Judgment of the Patna High Court on 11.03.1996 in fodder scam

CIVIL WRIT JURISDICTION CASE NO. 1617 OF 1996
IN THE MATTER OF APPLICATIONS UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA.

Sushil Kumar Modi , Saryu Roy, Shivanand Tiwari. Petitioners

Versus

The State of Bihar & Ors. Respondents

The Union of India & Ors.

P R E S E N T

THE HON'BLE MR. JUSTICE SACHCHIDAN AND JHA
THE HON'BLE MR. JUSTICE S.K. MUKJHOPADHYA

S.N.JHA, J
11.3.1996

These writ petitions have been filed in public interest by individual citizens and organizations of different complexions, in substance, Seeking direction to the Central Bureau of investigation (C.B.I) to enquire and investigate the cases relating to fraudulent excess expenditures/drawals in the Animal husbandry Department of the Government.

2. The crux of the petitioner case is that the officers of the Animal husbandry Department - both at the district and the Secretariat levels - in collusion with the Treasury Officers, officers of the Finance Department at the Secretariat level with the

blessings and Support of the Government. Systematically drew huge sums of money in excess of the grant i.e- the financial sanction against fake allotment orders, vouchers etc. According to the petitioners, because of the involvement and bias of the high-ups, fair investigation into - what has come to be know as Animal husbandry Scam in the State, is not possible.

3. The State does not deny that there have been drawals of money beyond sanctioned grant. It also does not deny that the drawals were fraudulent is nature. In paragraph 43 of the counter affidavit in C.W.J.C No. 602 of 1996 (R) it has been stated, " As a matter of fact it is a case of fraud and forgery and the money fraudulently drawn from the consolidated fund of the Sate", According to the State , while it was aware of the excess drawals, which is a usual phenomenon in the State Financing, it had no knowledge that drawals were fraudulent in nature until January 1996. And when the fraud came to light prompt action was taken by filing criminal cases, instituting administrative enquiry and so on.

4. It would be appropriate at this stage to notice the Constitutional provisions relating to State Financing applicable to the States. The provisions which require to be noticed for the purpose of these cases are contained in Articles 202 to 206, 266 and 267, Article 202 provides for laying down of statement of the estimated receipts and expenditure, called 'Annual Financial Statement', in common parlance known as the Budget, in respect of every financial year before the House of the State legislature. Article 203 provides that estimates in respect of 'non-charged' expenditure i.e. items other than those mentioned in Article 202 shall be submitted in the form of demands in the Legislative Assembly. After the Assembly gives its assent to the estimated, that is to say, the grants are made under Article 203, Appropriation Bill is introduced under Article 204 for the appropriation of money out of the consolidated fund of the State to meet the grants (with respect to 'non-charged' expenditure) and the 'charged' expenditure i.e. expenditure charged on the consolidated Fund of the State under Article 202(3), Article 205 lays down that if the amount authorised under the Appropriation Bill to be spent for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need arises during the current financial year for supplementary or additional expenditure upon some new service not

contemplated in the Annual Financial Statement (Budget) for that year, or if the money spent on any service during a financial year exceeds the amount granted that service, another statement showing the estimated amount of that expenditure is required to be presented to the Assembly. In that situation, the same procedure as contemplated by articles 202 to 204 is required to be followed. Article 206 provides for vote of accounts and exceptional grants. Where a full-fledged annual statement cannot be presented, the Assembly is empowered to make a grant in advance in respect of estimated expenditure for a part of the financial year pending completion of the usual procedure for the voting of such grants and passing of appropriation bill in accordance with Article 203 and 204. Similarly, the Assembly is empowered to make a grant to meet an unexpected demand when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in the Annual Financial Statement, and exceptions of Articles 203 and 204 are in repayment applicable with respect to these grants as well.

Article 266 provides for creation of consolidated fund of the State- it pays down that all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means, advances and all money received by that Government in repayment of loans shall form one consolidated fund called, "the consolidated fund of the State". Article 267 provides for contingency fund for each State as the Legislature of that State may establish by law comprising of such sums as may establish by law comprising of such sums as may be determined by such law, to be placed at the disposal of the Governor of the State "to enable advances to be made by him out of such Fund for the purpose of meeting unforeseen expenditure pending authorization of such expenditure by the Legislature of the State by law under Article 205 or Article 206".

5. The Constitution. Thus, contemplates expenditure either from the consolidated fund or the contingency fund of the State. The ordinary and usual procedure is to spend from the consolidated fund. The expenditure from contingency fund is supposed to be a temporary measure to meet unforeseen expenditure. The amount so spent, by way of advance, is to be replenished by supplementary or additional grants under Article 205 or vote of accounts or exceptional grants under Article 206.

6. From the provisions referred to above particularly Articles 205, there cannot be any doubt that the Constitution contemplated and permits expending of money in excess of the grants. That is why provisions have been made for supplementary, additional or excess grant with respect to amount spent in excess if the grant for a particular service is found to be insufficient for the purpose or a need arises for supplementary or additional expenditure upon some new service not contemplated in the Budget or if money has been spent on any service in excess of the amount granted for that service during a financial year. In other words, the Constitution contemplates excess expending but it also provides for a procedure.

7. The point for consideration in the instant case is whether the procedure prescribed or contemplated by the Constitution has been followed. If not, what are the consequences. Whether the consequences are purely fiscal or administrative in nature, or whether they partake a criminal character as well.

8. A transaction may give rise to both civil as well as criminal liabilities in law. For example . non re-payment of debt money may involved both civil and criminal consequences- depending on intention, which is to be gathered from the circumstances. If the intention was to cheat at the very inception of the transaction, the person taking loan would be as much liable for criminal action as for recovery of the money in a civil action. Likewise, excess drawals of money from Government treasuries may also partake a criminal character. if the intention of the person drawing the money was to cheat the State Exchequer, When the framers of the Constitution contemplated Supplementary, additional or excess grants, they surely intentioned that only bonafide excess expenditure be covered by that process - not deliberate, intentional and fraudulent excess drawals.

