(1998) 07 GAU CK 0011

Gauhati High Court

Case No: Civil Rule No. 4331 of 1996

Kipa Babu		APPELLANT
	Vs	
State of Arunachal Pradesh and Others		RESPONDENT

Date of Decision: July 29, 1998

Acts Referred:

- Benami Transactions (Prohibition) Act, 1988 - Section 5
- Civil Procedure Code, 1908 (CPC) - Order 19 Rule 3
- Constitution of India, 1950 - Article 226, 32, 51A
- Evidence Act, 1872 - Section 78(2), 81
- Income Tax Act, 1961 - Section 269A

Citation: (1998) 3 GLT 188

Hon'ble Judges: V.D. Gyani, Acting C.J.; D.N. Chowdhury, J

Bench: Division Bench

Advocate: A.K. Bhattacharyya, P. Pathak, T. Sen, R. Chakravorty, P. Barman, R. Baruah, A.K. Sarma, C. Deka and N.S. Deori, for the Appellant; A.K. Phukan, A.G., N. Dutta, N. Deori, N. Saikia, Sr. G.A., J.M. Das, G.N. Sahewalla and B. Goyal, for the Respondent

Judgement

V.D. Gyani, Actg. C.J.

1. This writ petition brought in the name of Public Interest Litigation, filed on 9th September, 1996 by President of Nishing Students'' Union, Dafla Students'' Federation of Arunachal Pradesh claimed to be working for the welfare of the students community and for the welfare of the people in general of Arunachal Pradesh, pray for issuance of a writ of quo warranto mandamus or any other appropriate writ, directing the Respondents to (i) disclose their known source of income alongwith the assets and liabilities within and outside the State of Arunachal Pradesh, (ii) produce the entire records of the power department including the findings of the Cabinet Sub Committee and its report dated 2.4.96 in respect of the

power deal by the Power Department during the financial years 1992-93,1993-94 and 1994-95 (iii) cause a judicial enquiry suo moto by this Hon''ble Court to unearth the misdeeds of the Government of Arunachal Pradesh in the Power Department into the alleged scam and squandering away Rs. 124 crore of the State exchequer by Shri Gegang Apang, the Chief Minister as well as Minister-in-Charge Power etc. and (iv) direct the CBI to probe into the power scam and to submit its report within a stipulated time before this Court.

2. The role of PIL is recent one and still fledgling institutional innovation. There are many facets to the public interest which is why it has been difficult to arrive at a consensus definition. The conceptual perspective of public interest is complex. While the term "public interest" has been used in many contexts though the decades no consensus as such has yet been arrived at, even in an approximate sense as to what it really means.

3. This Public Interest Litigation (PIL) has been filed primarily with the object of exposing the Chief Minister of the State, Respondent No. 5 in respect of his alleged misdeeds of corruption, favouritism, nepotism and amassing huge wealth disproportionate to his known sources of income. Respondent No. 6 is his wife, Respondent No. 7 is his son. The writ Petitioner in paragraph 6 which runs into almost 15/16 pages has enumerated the alleged acts of favouritism, nepotism and corruption. Respondents 5,6 and 7 have explained and/or denied the allegations made against them.

4. According to the writ Petitioner, M/s. Stanjyoli Agroplex, a small scale Industrial Unit, M/s. Automobile Repair and Services, M/s. Arunachal Paper Industry are owned by the Respondent No. 5, while M/s. Jigo Spun Pipe & Co., New Itanagar Cinema Hall, M/s. Donyi-polo Saw Mills are owned by Respondent No. 6, M/s. Yadap Apang. Apart from these industries, there are other immovable properties situated both in Arunachal Pradesh and out of Arunachal Pradesh. In Delhi a building at Noida in Sector No. 15-A 412, a 3-storried building at Defence Colony No. A449, Delhi and the President and Proprietorship of Donyi-polo Mission School, Itanagar and Institution for Hearing Impaired Institution at Gohpur. There are other immovable properties such as a Tanker and Bus owned by Respondent No. 6 have been made. Paddy field in Ngorlung, Rayang and Oyan purchased for lakhs of Rupees and partnership in M/s. Donyi-polo Petro-Chemical Industries at Duyung and the allegation of Ms.Yadap Apang holding various Petrol Depot at Lilabari and Joyrampur.

5. The Respondent State has denied the allegations as made in paragraph 6 of the petition as incorrect and misleading, so far as the State of Arunachal Pradesh is concerned the learned Advocate General, on the basis of records available, submitted that no firm called M/s. Stanjyoli Agroplex stands in the name of Shri Omak Apang. It has also been denied that there is an industrial unit named as M/s. Arunachal Paper Industry in the name of Shri Oken Apang. As for M/s. M.S. Eastern

Fabrication and Builders with Registration No. 52/04/000%. it stands in the name of Tadong Apang and after his death in April, 1985 it has been transferred to Smt. Ori Apang, wife of Late Tadong Apang. There is no such firm in the name and style of Automobile Repair and Service. It is, however, admitted that M/s. Jigo Spun Pipe stands in the name of Smt. Yadap Apang, wife of Respondent No. 5 but this firm has stopped functioning since September, 1995. As for forest leases granted to Smti. Yadap Apang, the Respondent State has pointed out that the same has been executed long prior to Sri Gegong Apang becoming the Chief Minister of the State. As regards leases for minor forest produces like cardamom, Nahar Seed, Pipli Seed, kutiki, Tezpat, Dalcini, Solemum Khasiyanum Berries, wild pepper, Phool Jharu etc. this leases expired long back and there is no such subsisting lease. So far as Donyi Polo Petrochemical Industry, there is no such firm but there is one public limited in the name of Donyi Polo Petro-Chemical Limited and none of the family members of the Chief Minister is a Director and holding the share in the said company. It is admitted that M/s. Yadap Apang is the owner of Donyi Polo Saw Mills which was purchased in 1989. As for Donyi Polo School and the institution for hearing impaired, these are private individual and social service institution. There is no record of any Petrol Pump being owned at Lilabari or Jairampur. That M/s. Arunachal Pradesh Wood Based and Chemical Industry which was initially started in 1977 and converted to Private Limited Company is still functioning. The Company is regulated by the Companies Act, 1956. In the said firm out of 7 partners Smti. Yadap Apang was one of them. The company which took loan of Rs. 1.47 crores has fully liquidated the same and there is no outstanding against the company. The allegations that undue favour was shown by M/s. Arunachal Pradesh Industrial Finance Corporation Limited has been denied by the State. The loan was given on its own merits and commercial transaction to the company. The amount of Rs. 12 lakhs was released as subsidy as per entitlement and based on similar payment given to other Industrial Firm under Government of India Scheme. The State has denied the allegation that the entire forest and other industries are being distributed as a bounty to his sons, wife, relatives, crippling the entire State economy. The allegation that the present State Administration headed by the present Chief Minister is in the verge of total collapse and that there is no administration has also been denied.

