writ petitions came to be filed and new facts unfolded after the judgment dated 16th April, 2014, were brought to our notice, it became necessary for us to examine the same in public interest notwithstanding the fact that each of these petitions have been filed by the persons, who are actively associated with political parties in opposition, both in the State as well as at the Centre.

51. We may now deal with the new points, which have been urged before us in support of the relief for transfer of investigation to CBI. We must do that also because the Court has taken the responsibility to monitor the investigation of stated cases, in public interest; and to re-assure that the truth does not become casualty.

52. Let us now turn to the circumstances pressed into service by the petitioners. Shri Tulsi, learned senior counsel had relied on the order passed by VYAPAM dated 6th May, 2014, Annexure P/34 and schedule thereto (in Writ Petition No.11695/2014) and had contended that VYAPAM did not take action against two candidates referred to therein, as they were sons of Member of Legislative Assembly of Bhartiya Janata Party. In this connection, suffice it to mention that the said decision of VYAPAM was because of the fact that the roll number(s) data of the concerned candidates - (not limited to the two named candidates) - were found to be unaltered and no change was noticed. In other words, VYAPAM did not proceed against all the candidates, whose roll numbers were found to be unaltered and no change was noticed. It was not limited to two candidates (sons of Member of Legislative Assembly belonging to Bhartiya Janata Party), as is alleged. Notably, in the present proceedings, we are not concerned with the correctness of that decision taken by VYAPAM. That, however, in no way can reflect on the performance or impartiality of STF. Further, we find that STF has not based its investigation of the subject crimes purely on the material supplied by VYAPAM, but is exploring all possible angles to unravel the crime. Besides this nothing more is required to be said, as that may prejudice the pending trial of those cases.

53. Shri Tulsi then invited our attention to Annexure P/31, which is a news item published in newspaper Nation, titled, "Cops, RSS offer different reasons to give 'clean chit' to Sudarshan, Soni". The argument proceeds that when the Court was monitoring the investigation, STF should not have given such Press Release. We may now turn to the contents of the said Press news. It mentions that RSS in Nagpur and the Police Headquarter in Bhopal tried to give a clean chit to RSS Chief - Late Shri K. Sudarshan and Joint General Secretary - Shri Suresh Soni, concerning the examination and recruitment scam in Madhya Pradesh. It further mentions that the reasons given were strikingly pernicious. What has been found

objectionable, is that, the M.P. Police denied the very existence of the controversial document. The news item also mentions about the police statement that the hard-disk recovered from Madhya Pradesh Professional Examination Board (MPPEB) provides no clue or information about the two RSS leaders of having made any recommendation. Further, the Police had said that Shri Sudarshan was unwell for a long time and died in Raipur on September, 15, 2012, while the examination (cleared by Shri Sudarshan's aide Mihir Kumar Choudhary) was held on October 7, 2012, and the result was declared on October, 18, 2012. The M.P. Police also refuted the allegations calling them untrue. The M.P. Police PRO's office also denied that any phone calls have been made from the Chief Minister's House to the accused.

54. Indisputably, this news item refers to the VYAPAM examination scam concerning Junior Food Civil Supply Officer. The investigation of that case is not the subject matter of monitoring by this Court. For, monitoring is only in respect of PMT - VYAPAM examination scam cases. Thus understood, this news item cannot be made the basis to question the investigation of PMT - VYAPAM examination scam cases by STF, which is being monitored by this Court. Moreover, the news item does not mention that the statement given by M.P. Police or the Police PRO's office was given on the basis of information furnished by any official of STF, much less, the Investigating Officer investigating the said crime. Notably, the said Mihir Kumar Choudhary, who has named the two RSS leaders, has been arrested by STF. That belies the apprehension that STF will not proceed against him or any other person involved in the commission of that offence. The fact that the news item was given on the basis of release from the PRO's office of M.P. Police, by itself, does not mean that STF was reporting about the substance of the investigation to superiors in Home Department or Police Department, much less, about the investigation concerning PMT - VYAPAM examination scam cases. Suffice it to note that the submission founded on this news item that the investigation of PMT - VYAPAM examination scam cases monitored by this Court, is directly or indirectly controlled by the superiors in Home/Police Department of the State, is misplaced and untenable. For the same reason, even the apprehension of the petitioner that the Investigating Agency may go slow on the investigation of PMT scam cases because of the possible involvement of someone

from the Office of the Chief Minister or the Governor of the State in connection with other crimes, is misplaced. In other words, the involvement of someone from the Office of the Head of the State in connection with criminal cases other than PMT - VYAPAM examination scam cases, will be of no avail. Suffice it to note that in these proceedings, we are not called upon to consider the justness of investigation of those cases (other than PMT VYAPAM examination scam cases).

55. Shri Tulsi has then invited our attention to the memorandum of statement of the said accused - Mihir Kumar Choudhary in Crime No.15/2013, to contend that the said document discloses complicity of Shri Sudarshan in the commission of the alleged offence, but, no action has been taken in that behalf; and, instead, a clean chit has been given to him even before conclusion of the investigation of that case. For the reasons already noted while dealing with the earlier submission, we are not impressed by the contention under consideration. Notably, this statement has not been recorded after the decision of the Division Bench of this Court dated 16th April, 2014, but, anterior thereto i.e. on 22nd November, 2013. Moreover, the statement of accused recorded under Section 27 of the Evidence Act has been made part of the charge-sheet in the concerned crime. That has no causal connection with PMT VYAPAM examination scam cases under monitoring of this Court. It is not as if the said statement has been omitted from the charge-sheet. It is also noticed that the former Minister - Laxmikant Sharma has already been arrested by STF in connection with the stated crime. This reassures the credibility and impartiality in the investigation by STF.

56. That takes us to the next point urged by Shri Tulsi in connection with the incident of suicide by Dr. D.K. Sakalle, Dean of Netaji Subhash Chandra Bose Medical College, Jabalpur. The argument proceeds that the suicide was the cause of a larger conspiracy concerning PMT - VYAPAM examination scam cases investigated by STF. Further, being part of the larger conspiracy which was likely to be investigated by CBI on the basis of consent given by the State, investigation of all the PMT

- VYAPAM examination scam cases must be entrusted to CBI. This argument is founded on two assumptions. Firstly, that the death of Dr. D.K. Sakalle was the

cause of a larger conspiracy concerning PMT - VYAPAM examination scam cases. This argument is misplaced and unsubstantiated. The fact, however, is that, Dr. Sakalle was in no way concerned with the PMT - VYAPAM examination scam cases either directly or indirectly. He was neither a witness in those cases nor named as an accused. Whether the death of Dr. Sakalle was on account of suicide or otherwise was being enquired into and further action would depend on the opinion to be given by the medical experts. The second assumption, is that, the enquiry about the death of Dr. Sakalle has already been entrusted to CBI. No doubt, the State Government expressed its intent to handover the investigation of that incident to CBI, but, the CBI, in turn, has opined that it was not a case for it to take over that enquiry, as it had no national or international ramification and that the State Police was capable of handling the same. The decision of the State Government to give consent it has been stated, was under compelling circumstances. However, whether that decision of the State was appropriate or otherwise, need not detain us. Suffice it to observe, that none of the aforesaid two assumptions are well founded. As a result, this argument cannot take the matter any further for considering the relief of transfer of investigation of PMT - VYAPAM examination scam cases to an independent agency - CBI.