9. Whether the materials on records suggest that excess expenditure/drawals, which is an admitted fact, partook a criminal character? The Deputy Accountant General, Bihar, vide his letter no.12 dated 5.4.90 after test check fund that the vehicles which were shown in the payment vouchers as having been used for transportation of bulls, heifers, cattle feed etc. were actually car, station wagon, oil tankers, jeep, scooter,

which could not have been used for the purpose, suggesting that the payment vouchers were fake and bogus and payments made were fraudulent in nature. The Regional Director, Animal Husbandry, Ranchi, vide his letter no 4690 dated 31.5.90 submitted his report to the Secretary of the Department certifying that the live stock had actually been transported to the destination. The Secretary of the Department, therefore, entrusted the enquiry to the Director, Animal husbandry, Dr. Ramraj Ram, who reported that the animals had been transported and had been distributed amongst the beneficiaries. When the matter was put up before the Minister In charge, Animal Husbandry, he proposed enquiry with respect to the on- goings on the department for the period 1980-90 by the C.B.I . The Chief Minister thereupon sought the advice of the Chief Secretary. The Chief Secretary in his note, dated 9.11.90 stated that he had a discussion with the director, CBI, and it appeared from the discussion that the CBI, and it appeared from the discussion that the CBI was not inclined to take up the investigation enquiry. He suggested that the enquiry may be made through the vigilance Department. This suggestion was accepted by the Chief Minister on 13.11-90 But curiously enough, no case was lodged.

It may be started at this stage itself that an affidavit sworn by Superintendent of Police, CBI, Patna, has been filed in this case in which the statement of the then Chief Secretary as contained in his aforesaid note dated 9.11.90 has been stoutly denied in those word " It is clarified that there was no occasion for the Director, Central Bureau of Investigation to refuse to investigation to refuse to investigate any related to se called animal Husbandry "Scam". No request has been made by the Government of Bihar to the Central Bureau of Investigation or to the Central Government in this regards".

It would also not be out of place to mention here that the only case lodged with the vigilance Police so far , namely, vigilance P.s. Case No. 34/90, relating to purchase of materials during the period of 1986-88 has been instituted earlier on 9.8.90. All other cases, reference to which will be made at the appropriate place in this judgment, have been instituted after 25.1.96 with respect to offences under the Indian penal Code with the local police. The offences as prescribed under the Prevention of Corruption Act do not find mention in those cases. As to how the aforementioned vigilance P.S. Case No. 34 of 1990 has progressed is another matter no less interesting than the way in which the complaint on the basis of the audit reports submitted by the Deputy Accountant

General relating to payment of bills for transportation of the cattle by scooter, car and the like was closed.

10. The reply of the State in this regard vide paragraph 46 of the counter affidavit in CWJC No. 602 of 1996®, is that the matter was closed on the basis the finding of the Public Committee. It is said that the Public Accounts Committee accepted the explanation submitted by the Regional Director to the effect that the numbers of the vehicles (trucks) as shown in the vouchers were correct, only the 'symbol' and wrongly been mentioned, and that the live stock had 'actually been transported to the destination and has actually been distributed to the beneficiaries. We wanted to know as to what where the correct registration numbers of the vehicles, which has been found to have been actually used for transportation. The report of the Public Accounts Committee was produced before us. To our dismay, we found nothing of the kind to suggest the basis for coming to the aforesaid conclusion. It contains only omnibus finding. it is amusing to find that while the matter was pending at the enquiry stage, a representation was made by the then Leader of the Opposition in the State Assembly that the institution of police case would result in subjecting the departmental officers to "unnecessary harassment" by the police and, therefore, further enquiry may be made through the Regional Development Commissioner, Ranchi.

11. At this stage it would not be inappropriate to notice the scope of the duties of the public Accounts Committee as contained in Rule 239 of the Rules of Procedure and Conduct of Business framed under Article 208 of the Constitution. That rule, inter alia, lays down that it shall be the duty of the Public Accounts Committee to scrutinise the appropriation accounts and the finance accounts of the State and the Report of the Comptroller and Auditor General relating to such accounts, and to satisfy itself that the money voted by the Assembly has been spent within the scope of the demands granted by the Assembly that the money shown in the accounts as having been disbursed were ""legally available" for and applicable to the service or purpose to which they have been "legally available" for and applicable to the service or purpose to which they have been applied or charged; that the expenditure conforms to the authority which governs it and that every re-appropriation has been made in accordance with the rules made in this behalf by the Governor or by the Finance Department, as the case may be. Having

regard to the nature of the duties conferred upon the Public Account Committee it is doubtful as to whether it lay within the domain of its jurisdiction to made enquiry in respect of fraudulent nature of expenditure. Its duty primarily is to see that the expenditure is in conformity with the grants, that the money which has been spent was available, as per the details of the grants for particular service and purpose for which it has been spent and so on.

12. The objection of the Deputy Accountant General vide his letter dated 5.4.90 (Supra) regarding alleged transportation of bulls etc. in cars, scooters and so on, was not the only complaint brought to the notice of the Government. Earlier, the Nivedan Samiti of the House in its report dated 16.6.89 (Annexure - 3 in CWJC No. 1617 of

1996) had pointed out how large-scale financial irregularities and misappropriation of funds were being committed by officers of the Animal Husbandry Department, Some of whom were also named.

Again, on 27.7.93, the vigilance Commissioner, Government of India, vide his letter as contained in Annexure- 23 requested the Chief Secretary, Government of Bihar to take necessary action in respect of complaints concerning the Animal husbandry Department.

13. The petitioners have brought on record newspaper reports published in 1993 carrying reports regarding the ‘going-on' in the Animal Husbandry Department. On the basis of these newspaper reports, a writ petition, in public interest bearing CWJC 3395 of 1994, was filed in this Court alleging fraudulent excess drawals of money by the officials of the Department. In the counter affidavit, the Government took the stand that the allegations were ""not only false and baseless but malicious".

14. In CWJC No. 1617 of 1996 the petitioners have brought on record xerox copies of the appropriation accounts with respect to the head 2403, which is the main head for the Animal husbandry Department, with respect to the year 1990-91, 1991-92, 1992-93, 1993-94 as Annexure - 4 series. The amount of total grant, the actual expenditure and excess drawals, as shown in the said Appropriation accounts for the aforesaid periods are as follows:-

Year	Total grant	Actual Expenditure	Excess Drawals
1990-91	54, 92, 38,207	84, 20, 99,989	29, 2861,782
1991-92	56, 10, 24,144	1,29,82,29,030	70, 72, 04,886
1992-93	66, 93, 35,120	1,54,70,62,755	87, 77, 27,635
1993-94	74, 14, 36,274	1,99,17,09,330	1,25,02,73,056

From paragraphs 11 and 51 of the counter affidavit in CWJC 602 of 1996(R) it appears that total non-plan expenditure under the head2403- Animal Husbandry up to month of October 1995 was Rs. 55.55 crores. By November 1995 it rose to 116.51 crores and by December 1995 it had reached the staggering figure of Rs. 151, 88, 64,000 as against the total budget allocation of Rs.71.84 crores for whole of the year 1995-96.

