

A.K.Viswanathan ... Vs. the State of Tamil Nadu, and ors.

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Court : Chennai

Decided On : Jul-12-2010

Judge : V.Dhanapalan, J.

Acts : Constitution Of India - Article 226

Appeal No. : WRIT PETITION No.9077 of 2010

Appellant : A.K.Viswanathan ...

Respondent : The State of Tamil Nadu, and ors.

Advocate for Def. : Mr.P.S.Raman, Adv.

Advocate for Pet/Ap. : Mr.V.Selvaraj, Adv.

Judgement :

1. What is sought for in this Writ Petition is a mandamus, forbearing respondents 4 and 5 from conducting any enquiry against the petitioner based upon the decision said to have been taken on 28.08.2009 by respondents 1 to 3.

2. According to the petitioner, he was selected by the Union Public Service Commission for appointment as an IPS Officer and was allotted to Tamil Nadu Cadre; he is holding the position of Inspector General of Police; during February,2009, he was working as Additional Commissioner of Police, (Law and Order), Chennai City; on the orders of Mr.Radhakrishnan, the then Commissioner of Police, he came to High Court on the forenoon of 19.02.2009 to oversee the

security arrangements in the High Court apropos the appearance of Dr.Subramaniam Swamy before the High Court; at about 14.45 hrs., the then Commissioner of Police called him over phone and directed him to go to B2 Esplanade Police Station and monitor the surrender of advocates connected in Crime No.13/09 on the file of B4 High Court Police Station; he has nothing to do with the planning and execution of the situation arising out of the said crime; there was firing of tear gas shells and lathi charge; the Hon'ble High Court initiated Suo Motu W.P.No.3335/2009 apropos the incidents in the Court campus on 19.02.2009; on the direction of High Court to submit the names of the officers who ordered the entry of police into the High Court campus and ordered lathi charge, Mr.Radhakrishnan filed a false and malicious report dated 18.03.2009, stating that the officers at the spot including him (the petitioner) took a collective decision to disperse the mob using force; it is totally a false report; on the basis of the said report, this High Court, by an order dated 18.03.2009, ordered his suspension from service; thereafter, he filed a Special Leave Petition (Civil) No.7540 of 2009 before the Hon'ble Supreme Court and the order of this High Court ordering his suspension was not given effect to; Mr.Radhakrishnan, the then Commissioner of Police alone was responsible for the incidents in the High Court campus and there were attempts to persuade him not to contradict the report of Mr.Radhakrishnan.

3. While so, on 28.08.2009, a committee consisting of the Chief Secretary, Home Secretary and the Vigilance Commissioner had ordered a vigilance enquiry against him, which he came to know only through newspapers; he has not been given a copy of the order; the Deputy Superintendent of Police, Vigilance and Anti-Corruption, met him and served a questionnaire, for which, he gave a reply to fifth respondent on 09.12.2009; on 18.01.2010, he received a letter from fifth respondent stating that Executive Engineer, PWD, Chennai, would evaluate his house and he asked for a copy of the report of the PWD Engineer, who evaluated his house, which is not furnished to him.

4. It is also the case of the petitioner that he is an IPS Officer governed by the All India Services Act and the rules framed thereunder; the enquiry conducted by respondents 4 and 5 against him is not based upon any legal authority; subjecting All India Service Officers to such illegal enquiries results in the administration

being paralysed; he was subjected to an illegal enquiry on account of his stand in *Suo Motu W.P.No.3355 of 2009* and the connected writ petitions and *Suo Motu Contempt Petition No.1278 of 2009* and hence he filed this Writ Petition.

5. Respondents have filed a counter affidavit, stating that the writ petition is not maintainable and the petitioner ought to have approached the Central Administrative Tribunal; based on the preliminary report of the appropriate enquiry authority, as *prima facie* materials were available, a detailed enquiry by the Directorate of Vigilance and Anti-corruption was ordered to be conducted against the petitioner, for accumulation of disproportionate assets to his known sources of income; in respect of any enquiry by the Directorate of Vigilance and Anti-Corruption and in the matter relating to any offence under criminal law, the State Government is well within its jurisdiction to order any enquiry; the requirement to obtain sanction arises only on or before any prosecution is launched by filing a charge memo and that the petitioner, who belongs to All India Service, cannot claim any immunity from any enquiry by the Directorate of Vigilance and Anti-Corruption, when *prima facie* materials are available which establish possession of assets disproportionate to his known sources of income.

6. It is also stated in the counter that the enquiry now ordered is only a fact finding enquiry on the basis of complaints received and materials available with the Government; the committee is constituted as a safeguard and filter against officers of the All India Services from being harassed by allegations; the enquiry is only to ascertain whether any *prima facie* case is made out against the petitioner so as to proceed further and, therefore, the writ petition is premature and misconceived and the same is liable to be dismissed.

7. The contentions of the learned counsel for the petitioner are as under :

(i)By virtue of Entry 70 of List I- Union List of the VII Schedule to the Constitution of India, the Parliament alone has legislative competence in respect of All India Services.