57. Shri Tulsi relying on the communication sent by CBI dated 10th September, 2014, (Annexure R/4, at page 111 of the return), argued that it was a clear case of inertia of the State Police in not registering FIR, inspite of the information about the unnatural death of Dr. Sakalle and only be content with the registration of inquest proceeding under Section 174 of Cr.P.C. This argument, plainly, overlooks the procedure that is usually followed by any Police in the country, when such incident is reported. In absence of specific information about the overt acts resulting in death of a person, the Police would commence the enquiry first by registering inquest proceeding under Section 174 of the Code; and dependent on the opinion of the medical experts about the cause of death, proceed further by recording FIR, if it is a case of homicidal or suicidal death, as the case may be. If it is a case of suicidal death and on account of abetment by someone, the offence can be registered as FIR. We are not impressed by the argument that immediately after receiving information about the death of Dr. Sakalle, the local Police was obliged to register FIR under Section 154 of Cr.P.C. and not resort to inquest proceeding

under Section 174 of Cr.P.C.

58. The next argument of Shri Tulsi, with reference to averments in paragraph 48 of the return, is another shade of the same argument already dealt with hitherto. According to the petitioners, non-registration of FIR in connection with the incident of death of Dr. Sakalle was a trick played by the STF not only on the public, but, also resorting to sharp practice by misleading this Court. In our opinion, there is no force in this criticism. As aforesaid, FIR in relation to the said incident can be registered only after opinion of the medical experts is made available. There is nothing wrong with the registration of Inquest enquiry at the initial stage by the local Police. Similarly, the fact that the State Government decided to give consent to CBI to enquire into that incident, also does not take the matter any further considering the fact that Dr. Sakalle was neither a witness nor an accused in connection with any of the PMT VYAPAM examination scam cases under monitoring by this Court.

59. Shri Tulsi then contended that on the earlier occasion this Court was assured that investigation of all criminal cases pertaining to PMT examinations conducted by VYAPAM registered since the year 2000 would stand transferred to STF. However, only supervision of investigation of those cases is taken over by STF. No doubt, this Court has noted that STF will take over the investigation of all those cases. The fact that the STF has decided to merely supervise investigation of those cases instead of taking over actual investigation, does not mean that those cases are not being properly investigated. It is a different matter that STF should have taken clarification from the Court for mere supervision of investigation by local police of those cases, instead of taking over the investigation of the concerned offences. At the same time, it is significant to mention that, it is only after STF took over the responsibility of supervision of investigation of those 45 cases, the investigation in those cases has made perceptible headway by arrests of most of the absconding accused and also by filing of further charge-sheet/police report under Section 173 (8) of the Code. The supervision by STF also made it possible to unravel the pattern or the modus operandi in all those cases and to collate information, which has helped them in investigating PMT VYAPAM examination scam cases entrusted to it by the State Government and

monitored by this Court. This Court is already monitoring the further investigation of even those cases supervised by STF.

60. Shri Tulsi had then relied on the Press Release issued through PRO of Police Headquarter. According to him, the contents of this news item go to show that there has been gross interference by the superiors in Police Headquarter in the investigation by STF. The first Press Release, Annexure R/5 to the return, issued under the signature of one Arun/Pradeep Bhatia, PRO Police Headquarter, pertains to the selection process of Transport Inspectors. There is nothing in this Press Release, which even remotely refers to the investigation of PMT

- VYAPAM examination scam cases, which is the subject matter of monitoring by this Court. The news item is founded on this Press Release and for which reason it can have no bearing on the matter under consideration. As regards the Press Release, Annexure R/6-2 to the return, even this Press Release concerns the selection process of Samvida Shala Shikshak and has nothing to do with the PMT - VYAPAM examination scam cases, even though, Controller - Dr. Pankaj Trivedi and Principal System Analyst - Nitin Mohindra may be common in all these criminal cases. Viewed thus, even this Press Release will be of no avail to question the fairness, independence and impartiality of STF in investigation of PMT - VYAPAM examination scam, which are being monitored by this Court.

61. It was argued that assuming that the fact referred to in this Press Release is ascribable to some other criminal case (other than PMT VYAPAM examination scam cases), but, the Press Release reinforces the apprehension of the petitioner(s) that STF was sharing details of the investigation, to its superiors outside STF. Else, there was no occasion to give the Press Release mentioning about the facts emerging from the documents available with the STF, to assert that the earlier news item published was false and misleading. The argument though attractive at the first blush, on deeper scrutiny, does not indicate that the documents collated by STF during the investigation of PMT - VYAPAM examination scam cases or for that matter selection examination of Samvida Shala Shikshak - were made available to the superiors in Police Headquarter or to the PRO of Police, who issued the Press Release. So long as the information

shared was limited to the description or availability of the document and not substance of the investigation, the efficacy and impartiality of investigation of those cases cannot be doubted. Similarly, the Press Release, Annexure R/5 to the Return, is in response to the news item in the Print as well as Electronic Media about the recommendation made by RSS Chief

- Shri K. Sudarshan and Shri Suresh Soni. This news item and the Press Release was concerning the selection process of Food Inspectors - 2012, registered as Crime No.15/2013. The charge- sheet in the said case has already been submitted on 20th March, 2014. As a result, even this Press release cannot be made the basis to question the fairness, independence and impartiality of investigation by STF in relation to PMT - VYAPAM examination scam cases, which are being monitored by this Court. As and when the investigation done by STF in those cases is questioned, that will have to be dealt with appropriately. Suffice it to observe that this document or the circumstances emanating from this document, by no stretch of imagination, can be the basis to assume or for that matter entertain a reasonable apprehension that the investigation by STF of PMT - VYAPAM examination scam cases is tainted, impartial or not independent. It is also not possible to persuade ourselves to accept the apprehension of the petitioner(s) that STF was sharing vital information concerning the investigation of PMT - VYAPAM examination scam cases to superiors in Police Headquarter/Home Department, so as to protect high Government officials or Heads of the State.