6. Let us also have a look at the affidavits filed by the Respondents Nos. 5, 6 and 7. There are as many as 21 allegations or instances given by the writ Petitioner as regards undue accumulation of wealth. Respondent Nos. 5, 6 and 7 have maintained that many of them are false. There is no firm called M/s. Stanjyoli Agroplex in the name of Omak Apang, Respondent No. 7. The registration number as given by the writ Petitioner is of M/s. Arunjyoti Agroplex. There is no unit named as M/s. Arunachal Paper Industry in the name of Shri Omak Apang. The registration relates to M/s. Arunachal Paper Agency. No family member is the owner of M/s. Eastern Fabrication & Builders not the owner Mr. T. Apang is any way related to the Respondent No. 5. They admit that M/s. Sigo Span Pipe & Company is owned by

Respondent No. 6, but for want of supply orders it has been closed since 1995. None of them nor any of the family member is associated with M/s. Automobile Repair and as per the affidavit filed by the State Government there is no such firm in existence. Apart from the immovable property the writ Petitioner has alleged that the Respondent No. 6 owns an oil tanker. According to Respondent No. 6 this Oil Tanker bearing Registration No. ARZ-1231 which was purchased with the help of bank loan from State Bank of India, Naharlagun Branch. It was completely burnt due to accidental fire on 29.2.90, of course necessary claim was made and received by the Respondent No. 6. Similarly, she claims to have purchased an Omnibus with registration No. ARC-118 from her agricultural income and even this bus was sold more than 5 years back. It is no longer with her. As for New Itanagar Cinema Hall, the allegations have been denied by Respondent No. 6. According to her this Cinema Hall is owned by a co-operative society, but was destroyed due to natural calamities and the Respondent No. 6 is just an ordinary member of the Co-Operative Society. She has further denied the allegation of lease in her favour of many forest produce while admitting a lessee for collection of Cardimom in Pashighat and Anr. agreement was executed to collect forest produce namely Pipli under the DFO, Along was made. But the sweeping general allegation have been denied by the Respondent No. 6. As for Donyi Polo Saw Mill, she has categorically averred that the same was purchased for Rs. 1,50,000/- derived from agricultural and other income. Purchase of paddy field at Norlong, Riang and Oyan is also admitted, but not at high cost as suggested by the writ Petitioner. The ownership of Building at Baskata Basti in Pashighat has been denied. The Respondent No. 5 has denied the ownership of any building at Noida at Sector 15A 412. According to him this property was purchased for Rs. 8,09,000/- by M/s. Donyi Polo Saw Mill from the income generated from the saw mill itself. Respondent No. 5 has further denied that neither he nor any member of the family own the three storried building at Defence Colony at A 449 at Delhi. While admitting the Chairmanship of the Trust Donyi Polo Mission he has denied that he is the proprietor. It is a charitable society for providing qualitative education to the needy boys and girls of their State. Respondent Nos. 4, 5 and 6 have further denied that none of them is a member of the Donyi Polo Petrochemical Industry and the Respondent No. 6 has also admitted that she is one of the 7 partners of Arunachal Pradesh Wood Based and Chemical Industry, but she has denied of receiving any undue favour from any State Government or State Institution. She has further denied that she owns any petrol pump either at Lilabari or at Jayrampur.

7. Mr. Bhattacharyya''s criticism that the Respondents have not come out with the whole truth, is not well founded. One of the allegations made is that the Respondent No. 5 is a partner of M/s. Donyi-Polo Petro-Chemical Industries at Dayang, Changlang district in Arunachal Pradesh and the Respondent No. 5 has categorically denied this fact. What more can the Respondent do? If he is not a partner of the Firm as alleged, what documentary evidence, the writ Petitioner expects of him to

produce in support of his denial. The writ Petitioner has not chosen to place on record any documentary evidence in support of his allegations that the Respondent No. 5 is a partner of the Firm. It is not as if the documentary evidence could not be obtained. There are several sources i.e. Registrar of the Firm, the Director of Industries and if nothing else, a notice calling upon the party to admit or deny the fact, even that could have done. But without doing anything of sort, the writ Petitioner wants the Respondents to come out with the truth, nothing but the truth and the whole truth of the allegations made by him, thus putting the whole process in the reverse gear.

8. There is Anr. allegation made against the Respondent No. 5 as contained in paragraph 9 of the writ petition which refers to a newspaper report as published in Indian Express, Madras in its issue dated 16.8.96. Now this relates to misuse of power by the then Chief Engineer, Power Shri Darshan Singh and it was Respondent No. 5 who was the Minister-in-charge and during whose tenure misuse came to light. It is the Petitioner''s case that as per newspaper report in the said power scam the Stale Government has reportedly suffered a loss of Rs. 124 crores in respect of power equipment in the State of Arunachal Pradesh for construction of 9 Hydel Projects a Cabinet Subcommittee was formed and ultimately on 2.4.96 the Sub-Committee submitted its report. After preliminary enquiry the Committee came to the finding that Shri Darshan Singh was guilty of most of the irregularities and the Sub-Committee noted:

In the entire fraudulent case, not only is the CE (Power) to be blamed but WAB (Work Advisory Board) members are equally responsible.

It was also reported that:

It was a "free-for-all" in the Power Department, the Cabinet Sub-Committee said and described the award of entire works for execution of nine hydel projects on turn-key basis as ''completely illegal''. It was also reported that the Cabinet Sub-Committee stated to have recommended that Darshan Singh be charge-sheeted, that disciplinary action be taken against the ''involved'' members of the WAB and that the entire case be handed over to the Central Bureau of Investigation.

9. Learned Counsel Mr. A.K. Bhattacharyya appearing for the writ Petitioner placing reliance on the following passage extracted from Bharat Singh and Others Vs. State of Haryana and Others, submitted that the State as well as the Respondents have not come out with the complete truth and suppressed material facts:

In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ Petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is Respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. In this

context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

Learned counsel was highly critical as to why the State should not give the name of the owner of M/s. Arunjyoti Agroplex and that of M/s. Arunachal Paper Industry, this according to him is a calculated attempt of suppression of facts.

Similarly, the Respondent No. 5 in his affidavit-in-opposition has denied distribution of State largesses to his wife, but at the same time the affidavit is totally silent as to who are the lessees.

There is no specific statement made as regards the two institutions Donyi-polo Mission School and Hearing Impaired School, the same fault lies with Respondent No. 6 when she does not come out with the whole truth.

10. As a proposition of law, there can be no quarrel with the principle as laid down by the Supreme Court, but it equally applies to the writ Petitioner as well who could not only procured a Cabinet Sub-Committee Report, a privileged official document then he could as well have obtained certified copies of the title deeds of immovable properties and certified copies of other documents showing the ownership interest or other relationship with the Respondents 5, 6 and 7 with other industrial units as alleged in paragraph 6 of the petition. In fact, an authority has been cited in support of the admissibility of illegally obtained evidence which is no bar to its admissibility as has been held by the Supreme Court (See Magraj Patodia Vs. R.K. Birla and Others,

11. It is not a question of admissibility of illegally obtained evidence, the moot question that arises is, if the writ Petitioner can obtain or managed to obtain a document like Cabinet Sub-Committee Report or recommendation, he could as well obtain certified copies of documents in support of 21 allegations made by him against the Respondents 5,6 and 7 in paragraph 6 of his petition. His resourcefulness for procuring a Cabinet Sub-Committee Report is not being viewed and considered as inadmissible, but for the limited purpose that if a Petitioner can obtain a document which is other-wise not normally accessible much less available, there is no reason why he should not obtain the certified copies of the documents which he was entitled to under the law. At any rate the writ Petitioner is silent on the point.

12. It was argued by the learned Advocate General that it is not the writ Petitioner, the moving spirit behind the petition is not Public Interest, but out and out a political rivalry and revenge. He, therefore, urged that such petition are not Public Interest Petition, but a political vendetta and must therefore, be curbed and nipped

in the bud. It does not serve any Public Interest. Mr. Bhattacharyya countering the argument submitted that if any of the allegations made by the writ Petitioner is proved to be false, the writ Petitioner shall suffer the consequences of swearing a false affidavit, placing strong reliance on Vineetnarain v. Union of India 1998 (1) GIT (SC) 11 the latest judgment of the Supreme Court on this point, he fervently appealed that the political corruption which is eating into the vital of the country be weeded out.