(ii)The All India Services Act, the rules framed thereunder and the Public Servants Inquiries Act alone are applicable to All India Service Officers and the

Administrative orders, if any, supplementing the All India Services Act and the rules framed thereunder can be issued only by the Central Government under Article 73 of the Constitution and, therefore, there is no scope for the State Government to pass any executive order exercising powers under Article 162 to supplement the All India Services Act and the rules framed thereunder.

(iii)The questionnaire served on the petitioner by the fifth respondent as well as the investigation done by him, who is an officer below in rank to the petitioner, is an abuse of process of law.

(iv)The Manual of Directorate of Vigilance and Anti-Corruption is contrary to law, opposed to public policy and the executive directions contained in the manual have to be rejected.

(v)Claiming powers under the Manual of Directorate of Vigilance and Anti-Corruption, the Government is targeting officers who are not amenable to its dictates and the executive instructions contained in the said Manual should be ignored.

(vi)The State Government is initiating the investigation of cases under the Prevention of Corruption Act, thus destroying the purpose for which the Act was enacted by the Parliament.

8. Learned counsel for the petitioner has relied upon the following decisions :

(i) P.Sirajuddin v. State, AIR 1968 MADRAS 117 :

"6....While it can be stated as a general principle that not every piece of information however vague intangible and indefinite need be recorded as first information report under Section 154 Cr.P.C. To start an investigation it is equally clear that to permit a preliminary enquiry before recording the first information report even after definite information as the commission of an offence is received would be to destroy the value of the first information report and equally to provide room for fabrication of cases. If the first information could be recorded after a detailed enquiry into the offence conducted, there is the danger and temptation to incorporate in the first information report details and circumstances advantageous

to the prosecution. S.154 only provides for the receipt of information relating to the commission of a cognizable offence; that is, the information should be such that it enables the police to come to the conclusion that a cognizable offence has been committed...."

"22. Such being the scope of Sec.251-A, infraction of the provisions of the Code in the matter of investigation brought to the notice of the Court before the framing of charge cannot be passed over leaving the accused to stand trial for charges framed on material gathered in violation of the provisions of the Code. No doubt illegality committed in the course of investigation does not affect the competence or jurisdiction of court for trial. Where cognisance of a case had in fact been taken and the case had proceeded to terminate the invalidity of the preceding investigation, it has been held repeatedly, does not vitiate the result, unless miscarriage of justice has been caused thereby. But the position would be different, if the illegality is discovered at the early stage of the proceeding...."

(ii) P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 :

"17.....Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general...."

(iii) S.N. Sharma v. Bipen Kumar Tiwari, AIR 1970 SUPREME COURT 786 :

"7..... It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High

Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that such a power must be read in Section 159 of the Code."

(iv) *State of Haryana v. Bhajan Lal*, AIR 1992 SUPREME COURT 604 :

"62. The sum and substance of the above deliberation results in a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of Divine Power which no authority on earth can enjoy."

"99. The Supreme Court in *State of Bihar v. J.A.C. Saldanha* (AIR 1980 SC 326) (supra) examined the question whether, when the investigation was in progress, the High Court was justified in interfering with the investigation and prohibiting or precluding further investigation in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. On the facts of that case, this Court set aside the

order of the High Court quashing the order of the Magistrate in postponing the consideration of the report submitted to him till the final report of completion of further investigation, directed by the State Government was submitted to him and held that the High Court in exercise of its extraordinary jurisdiction committed a grave error in giving the direction virtually amounting to mandamus to close the case before the investigation was complete." "108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(v) Dr H. Mukherjee v. S.K. Bhargava, AIR 1996 SUPREME COURT 1760 :

"6. The Tribunals under the Act are thus conferred with the exclusive jurisdiction, powers and authority exercisable immediately before the appointed day by all courts (except the Supreme Court) in relation to the matters set out in clauses (a), (b) and (c) of sub-section (1) of Section 14. The question is whether the present suit does fall under any of the said clauses. We do not think that it does. The suit appears to be one based on alleged tortious acts of the defendant committed with a view to harass the plaintiff and cause him mental pain and injury. At this stage, it is not our province to say whether the allegations are true or false. We have to take the plaint allegations as they stand. We also assume for the purpose of this appeal that such a suit does lie according to law since no contention to the contrary has been urged before us nor was urged before the civil court or the High Court. This is a pure action for damages for deliberately harassing the plaintiff by passing several vindictive and mala fide orders and proceedings and also by fabricating official records. Such a suit for damages is certainly not within the province of Section 14."

(vi) T.T. Antony v. State of Kerala, (2001) 6 SCC 181 :

"25. Where the police transgresses its statutory power of investigation the High Court under Section 482 Cr PC or Articles 226/227 of the Constitution and this Court in an appropriate case can interdict the investigation to prevent abuse of the process of the court or otherwise to secure the ends of justice."