62. Shri Tulsi then invited our attention to paragraph 25(d) of the return to contend that STF was under the Wings of the State and was accountable to superiors in Police Headquarter and Home Department. Similar argument has been considered by the earlier Division Bench and negatived in paragraph 19 onwards and, in particular, paragraph 44 of the decision dated 16th April, 2014. The Court opined that the fact that STF is one of the wing of the State Government, does not mean that it will not investigate the cases independently and impartially or will act on the instructions from higher-ups outside STF. Further, even CBI was under control of the Union of India and not an independent or autonomous Agency as such. So long as no allegation is made about the inertia of any STF official, or of

having acted under political influence and taking instructions from higher Authorities, it is too much to argue that STF will not do its job well, as per law, especially when it is manned by high ranking experienced IPS Officers and by far known to be independent. Shri Tulsi had placed reliance on the dictum of the Supreme Court in paragraph 29 and 30 in Shahid Balwa's case (supra). Those observations have been made in the fact situation of that case. Moreover, the doubts raised in the previous Public Interest Litigations about the impartiality and integrity of the STF has been considered threadbare and came to be negated. The petitioners in the present set of petitions have not been able to point out any acts of commission and omission of the officers of STF, that would raise doubt about their impartiality in investigation of PMT VYAPAM examination scam cases. For the same reason, reliance placed on the dictum of the Apex Court in the case of Vineet Narain (supra) will be of no avail.

63. Relying on the averments in paragraph 50 of the Return, it was contended that it does not lie in the mouth of the STF to disown its acts of commission and omission of having shared the details of investigation to higher-ups and, in particular, to PRO of Police Headquarter, inasmuch as, the common return filed by the respondents asserts that the Press Release was necessitated due to unwanted hype created by Print/Electronic media regarding the involvement of Shri Sudarshan and Shri Soni. We have already dealt with this aspect in the earlier part of this judgment and hence do not deem it necessary to dilate any further. For, the said news item and the Press Release pertain to cases other than PMT - VYAPAM examination scam cases and also because none of these Press Releases disclose the details or substance of the investigation or give slightest of impression about sharing of the contents of investigation by the STF to other Authorities outside STF. It is one thing to mention about the material fact unravelled during the investigation, but, mere disclosure about the possession of the document as denial of the press news - (referred to as missing from STF investigation record in the Press news), by itself, does not mean that the line of investigation or that the contents of the material evidence gathered by STF have been shared. Nor does it follow that the STF has completely ruled out the naming of persons mentioned in the document, until filing of final charge sheet in those cases in the concerned court. If the Press Releases were to give any further

justification or details of the investigation, that would have been objectionable. Moreover, that would be relevant to the investigation of those cases and not to PMT - VYAPAM examination scam cases.

64. Relying on paragraph 52 of the common return, it was argued that appearance of one Additional Advocate General for all the wings of the State, namely, State Government, Home Department, STF and VYAPAM was impermissible, inasmuch as, there was intrinsic conflict of interest between their stand and, at least, in relation to the factum of independence of investigation of those cases by STF.

65. Before dealing with the submission with regard to conflict of interest, we deem it apposite to refer to the expression 'conflict of interest' as understood in common parlance. The term 'conflict of interest' is used in connection with public officials and fiduciaries and their relationship to matters of private interest or gain to them. A conflict of interest arises when a government employee's personal or financial interest conflicts or appears to conflict with his official responsibility. [See Black's Law Dictionary - Sixth Edition; and Advanced Law Lexicon by P. Ramanatha Aiyar - 3rd Edition Reprint 2007].

66. On closer scrutiny of the stand of the respondents, we find merit in the argument of Shri L. Nageshwar Rao, Additional Solicitor General that appearance of common Advocate for all the wings of the State in no way affects the merits of the investigation done by STF or its impartiality and independence. It would have been a different matter if the same Advocate were to appear for the accused as well as the complainant. In all the PMT cases, the complainant is either STF or VYAPAM itself. There is no conflict of interest between them. As a matter of fact, both VYAPAM as well as the concerned Departments of the State are taking appropriate action against the officials of the concerned wing of the State involved in the commission of the alleged crime. The erring officials - be they howsoever high - are being prosecuted by STF as well as are being proceeded by the concerned Departments of the State by way of departmental enquiry and action of dismissal. There is nothing to even remotely suggest that officials of STF had passed on any benefit to any official of VYAPAM or any other Department of the State. On the contrary, the material shows that STF has proceeded against one

and all - be he the high Government official or person in public life. Accordingly, we find no merit in the submission that STF is not properly insulated, which, in turn, is affecting its independence in any manner. Shri Tulsi, no doubt, concluded with the submission that the DGP whose statement has been mentioned in the Press Release be called upon to file affidavit to state whether STF gave him access to the record of investigation of the subject crimes or that he has not seen the same. However, as noted earlier, the statement of the DGP in the Press Release is concerning offences other than PMT - VYAPAM examination scam cases, which are not the subject matter of monitoring by this Court. As a result, we have no intention to expand the scope of enquiry about those matters in the present petitions, being a non-issue.

67. That takes us to the argument of Ms. Indira Jaisingh. According to her, consent for enquiry by CBI in connection with the death of Dr. D.K. Sakalle given by the State was only a farce. Such consent could not have been given without issuance of a Notification under Section 6 of the Delhi Police Act. This argument has been rightly refuted by the learned counsel for the Respondents relying on the exposition in the case of Balkrishna Reddy (supra). Section 6 of the Delhi Police Act, 1946, which speaks of consent of the State Government neither refers to Notification nor order. Therefore, Notification under Section 6 of the Act is not required to be issued for grant of consent by the State Government under the Act. We have already dealt with the circumstances in which that consent was given. Ms Jaisingh had invited our attention to the other part of the same judgment, which, however, does not take the matter any further for deciding the argument under consideration. In that, issuance of a Notification under Section 6 of the Act is not envisaged for entrusting the investigation to CBI on the basis of consent given by the State Government. Accordingly, the point under consideration deserves to be answered against the petitioner.

68. So far as submission of Ms. Indira Jaisingh about intrinsic conflict of interest of different wings of the State, the same deserves to be stated to be rejected as we have accepted the argument of the respondents that there is no conflict of interest amongst the four wings of the State with regard to the subject matter of these petitions.