The Statement prepared by the Finance Department in the forecast of Resources presented to the 10thFianance commission in 1994 and the 1994-95 annual plan also show that the State Government was well aware of the phenomenon. The argument made on behalf of the State that the Constitution contemplates excess expenditure and, therefore, more excess drawals could not have given rise to any doubt that they were also fraudulent in nature, has to be considered in the aforesaid background. It may be stated here, even at the cost of repetition, that the State does not deny knowledge that the excess drawals were made by the district treasuries officers of the Animal Husbandry.

15. I have already referred to above the scheme envisaged by the Constitution. The Constitution permits excess drawals, but only if the amount authorised by the Appropriation Bills is found to be insufficient for the purpose or when a need arises during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for the year or if the money already spent on any service during the financial year exceeds the amount granted for that service and for that year. There cannot be any doubt, as I have observed above, that the constitution contemplated and permitted only bonafide excess expenditure so as to meet bonafide exigencies fo situation but what appears from the

Appropriation Account referred to above is that there were systematic excess drawals of huge sums of money every years, the amount of excess rising every year in yawning proportions. The plea of the State that the excess drawals/expenditure is a usual phenomenon in the State financing in the above mentioned background sound too hollow and unconvincing.

16. The excess expenditure/drawals may be a usual phenomenon in the State Financing but it is difficult to envisage that the amount of excess would be more than the amount of the grant, as in the years 199-92, 1992-93, 1993-94 and also 1995-96 the figures of which are available on the records. No doubt, there cannot be any ceiling on the amount of excess. it would be also difficult to predicate the exigencies of situation and lay down the parameters. The Bihar Contingency Fund Act, 1950, enacted under article 267 of the Constitution, However, gives some idea as regards the amount which can be spent in exigency of situation. Article 267 of the Constitution, as noticed above, provides for establishment of a Contingency Fund to be kept at the disposal of the Governor of the State Comprising of such sums " as may as determined by the law to be framed under that Article". Section 4 of the Act has determined such amount to be Rs. 50 crores. (The amount was raised to Rs. 250 crores by Bihar Act 10 of 1985 as a one time measure). The sum kept in the Contingency Fund may be spent to meet unforeseen expenditure pending authorisation of such expenditure bu the legislation under appropriation made by law, where after i.e. immediately after coming into operation of such law the amount equal to the amount so advanced for the aforesaid purpose is to be replenished to the fund. Rule6(1) of the Bihar Contingency Fund Rules, 1953, framed under the said Act provides that the supplementary demands for all expenditure so financed shall be presented to the state Legislation at the first session meeting immediately after the advance is sanctioned. If the law made under Article 267 contemplates spending from the Contingency Fund to meet unforeseen situation up to Rs. 50 crores only raised to Rs. 250 crores only once, as a one-time measure, it is difficult to visualise how excess expenditure/drawals of huge sums of money for in excess of the said amount of Rs.50 crores for one department alone could go unnoticed. The plea of the State that the excess drawals are usual phenomenon, in the circumstances, is difficult to swallow. According to the Petitioners, the money so spent was not drawn from the contingency Fund nor has the same been covered by way of

supplementary additional grant and appropriations till date. The State does not deny this fact.

17. There is controversy as to whether the Finance Accounts and the Appropriation Accounts prepared by the Accountant General during the relevant period was sent to the Finance Department of the State Government on time. Both the State Government and the Accountant General in their affidavits have tried to find fault with each other. According to the State Government. The Accounts were received in the Finance Department after inordinate delay, So far as the periods covered by Annexure - 4 series. referred to above, are concerned, it is said that the Appropriation Accounts for the year 1990-91 was received in the finance Department on 28.6-94; for the year 1991-92 it was received on 17-1-95; for the year 1992-93 it was received on 22.5.95 and for the year 1993-94 it was received on 27.9.95. According to the Accountant General, the delay occurred on account of the fact that the State Government treasuries and the concerned Departments made inordinate delays in sending the monthly accounts on the basis of which annual accounts are to be prepared. Although the monthly accounts are required to be submitted by the 10th of every month, sometimes the delay was of even more than two years. In this connection. Counsel for the parties referred to different provisions of the Bihar Financial Rules and the Treasury Code.

18. I do not think it is necessary to apportion the blame between the Accountant General and the State Government in the matter of preparation of accounts for the purpose of these cases. What I have not able to understand is how excess expenditures / drawals could be possible without the tacit support of high-ups at the Secretariat /Government level. It is usual to find the Treasury raising objections in passing bills-whether it is salary bill of the staff, fee bill of lawyers or contractor's bill. Now then, without the financial sanction and availability of funds could money be drawn. to the tune of crores of rupees every year? Who permitted this excess expenditure? The Constitution envisages a definite procedure to cover the excess. The Procedure has undisputedly not been followed.

19. We have noticed above the amounts of excess expenditure during 1990-91 and 1993-94. As against that, the amounts of supplementary grants under Head 2403-Animal Husbandry are said to be as follows:-

Year	Excess (in crores)	Supp.Grants(in crores)
1990-91	29.80	1.38
1991-92	70.72	0.97
1992-93	87.77	1.99
1993-94	125.03	0.22
1994-95	(not available)	10.07

As per the Constitutional provisions, the Government should have submitted revised/supplementary statement estimated expenditure in the Legislature and obtained additional grant for the service, or drawn money from the Contingency Fund of the State by way of advance.

20. All these basis, Prima facie, constitute gross financial indiscipline on fraud on the Constitution and the people, it is an irony of situation that while employees are not getting their salary on time in this State, writ petitions have been filed for payment of pension, contractors' bills, lawyers' fee bill, for construction and repairs of roads and bridges, hundreds of crores of rupees were allowed to be swindled. The usual plea of the State in all such matters is paucity of fund. Where all this money in the Animal Husbandry Department come from? That reminds me of the famous quote, “Nero fiddled while Rome burnt."

21. If money is misappropriated on the basis of fake bills and vouchers, it would constitute criminal offence. What if not only the money allocated for a particular service but also the money for another service/Department is also withdrawn purportedly for being utilised for that particular service and then misappropriated. The offence would be more serious. More so, when it is not an isolated act committed at only one place. The excess drawals were made, in the instant case, in a systematic manner in different districts year after year. Clearly, this would not have been possible

without the Support of the high-ups. Possibility of well-knit conspiracy cannot thus be ruled out.