13. Strong reliance has been placed on Vineet Narain and Others Vs. Union of India (UOI) and Another, , it would not be out of place to examine this case in some more detail and depth. What were the issues before the Supreme Court and questions raised in Vineet Narain need to be noted. The facts leading to the seizure of two diaries have been noted in paragraph 4 of the judgment. These two diaries seized by the C.B.I. contains detail account of vast payments made to persons identified only by initials which corresponded to the initials of highly placed politician in power and out of power and some higher ranking bureaucrats and it was consequent upon interrogation of a terrorist belonging to Hijbul Mujahidin that the raid was conducted and diaries recovered. The detail account as contained in the diaries discloses a nexus between crime and corruption at the high places in public life posing a serious threat to the integrity, security and economy of the nation. Still nothing was done. The investigating agencies having found detail accounts as contained in the diaries of immense evidentiary value, yet not proceeding with the investigation and had failed to investigate the matter. The arrest and interrogation of terrorists had led to the discovery of financial support to them by illegal means using tainted funds through hawala transaction and the investigating agencies were sitting tight over the whole matter for months together. It was in this backdrop of fact that petition was filed on 4th October, 1993 under Article 32 of the Constitution in public interest. The terrorist was arrested and interrogated on 25th March, 1991 and for more than 2 1/2 years in face of the potential threat to the integrity and security of the nation and the nexus between crime and corruption, the petition was filed in public interest.

14. This matter was brought to the Court complaining inertia of CBI and other agencies to investigate into the offence because of the alleged involvement of several persons holding high offices in the executive (see paragraph 9 of the judgment). Even some undesirable foreign elements appear to be connected revealing a grave situation posing a serious threat to the unity and integrity of the nation, that is why the Supreme Court noted that the continuing inertia of the agencies to even commence a proper investigation could not be tolerated any longer. Several orders were passed during the course of hearing of this petition, as a result of which investigation started moving. A single directive having the effect of restraining the recording of the FIR and initiation of investigation also came to be considered by the Apex Court, its validly decided and the directive No. 4.7(3) was struck down, which inhibited investigation was struck down.

15. Learned Advocate General Mr. Phukan appearing for the State referring to paragraph 5 of the writ petition submitted that on Petitioner''s own admission he has been associating himself with the general welfare of the people of Arunachal Pradesh in all respect, namely, political, economical and social. The findings of the Cabinet Sub-Committee on the preliminary enquiry is annexed to the petition as Annexure-A. It is a confidential document. The writ Petitioner in paragraph 9A of his petition has referred to a news item as published in the ''Indian Express'' dated 16.8.96 quoting the State Home Minister Neelam Taram:

Until recently it was Nagaland, but we''ve overtaken it in the last couple of years.

This very news report which the writ Petitioner has relied upon quoted:

Even Gegong Apang, the longest serving Chief Minister in the country after Jyoti Basu of West Bengal, harps on corruption in most of his public speeches. And now he''s at the centre of a controversy involving a corruption scandal in the State''s power Department.

In what has come to be known as the "power scam", the State Government has reported lost over Rs. 124 crores on different projects awarded to private companies.

The report further states:

The Chief Minister''s colleagues and bureaucrats feel that Apang cannot shirk responsibility in the scam because he is the power Minister.

16. A confidential letter addressed to the Governor of Arunachal Pradesh, as published in the same news paper ''Indian Express'', Madras on 16.8.96, Annexure-B has also been relied upon and quoted by the writ Petitioner for alleged misuse of Pawan Hans helicopter service. Those who are quoted in the news paper report are the ministers who have been dropped from the Council of Ministers by the Respondent No. 5. Out of those four ministers dropped from the Council of Ministers, one Shri Dera Natung was a member of the Cabinet Subcommittee and the other two Mr. Wanglat and Neelam Tarang figure very much in the news item as published in Indian Express dated 16.8.96 filed as Annexure-B. It was in this backdrop of facts as revealed from the writ Petitioner''s own case, learned Advocate General Mr. Phukan and Mr. Nilay Dutta appearing for the Respondent urged that unlike Vineet Narayan''s case where the question involved was one of initiation on the part of the investigative agency in face of a very serious revealations made during interrogation of a terrorist posing threat to the unity and integrity of the nation, here is a political vendata sought to be raised by the political rivals who are persons behind the scene or pulling string from behind the curtain, such petitions according to them do not serve any public interest. The Cabinet Sub-Committee in its report dated 2.4.96, Annexure-A suggested the following actions:
(1) Shri Darshan Singh, CE Power (under suspension) be charge-sheeted now.

(2) Disciplinary action should be taken against the involved members of Work Advisory Board for the Power Department during the year 1993 and 1994-95.

(3) After thorough examination of the Cabinet Sub-Committee had come to conclusion that in order to find out the involvement of others, if any, besides Govt. officials who were responsible for incurring huge loss to the State Exchequer in the various deals in the Power Department during the financial year 1992-93, 1993-94 and 1994-95 the entire case be handed over to Central Bureau of Investigation.

17. Before the Cabinet could take a decision on this report, the Respondent No. 5, the Chief Minister, on the writ Petitioner''s own showing was in the eye of the storm and this was reported in the Indian Express along with Anr. box news "Trouble at the top" on 16th August, 1996 and the four Cabinet Ministers were dropped on 24th August, 1996 as per An-nexure-E filed by the writ Petitioner and on 9th September, 1996, just within a fortnight, the present petition came to be filed.

18. The facts as noted above are not that indicative of political overtones. The Supreme Court dealing with this aspect of the matter even while observing that the scope of PIL is wider than that relating to private litigation and no rigid rule can be laid down, nevertheless the Supreme Court held that a mere busy body or meddlesome interlopes or wayfarers or officious intervenor without any interests or concern, except for personal gain or private profit or other oblique consideration - such a person cannot be allowed to abuse the process of the Court by initiating vexatious or frivolous litigation. The Supreme Court in AIR 1991 420 (SC) has observed:

Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine Petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affect persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extra-ordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation.

19. Of course, it was a petition under Article 32 of the Constitution but the underlying principle so far as PIL is concerned is the same. The Supreme Court in the welknown Janata Dal''s case as reported in Janata Dal Vs. H.S. Chowdhary and

Others, has held that the Petitioner had no locus standi to file the petition and the initiation of proceeding under Article 51 -A of the Constitution could not come within the true meaning and scope of public interest litigation. Consequently, the political parties, namely, Janata Dal, Communist Party of India (Marxist) and Indian Congress (Socialist) and others were held to have no right of seeking their impleadment/intervention even while recognising that no rigid litmus test can be applied since the broad contours of PIL are still developing. The Supreme Court emphatically pointed out that:

Only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the Court for the poor and needy, suffering from violation of their fundamental rights. But a person for personal gain or private profit or political motive or any oblique consideration has no locus standi. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold. The Court should not allow its process to be abused by mere busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity.

20. The Supreme Court in S.P. Anand v. H.D. Devegowda (1996) 6 SCC 735, has underlined the importance of locus standi. Of course, it was in relation to Supreme Court''s jurisdiction, but the importance of the principle is equally applicable to a petition under Article 226:

It is of utmost importance that those who invoke the Supreme Court''s jurisdiction seeking a waiver of the locus standi rule must exercise rest aint in moving the Court by not plunging in areas wherein they are not well -versed. Such a litigant must not succumb to spasmodic sentiments and behave like a knightcrrant roaming at will at pursuit of issues providing publicity. He must remember that as a person seeking to espouse a public cause, he owes it to the public as well as to the Court that he does not rush to Court without undertaking a research, even if he is qualified of competent to raise the issue.