69. The enquiry that needs to be confined in these petitions is : whether STF was impartially and independently investigating the stated PMT - VYAPAM examination scam cases and not likely to be influenced from any quarter. In the earlier round of Public Interest Litigation, this contention has already been negated and answered in favour of STF with the finding that it is an independent unit created for investigation of specified cases of serious nature having wide ramifications for the State and that the officials of STF are not expected to report to their superiors in the Home Department or the Police Headquarter concerning the contents or details of the investigation done by them. The head of the STF unit is none else, but, a high IPS official of the rank of A.D.G.P. having vast experience and is known for his impartiality and fairness in the investigation. Since there is no conflict of interest qua the subject matter in issue, there is nothing wrong if one Law Officer of the State appears for all the wings of the State. Suffice it to observe that we are not impressed by the submission of merger of personalities of different wings of the State and having propensity to affect the fairness and independence of the Investigating Agency because of filing of common Return or for that matter to be represented by one Law Officer. The fact that one Law Officer has appeared for the different wings of the State, does not necessarily lead to a presumption, in fact or in law, that he would share the vital information pertaining to investigation of the stated cases to persons from other Department. This apprehension is founded on a figment of imagination of the petitioner(s), without any tangible basis therefor. If the petitioners are able to substantiate commission of such misconduct by the Advocate concerned, must approach the proper forum. Inasmuch as, the factum of professional misconduct by any Advocate can be made subject matter of an enquiry before the Bar Council, which has the exclusive prerogative in that behalf.

70. In our opinion, there is nothing in law that can prevent the Law Officer from appearing for different parties in the same proceedings, which according to his wisdom, has no conflict of interest. Reliance has been justly placed on paragraph 100 in the case of Deepak Agarwal (supra), which reads thus :

"100. An advocate has a two-fold duty: (1) to protect the interest of his client and pursue the case briefed to him with the best of his ability, and (2) as an officer of the Court. Whether full-time employment creates any conflict of duty or interest for

a Public Prosecutor/Assistant Public Prosecutor? We do not think so. As noticed above, and that has been consistently stated by this Court, a Public Prosecutor is not a mouth- piece of the investigating agency. In our opinion, even though Public Prosecutor/Assistant Public Prosecutor is in full-time employ with the government and is subject to disciplinary control of the employer, but once he appears in the court for conduct of a case or prosecution, he is guided by the norms consistent with the interest of justice. His acts always remain to serve and protect the public interest. He has to discharge his functions fairly, objectively and within the framework of the legal provisions. It may, therefore, not be correct to say that an Assistant Public Prosecutor is not an officer of the court. The view in Samarendra Das to the extent it holds that an Assistant Public Prosecutor is not an officer of the Court is not a correct view."

71. Speaking about Shri P.K. Kaurav, we have observed his performance whilst he was defending the STF for opposing grant or non-grant of anticipatory bail or regular bail to the concerned accused named in the criminal cases - investigation whereof is being monitored by this Court. Not only that, he has been appearing for VYAPAM as well as the State in all the cases where VYAPAM had taken action against the candidates, who are incidentally named as accused by the STF. The assistance given by him in all those cases has been of high order. Not even once, it appeared to us that he had mixed up the causes of different wings of the State. It is very easy for the petitioners to raise a bogey - merely on the basis of their apprehension, but, accepting such unsubstantiated and flimsy plea would, inevitably, entail in recording a finding of that Advocate having committed professional misconduct, which is not within our domain and which we must eschew.

72. Since, we have had the occasion to observe the performance of Shri Kaurav on regular basis in series of petitions/applications arising from PMT - VYAPAM examination scam cases, almost on daily basis, since the matters have reached this Court, appearing jointly or separately for one wing or the other, we do not find any merit in the argument under consideration. For the same reason, the argument of Ms. Indira Jaisingh that, in public interest, this Court ought to appoint an independent Public Prosecutor to represent STF in this proceedings for

monitoring the investigation of STF in the stated cases, does not commend to us. The prayer is not to appoint Public Prosecutor to represent STF during the trial. Even that prayer cannot be examined behind the back of already appointed Public Prosecutor(s) in the respective 55 cases. The scope of monitoring of investigation cannot be enlarged in this behalf, unless we were to record a finding that the trials are not being properly handled by the existing Public Prosecutor(s) in the respective criminal cases.

73. We, however, appreciate the fair stand taken by Ms. Indira Jaisingh that she is not opposed to in camera monitoring of the investigation by the Court, if the situation so warrants. If the monitoring involves scrutiny of the substance of the investigation, it must necessarily be in camera. But otherwise, it must be in open Court. We have no difficulty in accepting this submission. But, as aforesaid, for the last few dates noted earlier, this Bench has been analyzing the quality of investigation already done by the STF, which, most of the times, involved discussion about the substance of the investigation. To avoid disclosure of those matters in open Court, the hearing was conducted in camera, in Chamber. Henceforth, if the enquiry in the process of monitoring is of a general nature, we can always take up the matter in open Court. Notably, even though in camera monitoring of investigation was resorted to in the past, the order-sheets of the concerned date, mentions about the presence of the officers of STF and the documents produced by them. That fact is already in public domain and placed on the official website of the High Court. It is evident from the said order-sheets that the monitoring in Chamber was done for sufficiently long time on case to case basis, spread over for almost over or about two hours on the given dates. As aforesaid, we have no difficulty in following the same method and as suggested by Ms. Indira Jaisingh.

74. Ms. Indira Jaisingh then relying on the common affidavit filed by the different wings of the State, contended that their entities have merged even though they have conflict of interest. We have already dealt with this contention, which was also raised by Shri Tulsi and negatived the same. It was also argued that from the reply-affidavit filed by VYAPAM in Writ Petition No.15404/2013, it is noticed that VYAPAM had taken a stand on merits regarding the scam and about the matters

which were engaging the attention of the Court concerning those crimes notwithstanding the fact that officials of VYAPAM were under scanner and their activities were being investigated by STF. This argument would have been relevant in the earlier round of writ petitions, which were disposed of by common judgment dated 16th April, 2014. Secondly, it is in ignorance of the fact that the said affidavit of VYAPAM was not filed by any of the officials of VYAPAM, who are under investigation. On the other hand, the stand of VYAPAM, plainly, was that as the unholy activities have been unearthed indicating involvement of its officials, it would proceed against those officials, in accordance with law. It is, therefore, wrong to contend that VYAPAM had hostile interest or had defended STF on any question of investigation done by STF. To put it differently, there was no conflict of interest between VYAPAM and STF on matters concerning investigation of the offences under monitoring. For the same reason, we reject the argument that filing of such common affidavit by different wings of the State entailed in interference with administration of justice. We also reject the argument that the Investigation Agency (STF) had disclosed any vital information about the contents or substance of the investigation to any other Authority outside STF or was taking instructions from them in connection with the investigation of the stated cases.