(vii) M.C. Mehta v. Union of India, AIR 2007 SUPREME COURT 1087 :

"7. CBI Manual, thus, is subject to the provisions of the Code of Criminal Procedure. In case of conflict, although none has been pointed out, evidently, the Code of Criminal Procedure shall prevail. Even under ordinary law, the investigating officer has a statutory duty to investigate into an offence upon receipt of a first information report as envisaged under Section 154 of the Code of Criminal Procedure. Section 157 thereof provides for the procedure for investigation, wherefor the only duty cast on the investigating officer is to maintain his case diary in terms of Section 172 of the Code of Criminal Procedure. (See State of Bihar and Another v. P.P. Sharma, I.A.S. And Another 1992 Supp.(1) SCC 222).

8. It is beyond any doubt or dispute that investigation of an offence is the field exclusively reserved for the police. It may be subject to supervision of higher ranking officer(s) but the courts jurisdiction to have control in this behalf is beyond any controversy."

(viii) Divine Retreat Centre v. State of Kerala, AIR 2008 SUPREME COURT 1614 :

"16. The well-defined and demarcated functions in the field of crime detection by the police and its subsequent adjudication by the courts is so well known and had been recognised way back in Emperor v. Khwaja Nazir Ahmad¹. The Privy Council observed that just as it is essential that everyone accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry..."

"33. The sum and substance of the above deliberation and analysis of the law cited leads us to an irresistible conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII of the Code. However, we may hasten to add that unfettered discretion does not mean any unaccountable or unlimited discretion and act according to ones own choice. The power to investigate must be exercised strictly on the condition of which that power is granted by the Code itself.

34. In our view, the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither are the accused nor the complainant or informant entitled to choose their own investigating agency to investigate a crime in which they may be interested.

35. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and non-compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code."

9. Conversely, the learned Advocate General appearing for the respondents would contend that the subject matter of the Writ Petition is a service matter within the meaning and purview of Section 14 of the Administrative Tribunals Act, 1985, and hence this Writ Petition is not maintainable; the entire enquiry, which is impugned

in the Writ Petition, is being undertaken under the procedures laid down in the Manual of Directorate of Vigilance & Anti Corruption; the enquiry contemplated under the Vigilance Manual is completely an 'indoor enquiry' which is initiated only for the limited purpose of ascertaining whether there are any prima facie materials against any officer against whom allegations have been made and if such prima facie materials are found to be available in the enquiry, the authorities concerned would thereafter decide whether to pursue the matter through criminal law by instituting necessary FIR under the Prevention of Corruption Act or by following the procedure set out therein and also the Criminal Procedure Code; the enquiry is a filter and check against unnecessarily instituting criminal case or departmental proceedings against senior officers particularly belonging to All India Service and hence no interference is called for in the said enquiry, which is a fact finding process.

10. To substantiate his contentions, the learned Advocate General has relied on the following authorities :

(i) P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 :

"17..... If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. The means adopted no less than the end to be achieved must be impeccable. In ordinary departmental proceedings against a Government servant charged with delinquency, the normal practice before the issue of a charge-sheet is for some one in authority to take down statements of persons involved in the matter and to examine documents which have a bearing on the issue involved. It is only thereafter that a charge-sheet is submitted and a full-scale enquiry is launched. When the enquiry is to be held for the purpose of finding out whether criminal

proceedings are to be restored to the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the delinquent officer and documents bearing on the same to find out whether there is prima facie evidence of guilt of the officer. Thereafter the ordinary law of the land must take its course and further inquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report."

(ii) L. Chandra Kumar v. Union of India, AIR 1997 SUPREME COURT 1125 :

"99.....The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned....."

(iii) Rajeev Kumar v. Hemraj Singh Chauhan, (2010) 4 Supreme Court Cases 554 :

"16.The principles laid down in L.Chandrakumar virtually embody a rule of law and in view of Article 141 of the Constitution, the same is binding on the High Court. The High Court fell into an error by allowing the appellants to approach it in clear violation of the Constitution Bench judgment of this Court in L.Chandrakumar."

11. I have heard Mr.V.Selvaraj, learned counsel for the petitioner; Mr.P.S.Raman, learned Advocate General, appearing for the State, given thoughtful consideration to the submissions and also gone through the voluminous records, coupled with the authorities cited.

12. Before deciding the issue on merits, let me first deal with the point of maintainability of the Writ Petition under Article 226 of the Constitution of India. Article 226, which deals with the power of High Courts to issue certain writs, reads as under :

"226. Power of High Courts to issue certain writs.- (1) Notwithstanding anything in article 32, every High Court shall have powers, throughout the territories in relation

to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-

(a) furnishing to such party copies of such petition and all the documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of that power conferred on the Supreme Court by clause (2) of article 32."

13. Admittedly, the petitioner is an IPS Officer, governed by the All India Services Act and the rules framed thereunder. The Committee, consisting of Chief Secretary, Home Secretary and Vigilance Commissioner, had ordered a vigilance

enquiry against the petitioner, based on which the Deputy Superintendent of Police, Vigilance and Anti-Corruption, met the petitioner and served a questionnaire. It is seen that from the pleadings and averments of the respondents that based on a preliminary report of the appropriate authority, as prima facie materials were available, a detailed enquiry by the Directorate of Vigilance and Anti-Corruption was ordered against the petitioner in respect of accumulation of assets disproportionate to his known sources of income.