21. Mr. Bhattacharyya, learned senior counsel has argued on high plan, copiously quoting from Constitutional and Administrative Law by Hilaire Barnett, ministerial responsibility and other connected topics, and the meaning of ''Rule of Law'' as propounded by Prof. DICEY in his well known treatise Law of Constitution. There can be no quarrel with the proposition that no man is above the law - whatever his rank or condition. Ministerial responsibility, both as collective and individual, the morality or public office, financial probity, personal relationship, disclosure of confidential information are not mere ideals to be cherished but are to be practised by those in position.

22. On the point of disclosure of official information Prime Minister Herbert Asquith has been quoted as saying at page 263 of Constitutional and Administrative Law, "... Again no minister is justified under any circumstances in using official information which has come to him as a minister for his own private profit, or for that of his friends."

23. The minister who was a member of the Cabinet Sub-Committee, and subsequently dropped from the Council of Ministers owes an explanation as to how the report Annexure-A was leaked. Mr. Bhattacharyya has taken a bold stand, that writ Petitioner will have to face and is prepared to face the consequence of using the report Annexure-A. It is not so much a question of taking a bold stance, it is a question of locus standi of the writ Petitioner whether he is on his own or the protage of the political rivals of Respondent No. 5, as argued by Mr. Dutta. The minister is not before us, but the writ Petitioner is there, nor for his personal gain but in public interest.

24. There are many facets to the public interest, but these facets can be grouped under two principal headings (i) is equity and the other (ii) is efficiency. It is this equity and efficiency combined together, which a long way in paving the path of public interest when any Petitioner approaching the Court, whose locus standi is called in question. Whose bonafides are doubted and denounced as politically motivated and patronised, the writ Petitioner ought to make a clean breast of himself as he expects of the Respondents, but he knows that the moment he discloses the source of Cabinet Sub-Committee report, the political nexus and links stand exposed which is why he profess the bold stand - prepared to suffer the consequences.

25. It is not merely because of the clouded standi, of the writ Petitioner but even considering the 21 allegations as made by him, many of which are not prima facie made out while others stand satisfactorily explained. The writ Petitioner alleged Stranjyoli Agroplex with the given registration number stands in the name of Omak Apang, son of the Chief Minister. There is no such firm in existence. On the other hand the registration as given by the writ Petitioner is of Arunjyoti Agroplex. Again the writ Petitioner named M/s. Arunachal Paper Industry standing in the name of Omak Apang. It is not Arunachal Paper Industry but Arunachal Paper Agency which has not been functioning for past ten years.

26. Mr. Bhattacharyya criticised and contended that the Respondents should have disclosed and given the names of owner of Arunjyoti Agroplex and Arunachal Paper Agency, and should have also said something about the relationship of T. Apang with Respondent Nos. 5, 6 and 7. The Respondent No. 5 has denied having a son by name T. Apang. The Petitioner does not allege any relation whatsoever, similarity of surname has prompted him to make the allegation. As for other industries, small scale units, was it really that difficult for the writ Petitioner, who is resourceful enough to procure a confidential document like Annexure-A, Cabinet

Sub-Committee Report, to have obtained certified copies from the Registrar of Firms or other competent authorities.

27. The ownership of buildings at Yingkiong, Noida and Defence Colony, Delhi has denied by Respondent No. 5, but Respondent No. 6 has admitted purchase of the house at Noida for Rs. 8.09 lakh. The ownership of all these properties is a matter of record, and any one could have obtained certified copies of the sale-deeds or atleast entries made in the Municipal/Corporation record. Owner of three storried building in Defence Colony, Delhi cannot remain unrecorded. The land-lord''s name is recorded in the House Tax Register. It was also criticised that the Respondent No. 5 has said anything about the ownership of the two schools of which he is the President. What more explanation is needed when it is stated that these are charitable trusts, and if there is anything with regard to their management, the Registrar Public Trusts is there to take care of them.

28. The writ Petitioner has in a very guarded manner suggested that the Respondent No. 5 is a benami holder of properties and while purchasing properties, particularly the one at Noida, the same was underestimated. In both these cases the Respondent No. 5 has made his position clear. T. Apang is no way related to the family of Respondent No. 5 and if it is a case of benami holding firstly, it is not so specifically pleaded and secondly the property held benami is liable to acquisition u/s 5 of the Benami Transaction Prohibition Act, 1985. All that the Petitioner has to do is to approach the competent authority. Similarly, the house at Noida is not the property belonging to Respondent No. 5, it was Respondent No. 6 who purchased it. Respondent No. 6 in her affidavit has clearly stated that she owned valuable properties long before the Respondent No. 5 joined public life. The allegation of amazing wealth has been denied. She has admitted to have purchased a saw mill for Rs. 1,50,000/-derived from agricultural income and also the Noida property at the costs of 1.90 lakhs and has further disclosed the source of her income being Donyi Polo Saw Mill. Although it is not very specifically pleaded but if the writ Petitioner had any doubt of these properties being undervalued. Section 269-A of the Income Tax Act provides for acquisition of immovable properties in certain cases of counteract evasion of tax. This statutory provision being available both under the Benami Transaction Act, 1988 and Section 269-A of the Income Tax Act, it is not for this Court by invoking its extra-ordinary jurisdiction under Article 226 of the Constitution, that too in a PIL to go into these questions. In either case the remedies available in the ordinary course of law having not been availed by the writ Petitioner, nor any reason assigned for not so availing the remedy, invoking Article 226 of the Constitution, that too, in the back-drop of circumstances as noted above, it would not be a proper exercise of power vesting in the Court.

29. Learned Counsel appearing for the writ Petitioner has relied on the following judgments:

(1) (1996) 6 SCC 530 : Common Cause, A Registered Society v. Union of India

(2) Shivsagar Tiwari Vs. Union of India (UOI) and Others,

(3) Centre for Public Interest Litigation v. Union of India, 1995 Supp (3) SCC 382

(4) Lucknow Development Authority Vs. M.K. Gupta,

30. Out of these cases, in Centre for Public Interest Litigation (supra) the Supreme Court endorsed the guidelines submitted by the Attorney Gener al for allotment of petrol pump, Gas Agency etc. and that has been referred to and relied upon in Common Cause, A registered Society v. Union of India (Satish Sarma). A mere glance at the judgment in Common Cause (supra) would reveal how crudely the discretionary power to allot petrol out-let was used or rather misused. There are as many as 15 such allotments made by the minister in stereo-type manner. The applications were not officially received in the ministry. No criteria or guideline was followed in the matter of allotment of petrol pump and the allottees were said to be related to various officials in the ministry or related to politicians or related to members of the Oil Selection Board. Even personal staff of the minister concerned were allotted petrol pump and gas agency while two staff and stenographer in the ministry were also allotted petrol pump. A relation of the Additional Secretary of the Ministry Ms. Madhuri Safaria and her relation Mrs. Manika Malla were also beneficiaries of petrol pump curtsey Capt. Sharma the minister.