22. Complaints did come to the notice of the Government. Either no action was taken or the matter was hushed up after slip-shod enquiry. A writ petition was also field, being CWJC No. 3395 of 1994 (Supra), in this court alleging fraudulent excess drawals by the officials of the Animal husbandry Department and the Treasuries. The Government in its counter affidavit, denied the allegations as"not only false and baseless but malicious". It is ineed curious to find the same Government admitting in no uncertain terms now that there have not only been excess drawals from the treasuries but they also fraudulent in natured. The only defence which is being taken by them is that they had no knowledge about the fraudulent nature of the drawals. In the facts and circumstances, as briefly indicated above, it is difficult to accept the plea.

23. I shall now consider the other submission made on behalf of the State questioning the jurisdiction of this Court to issue any direction for entrustment the investigations to the Central Bureau of Investigation. The objection broadly stated is three-fold. Firstly, is said that the State Police has statutory powers under the Code of Criminal Procedure to make investigation in respect of a cognizable offence, which cannot be interfered with and the investigation cannot be entrusted to an outside agency. Secondly, it is contended that such as order can be made only by the Supreme Court in exercise of its power under Article 142 of the Constitution which power is not possessed by the High Court. Lastly, it is urged that any order/direction of that nature can be made only if the on-going investigation is found to be inadequate. And since the investigation is in the early stage no such inference or conclusion can be drawn.

24. In support of the first contention reliance was placed by Mr P.P. Rao, learned counsel for the Sate. on the purtabpur Comnpany Ltd. V. Cane Commissioner of Bihar (AIR 1991 Supreme Court, 1260) and Director, C.B.I. V. 'Neyanavedi' and others[(1995) 3 SEC 301].

25. In Purtabpur Company Limited (supra) the power of reserving area for the different sugar factories was exercisable by the Cane Commissioner. The decision in

this regards, however, was taken by the Chief Minister, although the order was issued in the name of the Cane Commissioner. The Supreme Court relying on Commissioner of Police, Bombay V. Gordhan Das Bhanji (AIR 1952 Supreme Court 16) hold that where a power is exercisable by a statutory authority alone which is competent to exercise that power and he cannot abdicate his responsibility in favour of any one, not even in favor of the State Government of the Chief Minister . The situation in the present case is different. No doubt, the State Police is competent to make investigation in respect of cognizable offence under Code of criminal Procedure but it cannot be said that the Central Bureau of Investigate has got no statutory authority to make investigation. The only thing is that it can investigate only if the State Government has accorded its consent under the Act. The question as to whether it can do so at the behest ofr the High Court pursuant to direction to that effect under Article 226 of the Constitution apart.

P.P. Sharma's case (supra) has also no relevance . That decision is an authority on the point of the competence of the High Court to quash investigation. In that case the High Court had quashed the proceeding before the police on the basis of the defense put up by the accused. The Supreme Court upheld the power of the police to make investigation. In that context certain observations were made regarding power of the high Court to interfere with Police investigation.

In (1996) 3 sec 601 (supra) the State Government had itself entrusted the investigation to the C.B.I.

While investigation was still pending, writ petition under public interest was fields in the Kerala High Court for direction to arrest Raman Shrivastava, Inspector Genral of Police, for his alleged involvement in the case. The writ petition was dismissed both by the Single Judge as also by division Bench on appeal. It was held that the Court had no power to direct investigation officer to include a person as an accused while investigation was in progress. Certain observations, however, were made in course of the order, which were challenged by the concerned officials. The Supreme court observed that offending observations has been made after perusing the materials collected during course of investigation, presumably in order to examine the contention

relating to the alleged involvement of Raman Shrivastava in the crime, but as under the Cr. P.C only a limited use can be made of the statements before the police and police diaries, even in course of trial , the High Court should have refrained from disclosing in its order the materials and also ought mot have made adverse comments which were, "to say the least premature and could have been avoided." It was in the context that the Supreme Court observed that ordinarily the Court should refrain from interfering at a premature stage of investigation as they may derail the investigation and demoralize the investigation. I do not see how these observations can be at all used for the purpose of this case.

26. The competence of the C.B.I which is a police Force established under the Delhi Special Police Establishment Act. 1946 to make investigation in respect of certain types of cases, cannot be disputed. Whether the present case in such where the C.B.I should be asked to make investigation or not is a separate question.

I, therefore, do not find any substance in the objection that merely because the State Police Possesses statutory competence to make investigation under the Code of Criminal Procedure, the High Court cannot ask the CBI to investigate the case as that would amount to ‘Interference" with the exercise of that power.

27. Before i examine the second limb of the argument that any order entrusting the investigation to the CBI can be made only by the Supreme Court, I would like to refer to a decision of the Apex Court in the case of State of West Bengal V. Sampatlal (AIR 1985 Supreme Court 195). That decision has been relied upon both by the counsel for the petitioners and Mr. P.P. Rao for the State. The facts of that case were as follows. Two young boys were found missing. An information was lodged with the local police . A case also was registered. While the investigation was pending, two letters were sent to the chief Justice of the Calcutta High Court for issuance of direction to the Government for investigation of the case by some reputed organisation, like CBI. The letter were treated as writ petitions. A learned Single Judge of the High Court made an interim order directing the D.I.G. Central Bureau of Investigation, to hold enquiry and submit a report to the court. The order was appealed against before the Division Bench. The Judges sitting on the Division Bench came to different conclusions as to the maintainability of the writ petition. However, both of them came to the same

conclusion as to nature of the enquiry which the learned Single Judge had asked to be made by the D.I.G., C.B.I. In one of the orders it was observed, "In the instant case, the Deputy Inspector General, Central Bureau of Investigation, is not called upon to exercise any power or to investigate into any matter under the Delhi Special Police Establishment Act or any other statute. In view of what has been stated hereinbefore and in the facts and circumstances of the case, I appoint Deputy Inspector General, Central Bureau of Investigation, as the Special officer in this case. The Special officer will make the enquiry about the correctness of the facts, allegation and inference..... "The other learned judge came to different conclusion regarding maintainability of the writ petition but agreed as to the effect and import of the order of the learned single judge. It was in this background that the orders passed by the Calcutta High Court were challenged in the Supreme Court. While disapproving the action of the Calcutta High Court, the Supreme Court observed that appointment of Special officer with a direction to enquire into the commission of an offence can only be on the basis that there had not been a proper investigation. Their Lordships observed that there is a well defined hierarchical administrative set up of the police in the West Bengal as any other States and to have created a new channel or enquiry and investigation is likely to created an impression that everything is not well with the statutory agency and is likely to cast a stigma on the regular police hierarchy.