75. The next argument of Ms. Indira Jaisingh, is that, the Court on the earlier occasion should not have disposed of the Public Interest Litigations filed by the private persons. In our opinion, if this argument is entertained it would inevitably result in undertaking review of the said decision, which is not the scope of the present proceedings. Except this, nothing more is required to be observed. In any case, disposal of those petitions has not come in the way of the present petitioners to file fresh petitions and, more so, when the same have been entertained to the limited extent of considering the subsequent developments and actions of STF.

76. The argument that no other party was appearing in the suo motu proceeding except the official respondents and that those respondents have common interests also, does not commend to us. For, in the suo motu proceedings, the limited issue is about monitoring of the investigation by STF of the stated PMT - VYAPAM examination scam criminal cases. In that context, only the State of Madhya Pradesh and STF would be relevant parties. Indeed, STF is one of the wing of the

State, but, as observed earlier, is a separate unit in the Home Department of the State and, more particularly, the investigation of the stated cases have been completely insulated and progressing in right direction. Going by the criminal jurisprudence, ordinarily, after registration of offences until filing of the charge-sheet/police report (under Section 173 of the Code), the Investigating Officer is in complete control and it is his wisdom, which guides him to investigate the matter. Along with the charge-sheet, the Investigating Officer has to place on record complete material collated by him during the investigation. The Court after perusal of the charge-sheet and the accompanying record, can call upon the Investigating Officer to explore further investigation on certain matters, which it may deem appropriate. Further, during the trial, the Court has ample power to issue direction to examine someone as court witness as also to proceed against any person, who is found to be involved in the commission of the crime tried by it, if the evidence brought on record discloses that fact.

77. Suffice it to observe that the scope of monitoring of investigation by Court is very limited to surveillance. It is to ensure that the Investigating Agency conducts the investigation in a free, fair and time bound manner without any external interference. Thus understood, non-presence of any other party, much less public spirited person in such proceeding would make no difference nor can it be said to be inappropriate. The third party such as the petitioners before this Court, no doubt, can always bring certain vital facts to the notice of the Court to throw light on the laxity or inertia in the investigation or for that matter facts revealing investigation being controlled by external forces. Indubitably, there is no legal provision, at least brought to our notice, which mandates appointment of an *amicus curiae* to assist the Court for monitoring of the investigation. The monitoring of investigation by the Court, in itself, is an exceptional situation. If the Court takes the responsibility of monitoring and finds it difficult in discharging that role, certainly it is open to the Court to appoint an Advocate of eminence as *amicus curiae* to assist the Court at any stage. That will be a matter of prudence.

78. The next argument canvassed by Ms. Indira Jaisingh that suo motu proceedings should be heard in open Court, has already been answered in the earlier part of this judgment. Inasmuch as, the suo motu proceedings were initially

heard in open Court, but, when the Court found that without proper analysis of the material already gathered by the Investigating Agency, the monitoring of the investigation may be futile and that the analysis of the evidence in open Court would have, inevitably, entailed in discussion of the nature and the substance of the material so collected, it was deemed appropriate to opt for in camera hearing. Even Ms. Indira Jaisingh, in her usual fairness, concedes that if it is a matter involving discussion of the substance of the material collected by the Investigating Agency, it may not be appropriate to discuss it in open Court hearing; and to avoid revelation of such material, which may give advantage to the accused sooner or later, in camera hearing may be most suited.

79. Ms Indira Jaisingh had also relied on the decision of the Supreme Court in the case of Subrata Chattoraj (supra), in particular, para 31 therein. The observations in the said reported decision are in the backdrop of the fact situation of that case inter alia involving inter State ramifications. Hence, this decision will be of no avail. For, in these cases, we have already negated the apprehensions of the petitioners about the possibility of laxity or impartiality in the investigation by STF, for the reasons already noted hitherto.

80. Ms. Indira Jaisingh then contended that the Court should not have gagged the media from publishing the proceedings. As the PIL's filed by the private parties are now being finally disposed of, it is a non-issue. We, therefore, refrain from examining the same except to observe that the order passed was to desist from publication "of the deliberations in the Court Room" on the given dates and nothing more. Therefore, it is not necessary for us to dilate any further on the exposition in the cases of Sahara India Real Estate Corporation Limited (supra) and Asharam Bapu (supra).

81. A priori, we reject the submissions of Ms. Indira Jaisingh to transfer the investigation of the stated PMT - VYAPAM examination scam cases to CBI, and to appoint Special Public Prosecutor to represent STF or to direct the STF to appoint another Advocate to espouse its cause instead of the Law Officer of the State. We may, however, accede to her submission that the Court should continue to monitor the investigation of those cases. For the reasons already recorded, as of now, we

do not deem it necessary to appoint amicus curiae to assist the Court during such monitoring. Similarly, her submission that the hearing of suo motu proceedings should be in open court as held earlier, would depend on the matters to be considered in the process of monitoring of the investigation by the Court and not necessarily in open Court. We also do not accept her submission that the present PIL's filed by the private parties should be kept pending. In our opinion, there is no reason to multiply the proceedings for the same cause. Moreover, keeping these set of petitions pending, will be inviting further distraction to the process of monitoring of investigation by the Court. That would be antithesis to public interest and would impair the objective of monitoring. Inasmuch as, due to the objections taken by these petitioners, that suo motu proceedings should not be heard in Chamber and to injunct Mr. Kaurav from appearing for STF, the monitoring of the cases has virtually been in suspended animation from 12/09/2014. In the later part of the judgment, however, we would provide for a mechanism, which can assuage the apprehensions of these petitioners and persons similarly situated.

82. That takes us to the argument of Shri Tankha, Senior Advocate, who had relied on three notes prepared by him with the assistance of his colleagues on the basis of information culled out from the charge-sheets filed in the concerned criminal cases by STF. He pointed out that there were discrepancies in the investigation. According to him, the material reveals that the name of the Minister was not mentioned in the excel-sheet, but, the STF did not investigate that aspect and, more particularly, made no attempt to ascertain the name of the Minister. He then pointed out that although the name of Ms. Uma Bharti appears in the material filed along with the charge-sheet, however, she has not been named as an accused in any criminal case investigated by STF. Further, the Investigating Agency was adopting a policy of pick and choose by naming some of the candidates as accused and some as witnesses. Those who spoke about the facts convenient to STF, were made witnesses and those who named heavyweights as being party to the conspiracy, have been named as an accused.