31. Let us now advert to the pleadings of the instant case. The writ Petitioner in paragraph 6 has enumerated 11 items of forest produce such as Kukti, Dalchini, Wild peeper, Wild Cardamom, Phool Jharu (Broom) as largess to be conferred on the Chief Minister''s wife. No other details such as date, time and the period for which the lease rights were conferred has been indicated in the petition. It is also alleged that Smti. Yadap Apang being a sitting member of the Legislative Assembly and being wife of the Chief Minister was not entitled to State largees. Both the State Government, Respondent No. 5 as well as Respondent No. 6 have categorically denied the allegations made by the writ Petitioner. The Respondent No. 6 in her affidavit-in-opposition has denied the allegation of being a lessee in respect of certain forest produces. Until 1979 these forest produces were un-collected and was treated as mere waste. Some farmers from Sikkim visited this area and promised to extend assistance for its collection and propagation but the promised technical assistance never materialised and this agreement therefore died a natural death in 1985 and 1989 respectively.

32. Considering the pleadings of the writ Petitioner, the nature of the allegations and its emphatic denial in absence of any other material to support conclusion of any undue favour having been shown to Respondent No. 6, the cases relied upon by the learned Counsel for the writ Petitioner have no application. Even the order in which the lease/leases were granted for collection of forest produces by Respondent No. 6 has not been indicated. In this circumstance, the cases of Sheela Kaul (supra) and Satish Sharam (supra) is not attracted to the facts. Now coming to the Lucknow

Development Authority (supra), this case is not an authority for the proposition that CBI investigation should be ordered. It turns on its own fact as can be seen from the opening paragraph of the judgment. The question of law that arose for consideration whether the statutory Development authorities like Lucknow Development Authority, Delhi Development Authority and Bangalore Development Authority are amenable under the Consumer Protection Act, 1986. This is not a question which arise for consideration in the case at hand, but one such principle laid down in this judgment. However, this case is of worth noting for the proposition that the liability to pay damage can be fastened on the erring officials.

33. The Respondent No. 5 has admitted having purchased a paddy field for a price of Rs. 10,000/- in 1982 but he denied the allegations that he owned two buildings in Yingkiong which is leased out to the State Bank of India. Similarly the Respondent No. 6 Smt. Yadap Apang has also denied having any land and building at Baskata Basti in Pasighat. She has filed certificate of registration of Cinema Co-Operative Society Ltd. as Annexures-1 and 2 to her affidavit-in-opposition and the sale deed dt. 14.3.89 in respect of sale of Donyi Polo Saw Mill and those are properties of which certified copies of record of ownership could well have been produced, if the writ Petitioner had applied for it, at least after obtaining the copies of affidavit sworn and filed by Respondent Nos. 1,5,6 and 7. There is some controversy about the price of two paddy fields purchased by Respondent No. 5. The Petitioner has quoted the price of the paddy fields at Ngorlong. Rayang and Oyan, the paddy field at Ngorlong is admitted to have been purchased by Respondent No. 5 for Rs. 10,000/-, as for other two the said to have been purchased by Mrs. Yadap Apang, Respondent No. 6. She has made no comments about this two items, so it can be said that the allegation has not been traversed by the concerned Respondent, i.e. the Respondent No. 6. The paddy field at Rayang was purchased from the Gaonburah of Ruskin village Late Hooko Bahadur Kazi and the paddy field at Oyan was purchased from one Shri Talo Kadu. There are revenue records maintained, the Petitioner could as well have field entries made in the revenue record to substantiate his allegations but that has not been done.

34. Now coming to the allegation as made by the writ Petitioner in paragraph 9A relating to power scam the Respondent No. 5 in his affidavit has stated:

Regarding the allegation of power scam it is stated that as soon as the deponent came to know about irregularities in power Department he immediately ordered an enquiry. The Commissioner of Power conducted the enquiry and submit his report on these basis of the enquiry the erring officer, the Chief Engineer Shri Darshan Singh has been placed under suspension on 25.7.95. Departmental proceedings have been started/drawn up against him and the same has been started against him which is going on and is likely to be completed soon. In the said enquiry or in the relevant records and documents do not reflect any involvement of the deponent. The deponent was not holding power portfolio at the relevant time. He is

holding the power portfolio since April 1995 only. The deponent was not at all related with the said irregularities. The Petitioner has based his allegations entirely upon the baseless and uncorroborated publication in the paper Indian Express which have no evidentiary value.

35. The Respondent No. 3, the Chief Engineer in his affidavit-in-opposition has denounced the news item and has stated as follows:

That with regard to the statements made in paragraph 9 of the petition, I say that news items were published in Indian Express without verifying the facts from me nor any chance was given to me to clarify my position before publication of the same and the said news item is a result of distortion and misrepresentation of facts and is politically motivated by persons with vested interest. Nobody termed the case as a scam and in the affidavit filed in Civil Rule No. 3169/96 before this Hon''ble Court on behalf of the Govt. the charge were termed as simple irregularities. The Chief Minister, Arunachal Pradesh in an interview denied that there was any scam and stated that some irregularities had been committed by some officers without taking the power Minister into confidence. Be it mentioned herein that after considering the report, a disciplinary proceeding has already been initiated against me by issuing a charge sheet and the departmental enquiry is continuing.

The allegation in a newspaper that the State suffered a loss of Rs. 124 crores on different projects is totally false and baseless and the same must have been published at the instance of some vested interested persons. Regarding the allegation of irregularities in supply of turbine is concerned, I have no comment to make as the same was not supplied while I was in office.

He has also denied the constitution of the Enquiry Committee of the Cabinet and the terms of reference and the report submitted by the Committee. His grievance is that he was never given any notice. As for the statement of public money amounting to Rs. 124 crores being squandered away in purchasing 10 light weight micro turbine, the deponent has denied the same as absolutely incorrect and baseless. Incidentally the affidavit field by the State Govt. Respondent No. I may also be seen in this behalf.

36. It is obvious that the allegation as made by the writ Petitioner is based on newspaper report and what is the evidentiary value of such report incidentally came to be considered by the Supreme Court in respect of a news paper report published in the same newspaper, Indian Express, Madras and this is what the Supreme Court has said:

We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a news paper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1972 by which an allegation of fact can be proved. The presumption of genuineness attached u/s 81 of the Evidence Act

to a news paper report cannot be treated as proof of the facts reported therein.

26. It is now well-settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported.

(See Laxmi Raj Shetty and Another Vs. State of Tamil Nadu, Referring to its earlier judgment, the Supreme Court said:

The question as to the admissibility of news paper reports has been dealt with by this Court in Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, There the question arose whether Shri George Fernandez, the successful candidate returned to Parliament from the Bombay South Parliamentary Constituency had delivered a speech at Shivaji Park attributed to him as reported in the Maratha, a widely circulated Marathi newspaper in Bombay, and it was said:

A news paper report without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or grabled. Such news items cannot be said to prove themselves.

37. Given the evidentiary value as held by the Apex Court, let us now turn to the affidavit sworn and filed by the writ Petitioner and see how far has he strengthened the news report Annexure-B which is otherwise nothing but hearsay.

38. Writ Petitioner''s verification appended to the affidavit reads as follows:

That the statements made in paragraphs 1 to 7, 14, 15 of this petition are true to my knowledge, and those made in paragraphs 8, 9 to 12 are true to my information derived from records and those made in the rest of the paragraphs are my most humble submissions before this Hon''ble Court.

39. Averments made in para 9 are based on information derived from record, and what is that record the news paper report Annexure-B, which has been held as ''hearsay'' by Apex Court, which even the writ Petitioner does not say that he ''believes'' it to be true. The verification as reproduced above does not meet the minimal requirement of Order 19 Rule 3 Code of Civil Procedure.