28. The above observations were perused into service by Mr. P. P. Rao to buttress his argument that it is only on the ground of inadequacy of the on-going investigation that the investigations can be entrusted to the CBI. But as noticed above, the fact-situation in that case was entirely different. There was no order of the High Court for investigation by the C.B.I under the Delhi Special Police Establishment Act or any other Statute. What an officer of the C.B.I has been asked to do was to hold an 'enquiry' as a 'Special officer' without taking away the investigation from the State police. The enquiry of the kind (as mentioned in the orders quoted in the judgment of the Supreme Court) would certainly have amounted to interference with the Statutory the Supreme Court) would certainly have amounted to interference with the Statutory investigation carried on by the State police. The observations cannot be read as authority for the proposition that the High Court cannot issue any mandamus entrusting the investigation to the C.B.I.

29. As a matter of fact, the following observations occurring in paragraph 13 of the judgment suggest that the High Court is possessed of such a power under Article 226 and when the power is exercised , that is to say, a mandamus is issued entrusting investigation to the C.B.I., consent of the State Government as envisaged under section 6 of the Delhi Police Establishment Act is required. The observations run as follows:-

> " In our considered opinion, section 6 of the Act does not apply when the Court gives a direction to the C.B.I. to conduct an investigation and counsel for the parties rightly did not dispute this positions."

30. Mr. P. P. Rao tried to dilute the effect of these observations submitting that the question as to whether the necessity of consent of the State Government under section 6 of the Act be dispensed with and the High Court can issue any such mandamus was not canvassed and the observations were made on concession by the counsel for the parties. According to the counsel, a consent order cannot be used as an authority on a point of law. As broad propositions, the submission of mr. Rao is no doubt, correct. However it would appear that their Lordships after recording the concession of the counsel for the parties did not stop there, rather they gave their own 'considered' opinion on the point as well. It may be stated here that the judgment in Sampatlal's case and the observations quoted hereinabove have been used and interpreted by different High Courts as laying down the law that the High Court is competent to issue mandamus regarding entrustment or investigation to the C.B.I. without the consent of the State Government.

31. Mr. P.P. Rao submitted that the question as to whether a Court can order the Central Bureau of Investigation to investigate cognizable offences committed in State without consent of the State Government is pending consideration before a Constitution Bench of five judges, vide order dated 10.3.89 passed in writ petition(Cr.) Nos. 631-36 of 1988 in the Supreme Court. He pointed out that the said order dated 10.3.89 was interpreted in Md. Anis v. Union of India(1994 Supp.(1) SEC 145), as not precluding the Supreme Court from pending any position order notwithstanding the fact that the question is pending consideration by a large Bench. The following observation in

paragraph 6 of the judgment was relied on. "The reference of the expression ‘Court' in that order cannot in the context mean the Apex Court. For the reason that the Apex Court has been conferred to argue that this Court, until the point regarding the jurisdiction of the High court is decided, no positive order as prayed for, should be passed in these cases, This was the second limb of the argument of Mr. P.P Rao regarding his objection to the jurisdiction of this Court.

32. Mr. Rao also referred to' in re: Vinay Chandra' (1990) 12 JCC 584: Supreme Court BAr Association v. Union of India: 1995(4) SCALE 769; U.P.Sales Tax Service Association, Agra (AIR 1985 Delhi 268). In vinay Chandra Mishra's cases the point for consideration was whether the Supreme Court could take cognizance of contempt of a High Court held that Article 129 of the Constitution read with Article 142 conferred upon the Supreme Court the necessary jurisdiction. It, accordingly, convicted Mishra and awarded a suspended sentence of imprisonment. He was also debarred from practicing for three years. The quotation as to whether the Court can suspend the advocates license and right of practice has since been referred to Constitution Bench in writ petition(Civil) No. 200 of 1994. In its brief order, reported in 1996(4) SCALE 759, the Supreme Court stated that the order passed in vinay Chandra Mishra's case was"in exercise of power under Article 142 of the Constitution which no other Court has and, therefore, prima facie, it cannot be exercised by any other court."

> A direction, accordingly, was given that no other court shall exercise jurisdiction and power regarding suspension of a practicing lawyer for contempt of court till the issues are decided by the Constitution Bench. I do not understand, how this interim order of the Court can be or any help to the State having regard to the context in which it was passed.

The U.P Slaes Tax Service Association case (supra) has been cited for the proposition that the high court in exercise of its power under Article 226 of the Constitution should not issued a writ or order of prohibition prohibiting a statutory authority from discharging its statutory functions and transferring its functions to other authority. What has happened in that case was that the Allahabad High Court has passed an interim order prohibiting the post of Deputy Commissioner (Appeals) Sales Tax, Agra from discharging his function under section 9 of the U.P. Sales Tax Act, with

liberty to the Commissioner, Sales Tax, U.P. to transfer the cases pending before him to some other Court . The background of the case was that there was strike and petition by the lawyers protesting the conduct of the particular officer. There were counter allegations too. The Supreme Court observed that interference by the High Court was not proper because it generates its rippling effect on the subordinate judiciary and statutory functionaries. On slightest pretext by the aggrieved parties or displeased members of the Bar, by their concocted action they would browbeat the judicial officers or authorities. who would always be joterred from discharging their duty according to law without fear or favour of ill-will". These observations too, made in the context and facts of the case, cannot be read as precluding the high Court from exercising its writ jurisdiction in appropriate cases.

In the last of the aforementioned cases i.e. AIR 1986, Delhi 268 a public interest writ petition had been filed on behalf of peoples Union for Democratic Rights seeking direction, inter alia, for appointment of Commission to investigate the role of politicians and police in the large scale violence that followed the assassination of Mrs. Indira Gandhi, the then Prime Minister of India. The Delhi High Court held on the basis of materials produced before it that hundreds of cases had been registered, thousands of people had been arrested, security proceedings had been taken against hundreds of people and special investigation cells had been created for dealing with the cases and situation had come fast to normal and continues to be normal. It was on these findings that the Court refrained from giving any effective relief to the petitioners observing that the enquiry/ investigation into serious cases of crime and rioting require a single minded thorough and complete investigation by one body and if a parallel investigation was started by the High Court by appointing a commission to investigate them, looking at the magnitude of the crime it would be humanly impossible to do so. It was in that context that a further observation was made that since investigation was still going on the Court ought not to interfere.