83. To re-assure ourselves, we called for explanation from STF on those facts in sealed cover. Suffice it to observe that the explanation offered by STF in sealed cover for the perusal of the Court not only refutes the above noted points raised by

the petitioners, but, also gives sufficient reason to justify the charge-sheet as filed by the Investigating Agency. We do not deem it appropriate to disclose the said explanation in this judgment, which has been handed over in a sealed cover to us by the STF. For, any observation in that behalf may affect the fair trial of those cases. As is noted earlier, the legal position is well established that the Investigating Agency is obliged to place the entire material - be it for or against the prosecution - as has been collected during the investigation of the case along with the police report/charge sheet. Further, it is then open to the Trial Court to summon any person as court witness or to be named as an accused on the basis of the evidence that comes on record during the trial. Besides this, we do not deem it appropriate to make any further observation at this stage. We, however, restate the opinion already recorded that, as of now, we do not find any inertia or inaction on the part of the Investigating Agency in investigation of the stated PMT - VYAPAM examination scam criminal cases. Rather, we find that the investigation of these cases, assigned to STF, are proceeding in right direction and in a fair, impartial and independent manner. Therefore, reliance placed on the dictum of Vineet Narain (supra) is of no assistance to the petitioners, in the fact situation of these cases.

84. Shri Tankha referring to the fact that VYAPAM had furnished information to STF in only two days' time after receiving the requisition from STF, notwithstanding the fact that the material to be analyzed by VYAPAM was humongous task. We are not impressed even by this argument. In the first place, that argument was available in the first round of Public Interest Litigation and, in fact, has been dealt with in the said judgment. Secondly, the information furnished by VYAPAM was based on computer generated data analyzed by the technical experts of VYAPAM, which could be generated by few computer commands. Thirdly, the investigation by STF is in respect of all the relevant matters and not limited to the information furnished by VYAPAM, though the same was found to be relevant information. In any case, the credibility of the Investigating Agency (STF) is not shaken in any manner because of receiving such information from VYAPAM.

85. The next argument advanced by Shri Tankha, that the Court should continue to monitor the investigation has already been dealt with. Similarly, his argument

that the Court should appoint Special Public Prosecutor and Advocate of eminence as amicus curiae to assist the Court during the monitoring, has also been answered by us in the negative while dealing with the submission of Ms. Indira Jaisingh.

86. Reverting to the argument of Shri Rajendra Tiwari, Senior Counsel, who had additionally referred to paragraph 49 of the common return to contend that the affirmation clause of the return is not proper. We have already observed that the same is a curable defect and the affiant can be asked to swear a proper affirmation clause. We have also rejected the argument that the common return filed discloses that the different wings of the State are hand-in-glove or that it could not have filed such common return in view of the conflict of interest. His argument that there is no mention in the affidavit that the same was being filed in consultation with all the wings of the State, in our opinion, contradicts the argument that a common return could not have been filed on behalf of different wings of the State. As noted earlier, the return has been sworn by Ashish Khare, AIG, ATF, Bhopal and OIC in his capacity as official of STF. That return, cannot be discarded whilst examining the question as to whether the investigation of STF is free, fair, impartial and without pressure from Authorities outside STF. It would have been a different matter, if the common return was filed by official(s) from other Department. That could have given rise to an inference that vital details collected during the investigation have been divulged or shared with the said official(s).

87. As regards, FIR in Crime No.20/2013, which refers to the involvement of Ms Uma Bharti without naming her as an accused, we have already noted that the said offence pertains to Samvida Shala Shikshak and has nothing to do with the PMT - VYAPAM examination scam cases, which are being investigated by STF and are subject matter of monitoring by the Court. Needless to observe that the Investigation Agency is obliged to proceed against all persons found to be involved in the commission of the said offence. Further, the Court dealing with the said criminal cases will be in a position to analyze the material submitted by the Investigating Officer along with the police report and proceed against all concerned found to be involved in the commission of the said offence. Besides

this, nothing more is required to be observed.

88. The argument of Shri Tiwari that PMT -VYAPAM examination scam cases have inter State ramifications, also does not commend to us. The fact that some of the scorers/impersonators were brought from other States, does not make it a case of inter State ramifications. The offence has been planned and executed within the State of Madhya Pradesh. The main accused are officials of VYAPAM. The manipulation of official record was done by the officials of VYAPAM. The racketeers and even middlemen, who arranged for the scorers/impersonators were, essentially, from Madhya Pradesh. The question is : whether STF is capable of investigating the crime in which scorers and impersonators from other States have also participated. We have no hesitation in taking the view that STF is in a position to investigate even that aspect of the crime and, in fact, have succeeded in arresting large number of scorers/impersonators and for that matter middlemen from other States also. Understood thus, the question of entrusting the investigation to CBI on this argument does not arise; and, more so, on the finding that the investigation done so far by STF of the stated offences has been free, fair and impartial. It would have been a different matter if STF was not in a position to proceed at all against the scorers/impersonators coming from other States. Hence, there is no substance even in this submission.

89. The next argument of Shri Tiwari founded on Annexure P/5 (in Writ Petition No.12431/2014) that a clean chit has been given to Shri Sudarshan reflects on the impartiality of STF, clearly overlooks that Shri Sudarshan has not been named either as an accused or a witness in any of the criminal case arising out of PMT VYAPAM examination scam, but, it pertains to some other offence, which is not the subject matter of monitoring by this Court. Similarly, the argument about the involvement of someone from the Chief Minister's official residence will be of no avail to criminal cases arising out of PMT VYAPAM examination scam. We have already dealt with these aspects quite elaborately in the earlier part of this judgment. Suffice it to observe that the apprehensions expressed by the petitioner(s) represented by Shri Tiwari, Senior Counsel, are based on miscommunication and misunderstanding of the issues relevant to ascertain whether the investigation done by STF in relation to PMT - VYAPAM examination

scam matters is free, fair and impartial.

90. That takes us to the argument of Shri Siddhartha Seth, who reiterated his argument as was canvassed by him in the earlier round of Public Interest Litigation, about the *parens patriae* obligation of the State and about public outcry due to the scam and the disillusionment of the common man. That argument has already been considered and rejected in the earlier judgment. The petitioner for whom he is appearing has not pointed out any specific subsequent development, which can mar the credibility of the STF. Hence, no further elaboration is necessary.

91. As regards the argument of Shri Manish Verma that there was possibility of cut off higher marks for the open category having been manipulated and that has not been investigated, also does not commend to us. For, if any such clue is revealed during the investigation, the STF will be obliged to investigate even that aspect thoroughly. Suffice it to observe that until filing of the final charge sheet in all the PMT VYAPAM examination scam cases, entertaining such grievance is premature.