14. It is the stand of the respondents that in respect of any enquiry by DVAC and in matters relating to any offence under criminal law, the State Government is well within its jurisdiction to order any enquiry and that the only requirement is to obtain a sanction from the appropriate authority before any prosecution is launched by filing charge memo. It is claimed by the State that the enquiry now ordered is only a fact finding enquiry based on the materials received and available with the Government and if in the enquiry any case of misconduct or possession of assets disproportionate to the petitioner's known sources of income is established, then the regular criminal action will be initiated in accordance with law and therefore the Writ Petition is premature and misconceived.

15. To examine the question of maintainability whether the petitioner can maintain the writ petition under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure or if the matter comes under the purview of Central Administrative Tribunal, it is to be seen, at the first instance, whether the detailed enquiry ordered by the appropriate authority, namely, the Committee constituted for this purpose, comes under the purview of the Administrative Tribunals Act, 1985.

16. Section 14 of the Administrative Tribunals Act, 1985, deals with Jurisdiction, powers and authority of the Central Administrative Tribunal. Sub-section (1) (a) relates to recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian. Sub-section (1) (b) deals with all service matters concerning (i) a member of any All-India Service; or (ii) a person not being a member of an All-

India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or (iii) a civilian not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence; and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government. Sub-section (1) (c) relates to all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment. The expression service matters occurring in Section 14 is defined in clause (q) of Section 3 in the following words:

service matters, in relation to a person, means all matters relating, to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever.

17. In the case of Union of India v. Rasila Ram and Others, (2001) 10 Supreme Court Cases 623, an occasion arose before the Supreme Court to consider the definition under Section 3 (q) of the Administrative Tribunals Act and because of

the expression "any other matter whatsoever" occurring in sub-clause (v) thereof, when the Central Administrative Tribunal had come to the conclusion that eviction of unauthorised occupants from government quarters would tantamount to a service matter and, therefore, the Tribunal retains jurisdiction over the same, in view of the overriding effect given to the Act by virtue of Section 33 of the said Act, the Supreme Court authoritatively held the following :

"2.The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the Eviction Act) was enacted for eviction of unauthorised occupants from public premises. To attract the said provisions, it must be held that the premises was a public premises, as defined under the said Act, and the occupants must be held unauthorised occupants, as defined under the said Act. Once a government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of the Eviction Act, and appropriate orders are passed thereunder, the remedy to such occupants lies, as provided under the said Act. By no stretch of imagination the expression any other matter in Section 3(q)(v) of the Administrative Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal over an order passed by the competent authority under the Eviction Act must be held to be invalid and without jurisdiction..."

18. A reading of the above ruling would make it clear that if a matter is governed by a particular Act, then, "any other matter whatsoever" defined under Section 3 (q) (v) cannot be interpreted in a manner to the advantage of any of the parties. It is seen in this case that a specific stand has been taken by the respondents in paragraph 6 of the counter affidavit as follows : "6. It is submitted that the Writ Petition as framed is wholly misconceived and not maintainable either in law or on facts. In respect of any enquiry by the Directorate of Vigilance and Anti-Corruption and in matter relating to any offence under Criminal Law, the State Government is well within its jurisdiction to order any enquiry. The requirement to obtain sanction arises only on or before any prosecution is launched by filing charge memo. The petitioner, who belongs to the All India Service, cannot claim any immunity from

any enquiry by the Directorate of Vigilance and Anti-Corruption, when prima facie materials are available which establishes possession of assets disproportionate to his known sources of income. The letter sent by the first respondent is in the form of a Government order and the correspondence between the first and fourth respondents does not by itself give any cause of action to the petitioner to invoke the jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India."

19. It is also specifically averred in paragraph 13 of the counter that "Rule 7 of the All India Services (Discipline and Appeal) Rules, 1969 deals with the authority to institute proceedings and to impose penalty on the All India Services Officers. Rule 7 (b) (i) *ibid* provides that where a member of the service has committed any act or omission which renders him liable to any penalty, if such act or omission was committed after his appointment to the service, while he was serving in connection with the affairs of a State, or is deputed for service under any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of Legislature of that State, the Government of that State is the authority to institute proceedings and to impose penalty on All India Service Officers. Furthermore, the petitioner would fall under category of Public Servant, as defined under the Prevention of Corruption Act, 1988 (Central Act 49 of 1988) amenable to the jurisdiction of the State under which he is serving.

20. It is further stated by the respondents in paragraph 18 of the counter affidavit "that the respondents 4 and 5 deal with the cases under the Prevention of Corruption Act, 1988 and Indian Penal Code (Central Act 45 of 1860) and they are conducting the enquiry based on the orders of the 1st and 2nd respondents. Moreover, the allegation relating to accumulation of assets disproportionate to his known sources of income is otherwise allegation of corruption, for which the fourth and fifth respondents are empowered to conduct enquiries. There are several instances also in which enquiries/cases relating to accumulation of disproportionate assets are conducted by the DVAC. There were no objections till now for the same from any quarter."