33. It would, thus, appear that the decisions referred to above are not relevant. The decisions relating to the scope of power of the Supreme Court under Article 142 cannot be read as curtailing or restricting the power of the High Court under Article 226 to issue mandamus in appropriate cases to do justice between the parties. it is true that the expression " doing complete justice" occurring in Article 142 of the Constitution in

relation to the power of the Supreme Court does not find mention in article 226. In my opinion, however, more absence of the words does not mean that the High Court as an institution is not supposed to do' complete justice' between the parties. We put a pointed question to Mr. P.P. Rao as to whether and what kind of justice is to be done by the high Court in appropriate cases; surely the High Court is not supposed to do incomplete justice or no justice at all. As a matter of fact, there are catena of decisions on the point that the High Court's power top issue mandamus is to be exercised to "undo injustice wherever it is of the Supreme Court in recent case of B.C. Chaturvedi v. Union of india: (1995) 6 SEC 760:-

" It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the high Court, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material."

34. The moot question, in my opinion, is not whether the High Court under Article 226 of the constitution can give direction and / or entrust the investigation as a pending case to the C.B.I, but as to whether in these cases such an order / direction is required to be made. there are several reported cases in which such orders have been made. Reference may be made to some of them. In Kasmeri Devi v. Delhi administration (AIR 1988 Supreme Court 1323) the trial court was directed to direct the C.B.I ..., under the provisions of section173(8) Cr. P.C., to investigate a case of murder, after the charge sheet had been submitted and the case was at the stage of trial, In Gudalure M.J. Cherian v. Union of India [(1992) 1 SCC 397], Punjab and Haryana high Court Bar Association v. State of Punjab (AIR 1994 Supreme Court 1023) also the Supreme Court directed the CBI to investigate the case after the close of investigation and submission of charge sheet "to instill public confidence". Similar orders were passed in Maniyeri Madhavan v. S.l. of Police and other (1992 AIR SCW 3342) and (AIR 1994 SC 1033); (1994) 1 SCC536;R.S.Sodhi v. State of U.P (AIR 1994 Supreme Court 38); Khedat Mazdoor Chetna Sangathan v. State of M.P (AIR 1995 Supreme Court 31); and Indra Singhv. State of punjab of Rajasthan v. Phool Chand Garg (1991cr. I.J 125). Recently, the Allahabad High Court in writ petition no 32982 of 1994 relating to incidents taking place in connection with Uttarkhand agitation in the State of U.P, directed the CBI to

investigate the cases. The order was challenged by the State in the Supreme Court, vide SLP © No. 18125 of 1994, which was rejected on 14.11.94.

35. There, thus cannot be any doubt that in appropriate cases the Court can issue mandamus of the nature. It is true that in most of the cases referred to above orders were passed by the Supreme Court but that, in my opinion , cannot be a stumbling block before the High Court in exercise of its writ jurisdiction. As already stated above, the moot question is whether these are the appropriate cases in which direction should be issued. In Sampatlal's case also it has been observed that such an order can be made on “being prima facie satisfied that the investigation had either not been proper or adequate." It is this aspect of the matter that i now propose to discuss.

36. Mr. P.P. Rao in course of his submission in this regard formulated the following questions. (i) whether there is anything wrong with the on- going investigations, (ii) If so, who should conduct the enquiry / investigation, and (iii) Whether the enquiry / investigation should be done by the C.B.I Accordingly to mr. Rao the State has instituted as many as 24 cases in different districts, which are being investigated in right earnest by the police, the officers concerned have been sealed, many of the accused have been arrested and properties of the absconding accused have been attached . According to the counsel, in the absence of any allegation / fault with the process of on-going investigation, the writ petition seeking investigation by the C.B.I. Is premature. According to the counsel further, if the investigation agency committee any lapse or any loophole is found in the investigation, complaints can be made to the Court concerned and the lacuna can be remedied.

37. Copies of the information reports of the cases instituted by the State have not been brought on record. It, however, appears from the submissions at the Bar that they relate to isolated acts of excess drwals , But from what has been seen above, it is clear that the excess drawals were not isolated acts; they were manifestations and result of well-knit conspiracy to commit loot and plunder of public money in a systematic manner, which could not be possible without the support of high-ups. The incidence has been more in the districts of Tanchi, West Chaibasa, East Chaibasa, gumla, lohardaga, Dumka, Godda, Sahibganj, Hazaribagh. But more ajnhd more instances are coing to

light. There cannot be any doubt that the case has got All State ramifications which requires centralised investigation by a body / agency which could go into the entire gamut of the case. Having regard to the nature and magnitude of the offence I do not think a Sub Inspectors of Police attached to the police stations concerned can properly handle these cases.

38. That, perhaps, is the reason why the State Government itself has constituted a Special Investigation Team. it would, however, be not out of place to mention here, that one of the members of the Team Sri Baljeet Singh, Inspector Genral of Police, is said to be under cloud in the matter of appointment of Sub Inspectors of Police and the Other member Sri Neyaz Ahmad is said to be close to the powers-that-be because of association of his brother Sri Saba Ahmad who is a ruling Janta Dal M.L.A.

39. So far as the on-going investigation is concerned, except making few arrests of low ranking officials and attaching the house effects of some of the absconding accused nothing tangible appears to have been done. One of the serious criticisms of the petitioners was that cases were institute after gapes of five days or so in-different districts. Counsel for the petitioners high-lighted the fact that the time lapse gave enough opportunity to the persons involve in the crime to destroy the evidence, remove their house effects. The office staff to destroy the incriminating evidence.

40. Attachment of house effects fo the absconding accused, no doubt, is a part of the investigation but it only aims at securing the appearance of the accused. No sooner they appear the attached/ seized articles have to returned. Besides, it matters little to those who have allegedly swindled lakhs and crore of rupee if their house effects worth thousands are taken away temporarily . The Investigation Agencies, in my opinion, should have interrogated the officers of the Financé Department and the Animal Husbandry Department both past and present, to elicit facts regarding the nature of drawals and manner in which the drawals were affected.

41. In this connection it may be stated that one of the offices of the district Animal Husbandry Department at Ranchi was scaled by the police. The Allegation of the Petitioners in CWJC No. 459 of 1996 ® is that the seal was removed in the night of 27.1.96 and various important documents were removed. The said allegation has been

answered in paragraph 34 of the counter affidavit by Sri A.K.Rath, Secretary, Cabinet Secretariat and Co-ordinate Department in these words:-

> "The Sealing of both those offices was done by putting locks on both grill that is situated on the northern and western side, plain papers bearing signature of sub divisional officer, Sadar, was pasted on the locks and thereafter sealed..... (on 28.1.96 the Sub-divisional officer, Ranchi, and Sri Ritrikh Rudra, I.P.S., Assistant Superintendent of Police, inspected the third floor of the combined building and found that the paper bearing signature of the Sub- Divisional officer, Sadar, on the lock of the northern grill gate had been removed but the lock was intact . The force which was deputed on the western grill gate, had a clear view of the entire office has clearly stated that nobody had entered the office. The lock of the office as well as the lock put by the Sub- Divisional officer in the northern grill gate was again sealed by the Sub- Divisional Officer.")