92. Having dealt with each of the arguments raised by the counsel for the respective petitioner(s), we may now examine the scope of enquiry in the present set of writ petitions. As aforesaid, the question regarding the integrity and credibility of the investigation by STF will have to be tested on the basis of subsequent developments after the judgment in the first round of Public Interest Litigations. We have already dealt with each of those points raised by the concerned petitioner(s) and found it to be flimsy, baseless, untenable and replete with misinformation, if not disinformation. As a result, there is no reason to depart from the view already expressed by the earlier Division Bench of this Court about the independence of STF and also about the quality of investigation of the stated offences concerning PMT - VYAPAM examination scam by the said Agency. We find that even after the judgment dated 16th April, 2014, investigation by the STF in all the criminal cases and fresh registered cases concerning PMT - VYAPAM examination scam is proceeding in the right direction and is being done in a proper manner. This Court has closely monitored the investigation since the

commencement of suo motu proceedings, and did not find any infirmity, much less of the order to doubt the credibility of the investigation. For the aforementioned reasons, the decision rendered in the case of Narmadabai (supra) has no application to the facts of these cases.

93. We have no hesitation in placing on record that on each date of hearing for monitoring of investigation, the Court had to spend substantial time, almost about or over two hours on every occasion, to understand the progress made on case to case basis. The status reports submitted on every occasion by the concerned officials of STF have already been kept in sealed cover, which testify the amount of labour put in by the Investigation Agency. It has come on record that the Investigation Agency has succeeded in arresting more than 1000 accused since monitoring by Court and the process of arrest of absconding accused is also being pursued in right earnest on case to case basis. Besides the number of arrests, including of all the high Government officials and persons in public life, who were found to be involved in the commission of the said offences, each of them have been proceeded against by STF. The principal accused or the brain behind the conspiracy and most of the racketeers and middlemen have been arrested and put in jail. The bail applications filed by them have been effectively opposed at the level of the Trial Court as well as High Court. We have no hesitation in observing that there is no legal basis to transfer the investigation to another Investigation Agency, and moreso because of the fact that the investigation in each of these 55 criminal cases by STF has reached at an advanced stage. In most of the criminal cases, charge-sheet has since been filed against the concerned accused without committing any default; and in remaining cases further investigation is in progress. The STF has assured this Court that it would ensure that final charge-sheets will be filed almost in all the cases very shortly, except in two cases by March, 2015 because of the complexity of the investigation and involvement of large number of accused in those cases. Notably, the STF after taking over the supervision of 45 cases concerning impersonation registered from year 2000, was able to crack the whip against concerned accused, which cases were not effectively pursued by the local police.

94. In our opinion, as we find that the investigation of criminal cases, arising out of PMT - VYAPAM examination scam, done by STF so far is proceeding in right direction and is being done properly, therefore, at this advanced stage of investigation, it would be against the public interest to transfer the same. However, if some deficiency in the investigation is noticed during the monitoring of the investigation, it is always possible for the STF to take corrective steps and also for the Court to ensure that such issues are addressed by STF in right earnest. That option would be meaningful and in public interest, than the knee jerk reaction of transferring the investigation of all the 55 cases to new Investigation Agency. The latter may give rise to uncertainty, confusion and most importantly delay in bringing the offenders to book and to put them on trial at the earliest.

95. Indubitably, on the basis of some flimsy

apprehensions, which are, essentially, founded on

misinformation, miscommunication and misunderstanding of the real facts and, if we may say so, presented only to confuse and obfuscate the real issues, cannot be the basis to lightly undermine the sincerity, commitment and, more importantly, integrity and credibility of an institution especially created by the State to investigate such serious offences. It would have been a different matter, if the petitioners were able to demonstrate that the officials investigating the stated offences were biased or incompetent. If that case was to be made out, the Court could have passed appropriate order including to keep those officials at bay from STF and with the investigation of these cases. However, it is neither fair nor permissible or in public interest to question the integrity and credibility of the entire organization of STF on unsubstantiated apprehensions, if not unstatable. That approach would be counter productive and inevitably weaken the democratic values. It would entail in creating an environment of mistrust qua this premier organisation/institution of the State. It is cardinal to uphold and respect the integrity of the institution such as STF by one and all and more so by public spirited persons, as it is inextricably linked to democratic values and independent functioning of such institutions. Any attempt to undermine the integrity of the institution must be eschewed. As observed by the Apex Court, public outcry alone

cannot be the basis to transfer the investigation of the criminal cases to another Investigation Agency. But, something more and palpable should be brought to the notice of the Court to issue such a drastic direction.

96. It is noteworthy that Section 39 of the Code of Criminal Procedure, 1973, mandates that every person aware of the commission of or of intention of any other person to commit any offence punishable under the Sections of the Indian Penal Code mentioned therein, shall in absence of any reasonable excuse, forthwith give information to the nearest Magistrate or Police Officer of such commission or intention. Further, non- furnishing of such information without any reasonable excuse is in itself an offence punishable under Section 176 of the Indian Penal Code. A fortiori, it is the duty of the petitioners and similarly placed public spirited persons to report about any infirmity or illegality noticed by them and which is capable of being corrected by the Head of the Institution/Organization such as STF. We have no manner of doubt that if the petitioners had approached the Head of the STF, he would have been able to deal with the points raised by them in an objective manner and, in turn, could have instructed the concerned officials to deal with the matter appropriately. The petitioners, therefore, ought to first share the information available with them concerning any case under the monitoring of this Court or any other case investigated by the STF, to the Head of the STF, if they so desire. We refrain ourselves from observing anything further.

97. Be that as it may, although, we have neither found any infirmity in the investigation nor could discern any laxity or inertia in the investigation by STF in the stated criminal cases, but, keeping in mind the issues raised by the petitioners in the present set of petitions that the Court must appoint Public Prosecutor to espouse the cause of STF and in addition the Court must nominate an amicus curiae to assist the Court in hearing of the suo motu proceedings and further the hearing of suo motu proceedings should be conducted in open Court coupled with the fact that the matter has aroused public interest, we deem it appropriate to provide a dispensation, by creating one more effective level for filtering of information concerning the quantitative and qualitative progress of investigation by STF before the same is brought to the notice of the Court. That would further the cause of free, fair, independent and impartial investigation by STF. For that, we

intend to appoint a broad based Special Investigation Team (SIT), consisting of experienced judicial mind, IPS officer having indepth knowledge of the nuances of the investigation and an experienced I.T. professional - (as the evidence that will be presented in the concerned criminal cases will also be electronic evidence). This team would not only act as a watch dog Committee of the Court, but, would also be in a position to filter the information and inputs that would come to its knowledge through different sources and found to be relevant for ensuring free, fair and impartial investigation by STF. This team will also be entrusted with the task of overall supervision of the investigation of criminal cases concerning PMT - VYAPAM examination scam assigned to STF, on case to case basis. It may be open to this Team to give instructions to the Head of the STF concerning the investigation of the stated offences and to ensure that those instructions are carried out in right earnest. All future representations or information concerning the investigation of the stated offences, by any interested person, hereafter, will have to be first addressed to the Chairman of the Special Investigation Team. The Team after processing the said information, within a reasonable time after its receipt, may issue instructions to the Head of the STF and call upon him to submit compliance report within specified time. On failure to comply with such instructions, SIT may forward a report of the Chairman, bringing it to the notice of the Court, forthwith. Under this arrangement the petitioners or any other interested person, hereafter, will be free to submit their representations /information to the Chairman of the SIT and on receipt thereof, the SIT may compile such information and submit the same to the Court with its remarks and action taken thereon.