21. A reading of the specific averments made by the respondents in the counter would reveal that the action initiated, the questionnaire served and the enquiry conducted are under the purview of the Prevention of Corruption Act and the Indian Penal Code and they are conducting enquiry based on the orders of first and second respondents with regard to a case under Prevention of Corruption Act.

22. In fact, the petitioner is not in a position to know whether any departmental enquiry has been initiated against him. The enquiry initiated by DVAC assumes significance in view of the questionnaire served on the petitioner in respect of possession of disproportionate assets and it is a matter which concerns with the commission and omission of a particular act, which comes under the purview of prosecution and, therefore, it cannot be construed that it is an act under "disciplinary matters" as contemplated under Section 3 (q) (iv) as well or is it under the definition under Section 3 (q) (v) "any other matter whatsoever" of the Administrative Tribunals Act.

23. Though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases, an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution of India under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can issue a writ of mandamus restraining the police officer from misusing his legal powers. This is the law laid down by the Supreme Court in S.N. Sharma v. Bipen Kumar Tiwari, AIR 1970 SUPREME COURT 786.

24. Therefore, in view of the ruling of the Supreme Court in Rasila Ram's case, cited supra, it has to be stated herein that a detailed enquiry conducted under the DVAC Manual within the purview of Prevention of Corruption Act cannot be construed as "any other matter whatsoever" occurring in sub-section (q) (v) of Section 3 of the Administrative Tribunals Act and it is only to be concluded that the enquiry under the Prevention of Corruption Act would not come under the purview of service matter. To attract the said provision, it must be held that corruption, coupled with an enquiry, as defined under the Prevention of Corruption Act, is a

definite and different domain of law. Once a government servant is held to be in possession of disproportionate assets to his known sources of income and he has been proceeded against in accordance with the Prevention of Corruption Act, the remedy to such person lies as provided under the said Act only. By no stretch of imagination the expression any other matter whatsoever in Section 3(q)(v) of the Administrative Tribunals Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the Prevention of Corruption Act. In such view of the matter, this Court has got jurisdiction to deal with the matter either under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure. Therefore, the objection raised by the respondents/State with regard to maintainability of the Writ Petition is negated, holding that the Writ Petition is maintainable.

25. Adverting to the merits of the case, the State Government has noticed certain allegations against the petitioner, who is a Member of All India Services, with regard to amassing of wealth disproportionate to his known sources of income, and ordered a detailed enquiry, which is under challenge in this Writ Petition.

26. Clause 15 of the DVAC Manual specifies the authority for taking up enquiries/investigations. In this connection, it is quite relevant to extract Clause 15 (1) (vii) of the Manual, which reads as under :

"(vii) In respect of Members of All-India Services, District Collectors, Heads of Departments and Managing Directors/Chief Executives of Statutory Bodies, Corporations and State owned Companies, the following procedure will be followed :

(a) the Director of Vigilance and Anti-Corruption shall not start a Preliminary Enquiry, unless specifically authorised by the Government, in consultation with the Vigilance Commissioner;

(b) the Government may order Detailed Enquiries, grant permission to register criminal cases and trap cases ;

(c) the Vigilance Commissioner may also give concurrence for Detailed Enquiry, on the basis of Preliminary Enquiry reports."

27. From the above proviso, it is clear that in respect of Members of All-India Services, District Collectors, Heads of Departments and Managing Directors/Chief Executives of Statutory Bodies, Corporations and State owned Companies, the Director of Vigilance and Anti-Corruption shall start a Preliminary Enquiry when he is specifically authorised by the Government, in consultation with the Vigilance Commissioner; the Government may order Detailed Enquiries, grant permission to register criminal cases and trap cases and that the Vigilance Commissioner may also give concurrence for Detailed Enquiry, on the basis of Preliminary reports. (emphasis supplied).

28. Hence, as per G.O.Ms.No.374, Personnel and Administrative Reforms (N) Department, dated 10.10.1996, the State Government formed a three member committee, consisting of the Chief Secretary, Vigilance Commissioner and the Secretary of the Department concerned, to decide on the suggestions for action emanating after study of records and the reports, pursuant to which, the Director of Vigilance and Anti-Corruption, on being requested and authorised by the Government, which is empowered to order Detailed Enquiries, in consultation with the Vigilance Commissioner, has started a Preliminary Enquiry against the petitioner, who being a Member of All India Service, for which purpose the Director of Vigilance and Anti-Corruption has appointed the Deputy Superintendent of Police of the Department to investigate.