In the context of the allegation regarding tampering of the seal, the above passage makes a very interesting reading. If the plain paper bearing signature of the S.D.O has been pasted on the locks and thereafter the lock was sealed, how could the paper have been removed without removing or tampering the seal. The statement has been made by A.K. Rath on the basis of information derived from the records but no record was produced to substantiate the correctness of the statement. Perhaps, Sri A.K. Rath is his zeal to support the Government stand and protect the local police has come out with statements which are more in his mind than in the records. If this be the manner is which the custody of the seized paper is to be maintained, one can imagine the shape of things to come.

42. Counsel for the petitioners in the course of their submissions highlighted that the officers of the Animal Husbandry Department against whom serious corruption charges were levelled, whose house were raided by the Income-tax Department and unaccounted property worth crores of rupees was recovered, far from being punished were rewarded in various ways. Some of them were granted extension in service or

were re-employed, other were given promotion or choice posting. one of them (R.K. Rana) is a janta Dal M.L.A. others whose names figured in corse of hearing (averments also have been made in the writ petition) are Dr. Ram Raj Ram, Dr. Shyam Bihari Sinha, Dr. Indra Bhan Prasad etc. The reply of the State as regards some of them is that no action was taken because the Chairman, Public Accounts Committee had written a letter to the vigilance Department that the Committee was enquiring into the matter. Regarding the income tax raids, it is said the Government had no information about the same.

43. I do not want to discuss the conduct of the aforesaid officers or go into reasons why action was not taken against them although somewhat detailed submissions were made about them at the hearing because that is a matter of verification and probe. i would only state here that the Income- tax Department in its affidavit has given details of the action suo matu taken by it. We called upon the Department to file affidavit affirming or denying the correctness of the newspaper report published on 23.2.96 regarding the State Government allegedly not cooperating with the Income-tax Department in conducting raids in the premises of the officers and suppliers of the Animal Husbandry Department. The Income-tax-Department filed a cryptic affidavit saying that no 'official' communication was made to the press, without committing about the correctness or otherwise of the contents of the newspaper item. Mr. L.R. Rastogi, counsel for the Department, however, orally submitted that the news was partly correct.

44. Having regard to the manner in which the State Government has responded to the complaints regarding excess/fraudulent drawals in the department and the manner in which the Government had shown favor to the accused persons in the past. In my opinion, however faithfully the investigation may be done by the local police it would lack credibility. One of the first and foremost considerations which should carry weight not only with the people functionaries but also the courts is that the Government and its functionaries must not only act also appear to act in public interest. In my opinion, it is the legitimate right of the public to know, and feel assured about, that the investigation is done in the correct perspectives and that no guilty person will be spared.

45. we asked Mr. P.P. Rao why after all the State Government does not want a probe by an outside agency, which could give more credibility to its own intentions Mr. Rao promised to take instruction but when the hearing was resumed on the next day he did not advert to that question. The message was clear and we do not go into that aspect of the matter.

46. Far from suo motu agreeing to entrust the investigation to CBI, we were surprised to find, the State Government has come out with a notification which for all practical purposes purports or pre-empt the CBI from making any investigation in respect of any case against the State Government officials. The more interesting part of the notification is that it has been made on 19.2.96, the day when CWJC 459 of 1996 (R) was fixed for hearing. The notification reads as follows:-

Government of Bihar
Home Appointment Department
Notification

Patna, the February, 1996

G.O No._____/ In exercise of the power conferred by section 6 of the Delhi Police Establishment Act 1946 (Act XXV of 1946), and in suppression of all previous notifications on the subject, the Governor of Bihar is pleased to accord his consent to all members of the Delhi Special Police Establishment to exercise powers of jurisdiction under the said Act in whole of the State of Bihar in respect of the investigation of the Following:-

(a) Offence committed in connection with the affairs of the Government of India authorities subject to the control of the Government of India and any Corporation, Company or Bank owned and controlled by the Government of India:
(i) Punishable under the Prevention of Corruption Act,1947(Act 2 of 1947),

(ii) Punishable under sections 403,406,407,408,411,412,413, 414, 417, 468, 471, and 477 A of the Indian Penal Code (Act 45 of 1860); and

(iii) Attempts, abetments and conspiracies in relation to, or in commission of the offences under clauses (i) and (ii) above and any other offences committed in course of the same transaction arising out of the same facts;

(b) Offences Punishable under the Central Acts specified in the annexure appended hereto:

Provided that where public servants employed in connection with the affairs of the Government of Bihar and persons employed in connection with the affairs of any local authority subject to the control of the Government of Bihar or any Corporation, company or bank owned or controlled by the Government of Bihar or any institution receiving or having received any financial aid from the Government of Bihar are concerned, in offences referred to in items - (a) (i) to (iii) and (b) above, the prior consent of the State Government shall be obtained for the investigation of any such offence by the Delhi Special Police Establishment.

(File No.3/vividh-6019/96)

By order of the Government of Bihar.

Sd/D.P Maheshwari

Commissioner & Secretary, Home Department

Memo no. 3/vividh-6019/96-2023/Patna, the 19 February 1996"

The aforesaid notification issued under section 6 of the Delhi Special Police Establishment Act purports to accord general sanction/consent to the Delhi Special Police Establishment/CBI to investigation case of the nature mentioned in clauses (a) and (b). The notification however prohibits the CBI from investigation cases against the

officers of the State Government. Coming as it does, just on the date of hearing of the case, one gets the impression that the State Government wanted somehow to pre-empt investigation against State Government officers involved in the 'Scam' little realizing that such a notification cannot prevent the High Court from entrusting the investigation to CBI under Article 226 of the Constitution. the question as to whether it is a fit case for issuing any such direction apart. But if the intention of the Government was to preempt any such direction apart. But if the intention of the Government was to preempt any such direction the same deserves to be deprecated.

47. We wanted to know from the State Government as to whether any criteria had been followed in the past or have been laid down even now on which cases are to be entrusted to the CBI. It is a matter of general knowledge that even individual cases involving offences like murder, rape etc, have been entrusted to CBI. In this background it is not understandable as to why the Government should not agree to investigation by the CBI. The recalcitrance of the Government gives an impression that it is trying to hide facts and shield the guilty persons.