98. For assisting the SIT to present its case before the Court, it would be open to it to appoint an Advocate of its choice. The State Government shall be obliged to provide for the logistical support to the SIT appointed in terms of this order and shall also be responsible for the emoluments and expenses (including the expenses and professional fees of the Advocate to be appointed by SIT), to be paid to the members of SIT. We are of the considered opinion that such arrangement would not only create one more level for monitoring the investigation of stated cases by STF, but, it would also assuage the apprehensions or, if we may say so, the mis-apprehensions of the petitioners and similarly placed persons about the impartiality of the investigation by STF. If this dispensation is put in

place, the argument of the petitioners that the Court must appoint amicus curiae to assist the Court or for that matter issue direction to the STF to engage its own Public Prosecutor to espouse the cause of STF or the objection to the appearance of one Law Officer for all the wings of the State, will stand redressed.

99. Accordingly, we proceed to pass the following common order in these petitions:

1. Writ Petition Nos. 11695/2014 (PIL); 12196/2014 (PIL);

12386/2014 (PIL);12392/2014 (PIL);12431/2014 (PIL);

13475/2014 (PIL); and 13868/2014 (PIL) are disposed of with the above observations with no order as to costs.

2. Suo motu proceedings shall continue. However, the same be now listed on 7th November, 2014, in Open Court for nominating the members of SIT and for determining their emoluments.

3. We hereby appoint a broad based Special Investigation Team (SIT) consisting of (a) former High Court Judge as Chairman of SIT; (b) former IPS Officer not below the rank of Additional Director General of Police having indepth experience of investigation; and (c) former experienced I.T. professional.

4. The Special Investigation Team is appointed to supervise the investigation of all criminal cases concerning PMT - VYAPAM examination scam entrusted to STF, on case to case basis. Further, the SIT can issue instructions to the Head of the Special Task Force concerning the investigation of those cases, if any, with further instructions to file compliance report within the time frame specified by it. For any reason, STF fails to comply with those instructions within the given time frame, that fact may be brought to the notice of the Court by the Chairman of the SIT through his report submitted in a sealed cover.

5. Any information or representation regarding the investigation of the stated criminal cases entrusted to STF, by any interested person, hereafter, shall be submitted to the Chairman of the SIT, who, after due scrutiny thereof, may take

necessary follow up action and including issue instructions to the Head of the STF in that behalf. The representation/information received between the two dates of hearing of the suo motu proceedings before this Court, be compiled and presented by the Chairman of the SIT with his remarks and follow-up action, if any, in a sealed cover. In other words, no further communication, representation, Public Interest Litigation, application or writ petition can be filed or will be entertained by the Court concerning the investigation of PMT VYAPAM examination scam criminal cases assigned to STF (save and except involving issues of violation and infringement of fundamental rights of any person), unless routed through SIT.

6. The State Government is directed to, forthwith, provide complete logistical support to SIT and shall also be liable to pay all the expenses and including professional fees of the Advocate of SIT and emoluments of the Members of the SIT as and when due and payable, to be determined on the next date of hearing of suo motu petition. The Chief Secretary and the Secretary, Home Department, Government of Madhya Pradesh shall be personally responsible to ensure compliance of these directions in its letter and spirit.

7. The State Government is directed to ensure that none of the officials of STF, who are investigating the stated criminal cases, which are being monitored by this Court, should be transferred from STF Unit to any other Department/Organization or shall be entrusted with any other additional work other than investigation of the criminal cases entrusted to STF, without prior permission of this Court.

8. We further direct that no official of STF shall take instructions from any other Authority outside the STF nor shall divulge any information directly or indirectly or share the material collected during the investigation of the stated crimes to any third party or other Government official or higher ups outside the STF, without prior permission of this Court.

9. The STF officials investigating the concerned offences under monitoring of this Court, shall ensure that entire material collected during the investigation - be it in favour of or against the prosecution - be made part of the charge sheet/police report to be filed before the concerned court unless the confidentiality and privilege is claimed in respect of any confidential document. If such confidentiality and

privilege is claimed in respect of any official document and for which reason the same has not been made part of the charge-sheet, that fact should be contemporaneously brought to the notice of this Court in sealed cover whilst filing the charge-sheet in the concerned court.

10. The State Government is further directed to ensure that if STF unit requires any expansion because of the increase in workload, timely decision on such proposal/request, after receiving it from STF, should be taken, in any case not later than two weeks from its receipt. In case it is not possible to do so, the Chief Secretary of the State must move a formal application giving justification for the delay or refusal to accede to the request so made within one week thereafter. The Chief Secretary shall be personally responsible to ensure strict compliance of this direction. For ensuring timely compliance, STF must mark one copy of the requisition to the Chief Secretary in addition, for information and necessary action, contemporaneously whilst sending it to the concerned Department.

11. We further direct STF to record the statements of each of the writ petitioner(s), who are interested in getting their statement recorded with regard to the stated cases, which are being investigated by the STF and whose writ petitions have been disposed of by this common judgment; or any other person interested in recording his statement concerning the investigation of the stated PMT examination scam criminal cases and such statement should be made part of the charge-sheet/police report to be filed before the concerned court. Further, any relevant information disclosed in such statement must be thoroughly investigated and that should be made part of the charge-sheet/police report.

12. We further direct the Head of the STF to cause to keep close watch on print and electronic media reports, in particular, mentioning about the deficiencies in the investigation of the stated criminal cases and to take immediate steps in that regard including by recording statement of the persons responsible for dissemination of such news item. If the information divulged is found to be relevant, the Head of the STF must issue necessary instructions to the Investigating Officer to investigate the same and to be made as part of the charge-sheet.

13. The explanatory note handed over by Mr. Nageshwar Rao, Additional Solicitor General is ordered to be kept in a sealed cover bearing the date of this order, in suo motu proceedings.

14. The abovesaid directions have been issued in suo motu proceedings, bearing Writ Petition No.6385/2014, which is kept pending and will be heard separately on 7th November, 2014.

15. In case of any urgency or difficulty in complying with any direction given in terms of this order or any further direction to be given in pending suo motu proceedings, the Chairman of SIT or the Head of STF is free to approach this Court for appropriate direction.

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