40. Political overtones and motivations running through the wharf and weft of the petition is quite discernible and at some spots quite demonstrable (see para 10). It is the writ Petitioner''s case that after publication of the news item Annexure-B, the Chief Minister dropped four of his cabinet colleagues unceremoniously for their open criticising of the malfunctioning of Mr. Apang as Chief Minister of the State, which has been widely reported in the national media of the country, See the averments:

In this connection, it would be very pertinent to mention that a case bearing No. RC 1/82-ACU-II/CBI/SPE/Delhi is still pending since April, 1980 against Shri Apang but for reasons best know to the authorities, nothing has been done to investigate into the alleged corruption of Shri Apang since he has assumed the office of the Chief Minister in 1978.

Even those persons in authority, who expressed unequivocally the malfunctioning of the Chief Minister, Shri Gegong Apang, that is, his Cabinet Colleagues, were dropped from the Cabinet portfolio unceremoniously by abusing and misusing his power.

... the voice of the people were suppressed, as admittedly as many as four Cabinet Ministers were dropped by him and all of them publicly outcried and criticised about the corrupt practices of Shri Apang, more particularly in the Power Department.

41. Including, retaining or dropping some one from the Council of Ministers is the Chief Minister''s prerogative, repeatedly raising this issue speaks volume for itself.

42. Even the CBI is not above board according to the writ Petitioner who has referred to a case bearing No. R.C. 1/82-ACU-II/CB1/SPE/Delhi. Incidentally it may also be noted as to what the Respondent No. 5 has to say:

Case No. RC. 1/82 was started against several persons including a Minister. On the application of one of the accused deponent was summoned by the learned Special Judge. On the application filed by the deponent the learned Special Judge revoked the order issuing summons and discharged the deponent. The matter has been taken to the High Court where it is pending now.

43. So far as the power scam as reported in news paper and relied upon by the writ Petitioner, the Respondent No. 5 has denied his involvement he was not holding the power portfolio at the material time he came to hold it only since April, 1995.

44. It is the writ Petitioner''s case that the Respondent No. 5 after publication of the news report about power scam demanded CBI probe came out with a statement that the State does not fall under the jurisdiction of the investigating agency. Be that as it may, we are not going into the legal validity of the statement said to have been made by the Chief Minister but suffice it to note, that even Vineet Narain (supra) so heavily relied upon by the Petitioner takes note of this legal position.

45. It is certainly not for the above reason, given the political overtones motivations in the writ petition highly shaking slender evidence mostly constituting news paper report held to be hearsay even for the limited purpose of making out a prima facie case coupled with the defective verification of the affidavit failing to inspire any confidence in the veracity of the allegations made, at based as they are on news items coupled with politically shadowed standi of the writ Petitioner, to our mind it is not a fit case to invoke the extra ordinary jurisdiction of this Court under Article 226 of the Constitution that too in a PIL. The petition is, therefore, dismissed with no

order as to costs.

D.N. Chowdhury, J.
I have had the advantage of reading in draft the judgment of the learned Chief Justice (Actg.). Despite cogent argument, persuasively advanced with his usual lucidity in the judgment by Hon''ble the Chief Justice (Actg.) Mr. V.D. Gyani, after careful deliberations, I regret my inability to concur with his view and conclude that the writ petition should not be dismissed.

2. Since the learned Chief Justice (Actg.) has dealt with the facts comprehensively, I refrain from repeating the same.

3. The key question is the dynamics of judicial process - the extent and purview of providing access to the Court keeping in mind the ideals and aspirations ingrained in the Constitution. To secure justice in all its forms and the social condition of the country, the Supreme Court of India initiated the process of judicial democracy through innovative uses of judicial power. The Supreme Court of India in express terms decided to depart from the traditional rule of locus standi with a view to broaden the access to justice as pithily articulated in the case of S.P. Gupta Vs. President of India and Others, relevant portion of which reads as follows:

The types of cases which we have dealt with so far for the purpose of considering the question of locus standi are those where there is a specific legal injury either to the applicant or to some other person or persons for whose benefit the action is brought, arising from violation of some constitutional or legal right or legally protected interest. What is complained of in these cases is a specific legal injury suffered by a person or a determinate class or group of persons. But there may be case''s where the State or a public authority may act in violation of a constitutional or statutory obligation, resulting in injury to public interest or what may conveniently be termed as public injury as distinguished from private injury, who would have standing to complain against such act or omission of the State or public authority? Can any member of the public sue for judicial redress? Or is the standing limited only to a certain class of persons? Or there is no one who can complain and the public injury must go unredressed. To answer these questions, it is first of all necessary to understand what is the true purpose of the Judicial function. This is what Prof. Thio states in his book on ''Locus Standi and Judicial Review'':

Is the judicial function primarily aimed at preserving legal order by confining the legislative and executive organs of government within their powers in the interest of the public (Jurisdiction de droit objectif) or is it mainly directed towards the protection of private individuals by preventing illegal encroachments on their individual rights (jurisdiction de droit subjectif)? The first contention rests on the theory that Courts are the final arbiters of what is legal and illegal... Requirements of locus standi are therefore unnecessary in this case since they merely impede the purpose of the function as conceived here. On the other hand, where the prime aim

of the judicial process is to protect individual rights, its concern with the regularity of law and administration is limited to the extent that individual rights are infringed.

4. The entire process is for opening access . to the Court to the "poor, starved and mindless millions who need protection for securing to themselves the enjoyment of human life (borrowed from the observation of Justice YV Chandrachud in the case of Kesava Nanda Bharati v. The State of Kerala, reported in (1970 4 SCC 225 at page 947)". The Courts in India for a long time were used by the rich, affluent and the powerful who were described as "Repeat Players" by Prof. Mark Gallanter. Prof. Moolchand Sarma of the Law faculty of the Delhi University in his treatise "Justice P.N. Bhagwati Court Constitution and Human Rights" portrayed some of the observations of Justice Bhagwati in this regard, which reads as follows:

Today we find that in Third World Countries there are large number of groups which are being subjected to exploitation, injustice, and even violence. In this climate of conflict and injustice, Judges have to play a positive role and they cannot content themselves by invoking the doctrines of self-restraint and passive interpretation. The Judges in India have fortunately a most potent judicial power in their hands, namely, the power of judicial review. The judicious and sustained use of its power to further the cause of social justice has come to be regarded by many as not only beneficent but imperative in a developing country where there is a large scale poverty and ignorance. The judiciary has to play a vital and important role not only in preventing the remedying abuse and misuse of power but also in eliminating exploitation and injustice.

AGAIN

The history of public interest litigation is the history of last few years. It represents sustained effort on the part of the judiciary in India to provide access to justice for the deprived and vulnerable sections of the Indian humanity. With a legal architecture designed for a colonial situation and a jurisprudence structured around a free-market economy, the Indian judiciary has been hard pressed to fulfil the constitutional aspirations of the cast masses of poor and under-privileged segments of Indian society during the first three decades of independence... During the last few years however, judicial activism has opened up a new dimension for the judicial process and has given new hope to the justice-starved millions of India.

5. Prof. Upendra Baxi, a Scholar and Human Right activist while endorsing the views of Justice Bhagwati about the nature and scope and history and future of Social Action Litigations (SAL), made the following observations:

The Supreme Court of India is at long last becoming, after thirty-two years of the republic, the Supreme Court for Indians. For too long, the apex constitutional Court had become ''an arena of legal quibbling for men with long purses''. Now increasingly the Court is being identified by justices as well as people as the last resort for the oppressed and the bewildered. The transition from a traditional

captive agency with a low social visibility into a liberated agency with a high social visibility is a remarkable development in the career of Indian appellate judiciary... The Court is augmenting its support base and moral authority in the nation at a time when other institutions of governance are facing a legitimate crisis...