29. Rule 7 of the All India Services (Discipline and Appeal) Rules 1969 deals with the authority to institute proceedings against a member of All India Service, who commits any act or omission which renders him liable for penalty. Rule 7 (1) (b) specifically states that if such act or omission was committed after his appointment to the Service, the Government of the State is the authority to institute proceedings and to impose penalty, while he was serving in connection with the affairs of a State or is deputed for Service under any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of

the Legislature of that State. (emphasis supplied)

30. Therefore, in the present case, since the State Government has noticed certain allegations against the petitioner, who was serving in connection with the affairs of the State, the Government of the State alone is the appropriate authority to enquire into the matter and impose penalty, if he is found guilty. Therefore, the contention of the learned counsel for the petitioner that he is governed by the All India Services Act, 1951, and the All India Services (Discipline and Appeal) Rules, 1969, which prohibit the State Government from proceeding against the petitioner has no basis at all, when the said Act and the Rules per se empower the State Government to conduct such an enquiry.

31. The questionnaire served on the petitioner by the fourth respondent is with regard to a criminal misconduct by a public servant, who is the petitioner and the said criminal misconduct falls under Section 13 (1) (e) of the Prevention of Corruption Act, which is possession of property disproportionate to his known sources of income. Section 17 of the Act deals with the persons authorised to investigate. In this context, it is apt to extract Section 17, which goes thus : "17. Persons authorised to investigate.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,-

(a) in the case of the Delhi Special Police Establishment, of an inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the First Class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the First Class, as the case may be, or makes arrest therefor without a warrant:

Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police."

32. It is true, as per Section 17 (b) of the Act, in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank of an Assistant Commissioner of Police shall investigate any offence punishable under the Act without the order of a Metropolitan Magistrate or a Magistrate of the First Class, as the case may be. But, the first proviso clause to Section 17 states that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of First Class, as the case may be. The second proviso further states that an offence referred to in clause (e) of sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

33. In this case, the fifth respondent, who is the Deputy Superintendent of Police, not below the rank of Inspector of Police, is authorised by the fourth respondent to conduct a detailed enquiry against the petitioner, on the direction of the State Government.

34. As per Clause 4 (1) of the Manual of Directorate of Vigilance and Anti-Corruption, an Officer in the rank of Deputy Superintendent of Police is empowered to conduct enquiry/investigation and as per Clause 4 (2) of the Manual, coupled with the Government Order of Tamil Nadu, vide G.O.Ms.No.269, Personnel & Administrative Reforms (Personnel-N), dated 04.06.1990, all Inspectors of Police of the Directorate have been authorised to exercise powers of

investigation.

35. When a detailed enquiry is ordered by the State Government and pursuant to which the Directorate of Vigilance and Anti-Corruption has authorised the Deputy Superintendent of Police to conduct the said enquiry, the said officer alone is the competent authority to interrogate the accused, irrespective of the position he holds. Just because the petitioner holds the rank of Inspector General of Police, he cannot claim any immunity from the enquiry conducted by the competent officer. Therefore, the contention of the petitioner that the fifth respondent, who is an officer below his rank, is incompetent to investigate him with the questionnaire is to be rejected.

36. The petitioner cannot also contend that the State Government has no power to initiate investigation of a case under the Prevention of Corruption Act, because, the petitioner would fall under the category of "public servant", as defined under the Prevention of Corruption Act, 1988, amenable to the jurisdiction of the State under which he is serving. Besides, the proviso clause to Article 73 (1) of the Constitution makes it vivid that the executive power of the Parliament shall not extend to matters with respect to which the legislature of the State has also power to make laws.

37. As the State Government is empowered for initiating disciplinary proceedings against the All India Service Officers, working under the control of the State Government, the same yardstick is applicable to detailed enquiries under DVAC Manual also.

38. It is also true that Entry 70 to Seventh Schedule restricts the power to legislate to the Parliament. But, what is to be seen is that Article 309 read with the provisions under the All India services Act and the All India Services (Discipline and Appeal) Rules referred to above contemplate that the services of All India Service Officers are placed at the disposal of the State Government, for instituting proceedings and to impose penalty. In such a case, the Disciplinary Authority for that official is the State Government concerned. In the instant case, the petitioner is an IPS Officer on the cadre of Tamil Nadu State and hence the Disciplinary Authority is the State Government. Therefore, it cannot be said that the action has

been initiated against the petitioner by an authority incompetent to do so. As such, the procedure followed by the Government to order a detailed enquiry against the petitioner is well within the rules and the law.

39. One more contention of the petitioner that the Manual of the Directorate of Vigilance and Anti-Corruption is ultra vires the All India Services Act or that it is contrary to the Prevention of Corruption Act and the Criminal Procedure Code is wholly unsustainable, the reason being, the Manual is a precursor to the said legislations and is not in derogation or in substitution to any of them and the same has been examined by the Supreme Court in Sirajuddin's case, referred to above, and the procedure contemplated under the DVAC Manual taken into account and the decision arrived at by this Court settled.