48. Interestingly enough, after we had heard these cases and fixed them for judgment on 11.3.96 (when the High Court reopens after the Holi holidays) we came across newspaper reports regarding constitution of a commission of inquiry headed by a retired judge of this Court. I wonder whether the Government has done so thinking that by instituting a so called judicial enquiry the Court would refrain from passing any positive order in the matter. The aforesaid enquiry obviously cannot be a substitute for police investigation. From the terms of reference as reported in the newspapers it appears that it is merely a fact finding body. It has no powers to summon documents and witnesses or examine them on oath and take any consequential action. As noticed above, a fact finding enquiry committed had earlier also been constituted with the Development Commissioner as its head on 25.1.96 which was later reconstituted. I should not be misunderstood as suggesting that such administrative or judicial enquiry can serve no purpose. But experience shows that enquiry reports of even statutory commissions under the Commission of Inquiry Act have rarely been acted upon in the past. Such Committees. Commissions are usually constituted to shelve the issues and divert the people's attention. Human memory is proverbially short and after sometime people

forgets about the past. In the recent past several scandals and scams had taken place. When they came to light there was much public outcry. In course of time everybody seems to have forgotten them. The remedy, in my opinion is quick, fair, full and effective investigation by the police.

50. Investigation by the State / Local Police is the usual thing to be done. In course of time. need arose for specialised investigation and creation of a special agency for investigating particular types of cases. The Central Bureau of Investigation was constituted vide resolution dated 1.4.63 under the Delhi Special Police Establishment Act, 1946 to investigate cases involving, inter alia, economic offences and corruption in public services, particularly where the interests of the Central Government are involved. It consists of several Divisions to which particular functions have been assigned.

Natural of the fraudulent expenditures and drawals has been mentioned above. They are not isolated, individual, run-of-the-mill cases involving misappropriation of funds. Although the exact amount defrauded is yet to be found out, going by indications, it appears that it may be in proximity of a thousand crores(of rupees) or so. Central Government's fund is also involved. A proper and correct investigation in these cases would require going into the whole gamut of public financing- in its theoretical and practical aspects. I do not think a Sub Inspector of Police attached to district police in the State of Bihar well-equipped to investigate case of this nature.

51. I do not find any merit in the plea advanced on behalf of the state that the writ petitions are pre-mature that the aggrieved parties should wait will the close of investigation and then point out the loopholes in the investigation. The persons concerned have amassed huge wealth. They have formed a 'mafia' having great administrative and political clout. If the aggrieved public and the Court were to wait till the close of investigation by the local police, it might result into tampering and even disappearance or evidence.

52. The factual position of the case may be summed up as follows:-

(i) Huge sums of money, far in excess of the legislative sanction for the services, have been spent in the Animal Husbandry Department over the last so many years.

These expenditures, systematically effected by making drawals from the concerned Treasuries, were fraudulent in nature.

(ii) No legislative sanction in the shape of additional or supplementary rents/appropriations has been accorded to these excess drawals till date.

(iii) The State Government was admittedly in know of the excess drawals. Yet, no remedial action whatsoever, was taken. The government has failed to show its bonafide in not stopping the on-going drawals and expenditures.

(iv) The stand of the Government the excess drawals are usual phenomena, in the circumstances of these cases, cannot be accepted. Its plea that it was not aware of the fraudulent nature of the drawals /expenditure until January 1996 is also not belief-worthy.

(v) Excess drawals and expenditures could not have been made year after year without the tacit support and' blessings' of the high-ups at the Secretariat / Government level.

(vi) The State Government gave patronage to the officers of the Animal Husbandry Department who were already under ‘could' and are now made accused. The possibility of the Government influencing the course of investigation by State Police cannot be ruled out.

(vii) Administrative Actions taken against the officers are eye-wash.

(viii) Investigation done so far appears to be slip-shod and perfunctory.

(i x) The State Police is not well-equipped to make full and proper investigation of the case of the present nature.

(x) The State Government's recalcitrance in agreeing to probe by any outside agency. prima facie, shows that it wants to hide facts and shield guilty persons. Earlier in 1990 also, despite the Minister-in-charge suggesting CBI enquiry, the proposal was scuttled on misrepresentation of facts that CBI had declined to take up investigation.

(xi) The notification dated 19.2.96 (supra) and the appointment of 'judicial' Commission are attempts, prima facie, to pre-empt the CBI from taking up investigations and the Court from making positive orders in that regard.

53. In the above-mentioned backdrop of the case, I feel persuaded to hold that the grievance of the petitioners in well-bounded. The people of this State, in different walks of life, have been made to suffer on the specious plea of paucity of funds. The limited funds of the State which could be utilised for the welfare of the people were allowed to be systematically plundered, assuming unparalleled proportions. In such a situation people naturally have a' legitimate expectation' that the guilty be punished. It is the duty of this Court in writ jurisdiction to see that those legitimate expectations are fulfilled. It is a fit case, therefore, in which direction should be issued for enquiry and investigation of the entire episode by the Central Bureau of Investigation for the period in motion. According to the State, excess drawals in the Department have been taking place since 1977-78. I am of the view that the proposed enquiry and investigation should cover the entire period from 1977-78 to 1995-96.

54. I would, accordingly, direct the Central Bureau of Investigation (CBI) through its Director, to enquire and scrutinise all cases of excess drawals and expenditure in the department of Animal Husbandry in the State of Bihar during the period 1977-78 to 1995-96 and lodge cases where the drawals are found to be fraudulent in character, and take the investigation in those cases to its logical end, as early as possible; referable, within four months. The investigations by the State Police in cases already instituted shall remain suspended in the meantime.

I would also direct the Income -tax Department through the Chief Commissioner of Income-tax, Bihar, to initiate such action as may be considered fit, necessary and expedient under the Income-tax Act, Wealth-tax Act etc, against persons whom be reasonably thinks to be involved in the 'scam' and poses unaccountable wealth and property, and take the proceedings to their logical conclusions.

The State Government shall provide all necessary facilities to both the CBI and the Income-tax Department in discharge of their duties pursuant to this order.

These writ petitions, thus, stand disposed of. I make no order as to cost.

55. Before I part, I must make it clear that the observations or findings as contained in this judgment have been made for the purpose of these petitions. They should not be construed as Court's opinion on merit of the case in any way nor they shall be construed as reflection on any individual. the directions as given hereinabove should also not be understood as 'indictment' of any individual or individuals; they are intended merely to serve public interest and keep the people" faith in the system intact, For, if that faith is shaken, the would edifice will fall. The values of public life are fast declining. I do not expect that this judgment and the CBI investigation will improve the system. But, if we are only able to maintain it, by our effort, we will feel gratified.

Sd/
S.N.Jha
Sd/
S.J. Mukhopadhaya

I agree

PATNA HIGH COURT
The 11th March, 1996.
N.A. N.A.F.R.