People now know that the Court has constitutional power of intervention, which can be invoked to ameliorate their miseries arising out from repression, governmental lawlessness or administrative deviance. Undertrials as well as convicted prisoners, women in protective custody, children in juvenile institutions, bonded and migrant labourers, unorganized labourer, untouchables and scheduled tribes, landless agricultural labourers who fall prey to faulty mechanization, women who are bought and sold, slum dwellers and pavement dwellers, kin of victims of extra-judicial executions - these and many other groups - now flock to the Supreme Court seeking justice. They come with unusual problems, never before confronted so directly by the Supreme Court. They seek extra-ordinary remedies, transcending the received notions of separation of powers and the inherited distinctions between adjudication and legislation on the one hand and administration and adjudication on the other. They bring, too, a new kind of lawyer and a novel kind of judging. They add to poignant twist to the docket explosion which was previously merely a routine produce of the Bar committed only to justice according to the fees. They also bring a new kind of dialogue on the judicial role in a traumatically changed society.
The medium through which all this has happened and is happening, is social action litigation, a distinctive by-product of the catharsis of the 1975-76 Emergency. What emerged as an expiratory syndrome is now a catalytic component of a movement for ''judicial democracy'' through innovative uses of judicial power

(- liberally extracted from Prof. M.C. Sharma''s "Justice P.N. Bhagwati Court Constitution And Human Rights")

6. Public Interest Litigation (P1L) in India is in the process of development. The entire object is to remove some of the rigours of the Judicial process. PILs as a matter of fact are adverserial. The pleadings are not to be strictly interpreted-it is an innovative process used as a tool to render justice and to remove injustice. The Supreme Court initiated a judicial proceeding in the case of Labourers working in the Labourers Working on Salal Hydro Project Vs. State of Jammu and Kashmir and Others, on the basis of a letter addressed to the Supreme Court enclosing a paper cutting of a news item published in the Indian Express dated 26th of August, 1982 pertaining to exploitation of the migrant workmen, seeking interference from the Supreme Court and demanding justice. The Supreme Court treated the above letter as a writ petition under Article 32 of the Constitution of India and issued directions to the Respondents accordingly. On a letter from Prof. Upendra Baxi about the inhuman conditions of the girls living in the Government Protective Home of Agra, the Supreme Court entertained it as a petition under Article 32 of the Constitution, the decision in which is reported in Dr. Upendra Baxi and Others (II) Vs. State of U.P.

and Others, Upendra Baxi (II) (Dr.) v. State of U.P. and Ors. The Supreme Court on the strength of the said letter, issued directions to the concerned authorities. In the above case, it was held that PIL is not a litigation of adverserial nature. It involves collaboration and co-operative approach of the State Government, its officers, the lawyers appearing in the case and the Bench for the purpose of making human rights meaningful for the weaker sections of the community and to ensure socio-economic justice to the deprived and vulnerable sections of humanity in this country. There are numerous instances of cases of this nature which need not further be catalogued.

7. In the history of development of PIL, the Indian Press provided a great support. The history of the PIL in India is the history of active participation of Courts, Press and the social action groups. The Indian Express reported about the plight of the Bihar under-trial prisoners who were languishing in jail on pre-trial detention and the Supreme Court initiated a series of cases viz. in cases in the name of Hussainara Khatoon v. State of Bihar. Prof. Upendra Baxi and Prof. Latika Sarkar, the two Law teachers of the Delhi University sent a letter to the Editor of the Indian Express describing the plight of the inmates of the Agra Protective Homes which became the foundation of the writ petition under Article 32 of the Constitution of India (writ petition No. 1900/82 Upendra Baxi v. State of U.P., referred to by Dr. Mool Chand Sharma). Most of the PILs are/were based on news paper exposure - news paper reports, letters to the Editors, because of the fact that the Supreme Court liberalised the rigours of locus standi. To cause effective justice to the parties and to eliminate injustice, the Supreme Court even softened the rigour of rule of evidence, more so when such proceeding is treated not as adversarial in nature. In the case of Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, when faced with such a situation, the Supreme Court observed:

It is not at all obligatory that an adverserial procedure, where each party produces his own evidence tested by cross-examination by the other side and the judge sits like an umpire and decides the case only on the basis of such material as may be produced before him by both parties, must be followed in a proceeding under Article 32 for enforcement of a fundamental right. In fact there is no such constitutional compulsion enacted in Clause (2) of Article 32 or in any other part of the Constitution. It is only because we have been following the adversarial procedure for over a century owing to the introduction of the Anglo-Saxon system of jurisprudence under the British Rule that it has become a part of our conscious as well as sub-conscious thinking that every judicial proceeding must be cast in the mould of adversarial procedure and that justice cannot be done unless the adversarial procedure is adopted. But it may be noted that there is nothing sacrosanct about the adversarial procedure and in fact it is not followed in many other countries where the civil system of law prevails. The adversarial procedure with evidence led by either party and tested by cross-examination by the other party and the judge playing a passive role has become a part of our legal system because

it is embodied in the CPC and the Indian Evidence Act.

8. According to the Supreme Court, the Statutes have no application where new jurisdiction is created by the Supreme Court. The Court accordingly observed:

We do not think we would be justified in imposing any restriction on the power of the Supreme Court to adopt such procedure as it thinks fit in exercise of its new jurisdiction, by engrafting adversarial procedure on it, when the Constitution makers have deliberately chosen not to insist on any such requirement and instead, left it open to the Supreme Court to follow such procedure as it thinks appropriate for the purpose of securing the end for which the power is conferred, namely, enforcement of a fundamental right. The adversarial procedure has, in fact, come in for a lot of criticism even in the country of its origin, and there is an increasing tendency even in that country to depart from its strict norms. Lord Devlin speaking of the English judicial system said : "If our methods were as antiquated as our legal methods, we should be a bankrupt country". And Foster Q.C. observed: "I think the whole English system is nonsense. I would got to the root of it - the civil case between two private parties is a mimic battle ... conducted according to rule of evidence." There is a considerable body of juristic opinion in our country also which believes that strict adherence to the adverserial procedure can sometimes lead to injustice, particularly where the parties are not evenly balanced in social or economic strength. Where one of the parties to a litigation belongs to a poor and deprived section of the community and does not possess adequate social and material resources, he is bound to be at a disadvantage as against a strong and powerful opponent under the adversary system of justice, because of his difficulty in getting competent legal representation and more than anything else, his inability to produce relevant evidence before the Court.
The Court further observed:

Now it is obvious that the poor and the disadvantaged cannot possible produce relevant material before the Court in support of their case and equally where an action is brought on their behalf by a citizen acting pro bono publico, it would be almost impossible for him to gather the relevant material and place it before the Court. What is the Supreme Court to do in such a case? Would the Supreme Court not be failing in discharge of its Constitutional duty of enforcing a fundamental right if it refuses to intervene because the Petitioner belonging to the underprivileged segment of society or a public spirited citizen espousing his cause is unable to produce the relevant material before the Court ! If the Supreme Court were to adopt a passive approach and decline to intervene in such a case because relevant material has not been produced before it by the party seeking its intervention, the fundamental rights would remain merely a teasing illusion so far as the poor and disadvantaged sections of the community are concerned.