40. Inasmuch as the enquiry ordered against the petitioner is under progress and the information ascertained and the evidence secured from the witnesses during the enquiry should be treated as confidential, the petitioner is not entitled to have the confidential information collected during the enquiry. In addition, the petitioner is not entitled under law to receive any information pertaining to the enquiry conducted by the State Vigilance Commission and the Directorate of Vigilance and Anti-Corruption as per G.O.Ms.No.158, Personnel and Administrative Reforms (N) Department, dated 26.08.2008, in which the Government has issued a notification that in exercise of the powers conferred by sub-section (4) of Section 24 of the Right to Information Act, 2005, the Act shall not apply to the Tamil Nadu State Vigilance Commission and the Directorate of Vigilance and Anti-Corruption.

41. As the detailed enquiry against the petitioner is only in the initial stage, stoppage of the same at this point of time, in my considered opinion, will definitely hamper the process. The petitioner has also stated in the affidavit that he is ready to face the enquiry and establish his integrity. Having said so, he is now attempting to stall the enquiry. In fact, during the process of detailed enquiry, to the questionnaire submitted, the petitioner has given a reply as admitted in his affidavit and he has been actively participating in the present enquiry, accepting the jurisdiction under which such enquiry is being conducted. Having also participated in the enquiry and submitted himself to the jurisdiction of the Enquiry Officer, the

petitioner is estopped from challenging the same. Be that as it may, the final decision is ultimately in the hands of the Government and not in the investigating officer.

42. The impugned enquiry is only a fact finding enquiry. Criminal law can only be set into motion in a warrant case by institution of an FIR under Section 154 of the Criminal Procedure Code. In the instant case, no such FIR has been filed. The authority may also decide not to proceed under criminal law but merely institute a departmental enquiry in which event, the enquiry would be only as per the procedure in the All India Services (Discipline & Appeal) Rules. Also, if the enquiry reveals that there is no prima facie case made out against the officer concerned, then the proceedings would be dropped as provided under the Vigilance Manual itself.

43. The contention of the petitioner that the Vigilance Manual is unconstitutional or that the same cannot be relied upon in any manner is wholly unsustainable, as the same is not challenged in the Writ Petition.

44. The right of the State Government to conduct an enquiry particularly in cases of allegation of corruption against senior officials serving in the State of Tamil Nadu has also been well recognised by the Apex Court in the case of Sirajuddin v. State of Tamil Nadu, reported in AIR 1971 SC 520. In that context, the Supreme Court held that if the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner.

45. Let me now discuss the judgments relied upon by the learned counsel for the petitioner, one by one :

(i) In P. Sirajuddin v. State of Madras, (1970) 1 SCC 595, the Supreme Court held that before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct and a first information is lodged against him, there must be some suitable preliminary enquiry

into the allegations by a responsible officer. In the case on hand, only a preliminary enquiry is conducted against the petitioner, who is a public servant, into the allegations levelled against him and no First Information Report is lodged.

(ii) In *S.N. Sharma v. Bipen Kumar Tiwari*, AIR 1970 SUPREME COURT 786, the Supreme Court held that though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases, an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. In this regard, it is to be stated that the High Court can issue a writ of mandamus restraining the police officer from misusing his legal powers High Court under Article 226 of the Constitution only if the High Court is convinced that the power of investigation has been exercised by a police officer mala fide. In this case, I see no mala fide exercise of power of investigation by the police officer, as the same is done as per the procedure.

(iii) In *State of Haryana v. Bhajan Lal*, AIR 1992 SUPREME COURT 604 , the Apex Court held that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court, on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders. It is also held there in that the Court can interfere where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance

on the accused and with a view to spite him due to private and personal grudge. In this case, the fifth respondent, who is the investigating officer, has neither transgressed the circumscribed limits nor exercised his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of the petitioner. The Court can interfere only if a criminal proceeding is manifestly initiated with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, which is not the case here.

(iv) In *T.T. Antony v. State of Kerala*, (2001) 6 SCC 181, the Supreme Court held that where the police transgresses its statutory power of investigation, the High Court under Section 482 Cr PC or Articles 226/227 of the Constitution, in an appropriate case, can interdict the investigation to prevent abuse of the process of the court. As I already stated above, in this case, the investigating officer has not transgressed his statutory power of investigation.

(v) In *M.C. Mehta v. Union of India*, AIR 2007 SUPREME COURT 1087, the Apex Court has held that the investigating officer has a statutory duty to investigate into an offence upon receipt of a first information report as envisaged under Section 154 of the Code of Criminal Procedure and, in case of conflict, the Code of Criminal Procedure would prevail over CBI Manual. In this case, no FIR has been lodged against the petitioner and the authority who conducted the detailed enquiry is also not CBI.

(vi) In *Divine Retreat Centre v. State of Kerala*, AIR 2008 SUPREME COURT 1614, the Supreme Court held that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide and that power is to be exercised in the rarest of the rare case where a clear case of abuse of power and non-compliance with the provisions. In the present case, this Court is not convinced that the power of investigation has been exercised by the investigating officer mala fide by abuse of power and non-compliance with the

provisions. Therefore, the petitioner cannot cash in on the judgments, relied upon by him.

46. In *State of Punjab v. V.K. Khanna*, (2001) 2 SCC 330, the Supreme Court has held that the expression *mala fide* has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise *bona fide* actions not otherwise *bona fide*, however, by themselves would not amount to be *mala fide* unless the same is in accompaniment with some other factors which would depict a bad motive or intent on the part of the doer of the act. There must be a positive evidence available on record in order to decry an administrative action on the ground of *mala fides* and arbitrariness. The ill will or spite must be well pronounced and without which it would be not only unfair but patently not in conformity with the known principles of law.

47. On a scrutiny of the records as presented to this Court, there is no evidence apart from bare allegation of any spite or ill will, more so by reason of the fact that the same involves factual element, in the absence of which no credence can be attributed thereto.

48. In *Delhi Development Authority v. UEE Electricals Engg. (P) Ltd.*, (2004) 11 SCC 213, the Supreme Court has held that he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting in the legitimate exercise of power has, in fact, been acting *mala fide* in the sense of pursuing an illegitimate aim. It is not the law that *mala fides* in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order,

the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. It cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. This is not a case where the authority can be said to have acted in a mala fide manner or with oblique motives.

49. In *Jasbir Singh Chhabra v. State of Punjab*, (2010) 4 SCC 192, the Apex Court has held that it is trite to say that while exercising power of judicial review, the superior courts should not readily accept the charge of malus animus laid against the State and its functionaries. The burden to prove the charge of mala fides is always on the person who moves the court for invalidation of the action of the State and/or its agencies and instrumentalities on the ground that the same is vitiated due to mala fides and the courts should resist the temptation of drawing dubious inferences of mala fides or bad faith on the basis of vague and bald allegations or inchoate pleadings. In such cases, wisdom would demand that the court should insist upon furnishing of some tangible evidence by the petitioner in support of his/her allegations.

50. The burden of proving mala fides is very heavy on the person who alleges it. Mere allegation is not enough. Party making such allegations is under the legal obligation to place specific materials before the court to substantiate the said allegations. There has to be very strong and convincing evidence to establish the allegations of mala fides specifically and definitely alleged in the petition as the same cannot merely be presumed. The presumption under law is in favour of the bona fides of the order unless contradicted by acceptable material. This is the law laid down by the Supreme Court in *Chandra Prakash Singh v. Purvanchal Gramin Bank*, (2008) 12 SCC 292.

51. As held by the Supreme Court in the above decisions, the burden to establish mala fides is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof, both of which are conspicuously

absent in this writ petition. Therefore, the argument of mala fides advanced by the learned counsel for the petitioner is without any basis.

52. Part III, Clause 15, Sub-clause (vii) of the DVAC Manual empowers the State authority for taking up enquiries/investigations in respect of Members of All-India Services, District Collectors, Heads of Departments and Managing Directors/Chief Executives of Statutory Bodies, Corporations and State owned Companies and the procedure to be followed has been provided in (a) (b) (c), whereunder, (a) the Director of Vigilance and Anti-Corruption shall not start a Preliminary Enquiry, unless specifically authorised by the Government, in consultation with the Vigilance Commissioner; (b) the Government may order Detailed Enquiries, grant permission to register criminal cases and trap cases ; and (c) the Vigilance Commissioner may also give concurrence for Detailed Enquiry, on the basis of Preliminary Enquiry reports.

53. In the instant case, the Committee constituted by the Government for the purpose consisting of Chief Secretary, Home Secretary and Vigilance Commissioner ordered a detailed enquiry against the petitioner, based on preliminary reports. Therefore, when a competent authority is enquiring into the matter and in the absence of any incompetency, this Court cannot interfere in the matter of detailed enquiry as ordered and the power exercised by the authority in accordance with law and the provisions of the DVAC Manual. Further, it is only in a preliminary stage and it may end either in favour of the petitioner or against him, and in case the proceedings end adverse to him, the petitioner can very well have recourse to challenge such proceedings. In the given situation, no interference is called for in the detailed enquiry, initiated against the petitioner, at this stage.

54. The High Court under inherent powers under Section 482 Cr.P.C. or under extraordinary jurisdiction under Articles 226/227 of the Constitution, in an appropriate case, can interdict the investigation to prevent abuse of the process of law if the authority transgresses its statutory power of investigation, or, if the Court could be convinced that the power of investigation has been exercised by an authority mala fide, it can issue a writ of mandamus, restraining the authority from misusing his legal powers. But, as already held supra, this is not the case where

the investigating officer has transgressed his statutory power of investigation or the power of investigation has been exercised by the authority mala fide.

55. Since the matter is decided on merits in this Writ Petition under Article 226 of the Constitution of India, as it involved statutory interpretation and jurisdictional issue, it is unnecessary for this Court to direct the petitioner to move this Court under Section 482 Cr.P.C. What all this Court directs the respondents is to expedite the detailed enquiry and conclude the same at the earliest.

56. In view of my detailed discussion as above, this Writ Petition is dismissed with the above direction. No costs. Consequently, the connected M.P.No.1 of 2010 also stands dismissed.

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