The Court also observed in the above case that:

... what we have said above in regard to the exercise of jurisdiction by the Supreme Court'' under Article 32 must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226, for the latter jurisdiction is also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Article 32 and the same power can and must therefore be exercised by the High Courts while exercising jurisdiction under Article 226. In fact, the jurisdiction of the High Courts under Article 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights.

9. Our judicial system owes its origin to a great extent to the Anglo-Saxon jurisprudence and adapted to a large extent the traditional practice adhered in English system. However, the power of judicial review now emanates from the Indian Constitution - Judicial Review is a basic structure of the Constitution for upholding the Constitution and the Rule of Law. Today, the Judicial Review is not confined to the settlement of disputes between the private parties like the English Courts deciding the questions of "Lawyers Law" and delivering judgment on what Roscoe Pound called as "Rules in the narrower Sense" [Hierarchy of Sources and Forms in different Systems of Law " of Tulane Law Review 475, 482 (1933)]. The Judiciary, more particularly the Apex Court, as indicated earlier, added dimension to the traditional role of dispute settler on the Judiciary, to uphold the Constitution and the rule of law. The Judiciary is entrusted with the duty to preserve and protect the Constitution and the rule of law as the overseer of the Constitutionality of the actions undertaken by the Executive and the legislative branches of the State. There is a tremendous development of Constitutional law in India and the Judicial task is no longer confined to resolving private dispute between two individuals.

We expect Courts to encompass every reach of the law, to encircle us in our earthly sphere and to travel with us to the alien vastness of our outer space. We want Courts to sustain personal liberty, to end our racial tensions, to outlaw war, and to sweep the contaminants from the globe. We ask Courts to shield us from public wrong and private temptation, to penalise us for our transgressions and to restrain those who would transgress against us, to adjust our private differences, to resuscitate our moribund business, to protect us prenatally, to marry us, to divorce us, and, if not to bury us, at least to see to it that our funeral expenses are paid. These services, and many more are supposed to be quickly performed in temples of Justice by a small priestly castle with the help of few devoted retainers and an occasional Vestal Virgin. We are surprised and dismayed because the system is faltering.

[Echoed the words of Judge Shirley Hufstedler, "New Blocks for old pyramids : Reshaping the Judicial System ", 44 Southern California Law Review, 901 (1971)]

10. The Constitution of India enshrines and guarantees the rule of law and the High Court is clothed with the power under Article 226 of the Constitution of India to sure that each and every authority in the State including the Government acts bonafide within the Constitutional limits. The men who are entrusted with the task of governing and running the Government act as trustee and is to act bonafide for the public interest. For its actions or dereliction, the State and its instrumentality is accountable and where even allegation of abuse or misuse of powers in its jurisdiction is brought to the notice, such complaints are required to be investigated. Admittedly, the allegations in the instant case are of serious nature - some are admitted and some disputed. But nonetheless, there are allegations and those allegations are against persons who are in high places. It atleast requires proper investigation or examination and the same cannot be thrown off on some technicalities. It is also to protect the interest and image of those persons against whom the serious allegations are made that it should not be kept under the carpet on the ground of absence of material evidence. The Court is not to give a judgment at the stage. The function of the Court is to make way for a proper investigation. The Court is not armed with the machinery to investigate the matter. The State has its own machinery, but the accusing fingers are pointed to the persons who are at the helm of affairs. To avoid any misunderstanding, in my view investigation is to be made by an authority other than the State machinery. However, I am conscious about the statement of the learned Advocate General for the State of Arunachal Pradesh, Mr. A.K.. Phukan, who has submitted with candour that the State machinery is always available for investigation of the matter and to clear all the doubts. However, honestly and faithfully the local authority may act and carry out the investigation, the same will lack credibility since the allegations are pointed towards the persons at the helm of the affairs. It is in that view of the matter, I think it fit and desirable as also in the interest of justice, to entrust the investigation to the Central Bureau of Investigation (CBI) to investigate and to submit its report to the Court.

11. These steps for causing investigation through the CBI became necessary in view of the position at Arunachal Pradesh where the judicial functions are discharged by the executive authority. The Judiciary is yet to be separated from the Executive in the State of Arunachal Pradesh. Thus on consideration of all these aspects of the matter, I am of the view that the investigation is to be made on subject-matter through the CBI.

12. Mr. A.K. Phukan, learned Advocate General, as well as Mr. N. Dutta, learned Counsel for the Respondents, expressed their objection to the investigation of the case by the CBI since, according to them, the Delhi Special Police Establishment Act is not extended to the State of Arunachal Pradesh. In my view, this should not stand

in the way of the Court for entrusting an agency to examine the matter. The Court under Article 226 of the Constitution if within its jurisdiction to entrust any authority to investigate and report the matter to the Court. The Statutory provisions cannot stand in the way of the Court in exercising its Constitutional powers conferred on it by the Constitution. Accordingly, I direct the CBI to investigate into the matter and submit a report to this Court within four months.

13. I have given my anxious consideration on the subject. Before this Court, the Petitioner put forwarded some of the instances of misuse or abuse of the official power by the person who is at the wheel of the administration. These are only assertion in the form of charge. In a democratic State any citizen has a right to point out his finger to the person holding public office for the alleged misdemeanour in public office. Democratic norms and rule of law demands an enquiry into those charges. It is not only for the good of the administration but also is to be made in interest of those whose personal as well as political image is sought to be blurred. Every one has a right to live with dignity - a person holding public office should not be deprived of his personal dignity. It can only be protected by a fair investigation and not by stymieing the investigation. All the twenty-one imputations referred in the writ petition cannot be labelled as absurd and groundless for the purpose of making an investigation by an independent agency which has the necessary paraphernali to investigate the allegations. This is not the stage of evaluating the evidence. Nature of the burden of proof varies from case to case. Changes from stage to stage. Most cases involve more than one issue, naturally burden of proof on different issues may be distributed between the parties. "The duty of going forward in argument or in producing evidence, whether at the begining of the case or at any later moment throughout the trial or discussion" (Recalled the statement of American Scholar JB Thayer from "Preliminary Treatise on Evidence at the Eommon Law " 355). The burden of proof, even the provisional burden (sometime called as "tactical burden") shifts to and fro. Assimilation and assessment of facts is not a mere statistical analysis comprised of mathematical technique. Life is not logic. It is not the stage to ascertain whether a particular testimony is to be rejected on the ground of anumus or as being partisan. A testimony of a partisan witness cannot be whittled down even in a criminal trial. For the purpose of enquiry of this nature, the Court is to estimate as to the existence of materials which suggest a reasonable possibility of an investigation. I have refrained from making any observation about the correctness of veracity of the allegation which will be evaluated at a latter stage after completion of the investigation. It should not be even remotely understood to be expressing any view on the allegations in one way or the other. I have only considered the state of affairs that have been chronicled but purposefully refrain from entering upon the details lest it may prejudice in the fair investigation.

14. Accordingly, I direct the CBI to investigate the matter and sent the report to this Court within four months from the date of receipt of copy of this order.

15. A copy of this order alongwith a copy of the Paper Book be sent to the Director, CBI, to appoint a Senior Officer to hold the investigation/enquiry into the matter. I direct the Chief Secretary to the Govt. of Arunachal Pradesh, the Director General of Police/ Inspector General of Police and the law enforcing authority in general in the State of Arunachal Pradesh to render all the necessary help and assistance to the CBI in conducting investigation of the case, as directed.

The writ petition accordingly stands disposed in the above terms.

Registry to place the report of the CBI before the Court as and when it is received.